SECOND COMMENT PERIOD - COMMENTS/RESPONSES

Letters, e-mail messages, comment sheets were received from the following:

1. Budd-Falen Law Offices.....June 12, 2006
2. Erb & Suenram Law Offices.....June 12, 2006
3. Doney, Crowley, Bloomquist, Payne, and Uda Law Offices ..... June 12, 2006
4. Davis, Warren & Hritsco Law Offices..... June 13, 2006
5. Leon Sagaloff..... May 25, 2006
6. Robert Hartwell .....May 22, 2006
7. National Trout Unlimited .....May 23, 2006
8. Skyline Sportsman, Anaconda Sportsman, Public Lands/Water Access Association .....May 23, 2006
9. Harris H. Wheat .....May 26, 2006
10. John Osborne .....May 31, 2006
11. Steve Carl ..... June 03, 2006
12. Jerry Carl .....June 02, 2006
13. Bob Butler .....June 02, 2006
14. Chris Bradley ..... June 07, 2006
15. Mike Marcum .....June 07, 2006
16. Walter Morris.....June 10, 2006
17. John Cargill..... June 10, 2006
18. Fishing Outfitters Association of Montana..... June 12, 2006
19. Beaverhead Watershed Committee.....June 12, 2006
20. Steve Hull.....June 11, 2006
21. Raymond L. Gross, Jr ..... June 10, 2006
22. Larry Laknar.....June 09, 2006
23. Trout Unlimited.....June 12, 2006
24. Allen Schallenberger.....June 12, 2006
25. Beaverhead County Disaster of Emergency Services .....June 12, 2006
26. Terry Throckmorton .....June 12, 2006
27. Tom & Mary Smith ..... June 12, 2006
28. Montana Department of Fish, Wildlife and Parks..... June 09, 2006
29. Steve Cottom ..... June 09, 2006
30. Beaverhead and Big Hole Outfitters and Guides Assn. ..... June 12, 2006
31. Quarter Circle 9 Outfitters .....June 12, 2006
32. Eric Troth .....June 12, 2006
33. Richard & Martha Storey.....June 13, 2006
34. Jeremy Garrett .....June 15, 2006
35. U.S. Fish and Wildlife Service.....June 19, 2006
36. Robert Van Deren .....June 12, 2006

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June 12, 2006

Via Federal Express
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Re: COMMENTS on *Revised* 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 *Revised* Draft Environmental Assessment ("EA") Clark Canyon Reservoir that was released in May 2006.

As explained in Open A Ranch's comments to the Draft Environmental Assessment, Open A Ranch has land that is intermingled and neighbors the Clark Canyon Water Supply Company ("CCWSC") and the East Bench Irrigation District ("EBID"). Also, Open A Ranch is a non-signer to the CCWSC and EBID 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 EBID and CCWSC. 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. In addition to ranching, they spend significant time on their land for recreation and other purposes. They fish on their land and worry that the ongoing fishing will be directly impacted by the Bureau's decision. They also enjoy the use of these lands to view wildlife in the area. Open A Ranch has been directly impacted by sedimentation and flooding caused by reservoir operations and storage water deliveries. On behalf of Open A Ranch, we provide the following comments.

I. INTRODUCTION

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 Federal actions. 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. U.S. Forest Serv., 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. NO NEPA ANALYSIS ON THE GOVERNMENT ACTION TO INCREASE ACREAGE

1.1 Over the years since the initial authorization, the number of irrigated acres for the CCWSC and EBID have increased past the acreage originally allowed. There has been no NEPA analysis performed on these increased acres.

The contracts to CCWSC and EBID were issued in 1958. Because this occurred prior to the passage of NEPA, no NEPA analysis was necessary. However, expansion of the irrigated acres has occurred since NEPA's enactment in 1970. See 42 U.S.C. § 4321. Any increase after 1970 must have NEPA analysis completed as it is a major federal action. 42 U.S.C. § 4332. As explained above, this is so the agency will have detailed information on the environmental impacts of the decision and so the public will be fully informed. Northwest Environmental Defense Center v. Bonneville Power Administration, 117 F.3d 1520 (9th Cir. 1997). In this Revised Draft EA, the Bureau does not address the increase that has already occurred, but rather addresses only a very small portion of the increase in acres since 1970 (918 acres). The Bureau states that the preferred action (and, incidently, the no action alternative) is to approve the contracts to irrigate 33,706 acres for CCWSC and 27,137 acres for EBID (EA at 11-13); however, the government action is really approval of a contract that allows an approximate increase of 14,000 acres since 1970.[1]

[1] It is impossible to state for sure the exact increase in acreage since the Bureau and the irrigation districts use so many different numbers. However, if one accepts the Bureau's 2005 Memorandum "Beaverhead River Operations" as the status quo, comparing that number to the Bureau's preferred alternative in the Revised Draft EA results in an increase of 14,195 acres.

1.1: The Council on Environmental Quality interprets the environmental benchmark or environmental footprint (effects) for contract renewal processes to be measured at the end of the existing contracts (end of the 40 years).

The increase that has already occurred is an important aspect of full consideration of the impacts of the proposed action. This is the equivalent of allowing the Forest Service to clearcut 300 acres per year for 40 years, and when the Forest Service has to do NEPA because of its requirement to do a new forest plan, the Forest Service saying that there was no impact from logging because it was the historic practice to clearcut. No member of the public would see this as rational and no court would allow it. NEPA analysis must be done on the full change after 1970, not just certain aspects of it. See, e.g., City of Atlanta v. United States, 531 F.Supp. 506 (N.D. Ga. 1982) (airport approved prior to NEPA enactment, runway change proposed after enactment); Confederated Tribes & Bands of Yakima Indian Nation v. FERC, 746 F.2d 466 (9th Cir. 1984) (power plant approved prior to NEPA enactment, relicensing proposed after enactment). Here the contracts were approved prior to NEPA enactment, but the irrigated acreage was increased after enactment.

Below is a list of documents which over the years have discussed the irrigated acreage for both CCWSC and EBID. Attached as Exhibit A to these comments is a chart summarizing these documents and other claimed irrigated acres. As these documents and charts show, the claimed number of acres has not been consistent over the years, and has dramatically increased in the Revised Draft EA.

1. ***1944 Congress adopted House Document 475 and Senate Document 191*** – Sen. Doc. 191 provides that "Clark Canyon Reservoir . . . if built . . . will furnish a full supply of water for 25,000 acres on a bench east of Dillon, and a supplemental supply for 14,500 acres in the same general area."

The Revised Draft EA states, "Senate Document No. 191 . . . considered a full irrigation water supply for 32,400 acres of new irrigation and a supplemental irrigation water supply for 34,100 acres in the Beaverhead River Basin, including tributaries." EA at 4. It is not clear from the EA how the Bureau arrived at this number, since the Bureau did not provide a specific page reference in the Senate document. However, it appears from reviewing Senate Document No. 191 that the Bureau is likely manipulating the numbers contained in the document to exaggerate how many acres were originally considered.

Senate Document No. 191 states, "Clark Canyon Reservoir, on Beaverhead River, below the town of Armstead, if built to a capacity of 150,000 acre-feet, will furnish a full supply of water for 25,000 acres on a bench east of Dillon, and a supplemental supply for 14,500 acres in the same general area." Senate Doc. No. 191, p. 62. Only by adding together the new irrigation and supplemental irrigation supplies for the Red Rock, Horse Prairie, and Dillon Valley units can a person arrive at the 32,400 acres of new irrigation and 34,100 acres of supplemental irrigation that was supposedly considered in Senate Document No. 191. Id. at p. 64.[2] Because the Beaverhead

[2] Actually, adding together the acres of supplemental irrigation for the Red Rock, Horse Prairie, and Dillon Valley Units equals 34,200 acres. However, given the similarity to the Bureau's figure for supplemental acreage, and the fact that the new acreage listed is the same, this appears to

River drainage begins at the confluence of Horse Prairie Creek and Red Rock River, and because the statement in the EA also refers to tributaries of the Beaverhead River Basin, this is presumably how the Bureau arrived at the amount it alleges was considered.

The Bureau clearly manipulated the numbers in Senate Document No. 191 in order to make it appear as if the number of acres it is now proposing to irrigate has been considered all along. However, Senate Document No. 191 only considered furnishing a full supply of water for 25,000 acres and a supplemental supply for 14,500 acres, not the 32,400 acres of full supply and 34,100 acres of supplemental supply alleged by the Bureau. The Bureau cannot use the numbers from the Red Rock, Horse Prairie, and remaining portions of the Dillon Valley units not irrigated by Clark Canyon Reservoir to support its claim to additional acreage, since the Clark Canyon Reservoir is the only reservoir being considered in this EA.

2. ***1957 District Court Findings of Fact and Conclusions of Law*** – Montana District Court ruled that the EBID would have 22,193 irrigated acres within its boundaries.

3. ***1960 Definite Plan Report ("DPR")*** – The Bureau's DPR authorized flood irrigation of 28,004 acres for CCWSC and 21,800 acres for EBID.

4. ***1983 Bureau Brochure*** – The Bureau brochure describes the total acreage irrigated in the project from 1968 through 1981 as ranging from 45,944 to 48,815.

5. ***EBID Tax Assessments*** – Sent to Beaverhead and Madison County Treasurers and Montana Dept. of Revenue. EBID representative certified to the Montana Department of Revenue that the total acreage irrigated for the EBID was 22,684.55 acres.

6. ***Bureau Website*** – Bureau MTAO website East Bench Unit Land Areas (at www.usbr.gov/dataweb/html/gpeasprjdata.html) describing total irrigated acreage as 49,804 acres.

7. ***April 4, 2000 EBID Minutes*** – In its minutes, EBID recognized that they were irrigating too many acres: "We know that we are irrigating around 4000 more acres than the original contract. . . . If we cannot get the acres down, we will end up paying for an Environmental Assessment, which is around $30,000, or an Environmental Impact Statement, which can run into the hundreds of thousands of dollars."

8. ***January 16, 2003 Bureau letter to EBID*** – Bureau stated it is the Bureau's position that EBID cannot irrigate more than the 28,004 acres originally irrigated pursuant to the contract.

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be how the Bureau arrived at this figure.

9. ***February 4, 2003 Bureau letter to CCWSC and EBID*** – Bureau again stated that "[i]t is our interpretation that water delivered under either the Clark Canyon Water Supply Contract, or the East Bench Irrigation District contract, can only be applied to lands duly authorized by Reclamation. For the Clark Canyon Water Supply Company, the lands authorized to receive Reclamation water are the specific 28,004 acres of land which were irrigated at the time the contract was executed in 1958. For the East Bench Irrigation District, the lands authorized to receive reclamation water are the specific acreages approved by Reclamation through the land classification process. Any deviation from the authorized water deliveries outlined above is a violation of Reclamation law."

10. ***September 3, 2004 Bureau letter to EBID*** – Bureau again stated, "[i]t is also Reclamation's understanding that the original intent of both Reclamation's and the Company was to fix the number of acres served by the Company in the contract."

11. ***September 22, 2004 testimony before Congress*** – The attorney for CCWSC and EBID told the members of the House Resources Committee Subcommittee on Water and Power that the total number of acres irrigated by CCWSC is approximately 25,000 and by EBID is approximately 21,800.

12. ***Beaverhead River, Clark Canyon Irrigation District Water Budget 2004*** – Describing irrigated acreage as 28,000 for CCWSC and 21,800 for EBID.

13. ***EBID Meeting Minutes, dated January 6, 2005*** – Describing irrigated acreage as 21,800 for EBID and 24,898 for CCWSC.

14. ***Fall of 2005*** – Brent Esplin, of the Bureau handed out a memorandum titled "Beaverhead River Operations." This document provides "[t]here are 21,800 authorized acres with the [District] and 24,848 acres with the [Company] . . . . it is illegal to utilize federal facilities, including distribution or storage facilities, to serve lands in excess of their authorized acres."

15. ***Bureau NEPA scoping meeting at Dillon, MT – "No Action Alternative, Current Condition" as stated by the Bureau on January 11, 2005*** – Describing irrigated acreage as 22,689 for EBID and 24,848 for CCWSC.

16. ***Bureau "Information Sheet" for East Bench Unit technical meetings, dated March 10, 2005*** – Describing irrigated acreage as 21,800 for EBID and 28,004 for CCWSC.

17. ***HKM Final Report dated March 21, 2005, titled, "Review of Method of Determining Delivery of Water to Non-Signers – Beaverhead River" Figure 1*** – The Bureau hired HKM to do a report and that document described irrigated acreage as 21,800 for EBID and 28,004 for CCWSC.

18. **July 7, 2005 Letter from Larry Laknar, a CCWS Director, to the CCWS Board of Directors** – Larry Laknar addressed the issue of EBID increasing its acres: "For years Clark Canyon Water supply either legally or just by chance allowed at first the Bureau and then EBID to manage the operations and water supply. Why was the expanded acres issue not enforced by the Bureau at the beginning of the project or later by EBID?"

19. ***August 18, 2005 Assessment Letter to Beaverhead and Madison County Treasurers*** – Describing irrigated acreage as 22,684.55 for EBID.

20. ***March 27, 2006 Bureau letter to Open A Ranch*** – The Bureau acknowledges that more acres have been added since the original contracts: "Reclamation understands that water users within the CCWSC and the EBID **have been adding lands since the early 1970's; especially after advancements in pumping and the availability of cheaper electricity in the Beaverhead Valley.** Reclamation has been informed and believes that all of the acreage requested by CCWSC and EBID for inclusion in the proposed contracts has been irrigated on a regular basis and the water users intend to irrigate with as full as supply of water as is available in the future. Reclamation believes and this office has concurred that the authorization for the EBU in the Flood Control Act of 1944 is sufficient to include all of the proposed acreage."

21. ***Bureau MTAO website (at www.usbr.gov/dataweb/html/eastbench.html, last checked June 7, 2006)*** – Describing irrigated acreage as 21,800 for EBID and 28,000 for CCWSC.

These documents and numbers show that the original contracted acres are significantly different from the approximately 55,000 acres for CCWSC and approximately 30,000 acres for EBID depicted in the location map in the Draft EA. These numbers are also significantly different from the 33,706 acres for Clark Canyon and the 27,137 acres for East Bench listed in the Revised Draft EA as the currently irrigated acres (i.e., the no action alternative). EA at 11-12. These expanded acres have not had the necessary NEPA analysis. The Revised Draft EA state, "[b]oth alternatives carried forward for analysis would divert roughly the same volume of water and would irrigate approximately the same number of acres; however, there are subtle differences." EA at 11. The only NEPA analysis that has occurred is on these "subtle differences." There has been no NEPA analysis and no explanation of the difference between the original contract amount, the amount of expanded acres irrigated since 1970, and the acres the Bureau says the districts are currently irrigating (i.e., the amount of land irrigated in both the no action alternative and the preferred alternative). Because the Bureau claims that the amount of water in both analyzed alternatives is the same as it has always been, they fail to properly evaluate the environmental consequences related to 14,000 increased acres being irrigated by the EBID and CCWSC such as: water supply, water quality, wildlife, endangered species, and recreation. EA at 52, 53, 66, 67-68, 71-72.

1.2

1.2 : See response to Comment 1.1

1.3 In addition, under the new contract, there is no map of contract acres. Without a map of contract acres it is not possible to determine compliance with laws and will not be possible for the local district court to incorporate the administration of contract water into its administration of the Beaverhead River Decree, Case 1053.

III. NO NEPA ANALYSIS ON THE GOVERNMENT ACTION OF ADDING "SHOULDER" SEASON IRRIGATION

The Draft EA at page eight through nine mischaracterizes the "shoulder" season irrigation as not being part of this federal action. The Draft EA does not disclose that "shoulder" season irrigation is specifically included in the terms of the 2006 contracts and are referred to as "reregulation" in the 1958 contracts. In the 1958 contracts, EBID and CCWSC contractually abandoned the right to divert more than 3.1 acre-feet/acre for EBID and 4.0 acre-feet/acre for CCWSC in times of "shortage" for the contract irrigation season of April 15 to October 15 to ensure viability of the entire EBU project. The 1958 water contracts refer to "shoulder" season irrigation as "reregulation" and the limits on diversion were an inseparable basis of the 1958 water contracts.

"Reregulation" meant CCWSC contractually abandoned the right to "call" or divert "early," "late" and "high" water in exchange for a guaranteed supply of 4.0 acre-feet/acre during the most beneficial "summer" irrigation season, ensuring adequate storage inflows for EBID and other users. Furthermore, the DPR indicated that EBID is not feasible without CCWSC's "reregulation" or abandonment of the "shoulder" season "early", "late" and "high" flows. As a result of the 1958 contracts, CCWSC essentially traded the right to call "shoulder" season irrigation for the "reregulated" 4.0 a.f. summer supply, return flows from EBID's flood irrigation of 21,800 acres and exemption from paying Operations and Maintenance on the Bureau's Canyon Ferry Reservoir.

The change from the 1958 contracts prohibiting a "shoulder" season to the 2006 contracts to allow a "shoulder" season is clearly a government action subject to NEPA analysis. The EA must analyze and disclose the impacts of:

- the loss of return flows from 21,800 acres that used to be flood irrigated;
- the loss of return flows resulting from "water spreading" onto approximately 14,000 additional acres;
- the cumulative impact of allowing "water spreading" and expanded acres because of the inclusion of the shoulder season;
- the impact on non-signers, fisheries and other users by allowing "shoulder" season irrigation in a basin closed to new appropriations under Montana law.

It seems that if CCWSC is allowed an additional shoulder season, as is contemplated in the 2006 contracts, that they would be required to pay operating, maintenance and repair fees to Canyon Ferry project, just as EBID is required to pay these charges for impacts to Canyon Ferry resulting from EBID's use of stored run-off water. Since CCWSC is not required to pay similar charges for the "shoulder season," there may be an exemption in the contract for CCWSC use of "shoulder

1.3: There was a map at the beginning of the revised draft EA and the same map is at the beginning of the final EA. Provisions to develop a new GIS based map that delineates specific acres will be included in the negotiated repayment contracts.

season" water that is not explained. At any rate, the addition of a shoulder season in the 2006 contracts should have had NEPA analysis.

IV. INADEQUATE ANALYSIS OF ALTERNATIVES

1.4 The Revised Draft EA analyzes only two alternatives– the no action alternative and the preferred alternative. There are two problems with this. First, the no action alternative is not really "no action." And second, the Bureau did not analyze an adequate range of alternatives. The alternatives requirement is the "heart" of the EA. 40 C.F.R. § 1502.14; see also Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693 (2d Cir. 1972) (alternatives requirement is the "linchpin" of the EA). NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). Federal agencies must comply with this requirement even though they do not have to prepare an impact statement. 40 C.F.R. § 1507.2(d). The alternatives requirements seek "to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit analysis. Only in that fashion is it likely that the most intelligent, optimally beneficial decision will ultimately be made." Calvert Cliffs' Coordinating Comm. v. Atomic Energy Comm'n, 449 F.2d 1109 (D.C. Cir. 1971).

The no action alternative includes increased acres from the 1958 contracts and increased acreage since 1970, when NEPA was passed. As explained above, there has been no NEPA analysis on the increased acres. The Revised Draft EA only addressed the "subtle differences" between the two alternatives. The claimed number of acres currently irrigated (the number of acres to be irrigated in both the no action alternative and the preferred alternative) is larger than the contracted acres. Therefore, the Bureau is trying to sweep under the rug the acres that have been added since NEPA was passed in 1970. This is in violation of NEPA as it does not inform the public of the true impacts of the proposed project. It violates state water law and reclamation law.

In addition, the Bureau did not analyze an adequate range of alternatives. NEPA requires a federal agency to analyze a reasonable range of alternatives. City of Sausalito v. O'Neill, 386 F.3d 1186 (9th Cir. 2004). Analyzing only a no action alternative and a preferred alternative does not represent a reasonable range of alternatives. See Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800 (9th Cir. 1999) (agency considered only no-action alternative and two virtually identical physical alternatives); Curry v. U.S. Forest Serv., 988 F.Supp. 541 (W.D. Pa 1997) (timber sale; only no action and proposed alternative considered).

V. THE BUREAU FAILED TO USE THE REQUISITE SCIENTIFIC INFORMATION AND OBJECTIVITY

The Data Quality Act ("DQA") requires the Bureau to meet basic informational quality standards. 66 Fed. Reg. 49719. This standard of quality requires that the data used and published

1.4: The Council on Environmental Quality defines the No Action Alternative for water contract renewal as renewing the existing (expiring) contracts with minor changes. Minor changes would be updating administrative language and/or updating legal clauses in the contract to comply with current policy, regulations, and laws. The term "no action" does not mean doing nothing.

by the Bureau meet four elements: (a) quality; (b) utility (referring to the usefulness of the data for its intended purpose); (c) objectivity (data must be accurate, reliable, and unbiased); and (d) integrity. Id.

In addition to the DQA, NEPA imposes an affirmative duty on federal agencies to "insure the professional integrity, including scientific integrity, of the discussions and analysis in [an EA]." City of Sausalito v. O'Neill, 386 F.3d 1186, 1213 (9th Cir. 2004) quoting 40 C.F.R. § 1502.24; see also Earth Island Inst. v. United States Forest Serv., 351 F.3d 1291, 1302 (9th Cir. 2003) (claim will succeed "if Plaintiffs are able to convince the district court that the agency unreasonably relied upon inaccurate data"); Utahns for Better Transp. v. United States Dep't of Transp., 305 F.3d 1152, 1182 (10th Cir. 2002). The impact analysis under NEPA is supposed to be objective and unbiased.

In this case, the Bureau failed to "insure the professional integrity, including the scientific integrity, of the discussions and analysis in the [Revised Draft EA]," in violation of NEPA and the DQA. First, the HYDROSS model is not a comprehensive forward-looking projection as required by NEPA. There was no analysis of impacts or viability when Montana Department of Fish, Wildlife and Parks' instream flow rights are adjudicated and enforced. The Revised Draft EA indicates that minimum flows greater than 25 cfs from Clark Canyon Reservoir are "unreasonable" as they will adversely affect the viability of the irrigation project and/or lake fishery.

1.5 Second, the HYDROSS model assumptions, analysis and output are not consistent with and there is no reconciliation with past East Bench Unit operations and various reports and studies, including, but not limited to:

- Montana Tech water study
- Montana State university water study
- 1980's DNRC water study –Barretts to Dillon
- Bureau's 1951 water study
- Various historical aerial, satellite, high altitude images from USGS and NRCS
- Bureau maps
- Bureau brochure and website information
- Bureau's Definite Plan Report ("DPR")
- Irrigated acreage reports to MDOR
- River Commissioner Reports
- HKM Report

Lastly, the Bureau's Clark Canyon Reservoir data is unreliable. The Bureau discards original observations and substitutes alternative measurements. The Bureau's data changes are not done with mathematical or reproducible methods. There is no allowance calculation of reservoir losses before 2006. And, there is no allowance or calculation of storage water conveyance losses in Beaverhead.

1.5: As stated in the Methods of Analysis section of the revised draft EA and final EA, the model was designed to represent present reservoir operations and reasonable future water supply conditions. The model was not intended to duplicate historic conditions or operations. Reclamation reviewed various published reports and databases for applicability and usage in the model development, including, but not limited to, the East Bench Unit DPR, published USGS data, and data supplied by the EBID and the CCWSC. GIS datasets and aerial images assisted in defining the configuration and key assumptions for the model. EBID and CCWSC were consulted to review model parameters and data. A couple of the reports mentioned by the commenter were in development and not available for review and utilization at the time of the model was developed or determined not to be applicable.

VI. OTHER VIOLATIONS OF NEPA

A. NEPA requires the alternatives to be feasible. City of Sausalito v. O'Neill, 386 F.3d 1186 (9th Cir. 2004). Montana water law requires a permit from the state for charges in irrigated lands or irrigation of new lands after June 30, 1973. The current alternatives violate Montana water law. An alternative that violates Montana water law is not feasible.

B. The Revised Draft EA inadequately analyzes the impacts to anyone or anything other than CCWSC or EBID.

C. The Revised Draft EA is inconsistent with formally adopted and approved plans of state and local government. One of the purposes of the regulations implementing NEPA is to "[e]mphasize[] cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document." 40 C.F.R. § 1501.1(b). During the scoping process, the Bureau is required to "[i]nvite the participation of affected Federal, State, and local agencies." 40 C.F.R. § 1501.7(a)(1). The Bureau has failed to do this.

D. An environmental impact statement ("EIS") is required when there is a major federal action "significantly affecting the quality of the human environment." 42 U.S.C. § 4332. The Council on Environmental Quality has defined "significantly" to include both the context of the project and the intensity of the impact. 40 C.F.R. § 1508.27. Intensity includes, in part, "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat," and "[w]hether the action threatens a violation of Federal, State, or local law." Id. The Bureau must prepare an EIS based upon the controversial issues involved, the bald eagles in the area, and the fact that the contract renewals will violate Montana water law and reclamation law. The Bureau has not analyzed any of these factors and, thus, must do so in an EIS.

VII. ENDANGERED SPECIES ACT

1.6 Although the Bureau claims that there are no bald eagle nests in the area (Revised Draft EA at 39), there are bald eagles seen in the area and the area is suitable for nesting.

1.7 The Bureau must consult with the U.S. Fish and Wildlife Service to ensure that this action will not jeopardize the bald eagle and other listed species. 35 U.S.C. § 1536(a)(2).

1.8 The Bureau states that the U.S. Fish and Wildlife Service agrees that bald eagles may be found in the area (Revised Draft EA at 39), but does not explain the results of any consultation. This must be done.

1.6: The revised draft EA (at 39) states "There are no known bald eagle nests at Clark Canyon Reservoir" and that is a correct statement according to the Montana Natural Heritage Program. The revised draft EA (at 39) does not state "in the area", as the commentor suggests. The final EA contains the same language.

1.7: Reclamation did consult with the USFWS. See Chapter 5, Consultation and Coordination.

1.8: See response to Comments 1.6 and 1.7

VIII. CONCLUSION

The Revised Draft EA is nothing more than an attempt to legalize and sweep under the rug an approximate 14,000 acre increase without the required NEPA analysis. Nowhere else in the history of the project has the Bureau used the number of 60,843 acres that is in the Draft EA or has the Bureau analyzed the impacts of irrigating the 60,843 acres of land that the Bureau is now claiming is the historic use. The Bureau has not done the necessary analysis, has not provided accurate information to the public, and has attempted to use the NEPA process to legitimize an illegal increase in acres. Furthermore, the Bureau had not complied with NEPA substantively either because of its numerous process errors. The Revised Draft EA supports the Bureau's comments at public meetings that they are there "to help the irrigators." However, in the NEPA process the Bureau had obligations to comply with the law, which would be the best way to "help the irrigators," as well as others impacted by this NEPA analysis. The Bureau has failed to comply with the state law, federal law and NEPA.

Thank you for your attention to this matter. The remaining attachments referenced in these comments are being forward to you under separate cover from Open A Ranch. Should you have any questions or need any clarification with points made in these comments, please do not hesitate to contact me.

Sincerely,

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

xc: Robert Van Deren
Michael Cusick

EXHIBIT A

Year	CCWSC Acres	EBID Acres	Total Acres	Comments
1944	14,500	25,000	39,500	Senate Document 191 at 62.
1944			66,500	Bureau claims Senate Document 191 authorizes this. Revised Draft EA at 4.
1957		22,193		District Court Finding. District Court found that there were 39,089.5 acres within the boundaries of the district, but only 22, 193 were susceptible to irrigation. There was no court ruling on CCWSC.
1960	28,004	21,800	49,804	Definite Plan Report
1965 to 2005		22,684.55		EBID tax payments to Beaverhead and Madison County Treasurers and Montana Dept. of Revenue.
1968			47,364	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1969			47,896	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1970			48,031	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1971			48,102	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1972			47,583	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1973			45,944	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1974			45,989	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1975			47,398	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1976			48,454	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1977			48,417	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"

1978			48,341	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1979			48,707	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1980			48,815	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1981			46,490	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1983	28,000	21,800	49,800	Bureau brochure titled, "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev. 4/83"
1992			49,804	Bureau MTAO website East Bench Unit Land Areas at www.usbr.gov/dataweb/html/gpeasprjdata.html
2000		4,000 more than original contract		April 4, 2000 EBID Minutes.
2003		21,800		January 16, 2003, Bureau letter to EBID.
2003	28,004			February 2, 2003, Bureau letter to CCWSC and EBID.
2004	25,000	21,800	46,800	Testimony by attorney for CCWSC and EBID before Congress on September 22, 2004.
2004	28,000	21,800	49,800	Beaverhead River, Clark Canyon Irrigation District Water Budget 2004.
2005	24,848	21,800	46,648	Bureau Memorandum "Beaverhead River Operations"
2005	24,848	21,800	46,648	EBID Meeting Minutes, dated January 6, 2005.
2005	24,848	22, 689	47,537	Bureau NEPA scoping meeting at Dillon, MT – "No Action Alternative, Current Condition" as stated by the Bureau on January 11, 2005.
2005	28,004	21,800	49,804	Bureau "Information Sheet" for East Bench Unit technical meetings, dated March 10, 2005.

2005	28,004	21,800	49,804	HKM Final Report dated March 21, 2005, titled, "Review of Method of Determining Delivery of Water to Non-Signers – Beaverhead River" Figure 1.
2005		22,684.55		August 18, 2005 Assessment Letter to Beaverhead and Madison County Treasurers.
2005	55,000	30,000	85,000	Proposed irrigated acres on location map in Draft EA.
2005	~28,000	21,800	49,800	Bureau GP website at http://www.usbr.gov/gp/aop/um/0506/um_mtao.cfm#clark, Unit Operation Summaries, October 1, 2005
2006	33,706	27,137	60,843	No Action Alternative–Current irrigated acres. Revised Draft EA at 11-12, 73.
2006		28,055		Revised Draft EA at 73, "The Preferred Alternative includes an additional 918 that might become part of EBID." See also Revised Draft EA at 5.
2006	33,706	27,137	60,843	Preferred Alternative in Revised Draft EA.???
2006	28,000	21,800	49,800	Bureau MTAO website at www.usbr.gov/dataweb/html/eastbench.html, last checked June 7, 2006.

[1] This figure has never before appeared in any Bureau documents, yet now the Bureau claims that this vastly expanded acreage represents the historic use.

ERB & SUENRAM, PLLC
Attorneys at Law

Telephone: (406)683-2391
Facsimile: (406)683-2233

134 E. Reeder Street
P.O. Box 1366
Dillon, MT 59725

Calvin J. Erb
Andrew P. Suenram
Kurt W. Steadman
Jennifer Allen, CLA

June 12, 2006

Bureau of Reclamation
ATTN: MT-231
2900 4th Avenue North - Ste 501
Billings, MT 59101

Via E-Mail: clarkcanyon@gp.usbr.gov

RE: Comments on Revised Draft Environmental Assessment, Clark Canyon Reservoir, Montana

Dear Planning Coordinator:

I am receipt of a letter dated June 12, 2006 prepared on behalf of Open A Ranch of Dillon, Montana. I am not entirely familiar with all of the documents and the analysis concerning some of the action taken by the government that has been referenced by that letter. I want to state for purposes of comments for the Revised Draft Environmental Assessment that I concur in many of the items stated by Open A Ranch in their letter of June 12.

Calvin and Brooke Erb own a ranch that neighbors the Open A Ranch. We, too, are concerned about water quality, natural flows and the impact the expansion of acres may have on the quality and quantity of water available. As Open A, we are non-signers, that is, we are not members of Clark Canyon Water Supply. Because of some difficulties we have had in the past with Clark Canyon in maintaining the stream flows and delivering the water as required under Montana law, as well as what we perceive as interference with our water rights, we believe we have no other alternative but to make sure that we have a chance to participate in any settlements or ongoing discussions with Clark Canyon Reservoir. While we believe that Clark Canyon Water Supply has attempted to address several issues that we personally have been concerned about, we are not sure at this time whether in the final analysis that every issue which impacts our property has been adequately addressed. Brooke and I both believe that a negotiated settlement with all of the people interested in the water availability and the quality of the water is in the best interest to the community as a whole. Therefore, we feel it is necessary to provide this letter to you and state that we adopt the comments provided to you by Hertha L. Lund on behalf of Open A Ranch.

2.1

Sincerely,

CALVIN J. ERB

E-mail: Andy - suenramlaw@bmt.net; Cal - Suenramlaw3@bmt.net; Kurt - suenramlaw4@bmt.net; Jennifer - suenramlaw2@bmt.net

2.1: Noted.

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

Dear Sir or Madam:

As you are aware, my firm represents Geoduck Land & Cattle, L.L.C. ("Geoduck"), a shareholder in the Clark Canyon Water Supply Company ("CCWSC") and a member of the East Bench Irrigation District ("EBID"). As such, I submit the following comments on behalf of Geoduck to the Revised Draft EA.

Please note Geoduck tiers to and incorporates by reference its comments, dated December 5, 2005, to the Clark Canyon Contract Renewal EA issued in November of 2005. Geoduck also tiers to and incorporates by reference the comments submitted to the U.S. Bureau of Reclamation ("BOR") by the CCWSC, EBID and Beaverhead County Commissioners.

PIORITY OF DISTRIBUTION UNDER THE NO ACTION AND PREFERRED ALTERNATIVES

The description of the first and third "priorities" under the No Action Alternative is erroneous. The first priority under the 1958 CCWSC-BOR contract simply provided water in the volume of 4 acre-feet to lands owned by CCWSC shareholders' which were historically irrigated prior to the contract. Under the third priority, CCWSC shareholders received any additional water left over after the first and second priorities were fulfilled.
3.1 There was no mention of EBID receiving water under the third priority in the 1958 contract. As written, the No Action Alternative in the Revised EA is far from what the 1958 CCWSC-BOR called for in terms of priority of water distribution.

As Geoduck mentioned to the BOR on several occasions (both in comments to the November 2005 Draft EA and contract negotiations), CCWSC shareholders have a vested right in the supplemental water they received under the 1958 CCWSC-BOR contract for the past forty years. However, the priorities set forth in the Preferred Alternative in no way acknowledge those vested rights, much less the priority of distribution called for under the 1958 contract, discussed above. The Preferred Alternative needs to recognize
3.2 and acknowledge CCWSC shareholders' vested rights to the distribution of supplemental project water in that regard.

ANALYSIS OF IMPACTS OF NO ACTION AND PREFERRED ALTERNATIVES TO CCWSC SHAREHOLDERS AND EBID WATER USERS

There is no discussion in the Revised Draft EA of the impacts to CCWSC shareholders and EBID water users regarding water availability and distribution under the alternatives set forth therein, which they have historically received since the inception of the Clark Canyon project.

3.1: That is a correct statement. There were 2 contracts in 1958; one contract between Reclamation and CCWSC and one contract between Reclamation and EBID. The No Action Alternative as written in the revised draft EA and the final EA is a blended description of the priority system for both contracts.

3.2: The 1958 water service contract with the CCWSC was entered into under authority of subsection 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196). Reclamation does not agree that the shareholders of the CCWSC obtained a vested water right to the supplemental water delivered under the 1958 water service contract as the commenter suggests.

THE DROUGHT MANAGEMENT PLAN AND SHOULDER SEASON

3.3 The Revised Draft EA contains no assessment as to how often the Drought Management Plan ("DMP") would be triggered based upon historical data, which should be readily available for the BOR to use in its analysis. As a result, it is impossible for Geoduck to evaluate the real meaning and effect of the DMP without such an assessment being done and included in the Revised Draft EA. Geoduck requests such an assessment be done as part of the environmental analysis process.

In regard to the "shoulder seasons" concept, Geoduck points out that many CCWSC shareholders' have underlying water rights with a "period of use" overlapping the proposed shoulder seasons. As such, it must be noted that the proposed "shoulder seasons" cannot infringe or impair CCWSC shareholders' right to use their underlying water rights at the same time water is being delivered pursuant to the shoulder season concept.

OTHER MATTERS

Geoduck opposes the concept of a "partnership agreement" with the Montana Department of Fish, Wildlife, & Parks as set forth on p. 14. Geoduck does not believe such a "partnership agreement" is necessary for the administration of the CCWSC and EBID contracts. Moreover, such a partnership will only frustrate the decision making process by adding another layer of consultation which already contains the CCWSC Board of Directors, EBID Board of Directors, a (proposed) Joint Board, and the BOR. The decision making process is already too cumbersome.

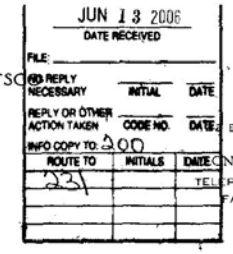
Geoduck notes that the BOR used HYDROSS modeling software in analyzing impacts in the Revised Draft EA. Geoduck has reservations about the accuracy of the HYDROSS modeling software, and whether it should be relied upon to make water distribution determinations.

Please communicate with my office if you have any questions or need further clarification of these comments.

Sincerely,

John E. Bloomquist
Thomas E. Davis
Attorneys for Geoduck Land & Cattle, L.L.C.

3.3: The hydrology model used 74 years of data in order to predict what would happen to the reservoir for the next 40 years. The August end of month content of Clark Canyon Reservoir was below 50,000 af in 18 of 74 years. Thus, 24% of the time, the drought management plan would be triggered. The final EA has been updated to reflect these numbers.



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DAVIS, WARREN & HRITSCO
LAWYERS

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

EAST GLENDALE STREET
P. O. BOX 28
N, MONTANA 59725-0028
TELEPHONE (406) 683-2363
FAX (406) 683-6790

June 12, 2006

Mr. Jeff Baumberger
U.S. Department of the 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 *Revised* Draft EA

Dear Mr. Baumberger:

Please be advised that this law firm continues to represent Clark Canyon Water Supply Company (CCWSC) of Dillon, MT. Please accept the following comments on behalf of CCWSC regarding the *Revised* Draft Environmental Assessment for Clark Canyon Contract Renewal. We are simultaneously submitting these comments via fax to 406-247-7338 and via email to clarkcanyon@gp.usbr.gov.

1. CCWSC incorporates by reference its comments dated December 5, 2005 to the earlier Draft EA, to the extent the same are not inconsistent with the following comments and to the extent the same were not addressed by Reclamation in the Revised EA.

4.1 2. In the description of the Clark Canyon Water Supply Company near the top of Page 4, CCWS notes that it is comprised of many individual shareholders *as well as* several individual ditch companies.

4.2 3. CCWSC believes the Revised EA more clearly explains for the public the project development history, the Congressional framework upon which irrigation acreages are based, and the fact that although CCWSC and the East Bench Irrigation District (EBID) are proposing to formally include more irrigated acreages in the present contracts they are nevertheless proposing to divert the same amount or volume of water as under the 1958 contracts.

4. CCWSC appreciates the manner in which the Revised EA makes it clear to the public that its shareholders retained their underlying natural flow water rights and contract for supplemental water from Clark Canyon Reservoir.

4.1: Noted. Changes were made in the final EA.

4.2: Noted.

4.3

5. CCWSC believes the Revised EA clearly distinguishes between water service contracts and repayment contracts, and clearly identifies the irrigation entities' legal right and ability to renew their contracts and to elect between the two types of contracts. CCWSC does in fact intend to enter into a repayment contract with Reclamation.

4.3: Noted.

4.4

6. With respect to the "Other Actions Occurring in the Beaverhead River Basin" section near the bottom of page 9, CCWSC recognizes that irrigation use by non-signers would continue regardless of this Federal action. However, the paragraph should also provide that such irrigation use would necessarily be in accordance with the prior appropriation doctrine and state water law generally, and would be subject to water availability. As stated, the paragraph could be misconstrued to indicate that non-signers would be guaranteed irrigation water regardless of priority or water conditions.

4.4: Noted. Changes were made in the final EA.

7. Regarding Winter Release Guidelines for the Beaverhead River and specifically Table 2.1 on Page 13, CCWSC remains concerned about the likelihood of flooding along the lower reaches of the river near Twin Bridges when winter releases approach 200 cfs. Although the draft contracts now being negotiated place the responsibility of setting winter releases upon the Joint Board, the Joint Board is concerned about being exposed to liability for damages caused by flooding. Accordingly, CCWSC and the Joint Board will be exploring ways to ensure indemnity from various state and federal agencies, as well as from others requesting such winter releases.

4.5

8. Regarding the issue of conveyance losses discussed throughout the Revised EA and identified in several of the public comments received by Reclamation on the first draft, CCWSC wishes to point out that while significant, the conveyance losses are not unusual for a system comprised primarily of earthen ditches, and that the losses are not atypical for irrigation projects in general. The public should be aware that much of those losses make up a portion of the ultimate return flow to the Beaverhead River. While CCWSC is interested in minimizing conveyance losses and increasing system and on-farm efficiencies, it should be noted that with ever-increasing operations and maintenance expenses, together with the new contractual requirement to establish and fund a significant reserve account, coupled with the repayment obligations, the resources of CCWSC and its shareholders are already compromised and the Company's ability to participate financially in future improvement projects is uncertain.

4.5: Noted.

CCWSC appreciates the opportunity to submit these Comments on the *Revised* Draft EA and looks forward to concluding the contract renewal process.

Sincerely yours,

DAVIS, WARREN & HRITSCO

By _____
William A. Hritsco

WAH:cl
c: CCWSC Board of Directors
Steve Cottom, President EBID

Clark Canyon Reservoir

Comment Sheet

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MAR 2 2006
DATE RECEIVED
FILE
NO REPLY NECESSARY
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DATE

Name Leon Segaloff

Address 908 E. Glendale

City Dillon State MT ZIP 59725 E-mail Segaloff@hotmail.com

Please return the completed sheet to:
Bureau of Reclamation - Montana Area Office
Attn: MT2351 Clark Canyon Comments
P.O. Box 30137
Billings, MT 59107-0137
You may also email your written comments to:
clarkcanyon@gp.usbr.gov
USE OF THIS FORM IS NOT REQUIRED FOR SUBMITTING COMMENTS

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 5/22/06

5.1 After attending most of today's meeting I would like to point out that the economic factor of fishing as reported in the report is grossly underestimated.

I feel the water rights plan should flexible and not set to never be changed. The plan needs to reflect the social & economic situation of 2006 and be flexible to handle growth in the future.

Minimum stream flows need to set to allow for the sustained viability of the Beaverhead as a "blue ribbon" trout stream because the Beaverhead is not only a state treasure, but a national treasure.

I would suggest that all water users come together to come up with a better water use plan that would benefit everyone; even if it means setting a precedent and re-writing water rights laws. Its time to think 21st century; not 19th century.

Thank you

Leon Segaloff

5.1: The economical recreation benefits listed on page 45 of the revised draft EA were based on visitor use days at Clark Canyon Reservoir. Economic recreation benefits and values for the Beaverhead River were added to the final EA.

Clark Canyon Reservoir

Comment Sheet

Name Robert Dartwell & Uncle Robs Outdoors, Inc

Address PO Box 263 11 Pierce Drive

City Dillon State MT ZIP 59725 E-mail

Please send the completed sheet(s) to:

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

Or e-mail your written comments to:
mtaoinfo@gp.usbr.gov

Up-to-date information is available from our Web site at:
http://www.usbr.gov/gp/mtao/clarkcanyon/

(USE OF THIS FORM IS NOT REQUIRED FOR SUBMITTING COMMENTS)

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 5-22-06

Myself and lots of people think we need an EIS - you folks (BR) think an EA is sufficient - it will probably end up in Court

6.1 I still want to see more flow in the river all year long. At least 50 CSF. Also, I think a minimum level of 10,000 AF is to Low!

6.2 I would like to see someone or group do something to correct silting from Clark Canyon Stream

+ still do not like either plan.

6.1: The 25 cfs minimum river releases from the dam and the 10,000 af minimum reservoir level are proposed as part of the new contracts to protect (not enhance) the environmental health of the Beaverhead River during times of extreme drought. Reclamation and Montana Fish, Wildlife, and Parks (MT FWP) have agreed through a Memorandum of Understanding (MOU) to examine opportunities to improve the environmental health of the Beaverhead River. This partnership will identify problems and possible solutions to improve the environmental health (possible increase river releases and higher reservoir levels) of the Beaverhead River while continuing to provide water the Reclamation water contract holders.

6.2: The silting from Clark Canyon Stream is beyond the scope of this Federal action. Reclamation has no jurisdiction in Clark Canyon Creek. The 2 groups that should be contacted included the Beaverhead Watershed Committee and MT DEQ.

Clark Canyon Reservoir

Comment Sheet

Name NATIONAL TROUT UNLIMITED – BRUCE REHWINKEL

Address 101 MANDA DRIVE

City TOWNSEND State MT ZIP 59644 E-mail brehwinkel@tu.org

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 5-23-06

TROUT UNLIMITED appreciates the thoughtful response to our written comments on the first Draft E.A. We are especially pleased with the following two points:

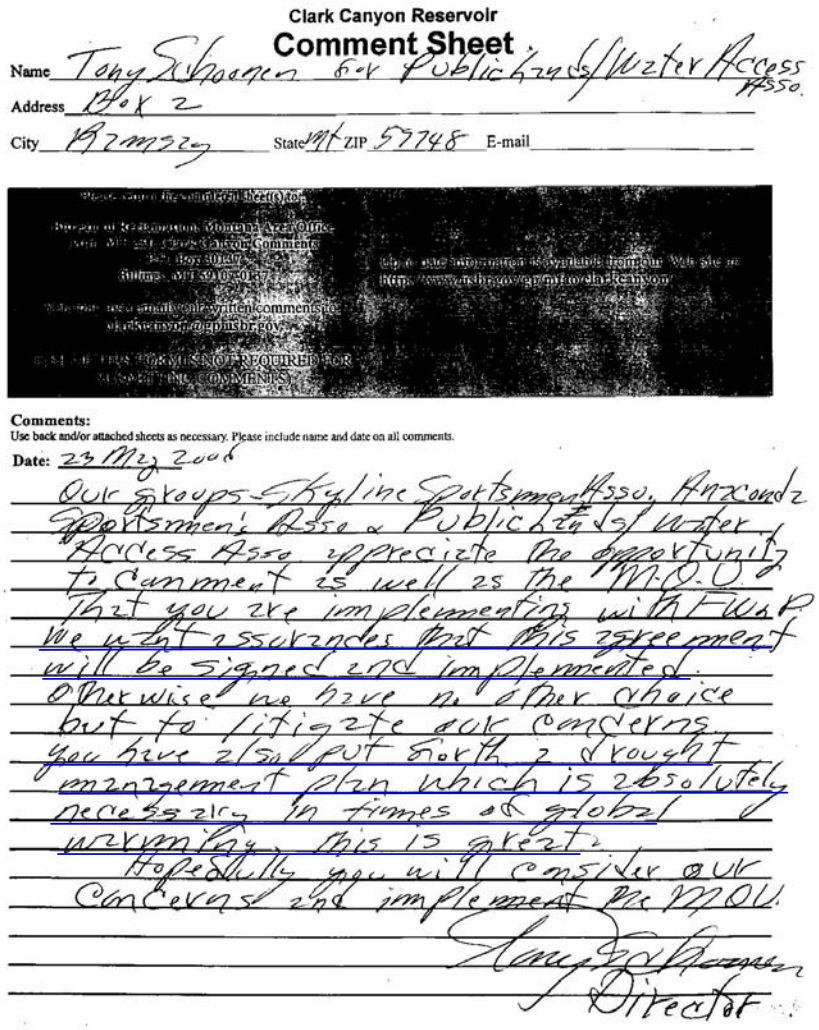
7.1 1) The Bureau's indication that you will be a contributing partner in the TMDL process with DEQ, and

7.2 2) The proposed MOU with the Montana FWP is a positive and significant step forward on all the river related issues.

TU looks forward to working together to improve this system.

7.1: Noted.

7.2: Noted.



Clark Canyon Reservoir

Comment Sheet

Name Tony Schoonen for Public Lands/Water Access Asso.

Address Box 2

City Ramsay State MT ZIP 59748 E-mail

[redacted]

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 23 May 2006

Our groups - Skyline Sportsmen Asso, Anaconda Sportsmen's Asso & Public Lands/Water Access Asso appreciate the opportunity to comment as well as the M.O.U. that you are implementing with FWP

8.1 We want assurances that this agreement will be signed and implemented. Otherwise we have no other choice but to litigate our concerns.

8.2 You have also put forth a drought management plan which is absolutely necessary in times of global warming, this is great.

Hopefully you will consider our concerns and implement the MOU.

Tony Schoonen
Director

8.1: The MOU between Reclamation and MT FWP is included in the appendix of this final EA.

8.2: Noted.

MAY 2 6 2006

Clark Canyon Reservoir

Comment Sheet

Name Harris H Wheat

Address P.O. Box 711

City Dillon State MT ZIP 59725 E-mail Wheats-pond@7pns.com

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 5-24-06

9.1 (1) I Am Not in Favor of Paying O.E.M. To Canyon Ferry.

9.2 (2) I Think in short water year The Fish and game Should be on drought Mamagement plain. Some thing like you show The Board Today

Thank you
Harris H Wheat
C.C.W. Board Member.
And Rancher

9.1: This comment will be addressed as part of the contract negotiation process.

9.2: Reclamation has no jurisdiction on what the MT FWP should do in times of a drought.

Clark Canyon Reservoir

Comment Sheet

Name John Osborne

Address 726 E Beach Rd

City Twin Bridges State MT ZIP 59754 E-mail strider@3rivers.net

[redacted]

Comments:
Use back and/or attached sheets as necessary. Please include name and date on all comments.

Date: 5/27

10.1 #1, I believe it is wrong to burden Clark Canyon and East Bench users with an open ended obligation associated with Canyon Ferry. We do have have any input into the scope, timing or amount of expenditures on Clark Canyon.

10.2 #2, The proposed contract is not in compliance with the original promises made to Class A shareholders when they signed up for the dam project. I believe Class A shareholder need an incentive to stay with Clark Canyon, not additional payments and restrictions

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INITIALS	DATE

10.1: See response to Comment 9.2.

10.2: Noted. Also, see response to Comment 9.2.

From: Steve Carl <stevecarl1944@yahoo.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/3/06 8:56PM
Subject: Clark Canyon Dam 40 Year Renewal Contract

Dear Bureau of Reclamation:
I own approximately 95 acres on the upper Beaverhead River, between High Bridge and Henneberry Bridge. The river bisects my property and I have irrigation ditches and water rights on both sides of the river. I am also an avid fisherman.

11.1 I am extremely concerned over the proposed contract renewal which sets minimum flows at 25cfs. I feel that the minimum flow should be at least 50 cfs. This could be accomplished without sacrifice if the water flows were managed more effectively over the course of the entire year, especially during the summer months. If the flows were managed more closely throughout the year, the total yearly effect of releasing 50 cfs during the winter months would be minimal.

11.2 During April last year, when the flow was at its absolute minimum, a heavy rain swept tremendous amounts of runoff from the badlands into Clark Canyon Creek, which flows into the river by High Bridge. This milky sediment had disastrous results on the fish population downstream for the entire fishing season. It reduced the recreational enjoyment of many fisherman like myself and adversely impacted the livlihoods of fishing guides. If more water had been released from the dam to flush out the effect of this"chocolate milkshake," the harmful effect would have been minimized.

11.3 I hope that you will reconsider your stance that September 1 storage has to be at least 80,000 acre feet before the dam keeper will allow 50 cfs in the winter months.

Sincerely yours,

Steve Carl
3433 Pipe Organ Road
Dillon, MT 59725

11.1: See response to Comment 6.1.

11.2: Reclamation and MT FWP have agreed through a MOU to examine opportunities to improve the environmental health of the Beaverhead River. This partnership will identify problems and possible solutions to improve the environmental health (possibly a springtime flush when water is available) of the Beaverhead River while continuing to provide water the Reclamation water contract holders.

11.3: The minimum flow criteria are guidelines and will be used as a starting point to determine winter releases. The guidelines were designed such that it would not limit the supply of irrigation water in any measurable amount. The model run did not result in any further restriction on irrigation supply. The model was first run with the 25 cfs minimum release and the irrigation needs and then additional runs were made adjusting the minimum flow up in years with a better water supply to a point that it did not impact the irrigation supply.

From: <flyfisherman444@aol.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/2/06 2:45PM
Subject: Clark Canyon Dam Renewal Contract

To Bureau of Reclamation:

With my brother, I am a landowner on the Beaverhead River who fishes and also uses the property for agricultural purposes. Based on last year's drastic reduction in the quality of fishing on the Beaverhead River due largely to low water flows early in the season, I feel that making the minimum water flow at 25 cfs as in the Bureau's proposal will be disastrous, not only for the fishery, but for the economy of the entire area.

12.1

It is not only the fishing guides, but the hotel and motel operators, the restaurant owners and employees, and all the other retailers in town who serve the thousands of fishermen who come through Dillon as they fish the famed Beaverhead. Conventions such as the annual dentist group that support the economy of the area will not be attracted if the Beaverhead's fishery continues to go downhill. It should also be remembered that property values in the whole area are inflated because of the presence of our world class fishery.

Since we also graze horses and cows my property, I also realize that ranches and farmers have water concerns. I also have water rights that have been impacted by the prolonged drought. But it seems to me that a careful use of the water throughout the year could enable at least a 50 cfs during the winter and early spring months.

12.2

I hope that you will reconsider your stance that the September 1 storage has to be at least 80,000 acre feet before the damkeeper would allow 50 cfs in the winter months.

Sincerely yours,

Jerry Carl
3433 Pipe Organ Road
Dillon, MT 59725

CC: <D_Cullen@umwestern.edu>

12.1: See response to Comment 6.1.

12.2: See response to Comment 11.3.

From: "crane" <crane@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/2/06 7:32AM
Subject: Dam Renewal ans "revised" EA

Please accept the following comments for the Clark Canyon Dam renewal and revised EA.

FWP biologists have recently completed their spring electrofishing survey on the upper Beaverhead river. The results are the lowest fish counts EVER RECORDED in the upper river.These results stem in a large part to the extreme low winter flows(25 cfs) that have been released in recent years.

Some points for your consideration:
-The fishery needs, as an ABSOLUTE MINIMUM 50cfs for winter; 80-100 when conditions permit.
-Again, I cannot find in this document where any of the canal user groups(East Bench, West Bench, etc) have taken it upon themselves to developed any kind of conservation effort such as lining the big loss areas, etc.
13.1 -The economic value of the fishery is, again, grossly underestimated. I have personal knowledge of half a dozen operations that have gross receipts of your listed total There lodges and or retail outlets rely heavily on the Beaverhead. And that is just a fraction of the REAL number. It raised a question as to how and why this number is so purposely underestimated.
-No where in this document do I see any reference to real estate and it's relationship to a healthy fishery.
13.2 -Reservoir pools need to be adequate for a spring flushing flow and to ensure a MINIMUM of 50 cfs for winter flows and signed off as such in the MOU.

Should the Bureau decide to go ahead with this proposal as recommended in this revised document(25cfs, no conservation, etc) it's actions will be challenged in court.

Sincerely, Bob Butler

--

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13.1: See response to Comment 5.1.

13.2: See response to Comment 6.1.

Bureau of Reclamation
Montana Area Office
Clark Canyon Comments
P.O. Box 30137
Billings, MT 59107-0137

JUN - 7 2006

To Whom It May Concern,

I'd just like to take a moment to express my concern over the Beaverhead River and the Clark Canyon Dam. This is far too important of a fishery to contine to be destroyed. Winter flows of 25-35 CFS are not sufficient to sustain this fishery. Agricultural needs are only part of the equation when considering flows. Fish numbers, especially larger fish, are at an all time low right now. This is a direct result
14.1 of water management policies over the past years. Please rethink these policies and find a way to restore and preserve this amazing resource.

Best Regards,
Chris Bradley
Butte Montana

14.1: This "amazing resource" and fishery has been created by the construction of Clark Canyon Dam. Water stored behind the dam minimizes the impacts to aquatic resources in times of severe drought. The minimum winter release of 25 cfs is set to protect (not enhance) the aquatic resource in times of severe drought. Also, see response to Comment 6.1.

JUN - 7 2006

Bureau of Reclamation
Montana Area Office
Clark Canyon Comments
P.O. Box 30137
Billings, MT 59107-0137

To Whom it May Concern,

I'd just like to take a moment to express my concern over the Beaverhead River and the Clark Canyon Dam. This is far too important of a fishery to contine to be destroyed. Winter flows of 25-35 CFS are not sufficient to sustain this fishery. Agricultural needs are only part of the equation when considering flows. Fish numbers, especially larger fish, are at an all time low right now. This is a direct result of water management policies over the past years. Please rethink these policies and find a way to restore and preserve this amazing resource.

15.1

Best Regards,
Mike Marcum
Butte Montana

15.1: See response to Comment 14.1.

From: "Walter Morris" <walteremorris@hotmail.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/10/06 9:21PM
Subject: Response to draft environmental assesment

I would like to thank you for allowing me to add my thoughts to the many expressed concerning your revised draft environmental assessment.

As an introduction, my name is Walter Morris. I was born in 1944 approximately 2 miles south east of the Beaverhead Rock. I lived in that location for the next fifteen years and had much time and opportunity to observe the Beaverhead River. My family members recorded the level of the Beaverhead River, for their records to be used in later years.

We moved to the Stephens ranch which is on the river app. 5miles N.E. of the Beaverhead Rock in 1959. At this location I had the privilege of bringing our milk cows from the river pasture across the river on many occasions during the ensuing years. The river was low enough to walk on the rocks and keep leather work shoes dry. The only water in that stretch of the river in the summertime would be below an incoming stream and to the next headgate where the river would again be dry. Consequently their was no fishing in the Beaverhead except for a few spots where there was sloughs or springs.

I hayed on most of the ranches between Dillon and Silver Star Mt. during the late 1950's and early 60's. I was able to observe most of the conditions of the river and the irrigation methods and patterns.

My wife and I purchased units 126 and 134 on the east bench in 1965 and put a sprinkler system on unit 134. We purchased a sprinkler system and irrigated on the bench in 1965, this being the first year of water but not officially the beginning as the government said there wouldn't be any water for irrigation on the bench until 1966.

The original E.B.I.D. board of directors consisted of Jeff Cox, Les Staudenmeyer, and Pete Rebich Sr. When Jeff Cox's term expired, he asked me to allow him to nominate me, thus began one of the greatest opportunities for me, as a young man inflicted with the normal handicap of knowing everything, to learn a great vastness of knowledge, which thank god, I was allowed to learn from many older and wiser men of knowledge and experience.

Much happened in the next twenty plus years, much of which was fate and the privilege of many good water years. Along with the good fortune was the knowledge of many very astute and hard working individuals with the desire to benefit all concerned and the ability to put the good of all foremost in front of the benefit of a few.

According to the records, all flourished. A river classified by the fish and game in a study done by them, went from being a stream unable to support a game fishery due to the historical condition of continual dewatering, to a blue ribbon trout stream.

The E.B.I.D. tried to make sure everyone used their water in a prudent manner but didn't have the power to police where people used their water. This lead to many people irrigating additional acreage. Numerous comments have been made as to the prudence of these actions which may have been

allowed by the district but to my knowledge were never encouraged or given authority or led to believe there would be a water right to equal or supercede a water right legally obtained by another right holder. I understand that the Bureau of Reclamation is including some of these appropriations and possibly placing them ahead of senior right holders.

I was also informed that an agreement between a representative of the Bureau made with the fish and game or fish and wildlife in 1973 to assure a minimum flow of 200 cfs. In an attempt to satisfy this agreement, higher flows were maintained after the drought started and led to an accelerated loss of storage. These facts were brought out by a study ordered in an attempt to prove a point which was erroneous. This study was done by HKM engineering and was a very informative and interesting document which brought forth many facts which had been denied and led to much of the present posturing and counter productive plans.

I don't see how you can completely throw out the original agreement with the original water right holders and make deals with new parties to give them water that is not there and totally disregard what was originally agreed to. Then give new stake holders water rights that they don't have and there isn't adequate water for and take water away from those that have historically had legitimate claims to and convince anybody that this is justice. How secure is the right of the new partners if you can take the water away from the people that have the oldest recorded rights? Is this the reason the non signers refused to sign the original agreement?

16.1

When you study all the facts and compare the improvement of the fishing from before 1966 and Clark Canyon Dam and the present situation after the water was managed under the recomendation of the fish and game biologist and the Bureau for the last 15 or more years, it seems a mystery to me why any sportsman would be condoning more of the same.

I keep seeing the reference to the dire need to improve the efficiency of the irrigation system. In looking back through old records I keep finding delivery efficiencies of 50 to 60 percent, these are figures from records of the bureau of reclamation. Doesn't it seem odd that you could put almost half of the project into gravity systems and eliminate miles of canal and have the efficiency go way down. Is it possible that we are looking in the wrong place.

The plan to make sure that the very large reserve fund, which had been built up over many years to a figure well in excess of a million dollars, be disposed of to prevent the danger of the Bureau from using it against the E.B.I.D. in the upcoming contract renewal as it could establish a false repayment ability. The present plan calls for not only the building of a large reserve fund by the E.B.I.D. to secure against a calamity to their facilities. Now the Clark Canyon water users will have to have a large reserve fund to protect facilities which they don't have and were originally told that they wouldn't be held responsible for.

It seems that the prudent request of most of the previous respondents to the first EA should be to demand a total revelation of all the facts and the insistence of a new negotiating team with an open mind with the goal of benefiting all stakeholders concerned and disregard the insistence of an EIS, and become an equal partner and insist that a new contract be written that with the interest of all stakeholders treated fairly. As long as we

16.1: No part of this Federal action will give new stake holders water rights nor will this Federal action take any water rights away. Water rights are under the jurisdiction of the Montana DNRC. Reclamation has a right under Montana statute to impound and store water behind Clark Canyon Dam. Reclamation, in turn, supplies water to entities holding water contracts with Reclamation.

are willing to let those that don't have any true stake in the game make the decisions and everyone insists on being promised something that isn't there, we will all lose and those with nothing at stake will be the big winners. Contrary to many statements, most ranchers and agriculture people are good and have the good of our natural resources at heart. If we cannot make a living, the rich will own it all and then we will all be the losers. An equitable conclusion to this mess is all I hope for. Please return this project to what it once was and could be again.

Bureau of Reclamation
Attn: MT231 Clark Canyon Comments
clarkcanyon@gp.usbr.gov
June 10, 2006

Bureau of Reclamation,
RE: Clark Canyon Dam 40 Year Renewal Contract

After receiving the document draft and attending the public meeting in Butte I would like to add my comments. After years of watching the spring run-off go to the Missouri and seeing Clark Canyon almost empty I think you need new management. One of your folks at the public meeting stated well it's caught in the Canyon Ferry Dam, this does the Beaverhead and Jefferson Valley no good after it is gone. You should have incentives and be urging the irrigators to use the early run-off water and soak the ground while the water is available, restoring the ground waters. Irrigators would need less early due to cooler climate and would assist later into the summer months. Whatever the flows are during the winter months will work to protect the fishery either 25 or 50 cfs, more if you have it. The Beaverhead used to go dry in the summer, as long as a stream flow exists in drought years we should be thankful. The agriculture community was there first and they pay for use of the water, fishing persons and guides need to do the same thing.

17.1

Economics: Agriculture: hay, machinery, grain, cattle, local jobs, the highest contributor to Montana's economy. Recreation is a huge factor in Montana's economy, management is the key for everyone. During drought years everyone may loose some.

Catch the water when you can, save it as long as you can, and try to be fair to all users.

Comment submitted by John Cargill.

17.1: Noted.

From: Robin Cunningham <rcunningham@montana.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/12/06 9:31AM
Subject: Re Clark Canyon Renewal

Bureau of Reclamation:

Thank you for the opportunity to comment on the Clark Canyon Dam Contract renewal.

After reviewing the documents and prior comments regarding this issue, the Fishing Outfitters Association of Montana (FOAM) offers these comments, concerns and requests:

1) We understand that the dam contract is key to satisfying the repayment of certain costs associated with the original construction and current O/M expenses tied to Clark Canyon Dam.
2) We understand that the coordinated efforts of the BoR, CCWSC, and EBID are required to satisfy both the federal regulations directing the BoR and the needs of the irrigators in the Beaverhead Valley.
3) We understand that the fisheries issues most key to our industry are not priority concerns for either the BoR, CCWSC, or EBID.

Nonetheless, we reiterate the concerns voiced by many of our constituents, the Montana Dept. of Fish, Wildlife & Parks, and various sportsman's groups from southwestern Montana regarding minimum pool levels and minimum flow releases during the winter months. We urge BoR consideration of maintaining, when possible, a pool of sufficient level

18.1 to allow a winter release of 50cfs to maintain the Beaverhead fishery. The ongoing health of the fishery and adequate measures to ensure water quality during spring sediment loading require more releases from the dam during winter and spring months.

18.2 We request, following renewal of the dam contract via the preferred alternative, immediate attention be paid the development of the MOU between the Joint Board (BoR, CCWSC, EBID) and the Montana Dept. of Fish, Wildlife & Parks in order to coordinate efforts to increase minimum pool and winter flows. This MOU cannot be an adjunct issue - it is a core ingredient to achieve and maintain the health of the fishery.

18.3 We disagree with the figures and method used to calculate the economic benefits rendered by the recreational community to the Beaverhead Valley. Even if no other portion of the recreation industry were considered, the average rate for a two-person guided fishing trip on the Beaverhead ($370) multiplied by the 2004 outfitted use levels recorded with the Montana Board of Outfitters for the Beaverhead (3059 individuals served, typically two clients per trip) equals $565,915, nearly 94% of the total $604,000 estimated by the BoR in their documents.

Since our figure includes only the recorded guided activity on the Beaverhead River, we are satisfied that if the amounts associated with Clark Canyon Reservoir guided fishing, non-guided activity, camp fees, gear, and support services to the entire recreating population in the area, not just those fishing, would be much larger than the balance of 6% or $38,085 remaining in your original figure.

18.1: See response to Comment 6.1.

18.2: The MOU between Reclamation and MT FWP is included in the appendix of this final EA.

18.3: See response to Comment 5.1.

If our needs must be non-priority, our contribution to the economic well-being of the Beaverhead area is not.

18.4 We urge BoR consideration of our simple request - the need for more water and active participation by the Joint Board with the MDFWP to take creative, necessary steps to ensure sufficient water for the Beaverhead fishery that maintains our service industry in that area.

Thank you in advance for your consideration.

Robin Cunningham
Executive Director
Fishing Outfitters Association of Montana
info@foam-montana.org
406.763.5436

18.4: See response to Comment 6.1.

From: "JNHoyrup" <jnhoyrup@bmt.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/12/06 9:12AM
Subject: Fw: Comments on Reclamation's revised Draft EA

To whom this may concern:

The forwarded e-mail contains comments from Mr. Robert Van Deren pertaining to the Draft EA for Clark Canyon Dam. Mr. Van Deren is a rancher on the middle reach of the Beaverhead River.

Nick Hoyrup
Coordinator
Beaverhead Watershed Committee
----- Original Message -----
From: Robert Van Deren
To: JNHoyrup
Sent: Wednesday, June 07, 2006 8:20 PM
Subject: Comments on Reclamation's revised Draft EA

Nick,

Below are some suggested comments I have on Reclamation's revised Draft EA.

Thanks,
--
Rob Van Deren

The USBR website indicates the East Bench Irrigation District irrigates 21,800 acres and Clark Canyon Water Supply Company irrigates 28,000 as of 2005 on these pages:

Pick Sloan Missouri Basin Program, East Bench Unit - Montana
http://www.usbr.gov/dataweb/html/eastbench.html
Unit Operational Summaries for Water Year 2005 Clark Canyon Reservoir
http://www.usbr.gov/gp/aop/um/0506/um_mtao.cfm#clark

The revised Draft EA indicates signficantly more acres in 2006 than in 2005. It is unclear to the reader when the the NEPA analysis has been conducted on these additional acres.

The revised Draft EA discusses the issue of high or "scouring" flows to flush the sediment downstream and restore the Beaverhead's ability to carry high flows as part of future operations. We understand the "scouring" flow are to be achieved through thoughtful management and timing of releases that would not short the irrigators.
The focus on flushing or scouring flows appears to be concentrated on flushing the sediment bars in the Beaverhead above Barretts downstream. The upper Beaverhead currently has the capacity to carry higher flows than the section below Dillon because of the routine high flow water deliveries to large diversions such as the East Bench Irrigation District Canal, Canyon Ditch and Westside Canal.

19.1 We have a concern the scouring flows will focus only on the upper Beaverhead to ensure the sediment is flushed "downsteam" and past the Dillon "urban" area. Below Dillon, where the channel lowest capacity below Dillon, there could be signficant flooding and damage, particularly on the lower west side of the river

19.1: Reclamation and MT FWP have agreed through a MOU to examine opportunities to improve the environmental health of the Beaverhead River. This partnership will identify problems and possible solutions to improve the environmental health (possibly a springtime flush when water is available) of the Beaverhead River while continuing to provide water the Reclamation water contract holders. This springtime flush will be coordinated with many entities; including, but not limited to the Beaverhead Watershed Committee and landowners along the Beaverhead River.

below Anderson Lane Bridge, with no mechanism to monitor and moderate the flows appropriate to this section of the river.

clarkcanyon@gp.usbr.gov

Bureau of Reclamation, Montana Area Office
Attention MT 231, Clark Canyon Comments

June 11, 2006

Dear Sirs,

I am taking time from my vacation to write this e-mail in hope that my feedback will have an impact on your decision regarding winter flows on the Beaverhead River. I am a non-resident visitor that has been coming to the Dillon area for over 20 years. I visit this area because of its outstanding fishing as well as the scenic beauty of the rivers and land. Some years I can only come for a couple of weeks but other years I stay in Dillon for the entire summer arriving n June and leaving in October. So I think my voice is more than that of just a passing through tourist.

Over the years I have seen many changes in the area. Land values have really climbed and since I am also looking at land I know that many of the buyers are out of state fishermen like me wanting to settle here or at least have a second home here so they can enjoy fishing in their retirement. I have also seen an increase in fishermen over the years in spite of frequent low water conditions from lack of rain and ranch/farm irrigation draws.

20.1 From the article I read about the possibility of limiting winter flows on the Beaverhead I noted that someone has estimated that the fishing industry brings in only $600,000 to the area. I think this must be a very conservative estimate. Last year I I spent over $6000 in the four months I was here. I spent this on lodging, food, entertainment, fishing trips and gear. Friends that came up for just 4 days last year spent $2500 for guided fishing, food and lodging. Over in Sheridan there is a B&B that charges guests over $500 a night per person and all along the rivers there are fishing lodges that make good money from the fishing tourists. I do not know how you came up with your estimate or the much larger figure for agriculture's contribution to the area but I only have to look around when I am fishing to see that there are a great many other fishermen up here enjoying your area and spending their money and that just has add up to be more than you estimated.

20.1: See response to Comment 5.1.

I also do not fully understand the significance of comparing the tourist's dollars to the agricultural dollars. I am wondering how much ranchers actually spend on lodging, restaurants, and in local shops, excepting the feed stores and other specialty stores that cater to there industry. I would guess that there are many hotels that depend heavily on fishing tourists for their revenue and do not get that much from the Ag industry.

From my visits here and from my friends at your local KOA, I have learned that the non-fishing vacationing tourist does not often see Dillon as a destination but only as a place to stop on their way to some other destination like Yellowstone. But for the fisherman this is the destination and here they stay as long as they can.

Take away the quality of fishing by lowering the water flows to the level where the fish are negatively impacted and the fishermen will eventually stop coming. And when they do I bet there will be a pretty damaging effect on the tourist industry in this area. Keep the fishing quality of this area high and fishing will continue to add important revenue to this area.

I also do not understand the "either or" of this decision. Why not manage the water flows to sustain the fishing quality so that the fishing tourist dollars can be added to the agricultural dollars. Efficient management can be a win/win.

Please consider my single voice as representing many other fishermen like me and strive to make a decision that will sustain the quality of the fishing in this area.

Sincerely, a very concerned fisherman tourist,

Steve Hull
Living and fishing in Dillon for the summer

Jeff Baumberger
Bureau of Reclamation
Montana Area Office
Comments EA Clark Canyon Contract Renewal

June 10, 2006

The revised Draft Environmental Assessment for Clark Canyon Contract Renewal dated May 8, 2006 does not address the concerns of my comments dated December 12, 2005:

21.1 1. No alternatives considering improvement of multiple use benefits such as fisheries or hydrology were brought forward.

21.2 2. No alternatives considering water conservation methods to improve the efficiency of the system were brought forward.

21.3 3. This is a NEPA process for a 40 year contract for the management of an important public resource, the analysis SHOULD be an Environmental Impact Statement. There are very significant environmental, economic and social issues involved here.

4. Maintaining minimum adequate flows for fisheries was NOT seriously consider in this revised EA. Table 2.1 "Winter Release Guidelines", 25 cfs for Storage of 80,000 AF is not acceptable. At present, June 2006, the fisheries on the upper Beaverhead River has crashed. The total numbers of trout are significantly down and the 18 inch and larger class has crashed. This is supported by Montana Fish Wildlife and Parks 2006 Beaverhead River fish shocking data, and from fishing experience. This EA is on going and MUST consider this data and analyze the impact of low winter flows on this fishery.

At the public meeting in Dillon on May 22, 2006 I was informed that there was a Draft MOU with Montana Fish Wildlife and Parks at the end of the EA document. In reviewing this Draft MOU There are words such as identify causes and POSSIBLE solutions, review and improvements MAY include, STUDY different flows, EXPLORE water conservation projects. This is not binding. And this is in conflict with the preferred alternative in the EA: such as Tabel 2.1 "Winter Release Guidelines". I do not accept that this MOU will mitigate my concerns mentioned above. The concerns I mention NEED to be addressed and an EIS is required. NEPA Law and Bureau of Reclamation Manual Policy, as referenced in comments from Trout Unlimited, Budd-Falen Law Offices and Saltman & Stevens, P.C. support this.

This Revised EA is not acceptable. The Issues are too important to brush over and the time period, 40 years, is too long to over look the deficiencies in this EA which does not consider the impacts on the resources.

Raymond L. Gross, Jr.
355 Antelope Drive
Dillon, Montnan 59725
406 683 2046

21.1: 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 are reasonable alternatives to achieve the purpose and need of the proposed Federal action. As part of the Preferred Alternative, Reclamation will enter into a MOU with the MT FWP to examine opportunities to improve the environmental health of the Beaverhead River. Other alternatives evaluated are in the "Reasonable Alternatives Considered, but Eliminated" section in Chap. 2 of the final EA.

21.2: See response to Comment 21.1.

21.3: 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.

To: Jeff Baumberger
Bureau of Reclamation
Montana Area Office
PO Box 30137
Billings, MT 59107-0137

Attn: MT-231

Re: General Comments on Revised Draft EA and comments from public:

Overall the majority of the comments seemed to be repetitive and a somewhat organized effort. With comments coming from some of the same people that were at the original scooping meeting and offered no comment at that time.

A lot of the comments seemed to be based on hearsay and I am not sure if they even read the Draft EA. A lot of the information in question is in the original EA and many of the comments were not based on fact.

22.1 The term public project (funded by the government) was used and nothing said about repayment and maintenance. Who is and has been paying for the majority project and the maintenance? The producers are. Some of the people who made comments need to realize that this project needs to remain viable for the economy of the area. Agriculture is paying for the majority of the project including the maintenance and upkeep. Recreation and other users need to support the contract renewal process to keep the project viable. If the producers have to fund an Environmental Impact Statement, which could take years, the project may not remain viable.

Jeff did a good job answering most of the questions and they way he referenced them in the revised EA was very good.

I question how credible some of these comments are when they have not read the whole document.

Thank you for opportunity to comment.

Larry Laknar CCWS Irrigator
85 Lost Trail
Dillon, MT 59725

22.1: Noted.

TROUT UNLIMITED
Laura Ziemer
Director
Montana Water Project

June 8, 2006

Mr. Tom Sawatzke, Manager
Resource Management Division
Bureau of Reclamation, Montana Area Office
Attn: MT-231, Clark Canyon Comments
P. O. Box 30137
Billings, MT 59107-0137

Re: Comments on Revised Draft EA
for Clark Canyon Water Delivery Contract Renewal

Dear Mr. Sawatzke:

Trout Unlimited thanks you for the invitation to provide additional comment on the "*Revised Draft Environmental Assessment for the Clark Canyon Contract Renewal*" (Bureau of Reclamation, May 8, 2006) (hereinafter, "*Revised Draft EA,*"), and we look forward to continuing to work with the Bureau of Reclamation on this process. As we expressed in our January 2005 and December 2005 comment letters, and our discussion at the May 23, 2006 public meeting in Butte, Montana, 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.

23.1 Trout Unlimited was heartened to see the draft Memorandum of Understanding (MOU) between Reclamation and the Montana Department of Fish, Wildlife, and Parks (FWP) incorporated in the Appendix of the *Revised Draft EA*. Trout Unlimited also incorporates by reference here our earlier articulation of concerns regarding water quality and the health of the Beaverhead and Jefferson River fisheries (*see, Comments of Trout Unlimited on Draft EA for Clark Canyon Water Delivery Contracts*, dated December 19, 2005, and reprinted at 98-110, *Revised Draft EA (first section, comments and responses)*.

Equally important were the references to the MOU throughout the *Revised Draft EA's* discussion of the preferred alternative (at pages 12-15). These references to the MOU, and the text of the MOU itself, indicate the Bureau's commitment to working as

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*

23.1: Noted.

an engaged partner in watershed restoration efforts. Because of the central role of the Clark Canyon reservoir operating regime and delivery of irrigation water to the overall health of the Beaverhead watershed, the engagement of Reclamation in restoration efforts is critical to their success.

In particular, Trout Unlimited commends the Bureau of Reclamation's statement made in the context of drought reservoir management that: "Both Reclamation and the irrigators agree that a higher minimum flow could be established in the future if improvements to the water distribution systems, such as canal lining projects, were implemented. A partnership of water users, Federal, state, and private entities is anticipated in order for this to be achieved." Trout Unlimited has been engaged in these kinds of productive, collaborative, multi-stakeholder watershed restoration efforts in a number of river basins around Montana, such as the Jefferson and Blackfoot, and believes that this kind of partnership approach can solve many of the most pressing threats to long-term river health. We look forward to partnering not only with Reclamation, but with the East Bench Irrigation District and the Clark Canyon Water Supply Company, as appropriate, on these kinds of efforts.

23.2 In addition, Trout Unlimited supports Reclamation's articulation of the four mitigation measures in the preferred alternative (pages 14-15), that demonstrate Reclamation's commitment to developing a partnership with FWP, Montana Department of Environmental Quality, and other stakeholders in the Beaverhead watershed. The mitigation measures express Reclamation's commitment to both study and address impairments to fisheries, water quality and the flow regime in the Beaverhead River basin in partnership with basin stakeholders.

The preferred alternative demonstrates a willingness to engage in forward-thinking river health. Adoption of this approach, while also fulfilling the core mission of reliable delivery of irrigation water, is at the heart of the Bureau's goal to become an agency of professional natural resource managers for the 21st century. Trout Unlimited supports and commends Reclamation's commitment to watershed health where the Bureau has projects, and remains committed to a productive working partnership with Bureau staff to achieve this goal.

Trout Unlimited looks forward to seeing the draft MOU between Reclamation and FWP finalized and signed in the near future. Indeed, this action is critical to the integrity of the preferred alternative set out in the *Revised Draft EA*.

23.3 Trout Unlimited takes issue, however, with the characterization in the preferred alternative of fish and wildlife habitat as "indirect project benefits." *See* Revised Draft EA at 15. Montana's federal district court has held that 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:

23.2: Noted.

23.3: TU's issue with indirect project benefits is noted. Recreation, fish, and wildlife are considered incidental project purposes because they are not the primary project purposes as authorized by Congress. Further explanation regarding incidental project benefits is described in Chapter 1, Project Development History.

"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).

Despite this oversight in the Revised Draft EA, Trout Unlimited looks forward to working cooperatively with the Bureau to implement its MOU with FWP, improve the health of the Beaverhead River, and work toward an economically-viable community within the basin. Please do not hesitate to contact us directly if we can be of service in finalizing the MOU or the EA on water delivery contract renewals.

Yours truly,

Laura Ziemer
Bruce Rehwinkel

Cc: Governor Brian Schweitzer
Susan Camp, Fisheries Natural Resouces Specialist, BOR
George Mathicus, MDEQ, Water Quality Planning Bureau Chief
Pete Shade, MDEQ, TMDL program
Chris Hunter, FWP
Dick Oswald, FWP
Bill Schenk, FWP
Bruce Farling, Montana Trout Unlimited
Dave McKernan, President, George Grant Chapter of Trout Unlimited

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Allen Schallenberger
53 Elser Lane
Sheridan, MT 59749-9604
June 10, 2006

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

Dear Jeff:

Your revised plan was much improved over the first draft but there is still work needed on it.

1. I want to be sure that the draft MOU is signed with MT FWP before the plan is finalized. Also I want assurance that the 15 year MOU continues in effect by the successors to the signers if they leave or move in either agency.

24.1 2. There should be at least 50 cfs of flow below the dam in all times to help the Beaverhead and Jefferson Rivers. Dam storage should not be drawn down below 40,000 acre feet. The 50 cfs flow would only take about 10,000 acre feet of water.

24.2 3. You have not rated the economic value of the fisheries nearly high enough. Saying that river fisheries will be declining 57 per cent of the time is an economic disaster created by poor government management.

4. Since I am a landowner in Madison County I know that better management of the water and fisheries will improve my land values and those of others.

24.3 5. I want to see you working with the USFS, BLM, MT FWP, private landowners and others to improve beaver habitat and beaver populations on streams on the headwaters feeding the dam. They could be providing a lot of riparian storage and water release during drought and summer periods which we are not now getting. Instead of rationing water you should work to improve the water production.

24.4 6.Bureau of Reclamation still has not admitted they where in error on the dissolved O2 levels in the river. It was measured in late afternoon which is the peak of O2 in streams with aquatic vegetation and algae (ie. Lower Beaverhead). You should have taken the readings at daylight for accurate readings. Low O2 is probably killing young fish on the lower Beaverhead and on the Jefferson Rivers.

7. You have great opportunities to improve water quality and quantity in the river. You should have more plans on how that will be accomplished in the final EA.

Thank you for the opportunity to comment and please send me a copy of the final EA.

Sincerely,

Allen Schallenberger

24.1: See response to Comment 6.1.

24.2: See response to Comment 5.1.

24.3: Reclamation does not have the authority or the direct involvement to work with terrestrial wildlife that is not associated with our projects. However, if one of the entities you listed asked Reclamation to be a partner on a terrestrial project, we would consider working with those partners on the project.

24.4: Reclamation did not admit the dissolved O2 sampling was in error because the dissolved O2 was a by-product of the water quality parameters being sampled. Reclamation sampled dissolved O2 in the afternoon when the other parameters were being sampled. We realize this was not the best time of day to sample O2, but since in was a secondary parameter; it was better to have any sample rather than not sample at all.

BEAVERHEAD COUNTY
DISASTER AND EMERGENCY SERVICES

2 S. Pacific St, Cl. #12
Ph. 683-3764

Dillon, MT 59725

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6-8-06

Jeff Baumberger
Bureau of Reclamation
PO Box 30137
Billings, MT 59107-0137

Re: Comments on Revised Environmental Assessment
Clark Canyon Dam Contract Renewal.

Dear Jeff,

After reviewing the above document, I have concerns mainly with the winter time flows proposed and comments from others about increasing the flows.
I have been the Disaster and Emergency Services Coordinator in this County for 20 plus years and have experienced and responded to numerous floods and potential flooding situations in the County including several on the Beaverhead River.

25.1 One of my concerns is that with proposed winter flows in excess of 100 CFS from Clark Canyon Dam and the normal fall and winter accretions back into the river would cause flooding problems North of Dillon to Twin Bridges. If a study was done of the flows to correlate the dam discharges and the river levels at Twin Bridges through the fall and
25.2 early winter months during non-drought years, it would verify this concern. I believe that 200 CFS releases (as recommended by several of the comments to the EA) during the winter would definitely cause flooding North of Dillon at this time.

To compound this problem we have experienced several years of drought and minimal flows in all the streams and rivers in the county. This has resulted in sedimentation in
25.3 the streams and encroachments on the stream banks by vegetation and human projects. The Beaverhead River needs to be flushed to restore the channel capacity function in a carefully managed plan when excess water is available and at a time when it will not cause flooding for the properties North of Dillon to Twin Bridges.

These flushing events used to occur naturally each spring prior to the construction of the dam. The dam was built primarily as an irrigation project and for flood control of the Jefferson River system but during the several years of drought enough stored water has not been available to create these flushing events in the river. In drought years these flushing events have not occurred yearly even before the dam project.

25.1: Winter releases out of Clark Canyon Dam have exceeded 100 cfs in the past and will likely exceed 100 cfs in the future. This will occur regardless of what alternative is implemented. Clark Canyon Reservoir has a total capacity of 253,442 acre-feet. Depending on reservoir storage, precipitation, temperatures, snowpack, and current inflows; there are times that winter releases will exceed 100 cfs to evacuate storage for future inflows. These normal operating procedures attempt to balance inflows, reservoir storage, and Beaverhead River flows.

25.2: Noted and see response to Comment 25.1.

25.3: See response to Comment 19.1.

In the County Disaster and Emergency planning and mitigation efforts we have identified as potential projects in our approved Pre-disaster Mitigation Plan. The flooding problems in the Blacktail Creek and Beaverhead River are due to steam encroachment and winter icing. A summary of flooding events is listed in the County Pre-disaster Mitigation plan. Mitigation efforts have not specifically been identified at this point for the Beaverhead River but will require an engineered study to determine the scope of the mitigation efforts to improve channel capacity. When stored water was available previous to the drought, we have worked with the management of the Clark Canyon Dam to increase winter/spring flows to maintain the channel capacity of the Beaverhead River to decrease the flooding impacts.

25.4 Another almost yearly concern is **Ice flooding** in any of the streams in the county but especially the Blacktail Deer Creek and Beaverhead River. During the months of December, January, and February we can experience several days in a row of 10 below zero weather. This normally results in what we call river icing. Not what normally is thought of as ice jams. River icing is when "Frazil" (soft) ice collects on the bottom of the streambed and slows the current in the steam bed and as the cold continues this hardens and raises the level of the stream thus causing flooding. This occurs with low and high flows. High flows do slow this frazil ice formation for a little while but not significantly. That is why we have problems almost yearly no matter what the flow. But high flows cause the flooding over a wider and larger area. Then following the cold weather and things begin to thaw, the ice formed over the river begins breaking up and chunks of ice move and cause blockages in the stream channel causing additional flooding in these restricted areas of the stream.

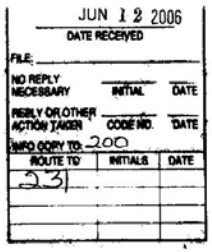
The Bureau of Reclamation has done considerable study on the river icing and ice jam displacement problems. Montana DES offers training using the BOR ice flooding study periodically to plan for and mitigate ice problems.

When we say that these flushing type projects need to be managed, it is critical to time the flushing events around the normal fall accretions and very cold weather times including the amount of flushing flows to minimize the potential for flooding. If ample stored water is available, spring may be the most feasible time and be more like a natural event. The determination of ample storage would be determined by the Clark Canyon Water Supply and East Bench Irrigation District, coordinating with BOR and ACOE.

There could be a liability exposure when proposing these flushing events if it not planned properly.

Sincerely, Larry Laknar
DES Coordinator

25.4: Noted.



Terry Throckmorton
433 Sullivan Lane
Dillon, MT 59725

Dear Sirs;

Let me introduce myself, I am Terry Throckmorton. I grew up on a large working cattle ranch just below the Lima Reservoir. We had several miles of the Red Rock River running through our ranch, I understand the idea of trying to get most out of your land.

Through out the 1960-1970's, the fishing on the Red Rock river was fantastic. Now from dewatering and alkali that dumped down the river from draining the dam several times, the first 20 miles has a very low trout counts. The last 15 miles of the Red Rock River where it enters Clark Canyon dam is still excellent fishing, thanks to the fact that enough springs keep enough water in this part year-round to support fish. The fish in this section grow very healthy with no help from Dam water. I guess that is why Ted Turner bought a big part of this section for the fishing.

Enclosed is the writing from Lewis and Clark on what they found when they arrived August 22, 1805, at the confluence of Horse Prairie Creek and Red Rock where Clark Canyon dam is today. See extra paper. But in short, within two hours, the crew caught 528 cutthroat trout and grayling in willow traps. (There are miles and miles of the lower Beaverhead that have less than one hundred fish per mile at this time.) The cutthroats were between 16- 23 inches long with the grayling a little smaller. Both cutthroat and grayling take cold, clear water. Grayling have been planted in the Beaverhead below the dam in recent years in large numbers, none have survived. If both the Red Rock and Beaverhead where
26.1 restored back to their original conditions with all head gates being closed, we would not need a dam to have a great fishery. Just as the Big Hole and Yellowstone are still great fisheries without dams. I know this is not realistic and will not happen. But the very least the Bureau of Reclamation should work to help keep a quality fishery below the dam.

26.2 There needs to be more than 25cfs released in the winter to keep a quality fishery on the Beaverhead River. Even during these last drought years, in late winter when most of the head gates are closed there is 50-100 cfs entering Lima reservoir. The Lima reservoir has been totally closed, releasing no water. Then from springs and small streams, Red Rock, Horse Prairie creek and springs within the dam there is 200-300cfs that fill the dam. Combine the two and you would have at least 250-

26.1: Noted.

26.2: See response to Comment 6.1.

350cfs minimum flow at Clark Canyon dam area. But of that amount only 25cfs has been let out during the drought. As the river continues on to Dillon with the 25cfs from the dam, it picks up another 175cfs. Making around 200cfs late winter flows through Dillon if this 200cfs was added to the 300cfs above. There must have been at least 500cfs for Lewis and Clark to pull their boats up the Beaverhead in August of 1805. At this time there are places on the Beaverhead River where it does not flow 25cfs in the summer.

Enough is enough. It is a shame to see so much of the Red Rock, Beaverhead and Jefferson being dewatered and the fish and wildlife that live there suffering. Back in the late 1800's and early 1900"s there were more water rights handed out than there was river. Now with aluminum pipes, modern equipment, many, many big wells and pivots still being put in and with lots of land that could still be irrigated, if the farmers can find the water where will it end?

Ten of the last forty years have been drought conditions, 25% of the time that the dam has been used. Maybe the dam can not irrigated the land that it was intend to irrigate? Even if we where to get back to whatever is normal, I believe we are not going to have enough water. The only thing that keeps these rivers going at certain times of the year is ground water coming up. And with the continuation of these large wells and aluminum pipes, the springs and ground water are not going to be there, even on good years. The problems are only going to get worse and it is time for the people at the Bureau of Reclamation to stand up and face the facts. My understanding is the dam was build by all the taxpayers and the canal system is being paid for by the farmers on an 80-year loan?

26.3

26.4 More acres are being irrigated than were ever intended when the dam was build. To me this is no different than clear-cutting an entire forest or stripping mining an entire mountain range. It's time to take a stand and try and keep what we can of these great rivers.

The Beaverhead, Red Rock and Jefferson are all national treasures and very special in their own way. But most of all the Beaverhead can be one of the most productive trout streams in the United States and probably in the world. I hope my kids and grandkids can fish the great rivers, I have fished. And like so many things I won't have to tell them what it used to be like.

26.5 I have asked both the Bureau of Reclamation and some leaders of the East Bench canal to promise that the next forty years will not get worse. They will not make that promise.

Please Bureau of Reclamation do the right thing and protected what's left of our great rivers.

Terry Throckmorton

26.3: The Federal government (taxpayers) originally paid for the construction of the dam and canal system. Through water contracts (both expiring and proposed new), the CCWSC and EBID will repay the Federal government for their appropriate share of the fixed charges related to the construction of Clark Canyon Dam and facilities and their appropriate share of the annual operation and maintenance costs.

26.4: The preferred alternative analyzed a total of 918 additional acres that are proposed to be irrigated as part of the EBID. Chapter 1, Project Development History describes how the number of irrigated acres was determined during the planning stages of the project compared to present day.

26.5: It is unclear what the commentor is trying to state when they say, "will not get worse". Neither the Bureau of Reclamation, leaders of the East Bench canal (ID), nor even the commenter can predict the future and promise that something "will not get worse".

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June 9, 2006

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Mr. Tom Swatzke, Manager
Resource Management Division
Bureau of Reclamation, Montana Area Office
Attn: MT-231, Clark Canyon Dam Public Comment
P.O. Box 30137
Billings, Montana 59107-0137

Re: Public Comment on Revised Draft EA for Clark Canyon Dam Contract Renewal:

Dear Mr. Sawatzke:

We do not think that either alternative presented should be accepted as is. There should be more thought and research done to a 40-year contract. There needs to be another alternative. Many things have changed the last 40 years and many more things will change in the next 40 years.

1. More alternatives need to be presented. The present two are unacceptable.
2. The Revised Environmental Draft Assessment is inaccurate in several areas including economic value of fishing and related expenditures, assessment of aquatic life and fishery (see detail below). **27.1**
3. **The minimum flows of 25CFS are too low.** More water is needed to support the fishery. There should be a minimum of at least 50 CFS with additional reserve water storage for spring flushing of the river in case Clark Canyon Creek dumps sediment into the river in the spring with heavy rains. **27.2**
4. Ranchers and Sportspeople need to work together for improving water usage including ditch-lining improvements.
5. Water users should be held accountable for how the water is used and the efficiency in which it is used. Savings from more efficient use of the water could be one way to conserve for the fishery. **27.3**
6. Ranchers have seen land value in the area go up substantially in the past 10 years. A big part of that increase is the demand for land from outside sportspeople attracted by a world-class fishery.
7. The MOU should be an essential part of the contract not just an addendum. **27.4**
8. The social and economic impact should be studied in more depth for a 40-year contract (see below). **27.5**

27.1: See response to Comment 5.1.

27.2: See response to Comment 6.1.

27.3: Water users are accountable for the water used and many are engaged in water conservation measures either on farm or within the applicable conveyance system. Reclamation agrees with the commentor that water savings from efficient use could be used for fishery. However, the group that funds a particular water conservation project will likely see the benefits of the water savings. The MOU between Reclamation and MT FWP will look for outside groups (including guides and outfitters) to fund projects if such groups want to see the water savings used for their particular benefit.

27.4: The MOU language is part of the contract located in Appendix D (environmental considerations). This appendix outlines the partnerships between the contract water users, Reclamation, and the State.

27.5: See response to Comment 5.1.

Detail on item 2:

A. The social and economic impact of this renewal is very great on the Beaverhead/Dillon area. The figure of $604,221 that the fishing industry contributes is **extremely undervalued(page 45 Table 3.12 of Bureau's EA).** Example: Fish, Wildlife and Parks along with the Montana Board of Outfitters had compiled a detailed study of usage on the Beaverhead River. (A partial copy is attached) For guided use the highest use year was 1999; the lowest use year was 2003 for guided use. (Report date Feb. 15, 2005 with data thru 2003) The total benefit value of non-agricultural use in 1999 was conservatively **$9,446,977. $7,442,758 (see note 1. below) from fishing directly** and $2,004,219 indirectly from people not fishing themselves. (Taken from page 45 of EA draft prepared by the Bureau of Reclamation on the CC Dam = total recreation activities minus fishing 2005 figures. 2005 figures are lower than either 1999 or 2003.) The non-agricultural benefit in 2003 was conservatively **$6,730,618. $4,726,399(see note 2. below) from fishing directly** and $2,004,219 indirectly from people not fishing themselves (same as above). **Much of this decrease from 1999 to 2003 and on into 2005 has been attributed to low water flows in the winter leading to decreased fish populations.** We would like to know where the figure on page 45 came from in Table 3:12 of $52.66 - 2005 value of a fishing visit.

B. The figures for dry land farming economic impact is $75.29/acre the incremental increase for irrigation is $45.38/acre. Assuming that dry farming would still occur, the **dam's economic impact due to agriculture is $ 2,802,714** (28,000+33,706Acres X 45.38) **Not** $7,452,700. (Page 45 dry land agricultural settlements began as early as 1862)

C. Concerning the social economic impact: The Agricultural industry has changed significantly in the past 40 years. Fewer people are employed per acre due to mechanization. The Fishing industry has also changed. More and more people are using more and more services when they fish and expect a great deal of personalized service and are willing to pay for it. This means more people are needed to work in this industry. The majority of parents in the Dillon & Beaverhead area see their children leave the area for work because they cannot get a job in the area. There is a trend towards fewer families and more older people because, a family is very hard to support in the area due to a lack of jobs. Why should an industry that is increasing the number of jobs be given little if no say or importance in this contract? Shouldn't their rights be protected also?

D. Concerning the 25CRS minimum: If you were to go back historically and view the inflows in the winter months to the reservoir, even in the drought years, the inflows were never that low. I do not know if the data is available before the dam was built but a year-by-year inflow in more recent years can be viewed at **http://www.usbr.gov/gp-bin/arcweb_ccr.pl** When storage in the dam was approved was the intent to dry up the streambed or to even allow that as a possibility? Montana DNRC gave the Bureau approximately

2800CFS water storage right. Did this mean that they were first in line for all usage? What about people with senior water rights and the health of the river itself?

E. Concerning pre-dam usage: Fish, Wildlife, and Parks has fishery use day records all the way back to at least the 1950's. According to Dick Oswald the river was used from the Dam all the way to its mouth before the dam. The fishing use days were fairly high. The dam and irrigation demands have caused the lower river to dewater and have concentrated the fishery higher upstream. The fishery higher upstream is now also in jeopardy due to the low winter flows. These figures should be available and should be studied in depth to determine the actual impact of the dam and increased irrigation.

F. Concerning, the comment on page 28 of the Clark Canyon Dam EA "The Beaverhead River between Clark Canyon Dam and Grasshopper Creek is listed as not supporting aquatic life and cold water fishery, and a drinking supply." And the comment on page 29 "The Beaverhead River between Grasshopper Creek to the mouth is listed as not supporting the beneficial uses of aquatic life, cold water fishery, and primary contact." – Please see pages 16-19 of "Montana Fish Wildlife and Parks Beaverhead and Big Hole River rec. rules Environmental Assessment". The fishery is self-sustaining. It is not stocked. The aquatic insect hatches are very prolific. The Bureau's statements are inaccurate.

Note 1:

Over 50% of the guided trips to the area are from lodges. Lodges are charging an average of about $600/day in 2006 per person for their guided trips which include lodging and meals and amenities. Example of some lodges in the area with prices displayed on the web are www.fiveriverslodge.com, www.rubyspringslodge.com , www.hwlodge.com, www.flyfishinglodge.com . Page 27 of EA prepared by FWP on the Beaverhead and Big Hole Rivers (attached) shows 1999 as the high year for outfitted use on the Beaverhead river 5,173 and 2003 as the low year and latest figure in report 2,462. Page 23 of the same EA shows the total Beaverhead river angler use: in 1999 39,622 and in 2003 26,968.

For 1999 the economic value is approximately **$ 9,446,977**. 5,173 X .5 X $600 = **$1,551,900** for guided lodge trips and 5173 X .5 X $333 = **$861,304** for non-lodge guide trips. ($333 = guide trip $187.50/person,license$12.50, Meals $38, Gear $25, Lodging $50, sundries & Ent. $20, does not include tips, accommodations tax, auto rental, airlines, fuel, etc.) Nonguided fishing days 39622-5173=34449 nonguided. 34449 X $146* = **$5,029,554**. Non-fishing recreation **$2,004,219** (page 45 of CC Dam EA). A majority of the people recreating in the area accompany fishermen to the area. *$146=$333-guide trip187.50.

Note 2:

For 2003 the economic value is approximately **$ 6,730,618**. 2462 X .5 X $600 = **$738,600** for guided lodge trips and 2462 X .5 X $333 = **$409,923**for nonlodge guided days. ($333 = guide trip $187.50/person, license$12.50, meals $38, gear $25, lodging $50, sundries & Ent. $20, does not include tips, accommodations tax ,auto rental, airlines, fuel, etc.) Nonguided fishing days 26,968-2462=24506 nonguided. 24506 X $146 = **$3,577,876**. Non-fishing recreation **$2,004,219** (from page 45 of CC Dam EA). A majority of the people recreating in the area accompany fishermen to the area.

Please consider our comments to this invaluable resource. We do not want a national treasure compromised or destroyed.

Sincerely,

Tom & Mary Smith

426 South Atlantic Street

Dillon, Montana 59725

Montana Fish, Wildlife & Parks

1420 East 6th Avenue
P.O. Box 200701
Helena, MT 59620-0701\
June 9, 2006

Tom Sawatzke
Manager, Resource Management Division
Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107-0137

Dear Tom,

Thank you for the invitation to comment on the Bureau of Reclamation's Revised Draft Environmental Assessment on renewal of long-term water service contracts for Clark Canyon Reservoir. As you know, the Montana Department of Fish, Wildlife and Parks submitted extensive comments to the original Draft Environmental Assessment. As a result of FWP's comments (and as noted in the Revised EA), BOR and FWP agreed to enter a Memorandum Of Understanding that identifies environmental problems associated with the Clark Canyon Project that need further study. By signing the MOU our agencies will commit to studying these problems, finding ways to address them, and implementing projects that will improve environmental conditions.

28.1

I was hoping that we would finalize the MOU before the Revised EA's comment deadline. My understanding, however, is that BOR is reviewing the latest draft. I do anticipate that the MOU will be completed soon. Therefore, I have elected not to devote staff time to preparing extensive comments to the Revised EA. However, because the Revised EA is still a draft, I assume that BOR will be publishing a Final EA. If we are not able to complete the MOU before the Final EA is released, FWP will submit comments.

28.2

Thank you for considering the issues we raised in our comments on the initial Draft EA. Please let me know when we can discuss the MOU further. Thank you.

Sincerely,

Chris Hunter
Fisheries Division Administrator

28.1: Noted.

28.2: Noted.

COTTOM SEED, INC.

PO Box 445 Dillon, 1750 East Bench Road, MT 59725

June 9, 2006

RE: Revised Draft Environmental Assessment, Clark Canyon Contract Renewal

Dear Mr. Baumberger,

29.1 I would like to congratulate you and your team in making sense of all the options, technical issues, legal issues, and negotiations that have occurred in the last year and addressing them in this EA. I am in favor of the preferred alternative as I feel it was the most viable alternative for EBID, CCWS, fisheries, and the community as a whole. It provides for many improvements during times of drought, over the previous contracts, to manage the water supply in a more conservative manor. This should help maintain better reservoir levels and river flows during these times.

My family has been raising seed potatoes and other crops in the Beaverhead Valley since the 1930's. We have seen many changes, with the building of Clark Canyon Reservoir being one of the most positive. My grandfather, Philip Cottom had the oldest right on the Beaverhead River but still signed up for stored water because there were times when he was short of water. He could see the more dependable supply of water that would come with storage would be a benefit to everyone. This includes the non-signers who benefited from the firming up of the river and the additional return flows that showed up from the use of stored water to supplement existing irrigation and also additional returns that showed up from the East Bench that was put into production with mostly stored water. This has been a great project for the economy of Dillon by substantially increasing and stabilizing agricultural production in the area. It also had a secondary benefit of creating a great tail-water fishery that is enjoyed by many and which brings additional tourism dollars into the area, but this project was built primarily for irrigation of crops and we should not lose sight of this fact.

We farm land in the valley and on the bench. The bench ground is more suited to potato production because it is generally lighter soil. Because of our elevation and isolation, we raise some of the best disease free seed potatoes in the country. Seed potato production requires high input costs and carries with it considerable risk due to weather, disease, market conditions and such. We depend on a consistent reliable water supply to raise quality seed potatoes because stress on the crop at the wrong time can severally reduce the quantity and quality of the crop. We have built a customer base in many states that depend on us for their seed stock on an annual basis. Areas like the Beaverhead Valley where seed potatoes can be raised successfully are very important to the potato industry in the whole country.

We need the stability of a long-term contract to properly secure financing for improvements and purchases. Lenders in this area are hesitant to loan money to

29.1: Noted.

producers who do not have a long-term contract for their water supply and this is why it is critical for us to renew the contract this year to provide assurance to the banking community that our agriculture does have a dependable water supply for the future.

As I was driving to town the other night for the NEPA scooping meeting I looked across the valley at beautiful green views with livestock sprinkled around, and white mountain peaks behind. This beautiful open space would be replaced with condo's, housing tracts, and dried up weeds if it weren't for the viability of our irrigated agriculture that is totally dependant on the water supply. I also believe that agriculture needs to be geographically diversified with production spread throughout the country. This is why insuring the continued viability of these kinds of projects is important. This spreads the risk to our food supply from natural disasters and other potential problems.

I have concerns that upstream effects above Clark Canyon Reservoir are changing the water supply into CCR and would like to see more investigation of possible changes that have occurred there. This could include things such as; cloud seeding in Idaho, changes in timber and grassland that could be affecting our watershed yield, expansion of irrigated acres in drainages above us, management of stored water above CCR, etc. I recognize that most of these issues are beyond the scope of the contract renewal, but it would be nice to see BOR investigate some of these issues in the interest of the projects long-term viability.

29.2 In regards to the minimum winter release guidelines, I think it is critical that the minimum release be allowed to go to 25cfs during times of extreme drought. Irrigators recognize this is far from optimum for the river fishery, but the additional storage provided helps the reservoir fishery, is very valuable to agriculture, and it actually helps the river fishery in the following summer by providing more summer flows. During the recent drought cycle, which has been one of the most extreme on record, winter releases have been 25-30 cfs. The fishery has still survived through this and I have read fishing reports indicating good fishing has occurred all throughout this drought. In contrast the EBID had severely reduced allotments for 3 years and no water in 2004. This has created extreme financial hardship on producers who have not had a decent crop or any crop throughout this drought.

Thank you for the opportunity to submit these comments.

Sincerely,

Steve Cottom
Cottom Seed Inc.

29.2: The minimum winter release guidelines remained the same from the revised draft EA to the final EA. These guidelines are set to protect (not enhance) the fishery in times of extreme drought while continuing to provide stored water to entities holding water contracts with Reclamation. The minimum release guidelines may be modified in the future if, through the MOU between Reclamation and MT FWP, it has been determined that a higher minimum flow can be achieved while continuing to provide stored water. Also, see response to Comment 11.3.

Jeffrey Baumberger - revised draft response Page 1

From: Robert Flynn <bbhoga2@yahoo.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/12/06 6:54PM
Subject: revised draft response

Dear sir,

30.1 This letter is a response to the revised Draft Environmental Assessment for Clark Canyon Contract Renewal. As an outfitter and representative for the Beaverhead and Big hole Outfitters and Guides Association we still feel the revised draft does not go near far enough to recognize the damage that has happened and will continue to happen to the Beaverhead rivers fishery as long as the reduced releases of 25 cfs continue through the off seasons.

At this time virtually every member of our Association I have spoke with has related their observations of how far the fishery has slipped. " The worst I've seen it since I've been guiding on it", is a comment I hear a lot, and all agree its because of the inadequate releases that have occurred the last five years in sequence from mid September through May.

We have got to do a better job of managing the fishery else we risk losing virtually all of our Angling based tourism.

Sincerely,
Robert Flynn
President BBHOGA

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http://mail.yahoo.com

30.1: The 25 cfs minimum winter releases are not the standard release regime. The 25 cfs minimum is set to protect the fishery during times of extreme drought while continuing to provide stored water to entities holding water contracts with Reclamation. Also, see the response to Comment 25.1.

Jeffrey Baumberger - Clark Canyon Reservoir Page 1

From: "Bill & Mary" <qc9@bmt.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/12/06 6:19PM
Subject: Clark Canyon Reservoir

31.1 Please consider implementing a minimum flow out of Clark Canyon Reservoir. Twenty five (25) CFS for extended periods is not enough water to sustain this world class fishery. I do not believe the accuracy in the low figures

31.2 ($600,000), previously stated, that this fishery contributes to our area. This should be re-examined. We are also not looking at the extensive impact this fishery has had on Real Estate prices in our County over the last ten years. Recreational property prices are sky-rocketing. The upper Beaverhead River is an integral part of our economy. It is a National Treasure and an world-wide draw to Southwest Montana. Providing this River with an increased, biologically proven minimum flow only makes sense for our economy and community.

Thank you,

Bill Kemph
Quarter Circle 9 Outfitters
(406) 683-5651

31.1: See response to Comment 6.1.

31.2: See response to Comment 5.1.

From: Eric Troth <etroth@yahoo.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 6/12/06 3:56PM
Subject: Comment on Revised Draft Environmental Assessment for Clark Canyon Contract Renewal

Thank you for the opportunity to comment again on the Clark Canyon Contract Renewal. I have been a Dillon resident since 1973 growing up fishing the Beaverhead River and earning a living guiding/outfitting on it since 1981.

32.1 I wish to again emphasize the vital importance of fish and wildlife values on the Beaverhead for both commercial and general recreational use. This Blue Ribbon fishery has had a substantial impact on the local economy (more than I believe you have recognized in the draft) and has been an important factor in land values as well as people relocate here to be near this outstanding recreational resource.

32.2 As I, and others, have addressed earlier, the flows from Clark Canyon Dam are the most critical factor in maintaining this resource. Winter releases of 25 cfs are simply inadequate to sustain it. Other issues

32.3 relating to flows, such as sediment loading, the winter-time reverse hydrograph on the lower river, etc. have also been called to attention. These concerns must still be better addressed.

I whole-heartedly support the involvement of Montana FWP Fisheries Biologist Dick Oswald in addressing these concerns. His decades of data collection and experience with this river in particular are an essential asset.

I also believe that the MOU with the Montana Dept. of Fish, Wildlife, and Parks must be included in the contract renewal.

32.4 Finally, I will assert that the 40 year contract period is excessively long given the changing nature of the resource in today's environment. There need to be interim environmental assessments in at least 10 year intervals with the possibility for revising current management practices to best serve all users and the resource.

Sincerely,

Eric Troth

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

32.1: See response to Comment 5.1.

32.2: See response to Comment 5.1.

32.3: The purpose and need of this Federal action is not to correct all of the environmental problems associated with the Beaverhead River. However, you river concerns will be addressed as part of the MOU between Reclamation and MT FWP. The MOU will identify environmental degradation issues, investigate possible solutions, and develop resource management strategies for the improvement of the environmental health of Clark Canyon Reservoir and the Beaverhead River.

32.4: Noted.

RICHARD AND MARTHA STOREY

602 E. POINDEXTER
DILLON, MT 59725

406/683-4208

Bureau of Reclamation
Montana Area Office
Atten: MT 231, Clark Canyon comments
PO Box 30137
Billings, MT 59107-0137

6/11/2006

To Whom It May Concern:

33.1 As a citizens of Montana and Beaverhead county, we urge you to maintain minimum flow levels of at least 50 CFS out of Clark Canyon Dam into the Beaverhead River. This minimum flow is necessary to maintain and sustain the trout population in the Beaverhead that supports considerable commerce in the Dillon and Twin Bridges area.

Thank you for helping ensure the economy and recreation of the Beaverhead valley.

Sincerely,

Richard Storey
602 E. Poindexter St
Dillon, MT 59725

33.1: See response to Comment 6.1.

JUN 1 5 2006

Dear Sirs,

The Beaverhead is one of the best trout fisheries in the world. This river is a very rare gem. I firmly believe that it is the best naturally producing brown and rainbow fishery in the world. I have fished hundreds of trout waters from Alaska to Chile, and with the proper conditions, the Beaverhead can naturally produce more big brown and rainbow trout than any other naturally producing river its size, and most larger rivers in the world.

Given its capabilities, the Beaverhead River is an amazing asset to our area and whether it is directly or indirectly, we all benefit from this great resource. The fertile soils that the Beaverhead headwaters percolate from and flow through create a chemical balance that is ideal for supporting an extraordinarily strong biomass. The more of this nutrient rich water that we have in the river, the greater the amount of biomass that can exist and be supported. It is a very simple equation: the more annual flows, the greater the biomass.

One hundred-twenty cfs minimal annual flow can create 4 times the biomass that 30 cfs minimal annual flow will produce. This means 4 times as many fish, which equates to 4 times as much fishing opportunity. Additionally, a minimum of 120 cfs will produce fish that are 4 times the size of fish that are the product of 30 cfs minimum annual flows.

If we continue to have winter flows of 25-35 cfs the Beaverhead will become a 2nd or 3rd rate trout fishery. The recreation opportunity provided by the "Big Beaverhead Fish" will diminish and be gone.

It is breaking my heart to see the Beaverhead in the sorry state that we find it in today. After many consecutive low flow winters, the "Beav" is producing fishing opportunities much below its potential. I fully realize that because Mother Nature is constantly changing, there are going to be natural fluctuations in average fish size and overall fish numbers, but we know that we need to improve conditions and create a stronger fishery.

34.1 I am asking for a mandated minimum annual flow of at least 120 cfs for the upper Beaverhead. This would ensure that the Beaverhead reaches its potential and is recognized as the best naturally producing fishery of big rainbow and brown trout found in the world.

Continued low winter flows will only produce a meager population of small fish that is recreationally undesirable. This would be a tragedy for the Beaverhead and create an incredible loss for our area's residents, as well as for all those from around the world who also enjoy this rare gem.

Thank you for your consideration,

Jeremy Garrett
(406) 925-5165
212 W. Glendale
Dillon, MT 59725

34.1: See response to Comment 6.1.

JUN 2 0 2006

United States Department of the Interior

FISH AND WILDLIFE SERVICE
ECOLOGICAL SERVICES
MONTANA FIELD OFFICE
100 N. PARK, SUITE 320
HELENA, MONTANA 59601
PHONE (406) 449-5225, FAX (406) 449-5339

File: M.04 June 19, 2006

Memorandum

To: Bureau of Reclamation, Great Plains Region, Billings, Montana Area

From: Field Supervisor, Montana Ecological Services Field Office, Helena, MT

Subject: Clark Canyon Contract Renewal Revised Draft Environmental Assessment

This letter responds to your request for comments on the proposed Clark Canyon Contract Renewal *Revised* Draft Environmental Assessment (draft EA). The U.S. Fish and Wildlife Service (Service) provides the following comments pertaining to federally listed species and other significant fish and wildlife resources affected by the proposed action. These comments have been prepared under the authority of and in accordance with the provisions of the Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. 661 et. seq.), Endangered Species Act (16 U.S.C. 1531 et. seq.), and the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 et seq. We apologize for the delay in responding to your May 15, 2006 request for comments.

35.1 Comments submitted by the Montana Department of Fish Wildlife and Parks (FWP) and other commenter's have raised substantive issues concerning the scope of analysis and range of alternatives considered in the draft EA. The Service fully supports the comments submitted by FWP. Stream flows in the Beaverhead River have been manipulated for irrigation purposes since the late 1900's, thus, impacting the hydrology, geomorphology, biology, water quality, and connectivity of the Beaverhead and Jefferson Rivers. A growing body of literature has increased our awareness of the impacts from flow manipulation on these components of river ecology.

Balancing the existing demands on the water resource, especially in the past several drought years has been challenging for local resource managers. A balanced approach can only be achieved if equal consideration to the significant fish and wildlife resources are considered in you analysis. This process does not obligate a federal agency to fix all the environmental impacts from the proposed action, but provides for an informed, balanced approach to decision making.

35.2 The Service has concerns that the proposed action will influences one of the primary prey items for bald eagles. The Service wants to ensure that future actions and management goals perpetuate adequate populations of forage species for eagles (i.e. fish and waterfowl). The indirect effects of the proposed action have resulted in reduced prey abundance in the lower river and the changes to the hydrograph have likely made winter forging efforts more difficult. As the proposed action would maintain a degraded condition for another 40 years, the Service believes

35.1: Comments submitted during the 1st comment period were addressed in the revised draft EA. The range of alternatives and the scope of analysis were consistent with the proposed Federal action. Due to the complexity of the Beaverhead River system including water rights, irrigation interests, and fishery interests; many comments were generated because commentors did not fully understand the Federal action.

35.2: The preferred alternative contains minimum reservoir levels, minimum river flows, a drought management plan, and winter release guidelines. These criteria and plans were developed to protect resources during times of severe drought while continuing to supply stored water to entities holding water contracts with Reclamation. None of the previously mentioned criteria or plans was part of the original (expiring) contracts with CCWSC and EBID. By implementing these plans and criteria, it is anticipated that the proposed action will not negatively influence one of the primary prey items for bald eagles, as the commenter suggests. The Service recommended a change in the determination based on the possibility of reduced prey abundance, Reclamation will not follow the recommended change as described in Comment 35.3 response. In addition, it is noted that bald eagle populations are increasing and have been proposed to be de-listed from the Threatened and Endangered Species list.

35.3 the appropriate determination for bald eagles is "May Effect Not Likely to Adversely."

35.4 The Service recommends addressing impacts to arctic grayling (*Thymallus arcticus*), as this species has recently been petitioned for listing as a threatened or endangered. In addition please
35.5 consider impacts to migratory birds. Clark Canyon Reservoir is recognized as an important resting and nesting area for migratory birds. However due to the fluctuating water levels bird nests may be inundated. This was a concern also raised in the 1965 Reservoir Management Plan.

The Service has reviewed the comments and revised draft environmental assessment and agrees with FWP that given the scope and magnitude of the proposed action the draft EA fails to
35.6 disclose the impacts to the natural and human environment. The issues identified in the state's comments addressing the significant fish and wildlife resources in the affected area warrant full consideration under the authority of the FWCA.

Thank you for the opportunity to provide comments. Should you have any further questions, please contact me or Dan Brewer of my staff at (406) 449-5225, extension 216.

Sincerely,

R. Mark Wilson
Field Supervisor

cc. MTDFWP, Helena, MT (Attn: Chris Hunter)
MTDFWP, Dillon, MT (Attn: Richard Oswald)

35.3: Reclamation informally consulted with the Service in February 2005 and January 2006 on the proposed action. Through discussions with the Service, Reclamation determined that the proposed action would have no effect on the five threatened species present, including the bald eagle. Written concurrence on Reclamation's determination was not requested from the Service. After the 2nd comment period ended (June 12, 2006), the Service recommended that Reclamation change the effects determination that the proposed action "may affect, not likely to adversely affect" the bald eagle, based on possible reduced prey abundance. Reclamation disagreed with the Service's recommendation based on the Preferred Alternative maintaining or increasing fish and prey abundance for bald eagles. Reclamation remained with their original determination of no effect.

35.4: The final EA has been updated with discussion on the arctic grayling. The Service indicates that the species has recently been petitioned for listing as a threatened or endangered species. According the Service's website, the Service agreed, in a lawsuit settlement, to make a final listing determination by April 16, 2007. At the time the final EA was completed, a final determination has not been made. The MOU between Reclamation and MT FWP will examine opportunities to improve the environmental health (including fisheries) of the Beaverhead River. Therefore, the final determination will be of interest to Reclamation.

35.5: The final EA has been updated with additional discussion on migratory birds.

35.6: Comment noted. Many issues identified in FWP's (state's) comment letter have been addressed in the revised draft EA and the final EA. The issues not addressed will be identified and investigated through processes listed in the MOU that Reclamation and FWP have agreed to. Reclamation has ensured that fish and wildlife resources have been given full consideration. To respond further to the Service's concern; in January 2005, Reclamation requested the Service's input and technical expertise to ensure fish and wildlife resources were protected. The request also provided funding to the Service for staff time in order to ensure that fish and wildlife issues addressed in this EA were adequate. The Service declined the request. The Service has been on the mailing list from the beginning of this project and given many opportunities to comment on this Federal action.

Comment #36

Robert Van Deren, on behalf of Open A Ranch, submitted the following documents as comments on the revised Draft EA. These documents were originally submitted electronically on June 10 and 11, 2006. Hard copies of the same documents were received on June 13, 2006.

Copies of the documents can be obtained by requesting the number and title at the following address:

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

The following comments and documents have been noted.

1) "Hydrogeology of the Upper Beaverhead Basin near Dillon, Montana" by Uthman and Beck, 1998. 94 pages.
2) Reclamation's HYDROSS model Draft Working Document, March 28, 2005. 12 pages.
3) Various documents (emails, charts, website disclaimer statements, etc) regarding the quality of data. 33 pages.
4) HKM report, Figure 1, March 21, 2005. 1 page.
5) Various East Bench Unit historical documents including:
    a. Senate Document 191 from 1944. 2 pages.
    b. MT 5th District Court Decree creating EBID in 1957. 17 pages.
    c. Selected pages from the Definite Plan Report. 28 pages.
    d. Testimony by attorney for CCWSC and EBID before Congress on September 22, 2004. 3 pages.
6) Reclamation's "Unit Operation Summaries" and "Operating Plans" for Clark Canyon Reservoir for water years 1997 to 2006. 128 pages.
7) Various information brochures and website information from Reclamation including:
    a. Brochure "Pick-Sloan Missouri Basin Program, East Bench Unit, Rev 4/83". 6 pages.
    b. Reclamation's webpage "Pick-Sloan Missouri Basin Program, East Bench Unit – Montana". 3 pages.
    c. Reclamation's webpage "East bench unit Project Data". 1 page.
8) Montana State University water studies for 2004 and 2005 including:
    a. Beaverhead River, Clark Canyon Irrigation District Water Budget 2004, Progress Report. 24 pages.
    b. Beaverhead River, East Bench Unit Water Budget 2005, Progress Report. 30 pages.
9) Various information handouts from the Spring of 2005 including:
    a. Bureau Memorandum: "Beaverhead River Operations". 2 pages.
    b. Documents from Bureau Technical Meeting March 8-10, 2005
    c. 2005 Canal Sealant Project. 1 page.
    d. Bureau "Information Sheet". 8 pages.
    e. CCWSC 1956 List of Signers and acres. 8 pages.
    f. CCWSC "Information Sheet", March 14, 2005. 7 pages.
    g. EBID "Information Sheet", April 5, 2005 meeting. 6 pages.
10) Various letters from Reclamation and Exhibit A from the draft water contracts including:
    a. Bureau letter to EBID of January 16, 2003. 2 pages.
    b. Bureau faxed letter to EBID/CCWSC of February 4, 2003. 2 pages.
    c. Bureau letter to EBID, September 2, 2004, with "A" and "B & C" share agreements attached. 5 pages.
    d. Bureau letter to Open A Ranch dated March 27, 2006. 5 pages.
    e. Draft Exhibit A for Bureau water contracts with EBID and CCWSC, January 23, 2006. 4 pages.
11) Letter dated May 30, 2006 from Open A Ranch to Beaverhead County Director of Disaster and Emergency Services, with newspaper article and photos. 24 pages.
12) Various CCWSC information including:
    a. Cover and page 8 from "A Landowner's Guide to Montana Wetlands" Revised Edition. 2 pages.
    b. CCWSC shareholders dated June 1966. 5 pages.
    c. CCWSC stockholder minutes dated March 13, 2000. 3 pages.
    d. CCWSC director minutes dated March 12, 2001. 3 pages.
    e. Jerry Meine letter to CCWSC dated March 12, 2001. 2 pages.
    f. CCWSC stockholder minutes dated March 12, 2000. 2 pages.
    g. CCWSC memo dated February 12, 2003. 1 page.
    h. Letter from Larry Laknar to CCWSC Board dated July 7, 2005. 1 page.
13) Presentation on the ongoing Montana Tech water study, dated November 16, 2005. 42 pages.
14) Beaverhead River Commissioners Weekly Report for the month of April 2004.

15) Beaverhead River Commissioners Weekly Report for the month of May 2004.
16) Beaverhead River Commissioners Weekly Report for the month of June 2004.
17) Beaverhead River Commissioners Weekly Report for the month of July 2004.
18) Beaverhead River Commissioners Weekly Report for the month of August 2004.
19) "Final Report, Review of Method of Determining Delivery of Water to Non-Signers - Beaverhead River, Allocation of Water to Non-Signers on the Beaverhead River" HKM Engineering, March 21, 2005. 37 pages.
20) Various correspondence between Reclamation and the Bureau and the BLM Dillon Field Office, including:
    a. Bureau comments on BLM Dillon DEIS and RMP, July 12, 2004. 1 page.
    b. BLM Dillon comments on Bureau Draft EA, December 19, 2005. 3 pages
21) "Beaverhead County Resource Use Plan", July 2001. 119 pages.
22) Various EBID information including:
    a. Minutes of the March 8, 2000 EBID meeting. 2 pages.
    b. Minutes of the April 4, 2000 EBID meeting. 2 pages.
    c. Letter from MT DNRC to EBID, January 29, 2003. 2 pages.
    d. Minutes of the January 6, 2004 EBID meeting. 2 pages.
    e. Minutes of the July 6, 2004 EBID meeting. 2 pages.
    f. Minutes of the September 7, 2004 EBID meeting - 2 pages
    g. Memo from EBID board to CCWSC board. 2 pages.
    h. EBID letter to Madison County Assessor, August 12, 2001. 1 page.
    i. EBID 2003 Beaverhead County Assessments. 11 pages.
    j. EBID 2003 Madison County Assessments. 10 pages.
    k. EBID August 18, 2004 Assessments Letter and Certificate. 2 pages.
23) "Dams and River, A Primer on the Downstream Effects of Dams", United States Geological Survey Circular 1126, 1996, revised 2000. 104 pages.
24) Various Montana State University, Water Resources Center studies on return flows in the Beaverhead, including:
    a. Assessment of Methodology Required to Quantify Irrigation Return Flows, Report No. 114. 28 pages.
    b. Assessment of Time Series as a Methodology to Quantify Irrigation Return Flows, Report No. 137. 40 pages.
25) Various USGS aerial and satellite images dated after June 30, 1973, including:
    a. LandSat image #34, July 16, 1973 - USGS #LM1042029007319790
    b. LandSat image #21, August 12, 1974 - USGS #LM1043028007422990
    c. SkyLab image 83-185, August 5, 1973 - USGS #ARG30B083158000
    d. SkyLab image, September 11, 1973 - USGS #ARG30B086226000
    e. USGS Color Infrared image 1899-1242, August 16, 1974 –USGS #AR5740018991242
    f. USGS Color Infrared image 1889-1248, August 16, 1974 – USGS #AR5740018991248
    g. USGS Color Infrared image 1899-1252, August 16, 1974 – USGS #AR5740018991252
    h. USGS B/W image #36
    i. USGS DOQQ image, August 1995.
    j. DeLorme Sat10 image, Summer of 2001.
26) Various USBR maps dated before June 30, 1973, including:
    a. Three Forks Division map, August 1958, USBR #613-604-600
    b. Jefferson Sub-Basin map, August 1958, USBR #613-604-601. 2 pages
    c. Vicinity map, Three Forks Division, May 11, 1964, USBR #RS MRB-7141A. 1 page.
    d. West Bench Unit map, January 1965, USBR #965-604-100. 1 page.
    e. West Bench Unit Land Classification map, December 1965, USBR #965-604-131. 1 page.
    f. East Bench Unit map, February 1960, USBR #699-604-589. 1 page.
    g. EBID Land Classification map March 22, 1960, USBR #699-604-361. 1 page.
    h. EBID Land Classification map, March 22, 1960, USBR #699-604-362. 1 page.
    i. EBID Land Classification map, March 22, 1960, USBR #699-604-363. 1 page.
    j. CCWSC Land Classification map, June 28, 1955, USBR #699-604-598. 1 page.
    k. CCWSC Land Classification map, June 28, 1955, USBR #699-604-590. 1 page.
    l. CCWSC Land Classification map, June 28, 1955, USBR #699-604-591.1 page.
    m. CCWSC Land Classification map, June 28, 1955, USBR #699-604-592. 1 page.
    n. Ownership map, February 1, 1960, USBR #699-604-599. 1 page.
    o. Ownership map, February 1, 1960, USBR #699-604-600. 1 page.
    p. Ownership map, February 1, 1960, USBR #699-604-601. 1 page.
27) Miscellaneous information including:
    a. CCWSC 2003 Assessments list. 3 pages.
    b. BLM Dillon response to USBR comments in FEIS and RMP, April 2005. 4 pages.
    c. 5th District Court Order Appointing Water Commissioner, May 16, 2006. 2 pages.
    d. Letter from Beaverhead Disaster and Emergency Services Coordinator, June 8, 2006. 2 pages.
    e. Errata list for Comments and Exhibit A submitted by Budd-Falen Law Offices, June 12, 2006. 1 page.