FIRST COMMENT PERIOD - COMMENTS/RESPONSES

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

1. Davis, Warren and Hritscoc ...................................................December 05, 2005
2. Budd-Falen Law Offices .......................................................November 22, 2005
3. Chris Hunter ........................................................................November 25, 2005
5. Bob Butler ...........................................................................December 01, 2005
6. Beaverhead County Commissioners ....................................December 02, 2005
7. Russ Kipp ............................................................................December 05, 2005
8. Doney, Crowley, Bloomquist, Payne, Uda .................December 05, 2005
9. Montana Department of Environmental Quality .............December 02, 2005
10. U.S. Army Corps of Engineers ........................................December 06, 2005
11. Public Lands Water Access Association ...........................December 07, 2005
12. Jerry Kustich .................................................................December 12, 2005
13. Paul M. Olsen ...............................................................December 13, 2005
14. Bob Butler ........................................................................December 14, 2005
15. Allen Schallenberger ........................................................December 14, 2005
16. Raymond Gross ..............................................................December 15, 2005
17. Bob Hartwell .................................................................December 16, 2005
18. Curtis Kruer ......................................................................December 16, 2005
20. Saltman and Stevens ........................................................December 16, 2005
22. Terry Throcktmorton .......................................................December 16, 2005
23. Lyle W. Barringer ...........................................................December 17, 2005
24. Bill and Donna Fraser ........................................................December 21, 2005
25. Will Murray ......................................................................December 21, 2005
26. John English ....................................................................December 19, 2005
27. Jeremy Garrett ..................................................................December 19, 2005
28. Robert Hartwell ..............................................................December 16, 2005
29. Steve Luebeck ...............................................................December 19, 2005
30. Trout Unlimited, George Grant Chapter ......................December 16, 2005
31. Meine Brothers ...............................................................December 19, 2005
32. Mary Smith ......................................................................December 19, 2005
33. Tom Smith ........................................................................December 19, 2005
34. Eric Troth ........................................................................December 19, 2005
35. 42 Identical Postcards with different Commenters .........December 15, 2005
36. Budd-Falen Law Offices (block) ......................................December 19, 2005
37. Montana Department of Fish, Wildlife and Parks ..........December 20, 2005
39. Budd-Falen Law Offices (cursive) ..................................December 16, 2005
40. Trout Unlimited .............................................................December 19, 2005
41. U.S. Bureau of Land Management .................................December 19, 2005
42. Friends of the Beaverhead ..............................................December 16, 2005
Mr. Jeff Baumberger  
U.S. Dept. of Interior - Bureau of Reclamation  
Montana Area Office  
P.O. Box 30137  
Billings, MT 59107-0137  
ATTN: MT-231  

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

Dear Mr. Baumberger:  

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

1. First and foremost, CCWSC wishes to publicly acknowledge that the East Bench Unit (the "Project") as a whole functions remarkably well and serves many varied interests. The Project has inestimably benefitted the economies of Beaverhead and Madison Counties for the past forty years and CCWSC anticipates the continuation of such favorable impact indefinitely.  

1.1: Noted.  

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

1.3: The comment is noted and has been corrected in the revised draft EA.
1.4: Noted. Acreages in the EA were provided by CCWSC and EBID and are meant to represent maximum irrigated acres. The actual negotiated acreages will likely be less than those indicated.

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

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

1.7: Specific contract language regarding Reclamation’s claim to “all seepage, return flows, and so-called waste water” is an issue to be negotiated during the formal contract negotiation process.
1.8: It is not clear as to what activities are proposed by the commenter to fall under the definition of “legal determinations.”

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

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

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

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

    Sincerely yours,

    DAVIS, WARREN & HRITSCO

    By

    William A. Hritsco

WAL:cl

c: CCWSC Board of Directors
    Steve Cottom, President, East Bench Irrigation District
    John Bloomquist
2.1. Reclamation extended the EA comment period until December 19, 2005 with an additional 30-day comment period for the revised draft EA.

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

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

2.4. The Draft RMP for Clark Canyon Reservoir and Barretts Diversion Dam was released to the public August 2004. Since that date, it has been available at www.usbr.gov/gp/mtao/clarkcanyon/ea/rmp.pdf. The Final Clark Canyon Reservoir and Barretts Diversion Dam RMP has been completed and will soon be available online. The RMP has never analyzed the operations of the reservoir (see p.16 of the Draft EA).
2.5: While the 2005 fieldwork portion of the MSU Study conducted under contract with Reclamation was complete by November 22, 2005, a draft report was not submitted to Reclamation until December 22, 2005. A progress report was provided to Reclamation on April 10, 2006. Reclamation will continue the ongoing study through the 2006 irrigation season. A final report will be published and available to the public at the completion of the study.

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

2.7: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA.
From: "Hunter, Chris" <chunter@mt.gov>
To: <clarkcanyon@p.usbr.gov>
Date: 11/25/05 12:12PM
Subject: draft EA for renewal of Clark Canyon water service contracts

November 25, 2005

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

Dear Mr. Sawatzke:

I am writing with regard to the draft Environmental Assessment for the renewal of water service contracts or conversion to repayment contracts for the Clark Canyon Water Supply Company and the East Bench Irrigation District. As you know the fishery resources of Clark Canyon Reservoir and the Beaverhead River downstream are some of the most prized and visited by anglers in the state of Montana. Consequently Montana Fish, Wildlife and Parks is very interested in this EA and the potential affects the No Action and Preferred Alternatives may have on fish populations. We do not feel that the two week long period to review this document and provide comments is adequate, particularly since the period includes a major national holiday.

3.1: Noted.

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

Sincerely,

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

CC: "Oswald, Dick" <fishwpdiffon@7aks.com>, "Rich, Bruce" <B@Rich@mt.gov>, "Phillips, Glenn" <gp@phillips@mt.gov>, "Scheek, Bill" <bscheek@mt.gov>
4.1: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA.
5.1: The scoping process is used to determine what issues need to be addressed and for identifying the issues related to the proposed action. Several of these comments were outside the scope of the proposed Federal action. The issues within the scope of the proposed Federal action were included in the EA and impacts regarding those issues were analyzed accordingly.

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

5.3: An EA is written for Federal actions where effects are undetermined and which may or may not require an EIS. An EA is used to clarify the issues and the environmental effects. During the EA process, if impacts of the proposed Federal action are found to significantly affect the quality of the human environment, an EIS is prepared. The Clark Canyon Contract Renewal Draft EA compared the environmental effects of the Preferred Alternative to the No Action Alternative. There is little difference between the two alternatives, mainly an additional 918 acres for EBID and the change in priority use for water. The analysis in the Draft EA has not demonstrated that an EIS is warranted. Mere opposition to the Federal action does not warrant preparation of an EIS.
The Beaverhead County Commissioners would like the time frame for providing public comments regarding the abovementioned subject to be a minimum of 30 days. Increasing the time frame will give any interested parties more time to comment.

Thank you for your consideration of this request.

Sincerely,

Garth L. Haugland
Chairman
Beaverhead County Commissioners

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

7.2: System water losses are described in the Water Losses/Conservation section of Chapter 3 of this revised draft EA.
7.3: The Drought Management Plan was developed between CCWSC and EBID, with assistance from Reclamation; since these entities are the parties that have legal binding contractual relationships. The Drought Management Plan is a voluntary reduction in water use by irrigators that have contracted with Reclamation for irrigation water. The Drought Management Plan would benefit not only the irrigators but also other users and resources in Clark Canyon Reservoir and the Beaverhead River. The Drought Management Plan is a small portion of what could be done to improve the Beaverhead River system. There are members of CCWSC and EBID that attend and participate in the Beaverhead Watershed Committee meetings. Reclamation agrees that the Beaverhead Watershed Committee is the appropriate forum to work on other such improvements.

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

The Preferred Alternative in the Draft EA includes a Drought Management Plan that would help conserve water in drought years to minimize effects to all interests, and the revised Draft EA includes the development of a partnership with MDFWP to minimize effects of operational issues.
December 5, 2005

VIA ELECTRONIC MAIL
and FAXSIMILAR

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

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

Dear Sir or Madam:

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

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

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

WATER ALLOCATION AND DISTRIBUTION UNDER
THE NO ACTION AND PREFERRED ALTERNATIVE

In the No Action Alternative, the BOR wants to "continue" providing supplemental irrigation water to CCWSC, in first priority, at the original diversion rate of 4.0 AP/acre for the original
8.1: It is impossible for any of the alternatives to impact water historically received by CCWSC shareholders and EBID water users. The water historically received has already been delivered and put to beneficial use. The Preferred Alternative would continue to deliver the water historically used under similar hydrologic conditions as the previous contracts. Contract negotiators have crafted a water allocation methodology that formalizes those historic practices in the proposed contracts.

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

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

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

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

The rationale in these cases is premised upon the fact that the federal Reclamation Act defers to state water laws for water right ownership and allocation issues. Similar to the state laws analyzed in those cases, Montana law regarding water right ownership and allocation states that appropriation of water for “beneficial use shall be the basis, the measure and the limit of all rights to the use of water.” McDonald v. State (1986), 220 Mont. 519, 531, 722 P.2d 398, 605 (citation omitted) (emphasis added). As such, the water users’ interest in Project water is the amount they and their predecessors have beneficially used since the inception of particular Project.

1 Goeduck's comments on the formation of a “Joint Board” are included below.
8.4: The contract with the CCWSC and the individual subscription agreements between the shareholders of CCWSC and the CCWSC adequately describe the contractual rights of the parties during the previous contract and the future contracts.

8.5: The Joint Board as proposed would have very limited authority to administer the water allocation sub articles of the proposed contracts. The Joint Board was not being proposed to be formed under M.C.A.85-7-1601. The parties believe they have authority to enter into a Joint Board as proposed by the negotiating parties. The shareholders of CCWSC and the members of EBID will have the opportunity to approve the creation of the Joint Board in the contracts prior to them being executed.

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

The determination of the appropriate share of the annual operation and maintenance cost is outside the scope of this proposed Federal action. There is a high probability that the some of the acres being irrigated under the 3rd priority of the existing contract would rely on stored water to provide a full supply, in comparison to their natural flow rights. The ability for Reclamation to provide a full supply utilizing water stored in Clark Canyon Reservoir is linked to Canyon Ferry Reservoir.
shareholders, switching from flood to sprinkler irrigation, which is a more efficient form of irrigation. The water "salvaged" by switching from flood to sprinkler irrigation was used to irrigate additional ground. This was common in the 1960's and 1970's along the Beaverhead River and was authorized and, in fact, encouraged under Montana law. While this does alleviate the fact that this irrigated ground was "expanded acreage," it does rebut the BOR's argument that this expanded acreage put an additional demand on the amount of water available, thus impacting the water available for the Canyon Ferry Project.

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

Sincerely,

John E. Bloomquist
Thomas E. Davis
Attorneys For Geoduck

cc: Geoduck Land & Cattle, L.L.C. (via Electronic Mail)
    Robert Parmenter (via Hand Delivery)
    Clark Canyon Water Company (via Hand Delivery)
    Bill Hritsco (via Hand Delivery)
Reclamation is funding two water quality/quantity studies in the Beaverhead River basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

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

The draft EA analyzed effects to water quality by comparing the Preferred Alternative to the No Action Alternative as required by NEPA. The finding that the Preferred Alternative would not change water quality substantially from the No Action is based on hydrologic modeling. For median flow years, the hydrographs for both alternatives are very similar with slightly less water being diverted. The similarity between the hydrographs and quantity of water diverted suggests that no adverse impacts to water quality will occur with implementation of the Preferred Alternative.
December 6, 2005

Planning, Programs, and Project Management Division

Mr. Tom Sawatzke
Montana Area Office, Great Plains Region
Bureau of Reclamation
P.O. Box 30337
Billings, Montana 59107-0337

Dear Mr. Sawatzke:

The U.S. Army Corps of Engineers, Omaha District has reviewed the Clark Canyon Contract Renewal Draft Environmental Assessment, and we offer the following comments:

We recommend an appendix containing copies of all agency coordination letters be included in the final Environmental Assessment.

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

Sincerely,

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

10.1: A summary of correspondence and coordination with other agencies, interests, and the public has been added to Chapter 5 of the EA.
11.1: See description of contract terms in the contracting section in Chap. 1 of the revised draft EA. Appropriate NEPA compliance will be completed when future Federal actions take place such as if changes to the new negotiated contracts are proposed. Reclamation is the Federal agency responsible to ensure the terms of the contracts are upheld. The Congress retains oversight of Reclamation.

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

11.3: See the response to Comment 9.1

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

11.5: See water conservation requirements described in the Water Losses/Conservation section in Chap. 3 of the revised draft EA.
In fact, we feel that there are so many violations of NEPA and the National and State Multiple Use Act that a complete EIS must be prepared before contracts are renewed. Our groups would also like the Fish, Wildlife and Park’s comments to be included as part of our official comments since they have much more expertise on this issue than we have.

Your consideration of our concerns will be greatly appreciated.

Sincerely,

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

Leroy Mihring, President
Skyline Sportsmen’s Association

Larry Thomas, President
Anaconda Sportsmen’s Club
12.1: The proposed Federal action is to renew long-term water service contracts or convert the existing contracts to repayment contracts. The CCWSC and EBID irrigators would be responsible to pay a construction component as well as their share of the operation, maintenance and replacement (OM&R) of the system. The contracts are attributed to the irrigated land, so, regardless of property ownership, the construction costs and OM&R would still be paid by the appropriate beneficiaries. See Table 3.7 for a breakdown of the major industries in Beaverhead and Madison County.

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

12.3: A general “plan” for the future of the region is beyond the scope of the proposed Federal action. However, the relationship between this action and other reasonable foreseeable action are addressed in the cumulative impacts sections throughout the document in Chap. 4.
13.1: Reclamation acknowledges that the Blue Ribbon fishery has an impact on the economy of Dillon and the Draft EA analyzed effects to fisheries when the Preferred Alternative was compared to the No Action Alternative as required by NEPA. Both alternatives were modeled and there was very little difference hydrologically and therefore minimal effect to fisheries. The No Action Alternative is basically continuation of conditions that have resulted in the premier trout fishery that exists now. The Preferred Alternative showed a slight beneficial effect in some cases due to the addition of a Drought Management Plan in the Draft EA.

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

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

The revised Draft EA did not include any additional alternatives; however, the Preferred Alternative would contain language to assist Reclamation, the two water user groups, state agencies, and other groups to work cooperatively together in order to address some of the concerns on the Beaverhead River.
13.3: The minimum winter flows in the Beaverhead River would be set during the non-irrigation season depending on hydrologic conditions. The in-stream flow may be set as low as 25 cfs in drought years or as high as 200 cfs in normal water years. The Preferred Alternative includes a target minimum reservoir level of 60,000 AF likely to be achieved during normal water years, and a minimum reservoir pool of 10,000 AF during drought years. It also would include a target minimum in-stream flow of 200 cfs likely to be achieved during normal water years and a bottom line minimum in-stream flow of 25 cfs in dry years. The target levels would likely be met during most years; however, during drought years the minimum levels were set to protect (not enhance) fisheries and other aquatic life. A drought impacts many resources, including, but not limited to, fisheries, water quality, recreation, and irrigation. Reclamation and the contract water users will be looking for various ways of improving water efficiencies and increasing minimum flows in the Beaverhead River. Reclamation and the contract water users will be seeking other partners, including interested parties that use the Beaverhead River, to assist with these improvements, both financially and in-kind.

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

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

Reclamation met with MDFWP to address water quality and fisheries concerns in the Beaverhead and Jefferson rivers. Reclamation and the State will be entering into an agreement, which will require cooperation among agencies to work toward improved water quality and improved fisheries and allow agencies to work toward a flushing flow to reduce impacts of sediment loading. Reclamation also will work cooperatively with the Montana Department of Environmental Quality during TMDL planning and implementation.
13.6: See response to comment 5-3.

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

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

Thank you for your time and consideration of my comments.

Sincerely,

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

Cc: Governor Brian Schweitzer
Sue Kelly, Montana Area Manager, BOR
14.1: See the responses to Comments 13.2.

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

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

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

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

Reclamation also proposes to negotiate repayment of the appropriate share of the construction cost of constructing the water supply works (Clark Canyon Reservoir) with CCWSC.
14.4: Reclamation, EBID, and the shareholders of CCWSC are obligated to exercise their water rights in accordance with the Montana Water Use Act, as amended. Downstream irrigators have provisions under that act to ensure their state-based water rights are fulfilled.

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

14.6: Wintertime or non-irrigation in streams flows are addressed as part of the Preferred Alternative and throughout various sections in the EA. For more information on target flows during normal water years and minimum flows during dry years, see the response to comment 13-3.
In general I am stunned by the complete disregard to the taxpaying public. The whole of the dam and accompanying irrigation projects have been funded by the American taxpayer. Repayment of same REMAINS A MYSTERY to the public. This EA seems to COMPLETELY ignore any possible values outside of irrigation.

To properly evaluate the dam properly a full EIS should be completed. Consider a 1 or 2 year interim contract until that EIS is complete. The interim contract should provide for increased winter flows.

Thank you,
R. G. Butler

14.7: See response to comment 14.3. The repayment contracts, when negotiated, will be in accordance with appropriate provision of Federal Law established by the Congress and delegated to the Secretary of the Interior. See language in the contract information section located in Chap. 1 of the revised draft EA for more details.

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

14.9: See the response to Comment 5.3.

14.10: See the response to Comment 13.7.
15.1: See the response to Comment 5.3.

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

15.3: See the responses to Comments 13.2 and 13.3.

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

15.5: Correcting all problems in the Beaverhead River is outside of the scope of this Federal action. However, Reclamation is committed to working with other entities, including Montana FWP and the Beaverhead River Watershed Committee, to improve the various issues that occur on the Beaverhead River.
15.5: Reclamation is funding water quantity and water quality studies in the Beaverhead basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

15.6: See the response to Comment 13.4

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

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

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

15.10: The commenter indicates that alternatives “should include comprehensive (economic) data for all alternatives including one which would remove or mitigate past problems and future problems.” Additional social and economic discussions for the two alternatives have been included in the revised Draft EA. Including a single alternative that “would remove or mitigate past problems and future problems” is outside the scope of this Federal action and not reasonable. See the response to Comments 13.2 and 13.3 for explanation of “reasonable alternatives”.
are funding buffalo disease research to the tune of several million. The Iraq war may see reduced U.S. action soon. One half trillion from the US has been spent there so far. Thank you for the opportunity to comment and keep me on your mailing list.

Sincerely,

Allen Schattenberger

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

c. Senator Conrad Burns, Senator Max Baucus, Congressman Denny Rehberg, Governor Brian Schweitzer, Senator Bill Tash, Representative Diane Rice
To: Bureau of Reclamation


December 12, 2005

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

16.1: See responses to Comments 13.2.

16.2: See responses to Comments 13.2.

16.3: See the response to Comment 5.3.

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

16.5: Dick Oswald and other fishery staff from MDFWP were consulted during the development of the Draft EA.
Reclamation provided the public several opportunities to participate in the decision-making process. Reclamation conducted public meetings in January 2005 in Dillon and Twin Bridges, provided a Draft EA for public review and comment, and conducted public meetings in Dillon and Twin Bridges in December 2005. These public meetings were announced via several local newspapers, including those in Dillon and Butte. In addition, letters and postcards were sent out to a mailing list of over 100 parties announcing both meetings and the availability of the Draft EA.

There is a total of 918 acres for EBID proposed to be added to the new contracts. EBID boundaries would need to be changed to include this acreage prior to irrigation and delivery of any contract water. The volume of water authorized to be diverted would not change with this increase in acreage (see 2nd priority under the Preferred Alternative).

CCWSC and EBID can only divert a set volume of water (1st and 2nd priority) for a certain number of acres as outlined in Chapter 2 of the document. The 3rd priority of the Preferred Alternative would allow additional water (if available) for “beneficial use”.

See the response to Comment 13.3.
18.1: Reclamation is funding water quantity and water quality studies in the Beaverhead basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality and other stakeholders during the TMDL process to assist with improving impaired water bodies throughout the basin. Also, see information in the response to Comment 9-1.

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

18.3: See response to Comment 5.3.
Subject: Clark Canyon renewal draft (EA) public comment

Dear Mr. Baumberger:

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

19.1: Minimum water flows
19.2: Added acreage for irrigation
19.3: 40 year contract

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

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

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

19.2: See the response to Comment 17-2.

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

19.4: Noted.
19.5

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

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

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

Thank You,

Sincerely,

Zack Medina
Licensed Montana Fishing Guide
#9052

19.5: See the responses to Comment 18.1.
The comment period was extended to December 19, 2005 with an additional 30-day comment period on the revised draft EA.

20.1: Despite the severely constrained time frames for providing comments on the EA, we have also included a brief discussion of a number of issues of concern that we have identified so far. We believe that there are many other issues yet to be identified and that the issues we have identified so far could be explored in greater detail to the benefit of the environment, the public and BOR, if the comment period were extended for at least 60 days.
Alternatively, if for some reason the comment period is not extended, we strongly urge the BOR to prepare an Environmental Impact Statement.

1. Overview Of The Draft EA.

20.2 The BOR’s preferred alternative in the draft EA involves, among other things, the execution of “new long-term 40 year water service contracts or the conversion of existing contracts to repayment contracts.” EA at 8. Moreover, and despite the BOR’s recognition that “[t]he Beaverhead watershed has experienced a severe drought for more than 6 years, with inflows into the reservoir about 40% of normal” (EA at 8), the preferred alternative would add 7,711 acres to 1st priority lands and an additional 5,336 acres to 2nd priority lands. EA at 9. Remarkably, nearly 1,000 acres to be added to the 2nd priority lands are not even currently located within the boundaries of the East Bench Irrigation District. In short, the preferred alternative would put considerable additional strain on an already overtaxed resource.

20.3 Additionally, the preferred alternative would institute a Drought Management Plan as part of the new contracts and that plan would be administered by a “Joint Board.” EA at 8-9. Both the Plan and the Board are new and their operation is not adequately explained in the EA.

20.4 The only other alternative considered by the BOR, the so-called “no action alternative,” would actually result in the renewal of long term contracts with some “minor changes.” EA at 7.

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

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

20.4: Minor changes would mean modifying/renewing existing contracts with updated language, clauses, and contracting standards. These minor changes are administrative changes only.
20.4: Unfortunately, it is not a simple matter to tell from the draft EA what these changes are or that they are in fact minor.


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

Additionally, the NEPA regulations require that, in the case of the issuance of a draft EIS, at least 15 days be provided before public meetings are held. 40 C.F.R. § 1506.6(c)(2). Despite this fact, public meetings on the draft EA were scheduled for November 30 at Dillon, MT and December 1 at Twin Bridges, MT, i.e., considerably less than 15 days after most members of the
public received copies of the draft EA.² Thus, given the large scope of the environmental issues to be addressed (which we believe requires that an EIS be prepared, as is discussed below), the period between release of the EA and the public meetings was far too short for participants to meaningfully prepare to participate in them.

In this same regard, the NEPA regulations contemplate that at least 90 days for comment on a draft EIS will be provided and (unless an emergency situation exists) in no case shall a comment period of less than 45 days be provided. 40 C.F.R §§ 1506.10(a)(1) and (c). Again, given the potentially significant and widespread impacts at issue in the draft EA, roughly comparable time frames for public comment should have been allowed by the BOR. However, despite the BOR’s obligation under NEPA to make diligent efforts to involve the public in NEPA decisions, members of the public will not be afforded anything approaching 90 days (or for that matter even 45 days) to evaluate the draft EA and provide the BOR with comments.³ Accordingly, we strongly urge the BOR to reopen the comment period and provide the public with an additional 60 days, i.e., until February 17, 2006, to evaluate and provide comments on the draft EA.

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

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

20.6: See the responses to Comment 5.3 and Comment 17.1.
III. The Preparation Of An Environmental Impact Statement Is Required.

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

- proposed repayment contracts, water service contracts or amendments to such contracts for irrigation; and
- proposed modifications to existing projects or proposed changes in the programmed operation of an existing project that may cause a significant new impact.


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

20.7: See the responses to Comments 5.3.
IV. The Draft EA Does Not Comply With NEPA.

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

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

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

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

20.8: Reclamation did informally consult with the U.S. Fish and Wildlife Service prior to the release of the Draft EA. However, the Draft EA did not explain this informal consultation adequately. The consultation and coordination section of the revised draft EA has been corrected to better explain the informal consultation that took place.
Agency actions that are potentially subject to consultation include the granting of licenses, contracts, easements, rights-of-way, and permits as well as actions that directly or indirectly cause modifications to the land, water or air. 50 C.F.R. § 402.6. Thus, the effects of the actions under consideration here are of the type on which consultation between a federal agency and the Fish & Wildlife Service are routinely conducted.

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

The BOR’s “analysis” for the Bald Eagle is even more suspect and claims only that “[t]here are no known bald eagle nests within two miles of the Clark Canyon Reservoir or the
The statement in the draft EA regarding eagle nests locations had a typographic error. Thank you for pointing it out. The revised draft EA has been modified to correctly document the eagle nests.

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

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

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

“Non-signers” are those irrigators who typically have senior water rights to irrigate some 6,620 acres out of the Beaverhead River and who are not currently receiving water from federal contractors. The description of the preferred alternative in Chapter 2 does not even mention the issue of irrigation by non-signers, and the description of the “no action alternative” notes but does not analyze water use by non-signers. This lack of analysis exists despite the fact that the acres subject to irrigation by non-signers equal more than 11% of the total acres to be irrigated.
by the contracting entities. Simply because the non-signers are not part of the federal project, does not mean that their irrigation from the Beaverhead River should have no impact on the BOR's analysis of the reservoir as is claimed in the EA. See EA at 8. In this regard, NEPA requires an agency to

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

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

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

The draft EA acknowledges that:

Clark Canyon Reservoir provides recreational opportunities for a wide region. The area also attracts people from out-of-state to fish or who are just passing through... Most visitors fish, camp, boat, picnic, swim, or view wildlife. Most recreation is highly dependent on reservoir levels, which in turn are highly influenced by small changes in climatic conditions, as well as annual operations of the Clark Canyon Dam.
EA at 31. The EA also specifically recognizes the significant use of both the reservoir and Barretts Diversion Dam by fishermen. Id. However, the EA asserts, without any meaningful analysis, that “[v]isitation at the reservoir would remain constant or increase slightly in the future, regardless of fluctuating water levels to meet the new water contracts.” Id. at 54. Why this would be so, especially when the EA admits that recreation is “highly dependent on reservoir levels,” is not explained. Indeed, our clients believe that the opposite is quite likely to be the case. For example, at present, access to only a single boat launch is possible in dry years (see EA at 54). As common sense would dictate, a further reduction in river flows can only impair recreational opportunities.

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

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

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

20.14: It is unclear what reach of the river the comment refers to when “unnatural accumulations of sediment” is discussed. However, sediment accumulation does occur and tributaries (such as Clark Canyon Creek) to the Beaverhead River are the main contributors. Reclamation has worked with the Beaverhead River Watershed Committee in the past and will continue to work with them in the future to find ways to address various water quality issues (including sedimentation) on the Beaverhead. The Beaverhead River Watershed Committee is open to all parties. Also, see the response to Comment 15.6.
EA claims that “the ‘Methods of Analysis’ section provides information on how effects of the alternatives [with respect to recreation] were estimated.” EA at 53. However, it is not apparent that the Methods of Analysis section of the EA contains any such information. In this same regard, the EA suggests that “[v]ehicle counters at the reservoir record about 59,000 visitors annually, generating about $2.2 million in the surrounding community.” EA at 30.

Unfortunately, the sole basis for this assertion is a single study performed by the University of Montana nearly 20 years ago. Id. Clearly, the BOR lacks adequate current information upon which to base its conclusion that recreation will not be impacted under either alternative considered in the draft EA. This is particularly true in light of the fact that one of the alternatives under consideration contemplates increased irrigation (and correspondingly reduced river flows) for a 40-year period. By contrast, our clients are well aware that both the number of recreational visitors and the economic importance of those visitors to the surrounding communities have dramatically increased since 1986 and will in all likelihood continue to do so. Accordingly, the draft EA seriously underestimates the potential impacts of the alternatives on recreation and the local economy. We, therefore, strongly urge the BOR to: (1) thoroughly investigate the current economic value of recreation provided by water from the reservoir and (2) analyze a full range of alternatives (not just two) and the impact of each on the economic value of recreational opportunities to local communities in an EIS.

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

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

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

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

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

20.18: See the response to Comment 20.17.
21.1: See the response to Comment 5.3.

21.2: The comment period was extended to December 19, 2005.
To: Bureau of Reclamation

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

I have the following comments on the EA

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

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

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

22.4: See the response to Comment 20.15.

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

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

Terry Throckmorton
433 Sullivan Lane
Dillon, MT 59725
23.1: See the response to Comment 15.6 and Comment 17.1.

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

23.3: See the response to Comment 5.3.

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

23.5: The revised draft EA has been changed and inconsistencies removed. Also, see the response to Comment 5.3 regarding the development of an EIS.
December 14, 2005

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

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

Dear Mr. Jewel:

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

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

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

24.3: See the response to Comment 5.3.

Sincerely,

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

24.1: See the response to Comment 9.1.

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

24.3: See the response to Comment 5.3.
25.1: See the response to Comment 5.3.

25.2: See the response to Comment 13.5.

25.3: See the responses to Comments 13.2.
conveyance losses (which cause great problems for irrigators as well as aquatic life in the rivers as more water is diverted), unnaturally high winter flows in the lower Beaverhead and Jefferson rivers, and the absence of a natural hydrograph (or a hydrograph that in any way simulates natural), all of which has greatly harmed the rivers' bank cover, fish spawning habitat, fish population and vigor, as well as water quality.

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

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

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

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

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

25.9: Your social and economic discussions are highly insufficient and should include comprehensive data for all alternatives, including an alternative that would remove or mitigate past, and future, river management issues. If either of the two alternatives presented are adopted, excessive water will be consumed; water quality and river channel health will continue to deteriorate, as will fish populations; irrigators on the project and downstream irrigators will not receive necessary water; and the fisheries and recreational economy in the area will continue to decline. We have had >10% reduction in angler days on the Jefferson River since the early 1980’s.

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

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

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

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

<table>
<thead>
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<th>Jan</th>
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<tr>
<td>Historic</td>
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<td>429</td>
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<td>425</td>
<td>484</td>
<td>536</td>
<td>464</td>
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<tr>
<td>Avg Simulated</td>
<td>389</td>
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<td>537</td>
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<td>259</td>
<td>251</td>
<td>530</td>
<td>645</td>
<td>665</td>
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This data does not show excessive differences between simulated and historic wintertime discharges. We agree that there is potential for much of the discharge in the lower Beaverhead River to be derived from return flows. This EA did not evaluate how the hydrograph for the lower Beaverhead would be impacted by potential changes to system efficiencies.

25.9: See the response to Comment 15.10.

25.10: Clark Canyon Dam operates under different authorities than the “other rivers with irrigation dams” as the commenter indicates. Therefore, it is very difficult to compare the operations of Clark Canyon Dam to these other irrigation dams. However, desirable natural flows can be achieved through coordinated and responsive management in the Beaverhead River, but this takes time and cooperation with many stakeholders. Reclamation is committed to working with various stakeholders to investigate options to improve conditions in the Beaverhead Valley.
26.1: See the response to Comment 5.3.

26.2: The revised Draft EA has been updated to reflect more recent recreational data. Thank you for your comment.
27.1: See the response to Comment 13.1.

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

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

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

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

With proper management the Beaverhead will continue to be one of the worlds premier trout fisheries.

27.1 The current proposals and the draft EA do not even consider the fisheries as an attribute of the Clark Canyon Res/Beaverhead river.
27.2 I would like to see these resources managed for multiple use, with consideration given to all shareholders.
27.3 I would like to see more efficient use of the limited irrigation water before allowing for broader use.
27.4 People will take whatever they can under the law and then whatever else they can sneak. There are no voluntary use restrictions when conditions are critical. The common irrigator’s mentality seems to be to take everything you can because if you don’t, someone else downstream will. Letting the Ag industry dictate policy on the water use is like putting the fox in charge of the henhouse. For proper resource management, the managing agencies need to base policies on the wants and needs of all shareholders.

27.5 If you adopt the current proposals, you run a very high risk of destroying any fishery the Clark Canyon Res./Beaverhead river ecosystem has supported, eliminating one of the few safe, clean, and renewable natural resources Montana has to offer. The rest of us shouldn’t be made to suffer, and in some cases go out of business, so that a handful of area farmers can make more money.

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

27.5: See the response to Comment 13.1.
27.6: The Preferred Alternative contains target minimum in-stream flow releases of 200 cfs in normal years and bottom-line minimum in-stream flow releases of 25 cfs during drought years. Releases from Clark Canyon Dam are determined by many factors, snow pack, spring run-off, reservoir levels, demands for irrigation water, to name a few. Hydrology models have shown that if high minimum in-stream flows (minimum of 200 cfs) were set in the Beaverhead River, the reservoir would become drastically low during drought years, and irrigation water could not be provided. Reclamation has stored water rights on the Beaverhead River. The checks and balances for regulating water use throughout the basin is the jurisdiction of Montana Department of Natural Resources and Conservation. Please contact them or the local river commissioner if you would like to complain about a water right violation. Reclamation has no authority to regulate violations of water rights on the Beaverhead River, or any other river.

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

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

27.8: The proposed Federal action would not be implementing “new rules” as the commenter states. Reclamation is renewing water service contracts for stored irrigation water with water rights held in the name of the United States. Reclamation also provides incidental benefits, such as recreation, fish, and wildlife to the general public and will continue to look for ways to improve all resources.
YOU PEOPLE DID A VERY POOR JOB IN GETTING THE WORD OUT ABOUT THE DRAFT MEETING IN DILLON. I WAS TOLD ONLY ONE PERSON SHOWED UP TO COMMENT (DICK OSWALT, THE FISHERIES BIOLOGIST) OTHER THAN THE B.R. AND C.C. DIRECTORS. KEVIN, AT THE BUFFALO LODGE RECEIVED A COMMENT SHEET, BUT NO COPY OF THE DRAFT. IT APPEARS THAT THE LESS PEOPLE KNOW ABOUT THE DRAFT THE BETTER CHANCE IT HAS TO PASS. MY COMMENTS ARE BASED ON HEARSAY AND SECOND HAND INFO. I HEARD THAT EITHER ADDITIONAL ACREAGE OR PASTED ACREAGE WILL BE ALLOWED TO BE IRRIGATED AND THERE IS TO BE NO MINIMUM FLOW ON THE BEAVERHEAD RIVER. IF, ADDITIONAL LAND IS IRRIGATED THIS WILL BENEFIT A FEW PEOPLE, AND IT WILL HURT THE OVERALL ECONOMY OF DILLON (THIS CAN BE PROVEN BY CHECKING SOME BUSINESS RECORDS BEFORE THE DROUGHT AND NOW. I WANT A NEPA AND AN EIS DONE BEFORE ANY ACTION IS TAKEN. ALSO, I WANT A MINIMUM LEVEL OF THE LAKE AT 60,000 AF AND A MINIMUM FLOW ON THE BEAVERHEAD RIVER OF 50 CFS.

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

Robert Hartwell

28.1: See the response to Comment 17.1.

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

28.3: See the response to Comment 5.3.

28.4: See the response to Comment 13.3.

28.5: See the response to Comment 13.3.
29.1: See response to Comment 5-3 regarding the “EIS” comment. See the response to comments 13.2 regarding the “Preferred Alternative” comment. There is a total of 918 acres for EBID proposed to be added to the new contract, not 9,000 acres. This acreage would need to be included within EBID boundaries prior to being irrigated with contract water. The volume of water presently authorized to be diverted would not change with the increase acreage (see 2nd priority under the Preferred Alternative).

29.2: See the response to Comment 13.1.

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

29.4: See the response to Comment 5.3.
December 16, 2005

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

Dear Mr. Baumberger:

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

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

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

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

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

30.1: See the response to Comment 5.3.

30.2: The analysis in the draft EA compares the impacts associated with the implementation of the Preferred Alternative to the No Action Alternative. If the No Action Alternative (renewing the existing contracts) were the alternative implemented, there would be no environmental impacts of the proposed Federal action.
precipitation has declined drastically. As a result, the Clark Canyon Reservoir frequently is unable to fill its pool and summer recreation and irrigation has suffered. BOR must recognize the reality that drier climatic conditions are likely to persist into the future and that the Clark Canyon system cannot possibly meet the level of demand that the two current alternatives foresee. Simply put, if either alternative is approved by BOR, over the short-term Clark Canyon and Beaverhead River fisheries, and thus recreational angling, will likely collapse. The end result will be an economic impact not examined or recognized in the EA.

Additionally, the lower Beaverhead River harbors a remnant population of fluvial Arctic Grayling, a fish species that is currently classified as Warranted but Precluded by the United States Fish and Wildlife Service (USFWS). Grayling were the subject of a legal settlement in 2005 in which the USFWS agreed to review the fish's status. Almost everyone agrees, by April 2007 fluvial Arctic grayling, including the Beaverhead population, will be listed as either Threatened or Endangered under the Endangered Species Act. The operation of Clark Canyon Dam has a critical impact on the success of the Beaverhead population of fluvial Arctic grayling. This issue was not studied in sufficient detail in the EA, thus an EIS must be conducted to evaluate the impact of this project on a potentially endangered species.

The following is a list of other critical issues that were not analyzed in sufficient detail, were not analyzed at all or were conclusions are in error:

30.5 Water conservation. The EA indicates that the efficiency of water delivery is 29%-38%. BOR needs to analyze ways to improve the efficiency of water delivery. A doubling of efficiency would provide adequate water for both irrigation and fisheries.

30.6 TMDL process. The EA indicates that water quality is “generally good”, though very little study went into this area. In fact, water quality is impaired, nutrients and salts are serious concerns and the EA completely overlooks the need for thermal data. Likewise return flows from the EBID is a significant source of water quality impairment.

30.7 Lower river. There is almost no acknowledgement of problems in the lower Beaverhead River, particularly low stream flows, an inverted hydrograph and resulting low fish density.

30.8 Fisheries. The EA indicates that fisheries would be impaired or poor 54% of the time in the reservoir and 67% of the time in the Beaverhead River. Yet, the EA concludes that the preferred alternative would not affect recreational opportunities.

Page 2 of the EA asks the two following questions:

Are there any terms and conditions ensuring environmental quality that need to be included in future contracts, and would a new contract constitute a major Federal action significantly affecting the quality of the human environment, thereby requiring an EIS?

The answer to both questions is yes. Both alternatives are inadequate, threaten the aquatic environment and fail to take reasonable steps to balance the competing needs of irrigation and fisheries, in fact irrigation is served to the detriment of fisheries in both alternatives. Both alternatives are based upon assumptions and inadequate study. The only reasonable course of action is to temporarily extend the current water contracts, for no more than two

30.3: See the response to Comment 13.1.

30.4: See the response to Comment 29.3.

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

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

30.7: Water quality effects of project operations on the lower Beaverhead River are discussed in the water quality section of Chap. 3 in the revised draft EA. Fishery effects in the lower river have been compounded by severe drought in recent years. To evaluate drought related effects, as well as other effects, the Preferred Alternative in the revised draft EA includes a partnership agreement with Montana FWP. Reclamation, the 2 contract water users, Montana FWP, and other stakeholders will work toward improving various issues, including fisheries, in the Beaverhead River.

30.8: See the response to Comment 13.1.

30.9: The new contract may constitute a major Federal action, but the EA has not concluded that the Federal action would significantly affect the quality of the human environment. An EA is the proper instrument under NEPA.

30.10: Noted.

30.11: See the responses to Comments 13.2
years, and conduct full EIS incorporating new alternatives recognizing and balancing competing needs and recognize the need to protect fisheries and recreation.

Thank you for the opportunity to comment.

Sincerely,

[Signature]

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

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

Re: Comments on Contract Renewal Draft Environmental Assessment

Dear Mr. Baumberger:

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

31.1 The use of a 25 CFS minimum flow in times of drought has maintained a good fishery in the Beaverhead River. Although size and numbers of fish declined during this flow, a viable fishery for outfitting still remained.

31.2 Flows in the lower Beaverhead River around the Anderson Lane have been greatly stabilized since the construction of Clark Canyon Dam. Before the dam and during late summer or in low water years, it was a common practice for irrigators to divert all of the flows of the Beaverhead River by means of a gravel dam. Flows in the river would resume below the diversion through seepage and wastage and would increase until the next diversion. The river was often not fishable because of high amounts of moss and low flows. Because of better management and supplementing river flows from storage water, I have not seen this occur since the construction of the dam.

31.1: Noted.

31.2: Noted.
3. Flows in Selway Slough, Murray Gilbert Slough, Flying Pan Gulch Slough, Albers Slough, Willard Slough and Back (Black) Slough have been reduced 50 to 90% in the last 40 years.

Meine’s have a 2/3rds share on a decreed water right (Case # 1053) of 342 miners inches of water from a point of diversion (NW1/4 SE1/4 NW1/4 Section 32, T68S,R8W) on Selway Slough. Flows have decreased at this point of diversion to where we no longer divert water from Selway Slough and have to bring water from the river to supply this water right. This directly affects river flows and the amount from storage needed to satisfy this use.

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

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

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

Thank you for the opportunity to submit these comments.

Sincerely,
Meine Brothers

[Signature]

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

31.4: If the commenter is concerned about consumption in the Beaverhead Valley increasing and the impacts consumption has on non-signer water rights, then the commenter should formally notify the Montana Department of Natural Resources and Conservation. Again, Reclamation has no regulatory authority for water right violations.
32.1: See the responses to Comments 13.2.

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

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

32.4: See the response to Comment 18.1.

32.5: See the response to Comment 13.3.

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

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

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

32.9: Both CCWSC and the EBID are “accountable” to the U.S. government. Reclamation, an agency of the Department of the Interior, has an obligation to administer the proposed contracts to ensure both entities abide by the terms set forward therein.
Public Comment-Bureau of Reclamation Draft EA Clark Canyon – Beaverhead 2005 Water Contract Renewal

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

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

Sincerely,

Tom Smith
426 South Atlantic St.
Dillon, Montana 59725
From: Eric Troth <etroth@yahoo.com>
To: <clarkcanyon@bpo.usbr.gov>
Date: 12/18/05 4:22PM
Subject: Comment on EA for Clark Canyon Contract Renewal

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

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

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

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

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

Thank you for receiving my comments.

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

34.1: See the response to Comment 7.4.

34.2: See the response to Comment 13.1.

34.3: See the responses to Comments 13.2.

34.4: See the Water Losses/Conservation Section in Chap. 3 of the revised draft EA for further information.
Comments on the EA for the 40 year water supply contract for Clark
Canyon-Beaverhead 2003 Water Contract Renewal

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

Thank you,

The following names submitted identical postcards shown above:

Todd Throckmorton
Karen Throckmorton
Brian Throckmorton
Tim Boka
Kerry Clark
Robert Des Jardine
Crystal Dunlap
R. Quinn Henley
Deborah Jadrny
Frank Jadrny
Bill Johnson
Tim Kern
Melissa Kern
Rene Loder
Steve Lubinski
Jerry & Shelly McDonald
Kevin McDonald
Johanna McLaughlin
Jeff Mikunda

Wallace Miller
Mary Odle
Dennis Relise
Kathy Wise
Steve Bielenberg
Donald Dvoroznak
Raymond Gibson
D.L. Griffis
Kelly Kimsey
Jim Nelson
Patricia Rose
Cliff Beil
Matt Bryn
Eric Stala
Scott McDougal
Bob Chin
Jeff Goody
Kyle Nye
Gayleen Merry-Reynolds
T.J. Thomas
Teresa Tollett
Tim Tollett
Illegible Name

35.1: See responses to Comment 13.2.
35.2: See the response to Comment 7.4.
35.3: See the response to Comment 11.2 and Comment 27.2.
December 19, 2005

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

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

Dear Mr. Chaffin:

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

The following comments are not exhaustive of Open A Ranch’s comments and Open A Ranch retains the right to supplement and amend their comments as the process continues to unfold. Underlying all of Open A Ranch’s comments is one basic premise: under Montana water law, Open A Ranch holds senior water rights to natural flow and is, therefore, first in time and first in right to receive that water in relation to the Bureau and the irrigation districts. The burden is on the Bureau and the irrigation districts, to affirmatively disprove interference with Open A Ranch’s water rights. Furthermore, any actions such as expanding acres, changing to sprinkler irrigation, or allowing members of the district or company to apply more water than is their rights are likely to violate Montana laws that do not allow changes in water rights unless those changes do not interfere with other valid water rights like Open A Ranch’s senior water right.
36.1: The maps in the Draft EA are general in nature. Delivery of water for both CCWSC and EBID would be at Clark Canyon Reservoir outlet works in the proposed new repayment contracts. Shareholders of CCWSC have an obligation to ensure that natural flow water rights are properly exercised. Reclamation is not aware of any determination of injury to senior water right holders in the Beaverhead River Basin. See the Project Development History section in Chap. 1 of the revised draft EA.

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

36.3: The 1960 DPR laid out the plan for the project as conceived at that time. It stated that the “general scheme of irrigation in the whole area is one of continual flooding” (p.1). The 1960 DPR also states, “the general plan of irrigation is that of continual flooding” (p.23). The 1960 DPR further stated “wild flooding from contour or border dikes is the most popular method of spreading water on the presently irrigated land in the vicinity of the East Bench Unit. This method is not efficient in use of the water and should be discontinued even though excessive erosion is not evident” (p.99). It is evident from the 1960 DPR that flood irrigation was the expected method to continue into the future but that some flood methods were not considered an efficient use of available water. One could venture that if current low-pressure pivot irrigation methods were known at the time of the 1960 DPR, that would have been the recommended irrigation method since some flood irrigation techniques were already recognized not to be an efficient use of water. No mitigation is required since both the incremental development of acres in the East Bench Unit and irrigation practices are historic in nature and are part of the environmental benchmark condition from whence the analysis of the Preferred Alternative was conducted.

CONCLUSION

The apparent illegal increase in acres irrigated and change to sprinkler irrigation...
December 19, 2005
Page 3

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

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

We are open to discussing our concerns with the Bureau and the Board of Directors of either/both East Bench and Clark Canyon. My client has hired me to find a way to resolve his concerns prior to Clark Canyon and East Bench seeking confirmation of the validity of the contract terms and boundary changes at the district court or any other legal action. Please feel free to contact either myself, Hertha L. Lund, at 307-632-5103 or Michael Cusick at 406-687-5511. We would be happy to discuss this issue on the phone or to set up an in-person meeting prior to the finalization of these contracts.

Sincerely,

Hertha L. Lund
BUDD-FALEN LAW OFFICES, LLC

HLL:rec

cc: Board of Directors, East Bench Irrigation District
    Board of Directors, Clark Canyon Water Supply Company
    Robert Van Deren, Open A Ranch Inc.
    Michael Cusick, Moore Law Firm
Jeff Baumberger  
Bureau of Reclamation  
MT-231  
P.O. Box 30137  
Billings, MT 59107-0137

Dear Jeff,

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

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

Sincerely,

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

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

I. General Comments

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

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

37.3 The document thoroughly ignores important changes that have occurred over the life of
the project that could significantly reduce surface water available for irrigation and
instream flow. Foremost are the persistent drought conditions that have dominated the
area’s climate since the late 1980’s. Further examples include the proliferation of new
problems or issues associated with the Beaverhead River because they were outside the scope of
this Federal action.
Irrigation wells, subdivision development around Dillon, and evaporative loss from numerous new fish and waterfowl ponds.

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

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

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

BOR’s apparent disregard of most of the public comment and input from early scoping meetings reveals a business-as-usual bias toward management of these important resources. Clark Canyon, a public resource has been managed by and for private water user companies. Under the preferred alternative, this program bias will continue, and even expand. This system is flawed, and as recently as this year, fraught with error. For example, the 2005 fishing season opened with a minimum dam release of approximately 25 cfs as Clark Canyon dumped heavy loads of sediment into a river with no power of dilution or transport in an obvious attempt to withhold stored water for later irrigation release. In July, flows in the lower river failed to even meet the 25 cfs minimum at Beaverhead Rock. These low flows directly corresponded with water temperatures that attained daily maxima in excess of 70 degrees F. every day of the month and sometimes exceeded 80 degrees F. The river reached a maximum of 82 degrees and exhibited daily
mean temperatures in excess of 70 degrees on 17 days of the month. Again, we assume that this management was directed at maximum storage of water for irrigation. This action was followed by a September release regime that deviated significantly from recent past actions under which dam releases were cut back to the over winter minimum of approximately 23 cfs immediately after Labor Day. Instead, with slightly improved storage in the reservoir in 2005, the water supply companies continued to release stored water through September 23rd, seemingly reversing the trend of maximum water storage management in Clark Canyon Reservoir. Finally, an inspection of the Clark Canyon Dam outlet which required the shut down of all water releases for at least two hours was scheduled and performed after dam outflow was reduced to the over winter minimum rather than during the reduced release period between labor Day and September 23rd. This action unnecessarily increased the risk of dewatering in downstream environments and loss of aquatic organisms. We submit that all of these actions are indicative of a virtual lack of any concern for fisheries and other aquatic resources and a singular management of one commodity; storage and delivery of irrigation water at the expense of all other public benefits associated with the project. We suggest and hope that the future contract change management responsibility for the project from the present private companies to the Bureau of Reclamation, a public agency accountable for the management of a public resource.

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

Drought Management
Page nine states that the Preferred Alternative would include a target minimum pool of 60,000 AF in Clark Canyon Reservoir in most years, with a minimum reservoir pool of 10,000 AF in the driest years. The Drought Management Plan would be triggered when August EOM forecasts were 50,000 AF or less. This alternative would also include a target minimum in-stream flow of 200 cfs at Clark Canyon Dam, with a bottom-line minimum in-stream flow of 25 cfs at the dam. The EA notes that FWP has recommended that 200 cfs stay in the river. FWP realizes that the reservoir will not always be able to
supply 200 cfs to the river. However, at the time of this writing (11/29/05, 12:20 p.m.)
the BOR’s website reports that reservoir inflow is 239 cfs and outflow is 25.8 cfs. In
other words, outflows are only 12.9 percent of FWP’s recommended minimum and 10.8
percent of reservoir inflows. This means that 89.2 percent of the Beaverhead’s natural
flow is being retained for storage.

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

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

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

Page 8 and 9 discuss the priorities of water delivery. It is difficult to understand why the
BOR would prefer an additional 7,711 acres above the 25,995 that were presumably
included in the original contract with CCWSC. Similarly, the preferred alternative would
add an additional 3,565 acres, including 918 acres currently outside the district’s
boundaries.
As mentioned above in our discussion of the statewide adjudication, given the date of development, it is possible that some of these acres—especially those currently outside the districts—should not be irrigated with Clark Canyon water. Rather, because that water use, i.e., post-1973 expansion in water use, may not be a legitimate part of the claims, it should be permitted use under the Montana Water Use Act. Depending on the date of appropriation, some of that water may be junior to FWP’s instream flow reservation.

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

II. The View From the Beaverhead River.

Introduction—Chapter 1

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

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

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

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

37.6: The EA has been changed as suggested.

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

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

37.9: The shoulder season concept is recognition of the exercise of historic natural flow water rights of the shareholders of CCWSC and EBID. The shoulder season will use their natural flow rights, most of which enter into the Beaverhead River below the outlet works of Clark Canyon Dam. The natural flow rights, while not adjudicated, are believed to have priority dates of 1962 and earlier, and would be senior to MDFWP’s In-stream Flow Reservation with a 1985 priority date.
Public Concerns: While some public concerns identified through scoping are summarized (p. 77 - 79), they are not seriously addressed in the EA.

Alternatives - Chapter 2

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

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

37.10: See the response to Comment 5.1.

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

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

37.13: The Preferred Alternative’s Drought Management Plan would set minimum pool levels, both target and bottom. The Federal action is not proposing to set the target minimum pool of 60,000 AF as “a standard pool level”, as the commenter indicated. It is common knowledge that more water in storage is beneficial to everyone and everything, including fisheries. Therefore, in general terms, anything above the target minimum pool is optimum.
fisheries and a deficit condition in storage that perpetuates low river flows for fisheries and irrigation water shortages. Emphasis should be on water conservation practices to avoid storage deficits. Similar reasoning would apply to the Beaverhead River flow regimes. While the "target flow" of 200 cfs represents a minimum condition under which fisheries can flourish, the base of 25 cfs is woefully inadequate. All of the US Fish and Wildlife Service documents and findings prior to the construction of Clark Canyon Reservoir called for a minimum flow of 200 cfs between the dam and Barretts and 250 cfs from Barretts to the mouth of the Ruby River. The Ruby River, a much smaller river - reservoir complex releases a minimum of 25 cfs from the dam. We find a minimum flow of 25 cfs to be inadequate to support fisheries in any reach of the Beaverhead River.

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

Table 2.1 Effects of Alternatives:
Description: Again, we would much prefer to see a higher storage trigger than 50,000 acre feet and higher minimum for storage and flow than 10,000 acre feet and 25 cfs. Under what guidelines, conditions, or standards would reservoir storage drop to or below the 60,000 acre-foot target? We fear that the target would become the standard.
Water Supply: How would March EOM reservoir contents rebound from 10,000 or 30,000 acre-feet to the 147,600 – 131,000 acre-foot range under drought conditions? In reality March EOM contents have not rebounded to halfthose amounts during the current drought episode.
Water Quality: The statement that water quality would "remain good" is dubious at best. No attempt is made to address problems in Stone and Spring Creeks. The effects of low flow on water quality, high water temperatures in the lower river, sedimentation, and gas bubble disease were not even addressed. This will be discussed in more detail later in our comments.
Fisheries: Conditions that result in impaired or poor fish populations half or more of the time are unacceptable. The document also does not even address other forms of aquatic life such as plant, macroinvertebrates, periphyton, and macrophytes.
Wetlands: The document focuses on artificial creation of wetlands via irrigation water returns, drains, ditch loss, etc. but fails to acknowledge how much natural wetland has been lost due to drain ditch construction throughout the valley. We submit that improved instream flows via water conservation would improve adjacent wetlands and riparian cross section along the river and tributaries.
Social and Economic: We submit that a system that is predicated on 34% to 38% efficiency in water delivered to the field versus water diverted from the river is flawed and holds a great deal of room for improvement. Small improvements in water conservation could potentially provide much more water for other beneficial uses as well as irrigation. Again, we strongly recommend development of alternatives that emphasize water conservation.

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

37.15: (See the response to Comment 7.4). Reclamation has funded and implemented water conservation measures in the past and will continue to do so in the future. As discussed in previous meetings between Reclamation and MDFWP, language has been added to the revised Draft EA that will foster cooperation and communication between Reclamation, the two water user groups, state agencies, and any other group willing to address some of the concerns on the Beaverhead River, including water conservation.
Recreation: Recent trends in reservoir storage and river flow have resulted in dramatically reduced recreational use on Clark Canyon Reservoir and the Beaverhead River. This trend could continue under the same conditions that resulted in the classification of fisheries as poor or impaired half of the time or more. The EA fails to adequately address the affects of the two alternatives on recreational use of the project.

Affected Environment – Chapter 3

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

Water Quality: Water quality in the Reservoir should be compared with the work of Rodney Berg (1974) rather than Smith (1973) as cited. Tables of mean values should be presented for data comparison rather than a general statement that “overall water quality is good having changed little over the years”. The same means of comparison should be applied to the river sections for comparison with data from Smith (1973). We question the statement that river water quality is generally good due to a lack of information in key areas. Severe water temperatures that exceed 80 degrees F have accompanied low summer flows in the lower river. We disagree that this is what would “typically be expected in a similar system”. Such temperatures were documented as recently as 2003 and 2005, yet temperature is not analyzed or mentioned in the document. Gas bubble disease has been cited as a water quality problem directly affecting fish health in the upper river by both FWPG and BOR studies, yet this parameter was not included in the EA. Sediment analysis, TSS, or turbidity measurements were not included during the winter in the lower river when USGS Gage data clearly demonstrate maximum sediment movement or were they collected in the upper river when irrigation flow releases are increased in the spring. Sampling for mercury, a metal often associated with methylation conditions in reservoir ecosystems and concentration in fish flesh, was apparently not even included in the analysis for the EA. The EA consistently points out nutrient level problems in Stone and Spring Creeks but fails to address the problem in any other fashion, merely stating that the problems are expected to continue under both Alternatives. The EA also fails to mention elevated levels of salt forming ions (particularly Na and K) in both streams and a sample revealing lead concentrations of 30 μg/l in Stone Creek. Finally, the document appears to lack any significant coordination with Montana Department of Environmental Quality (DEQ) and their TMDL sampling and evaluation process in the Beaverhead drainage.

37.16: The table has been revised.

37.17: The water quality section in the revised draft EA has been modified where appropriate. Also, see the responses to comment 9.1 and comment 15.6 for further water quality information.
Fisheries: This section appears to be the most thoughtful and well-written section in the document and also appears to be best coordinated with an outside agency. Similar to the situation with water quality analysis, the section should probably divide the Beaverhead River into different reaches for analysis of fish populations. We would suggest discussing fish populations in terms of reaches defined from the dam to Barretts, Barretts to the Westside Canal, and Westside Canal to the mouth. This subdivision would be based on dominant flow regime, productivity, temperature, and quality and diversity of habitat niche. We also suggest that tables demonstrating trout abundance, standing crop, and size distribution through the system would be helpful to the reader. A minor correction should be applied to Table 3.3 through the addition of both westslope cutthroat trout and brook trout to the list of species collected in the Beaverhead River.

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

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

Upper Beaverhead River: In the upper river, some mention of angler crowding and the Biennial Rule process that addressed the problem should probably be included. The biennial rule analysis identified severe crowding issues in the tailwater reach. Prior to dam construction and operation, the U.S. Fish and Wildlife Service (USFWS 1956) estimated angler use of the Beaverhead at 45,500 total angler days per year as distributed as 27,000 between the dam and Barretts sites, 10,000 between Barretts and Dillon, and 8,500 between Dillon and the mouth of the Ruby. As was the case for the reservoir, some mention should also be made of the large differences in angling pressure resulting from flow regime. Typically, modern angling pressure on the Beaverhead can exceed 40,000
Chapter 3 “Fisheries” has been revised as suggested.

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

The EA has been revised as suggested.

The revised Draft EA has been updated to reflect more recent recreational data and has additional tables.
nonresident component declines from more than 25,000 to 4,000 per year. The same analysis should be applied to the river fishery that is not even mentioned in the section.

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

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

Environmental Consequences – Chapter 4

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

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

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

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

Threatened and Endangered Species: The earlier error referencing bald eagle nests was noted and seemingly corrected with Table 4.6. The statement that Reclamation
Thank you for your comment. The EA has been corrected.

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent</td>
<td>40%</td>
<td>40%</td>
<td>38%</td>
<td>22%</td>
<td>8%</td>
<td>8%</td>
<td>14%</td>
<td>27%</td>
<td>35%</td>
<td>34%</td>
<td>39%</td>
<td>40%</td>
<td>22%</td>
</tr>
</tbody>
</table>

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

See “Methods of Analysis” in the Draft EA for explanation of the hydrologic model. As for the water quality comment, this section of the EA pertains to wetlands, and the purpose of documenting return flow information is to simply show the baseline return flows for comparison between the No Action Alternative and the Preferred Alternatives in Chapter 4. The Montana Tech study is looking at return flows impacts on this stretch of the river, both quality and quantity. The area in question does not have a conduit to return the flows (such as Stone Creek or Spring Creek) but comes in through groundwater connections and springs.

Reclamation is funding a water quality study in the Beaverhead basin through Montana Tech to evaluate return flows. When data collection and analysis have been completed, this study will provide needed information in the TMDL planning and implementation process. Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.
Page 37. The EA states: “Reduced diversions during droughts would lessen return flows available for irrigation of downstream lands.” The document goes on to explain that the preferred alternative would provide 86,200 AF of return flow near Twin Bridges compared to 87,900 AF for the No Action alternative. Both alternatives recognize that the project provides a tremendous quantity of water, but there is inadequate information to determine if the timing of return flow positively or negatively impacts aquatic life, nor does the document adequately address the issue of water quality associated with this large volume of water. For the no action alternative and the preferred alternative, the document simply says (page 37 and 38) that continued operation would not degrade water quality.

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

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

Conclusion

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

To be clear, FWP is not advocating that BOR fail to renew irrigation contracts. The Clark Canyon project is vital to the economic well being of Beaverhead County. However, it is undeniable that the project dramatically impacts the fisheries of the Beaverhead and Jefferson Rivers. As noted in these comments, BOR states on the first page of the EA that “the Reclamation Act of 1936 requires Reclamation to provide water users holding contracts a first right of renewal to a project’s available water supply…” Clearly, BOR has focused its energy on the first right of renewal, while failing to
consider all of the factors that determine the *available water supply*. FWP submits that the availability of project water cannot be determined without analyzing the expansion of irrigated acres that the project serves and comparing that demand to other state-based water uses. Serious conservation measures could increase availability for all uses.
38.1: Reclamation has extended the existing contracts until December 31, 2006 and until NEPA is completed.

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

38.3: See the responses to Comments 9.1 and 32.2.

38.4: Reclamation is working cooperatively with the Montana Department of Environmental Quality to cooperatively fill existing water quality data gaps to further planning phases of the TMDL development. Reclamation, as a stakeholder in the valley, will be working with the Department of Environmental Quality in the planning and implementation phases of the TMDL process to assist with improving impaired water bodies throughout the basin. Montana Department of Environmental Quality is the agency responsible for the Beaverhead TMDL, so consultation with the EPA is not needed.
38.4: See the response to Comment 7.4.

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

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

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

38.8: See the response to Comment 18.1.

38.9: The Draft EA did not mention new subdivision’s impact on groundwater resources because it was outside of the scope of this Federal action. However, subdivision language has been added to Chapter 1 of the revised Draft EA ("Relationship of This Action to Other Actions"). New wells and additional groundwater use is a concern of Reclamation’s as well, and Reclamation is funding some of the studies the commenter mentions. Reclamation is not the agency that regulates the groundwater resource; please contact the Montana Department of Natural Resources and Conservation if there are concerns about water rights or groundwater wells.
December 19, 2005

Via Certified U.S. Mail: 7003 1820 0001 0723 4983
and Via E-Mail: clarkcanyon@gp.usbr.gov
Attn: MT-231
PO Box 30137
Billings, MT 59107-0137

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

Dear Planning Coordinator:

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

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

I. INTRODUCTION

The Draft EA fails to comply with Federal and State law. These failures need to be addressed and rectified before the Draft EA is finalized.
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. Kuxman, 817 F.2d 484, 492 (9th Cir. 1987)) and establishes a process by which Federal agencies must study the environmental impacts and effects of actions before such actions are taken. NEPA applies to any Federal action. NEPA exists to ensure a process, not a result. Northwest Environmental Defense Center v. Bonneville Power Administration, 117 F.3d 1520 (9th Cir. 1997); Inland Empire Public Lands v. United States Forest Service, 88 F.3d 724, 758 (9th Cir. 1996). NEPA’s procedures are designed to (1) ensure that an agency will have detailed information on significant environmental impacts when it makes its decision; and (2) guarantee that this information will be available to a larger audience. Id. Any action taken without observance of the procedures required by NEPA will be set aside. Save the Yaak Committee v. Block, 840 F.2d 714, 717 (9th Cir. 1988).

II. INADEQUATE ANALYSIS ON THE PROPOSED INCREASED ACREAGE

39.1 The Definite Plan Report ("DPR") map that accompanied the complete description of the Bureau project when it was approved in 1960 authorized 28,004 acres for Clark Canyon and 21,800 for East Bench. This is significantly different than the approximately 55,000 acres for Clark Canyon and approximately 30,000 acres for East Bench depicted in the location map in the Draft EA. This is also significantly different than the 33,706 acres for Clark Canyon and the 27,137 acres for East Bench listed in the Draft EA as the currently irrigated acres (i.e. the no action alternative), EA at 8-12. These expanded acres have not had the necessary NEPA analysis. Additionally, white the Bureau admits that water spreading is being employed (EA 1-3-4), no analysis has been completed on the impacts of water spreading. See Part III below.

A. Cumulative Effects Analysis is Lacking

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

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

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

39.2: Other past, present, and reasonably foreseeable future actions were listed on p.5 of the Draft EA. "Relationship of This Action to Other Actions." This Federal action was compared to those past, present, and reasonably foreseeable future actions during the cumulative impact analysis. The only action in "Relationship of This Action to Other Actions" related to the Federal action was the non-signer irrigation use of Beaverhead River water. Non-signers have water rights for natural flows of the Beaverhead River. Reclamation’s stored water is released into the Beaverhead River during the irrigation season for CCWSC and EBID. If this stored water were not available during drought years, there is a high probability that the Beaverhead would be dry due to depletions of the non-signers during the irrigation season. Therefore, our analysis has determined there will not be cumulative impacts associated with the Federal action when compared to irrigation use of the non-signers.
39.3: See response to Comment 36.2. In addition, the Federal action is to renew long-term water service contracts or convert to repayment contracts with CCWSC and EBID. The Draft EA analyzed impacts of implementing the Preferred Alternative when compared to the No Action Alternative. The purpose and need for this action is described in “Purpose and Need,” p.1 of the Draft EA.

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

The administration of water rights is under the jurisdiction of the State of Montana. Reclamation is unaware of any formal complaints filed under the Montana Water Use Act with the state relative to the exercise of Reclamation’s water rights or the water rights of the shareholders of the CCWSC.
III. INADEQUATE ANALYSIS ON THE CHANGE FROM FLOOD IRRIGATION TO SPRINKLER IRRIGATION

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

A. Cumulative Effects Analysis is Lacking

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

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

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

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

IV. NO ANALYSIS OR EXPLANATION OF MITIGATION

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

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

See response to Comment 36.3

39.6: See the response to Comment 39.2 above.

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

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

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

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

Notices of formal contract negotiations sessions were published in local newspapers of wide circulation. A point of contact was provided in those notices for those wishing to be personally informed of formal negotiation sessions and to receive copies of draft contracts. Draft contracts were available at each of those formal negotiation sessions.
39.11: Additionally, the Bureau failed to properly coordinate with Beaverhead County. Beaverhead County has a Resource Use Plan and Resource Use Guidance as part of the Growth Plan. The Bureau should have coordinated with Beaverhead County to ensure compliance with this plan.

VII. CONCLUSION

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

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

Sincerely,

/s/ Hertha Lund

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

HLL: mec

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

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

Dear Mr. Baumberger:

Trout Unlimited thanks you for the invitation to provide comment on the "Draft Environmental Assessment for the Clark Canyon Reservoir" water delivery contract renewal (Bureau of Reclamation, November 2005) (hereinafter, "Draft EA."). To you look forward to working with the Bureau of Reclamation on this process. As we were stated in our January 2005 comment letter during the scoping process, Trout Unlimited believes that the Beaverhead River faces a crossroad. 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" nonnessful of responsible water management for the 21st century.

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


Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
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The reference cited in your letter allows Reclamation to prepare an EA when it is initially decided not to prepare an EIS. In this case, Reclamation was initially uncertain as to the potential for significant impacts and determined that an EA was the appropriate NEPA document to assess the potential effects of the proposed action and alternatives to it.
The Draft EA at 2, acknowledges that one of the questions that it must address is, “[w]ould a new contract constitute a major Federal action significantly affecting the quality of the human environment, thereby requiring an EIS?” The Draft EA, however, commits a fundamental mistake in its truncated analysis of this question by a complete failure to address changed conditions underlying contract renewal.

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

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

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

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

40.2

The Draft EA fails to address significant adverse environmental impacts because it does not begin its analysis from the correct environmental baseline condition. The Council on Environmental Quality suggests that in water service contract renewal cases the No Action be defined as the status quo or renewing the existing contracts with minor (administrative language) changes (Federal Register, Vol. 54, No. 128, Thurs. July 6, 1989, pp. 28477-78).
correct environmental baseline for the Bureau’s NEPA analysis is conditions at the time of the 1958 contracts. The Bureau’s NEPA analysis must address the changes in river and project conditions since this time. The Draft EA’s environmental baseline is current river and project conditions, at the time of expiration of the contracts. By looking only at future impacts of contract renewal relative to conditions at the time of contract expiration, the Draft EA fails to analyze significant adverse cumulative impacts to the environment under contract renewal. In American Rivers v. FERC, 201 F.3d 1186, 1198 (9th Cir. 2000) the Court noted that if the baseline constituted an already degraded environment, the agency still had the obligation to consider past degradation in its cumulative impacts analysis.

40.3

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

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

40.4

III. Failure to Meet Clean Water Act Obligations.

The Clean Water Act requires all federal agencies to meet state water quality standards. 33 U.S.C.A. § 1323 (a) (“federal facilities clause”); Idaho Sporting Congress v. Thomas, 92 F.3d 792, 798-99 (9th Cir 1996) (“Under the Clean Water Act, all federal agencies must comply with state water quality standards”). Since the start of the 1958 contracts, the State of Montana has documented violation of a number of state water quality standards below the Bureau’s Clark Canyon Reservoir. Indeed, the Draft EA discusses the Beaverhead River’s water quality standard violations: “[t]he Beaverhead River between Clark Canyon Dam and Grasshopper Creek is listed as not supporting...
aquatic life, cold water fishery, and a drinking water supply. Probable causes are bank
erosion, dewatering, flow alteration, lead, metals, and habitat alteration.” Draft EA at 18.

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

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

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

1. Sediment Deposition and Bank-full Flow Events.

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

This dramatic reduction in the frequency of bank-full flow events on the
Beaverhead River has also resulted in the loss of healthy channel geometry, in addition to
the increase in fine-sediment deposition within the channel. As a result, when the bank-
full spring flow events now do occur, these events result in more overland flow
(flooding) than when the 1958 contracts were executed, since the channel’s conveyance
area has been reduced. The long-term result will be channels that are wider, shallower,
straighter, and that contain less habitat complexity. With more fine sediment held in the
channel, insect populations will continue to change toward more numerous, small.
sediment-tolerant species. Fish reproductive success will continue to decline. Holding water will become less abundant since the channel is filling. The overall fish populations in the Beaverhead River will decline with poorer spawning success, less desirable and abundant food sources, and less habitat to support a diversity of trout age groups. Downstream in the Jefferson River, the impacts will be similar. In addition, the degraded channel condition reduces the ability of the Beaverhead to deliver water to downstream irrigators.

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

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

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

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


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

40.6: Reclamation has evaluated the proposed action and alternatives to it for potentially significant impacts. We determined that an EA is the appropriate NEPA document. For further information, see the response to Comment 40-2.
The data in these tables document increases in nutrient loading along the Beaverhead River between Barretts (page 64) and Gien's Bridge (page 66), but there is no discussion of required mitigation measures, and no discussion of developing a total maximum daily load ("TMDL") for these nutrient pollutants. Because the Beaverhead River basin is currently engaged in TMDL planning and monitoring, the Draft EA should have at least included an analysis of these efforts and how the BOR's required mitigation measures could support a basin-wide TMDL. However, the Bureau failed to coordinate with either the Montana Department of Environmental Quality or the Environmental Protection Agency in preparing the Draft EA. See, Draft EA at 60 (list of agencies with whom the Bureau coordinated for NEAP analysis).

40.7

40.8

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

3. Dissolved Oxygen Levels.

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

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

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

40.7: See the response to Comment 38.2.

40.8: See the response to Comment 5.3.
In addition, an increase in streamflow volume would also be likely to lower water temperatures and ameliorate low dissolved-oxygen conditions.

40.9

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


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

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

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

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

40.9: See the response to Comment 38.2.
Adding the 25 cfs released from Clark Canyon to the combined total of the tributary inflows results in an expected flow of 101.0 cfs in December, and 91.5 cfs in February.

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

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

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

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

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

40.10: See the responses to Comments 40.2 and 40.6.

A full EIS must discuss the increase in sediment to the Beaverhead River since the execution of the 1958 contracts. A full EIS must also contain a preferred alternative
that provides adequate proposed mitigation of the significant adverse environmental impacts of sediment pollutants under renewed contracts.

5. Dewatering.

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

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

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

<table>
<thead>
<tr>
<th>Water Diverted, p. 9</th>
<th>Water At Farm Headgate, p. 74</th>
<th>Water to Fields, p. 52</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCWSC 4.0 ac. ft./ac</td>
<td>2.09 ac. ft./ac.</td>
<td>1.51 ac. ft./ac.</td>
</tr>
<tr>
<td>EBID 3.1 ac. ft./ac.</td>
<td>2.09 ac. ft./ac.</td>
<td>1.06 ac. ft./ac.</td>
</tr>
</tbody>
</table>

These data suggest that over 60% of the water diverted from the river is lost in conveyance. This information strongly suggests that a much more aggressive water conservation process is needed. The Draft EA misses the opportunity to analyze the
possible mitigation measures in reducing conveyance losses and ensuring that the 
salvaged water remains instream. Page 32 of the Draft EA mentions “water conservation 
plans” but does not include these in the document. Similarly, the Draft EA’s preferred 
“Drought Management Plan” (page 9) only proposes further reductions of winter releases 
into the Beaverhead River (from the normal of 200 cfs to 25 cfs).

III. Social and Economic Analysis is Inadequate.

40.12

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

Presently, an estimated 90% of the angling pressure is occurring in the upper 30 
miles of the Beaverhead River, and angling pressure has—not surprisingly—been on the 
rise for the last 20 years. Dr. John Duffield estimated the economic value of angling in 
1982, with an estimated value per angling trip of $39 per day for resident anglers, and 
$205 per day for non-resident anglers, finding that 33% of use was by resident anglers, 
and 67% was by non-resident anglers. For the purpose of these comments, Trout 
Unlimited applied a 3% per year inflation calculator (increasing the average daily angler 
value to $240). Restoring the lower 50 miles of the Beaverhead River could increase the 
angling pressure by 37,956 days in an average year. This increased number of angler 
days, multiplied by the average angler day-value of $240 yields an estimated income to 
the river basin of $9.1 million per year. Such an economic contribution and increase in 
economic diversity could complement the agricultural production supported by the Clark 
Canyon project. The Draft EA fails to provide such an analysis.

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

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

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

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

In meetings in the past year with the Montana Department of Fish, Wildlife, and Parks, the Bureau has suggested that it has no control over the operation of Clark Canyon dam. While the Bureau contract has allowed the board of the East Bench Irrigation District to assume operation and maintenance of the unit, under both the terms of the contracts and by statute, the Bureau retains considerable authority to influence operations. In addition, while the amount of water to be delivered remains the same in contract renewal, the Bureau of Reclamation has “considerable discretion . . . to change other terms of the renewed contracts.” See Memorandum from the Solicitor to the Asst Secretary, Water and Science, Renewal of Friant Unit Contracts, 96 I.D. 289 (Nov 10, 1988).

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

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

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

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

Furthermore, the commenter is correct by stating, “in addition, the amount of water to be delivered remains the same in contract renewal...”. However, Reclamation is unclear with the 2nd part of that sentence “...the Bureau of Reclamation has ‘considerable discretion’...to change other terms of renewed contracts”; because Reclamation has changed certain terms of the new contracts.
manage scarce water resources and develop partnerships to nourish a healthy environment and sustain a vibrant economy." Interior Secretary Announces Challenge Grant Program for Western Water Conservation Projects, US Department of the Interior, Office of the Secretary (January 13, 2004). Trout Unlimited is willing to put the time and resources into a successful partnership with the Bureau, the East Bench Irrigation District, the Clark Canyon Water Supply Company, and other interested parties. Not only is a full EIS considering the range of reasonable alternatives to mitigate for elements of contract renewal that address these priority resource concerns legally required, it is an excellent starting point for such a collaborative approach.

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

Yours truly,

Bruce Rehwinkel
Laura Ziemer

Cc: Governor Brian Schweitzer
    Senator Conrad Burns
    Senator Max Baucus
    Representative Rehberg
    Sue Kelly, Montana Area Manager, BOR
    Susan Camp, Fisheries Natural Resources Specialist, BOR
    Chris Hunter, MFWP
    Dick Oswald, MFWP
    Bruce Farling, Montana Trout Unlimited
    John Wilson, Montana Trout Unlimited
December 19, 2005

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

Dear Bureau:

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

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

41.1: Noted.

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

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

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

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

The BOR’s Draft Environmental Assessment considers only the recreational impacts to lands and facilities managed by the Bureau of Reclamation. The Bureau of Land Management manages recreational lands at the old Ney Ranch near Pipe Organ, and provides important recreation opportunities that are largely dependent on the availability of water in this section of the Beaverhead River to provide
fishing, boating, and hunting opportunities. Recreational use of these lands is directly affected by the proposed contract renewals, and should be considered in the analysis. Even though the BLM manages only small amounts of lands along the Beaverhead River, other indirect impacts to recreational use of BLM lands would be expected if the fishing opportunities offered in the Beaverhead River are lost, and Dillon no longer attracts those outdoor recreation enthusiasts who would also take advantage of other opportunities on nearby BLM lands.

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

The BLM’s RMP also includes analysis of cumulative impacts to fish and wildlife stating, “Cumulative impacts from water diversions and reservoir draw downs for irrigation include increased water temperatures resulting in the loss of habitat in many streams and rivers within the planning area.” Fluctuations in the Clark Canyon Reservoir pool are having an effect on the reproduction and survivability of native burbot and the popular rainbow and brown trout populations to the extent that Montana Department of Fish Wildlife and Parks (MTFWP) has felt the need to reduce the bag limit down to 2 fish per day. Catch rates over the past 5 years have steadily dropped. In addition, MTFWP has for the most part discontinued stocking until habitat conditions are more favorable. 2003 marked the first stocking in nearly 5 years.

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

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

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

The threat of new aquatic invasive plants and how they will be treated should be addressed by the Bureau in this environmental assessment. The recreational usage of the reservoir by out of state boaters continues in 41.4:

41.2: See response to Comment 13.1.

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

41.4: The control of noxious weeds is outside the scope of this Federal action. See the response to Comment 41.3 above.
to increase as does the threat to this area by these aggressive plants. Prevention is the most inexpensive form of noxious weed control and something such as an educational posting letting boaters know about these weeds might go a long way in preventing the accidental infestation of the reservoir.

41.5 Finally, the wildlife discussion in the environmental assessment is incomplete and inconsistent within the document, specifically for bald eagles. Chapter 3 states that there are no bald eagle nests within the project area, while Chapter 4 lists 6 nests. The document then states that none of the nests are in the project area. All of these nests are located immediately adjacent to Clark Canyon Reservoir or the Beaverhead River, and are totally dependent on the water resources being affected by reservoir operation and the diversion of irrigation water. Additionally, up to 75 bald eagles occur within the Beaverhead River corridor during winter months and are dependent on the availability of open water and waterfowl. There is no discussion of the impact that water diversions have on overwintering habitat and specifically on waterbirds such as ducks of the area in 1995, or projected water future management. These impacts have had, and are continuing to have a direct impact on bald eagles. There is no indication that the Bureau of Reclamation has conducted any consultation with United States Fish and Wildlife Service on bald eagles as required under Section 7 ESA.

41.6 The EA does not discuss how diverted irrigation waters are being used, how that differs from past use, and what the projected impacts of those changes will have on riparian and palustrine wetlands. When the original diversion authorizations were made the dominant irrigation method was flood irrigation which created wetlands and certainly sustained some return flows to the Beaverhead River. This practice has been replaced by wheel lines and more recently by center pivot irrigation systems which have progressively reduced surface flows in ditches, and return flows into wetlands and the river. The EA does not discuss where the “near Dillon” flow monitoring station is located or the source of the return flows being monitored. Reduced and inconsistent flows in the Beaverhead River between Barnett and Beaverhead Rock yearlong are having a significant impact on the distribution and productivity of wetland habitat, and dependent wildlife.

41.7 The Beaverhead near Dillon flow monitoring station is a discontinued U.S. Geological Survey site approximately 7 linear miles northeast of Dillon. The following description and map of the Beaverhead near Dillon flow monitoring station was taken from the USGS’s NWIS web server:

USGS 06018000 Beaverhead River near Dillon MT
Beaverhead County, Montana
Hydrologic Unit Code 10020002
Latitude 45°31'18", Longitude 112°33'45" NAD27
Drainage area 3,484.00 square miles
Gage datum 4,960 feet above sea level NGVD29
Period of record: 1950-10-01 to 1983-10-05
41.8: The Intermountain Joint Venture has recognized the Beaverhead River corridor as a primary focus area and has leveraged several million dollars toward wetland and wildlife habitat protection. Operation of Clark Canyon Reservoir and Fast Bench Project could complement these efforts, but as proposed is creating environmental conditions, compounded by drought, that are contrary to Venture objectives. For example, the BLM Pipe Organ Ducks Unlimited project is being influenced by upstream river flows and the availability of water for project operation. These projects and initiatives are not acknowledged in the EA.

41.9: One last note that does not appear to be a factor in your decision, but is mentioned to improve the accuracy of your document, is that you shouldn’t add the “per capita income” of each of the counties affected (Beaverhead and Madison) to come up with a “Total” per capita income that is essentially double the per capita income of the two counties. In other words, if Beaverhead County’s per capita income is $21,452 and Madison County’s per capita income is $20,094, the average per capita income of both counties is $20,788. Adding the per capita incomes of the two counties does not provide any useful information.

Sincerely,
Tim Booruth
Field Manager

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

41.9: The revised Draft EA has been changed.
To: Bureau of Reclamation


December 12, 2005

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

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

42.1 1. No alternatives considering improvement of multiple use benefits such as fisheries or hydrology were brought forward. This should be a part of the final alternative.

42.2 2. No alternatives considering water conservation methods to increase efficiency of the system were advanced. This should be part of the final alternative.

42.3 3. This is a NEPA process for a 40 year contract for the management of an important public resource. Analysis at the Environmental Impact Statement level should be considered because of the environmental, social and economic impacts.

42.4 4. The final alternative needs standards for minimum winter flows to protect fisheries and other aquatic life and for maintaining minimum flows in the lower Beaverhead River during irrigating season, to prevent high temperatures.

42.5 5. Dick Oswald, Montana FWP Fisheries Biologist, is the authority on the Beaverhead River and should be part of this ID Team.

Sincerely,

Raymond Gross, President

Dave Cullen, Vice President

Robert DesJardins, Secretary Treasurer

Friends of the Beaverhead
355 Antelope Dr
Dillon, Montana 59725

42.1: See responses to Comments 13.2.

42.2: See responses to Comments 13.2.

42.3: See the response to Comment 5.3.

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

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