SECOND COMMENT PERIOD - COMMENTS/RESPONSES

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

1. Budd-Falen Law Offices.........................................................June 12, 2006
2. Erb & Suenram Law Offices...................................................June 12, 2006
3. Doney, Crowley, Bloomquist, Payne, and Uda Law Offices ......June 12, 2006
5. Leon Sagaloff...........................................................................May 25, 2006
7. National Trout Unlimited .......................................................May 23, 2006
9. Harris H. Wheat .................................................................May 26, 2006
10. John Osborne ........................................................................May 31, 2006
11. Steve Carl ...........................................................................June 03, 2006
12. Jerry Carl ...........................................................................June 02, 2006
15. Mike Marcum ......................................................................June 07, 2006
16. Walter Morris .......................................................................June 10, 2006
17. John Cargill ..........................................................................June 10, 2006
18. Fishing Outfitters Association of Montana............................June 12, 2006
20. Steve Hull ...........................................................................June 11, 2006
22. Larry Laknar .........................................................................June 09, 2006
23. Trout Unlimited .....................................................................June 12, 2006
25. Beaverhead County Disaster of Emergency Services .........June 12, 2006
26. Terry Throckmorton .............................................................June 12, 2006
27. Tom & Mary Smith ...............................................................June 12, 2006
28. Montana Department of Fish, Wildlife and Parks ............June 09, 2006
29. Steve Cottom ........................................................................June 09, 2006
30. Beaverhead and Big Hole Outfitters and Guides Assn. ........June 12, 2006
31. Quarter Circle 9 Outfitters .....................................................June 12, 2006
32. Eric Troth ...........................................................................June 12, 2006
34. Jeremy Garrett .....................................................................June 15, 2006
35. U.S. Fish and Wildlife Service ..............................................June 19, 2006
36. Robert Van Deren ...............................................................June 12, 2006
June 12, 2006

Re: COMMENTS on Revised Draft Environmental Assessment, Clark Canyon Reservoir, Montana

Dear Planning Coordinator:

Open A Ranch, Inc. and Robert Van Deren (hereafter collectively referred to as “Open A Ranch”) have hired the Budd-Falen Law Offices to provide comments on the Revised Draft Environmental Assessment (“EA”) Clark Canyon Reservoir that was released in May 2006.

As explained in Open A Ranch’s comments to the Draft Environmental Assessment, Open A Ranch has land that is intermingled and neighbors the Clark Canyon Water Supply Company (“CCWSC”) and the East Bench Irrigation District (“EBID”). Also, Open A Ranch is a non-signer to the CCWSC and EBID delivery contracts with the Bureau and has water rights to natural flows senior to those administered by the Bureau. Therefore, Open A Ranch is directly impacted by the Bureau’s actions in delivering water to EBID and CCWSC. Furthermore, the Van Deren family has lived and ranched on the Open A Ranch for over four decades and has a deep love and concern for the environment impacted by this EA. In addition to ranching, they spend significant time on their land for recreation and other purposes. They fish on their land and worry that the ongoing fishing will be directly impacted by the Bureau’s decision. They also enjoy the use of these lands to view wildlife in the area. Open A Ranch has been directly impacted by sedimentation and flooding caused by reservoir operations and storage water deliveries. On behalf of Open A Ranch, we provide the following comments.
1.1: The Council on Environmental Quality interprets the environmental benchmark or environmental footprint (effects) for contract renewal processes to be measured at the end of the existing contracts (end of the 40 years).
June 12, 2006

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The increase that has already occurred is an important aspect of full consideration of the impacts of the proposed action. This is the equivalent of allowing the Forest Service to clearcut 300 acres per year for 40 years, and when the Forest Service has to do NEPA because of its requirement to do a new forest plan, the Forest Service saying that there was no impact from logging because it was the historic practice to clearcut. No member of the public would think this as rational and no court would allow it. NEPA analysis must be done on the full change after 1970, not just certain aspects off it. See, e.g., City of Atlanta v. United States, 531 F. Supp. 506 (N.D. Ga. 1983) (airport approved prior to NEPA enactment, runway change proposed after enactment); Confederated Tribes & Bands of Yakima Indian Nation v. WAEC, 746 F.2d 466 (9th Cir. 1984) (power plant approved prior to NEPA enactment, relicensing proposed after enactment). Here the contracts were approved prior to NEPA enactment, but the irrigated acreage was increased after enactment.

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

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

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

Senate Document No. 191 states, "Clark Canyon Reservoir, on Beaverhead River, below the town of Armat, if built to a capacity of 150,000 acre-feet, will furnish a full supply of water for 25,000 acres on a bench east of Dillon, and a supplemental supply for 14,500 acres in the same general area." Senate Doc. No. 191, p. 62. Only by adding together the new irrigation and supplemental irrigation supplies for the Red Rock, Horse Prairie, and Dillon Valley Units can a person arrive at the 32,400 acres of new irrigation and 34,100 acres of supplemental irrigation that was supposedly considered in Senate Document No. 191. Id, at p. 64.7 Because the Beaverhead

2 Actually, adding together the acres of supplemental irrigation for the Red Rock, Horse Prairie, and Dillon Valley Units equals 34,200 acres. However, given the similarity to the Bureau's figures for supplemental acreage, and the fact that the new acreage listed is the same, this appears to
River drainage begins at the confluence of Horse Prairie Creek and Red Rock River, and because the statement in the IIA also refers to tributaries of the Beaverhead River Basin, this is presumably how the Bureau arrived at the amount it alleges was considered.

The Bureau clearly manipulated the numbers in Senate Document No. 191 in order to make it appear as if the number of acres it is now proposing to irrigate has been considered all along. However, Senate Document No. 191 only considered furnishing a full supply of water for 25,000 acres and a supplemental supply for 14,500 acres, not the 32,490 acres of full supply and 34,100 acres of supplemental supply alleged by the Bureau. The Bureau cannot use the numbers from the Red Rock, Horse Prairie, and remaining portions of the Dillon Valley units not irrigated by Clark Canyon Reservoir to support its claim to additional acreage, since the Clark Canyon Reservoir is the only reservoir being considered in this IIA.

2. 1957 District Court Findings of Fact and Conclusions of Law – Montana District Court ruled that the EBID would have 22,153 irrigated acres within its boundaries.

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

4. 1983 Bureau Brochure – The Bureau brochure describes the total acreage irrigated in the project from 1958 through 1981 as ranging from 45,944 to 48,815.

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


7. April 4, 2000 EBID Minutes – In its minutes, EBID recognized that they were irrigating too many acres: “We know that we are irrigating around 4000 more acres than the original contract. If we cannot get the acres down, we will end up paying for an Environmental Assessment, which is around $10,000, or an Environmental Impact Statement, which can run into the hundreds of thousands of dollars.”

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

be how the Bureau arrived at this figure.
9. **February 4, 2003 Bureau letter to CCWSC and EBID** – Bureau again stated that "[i]t is our interpretation that water delivered under either the Clark Canyon Water Supply Contract, or the East Bench Irrigation District contract, can only be applied to lands duly authorized by Reclamation. For the Clark Canyon Water Supply Company, the lands authorized to receive Reclamation water are the specific 28,604 acres of land which were irrigated at the time the contract was executed in 1934. For the East Bench Irrigation District, the lands authorized to receive reclamation water are the specific acreages approved by Reclamation through the land classification process. Any deviation from the authorized water deliveries outlined above is a violation of Reclamation law.”

10. **September 5, 2004 Bureau letter to EBID** – Bureau again stated, “[i]t is also Reclamation’s understanding that the original intent of both Reclamation’s and the Company was to fix the number of acres served by the Company in the contract.”

11. **September 22, 2004 testimony before Congress** – The attorney for CCWSC and EBID told the members of the House Resources Committee Subcommittee on Water and Power that the total number of acres irrigated by CCWSC is approximately 25,600 and by EBID is approximately 21,800.

12. **Beaverhead River, Clark Canyon Irrigation District Water Budget 2004** – Describing irrigated acreage as 28,604 for CCWSC and 21,800 for EBID.

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

14. **Fall of 2005** – Brent Exline, of the Bureau handed out a memorandum titled “Beaverhead River Operations.” This document provides “[t]here are 21,800 authorized acres with the (District) and 24,898 acres with the (Company). . . . We are trying to utilize federal facilities, including distribution or storage facilities, to save funds in excess of their authorized acres.”

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

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

17. **HKM Final Report dated March 21, 2005, titled, “Review of Method of Determining Delivery of Water to Non-Signers – Beaverhead River” Figure 1** – The Bureau hired HKM to do a report and that the document described irrigated acreage as 21,800 for EBID and 28,004 for CCWSC.
18. July 7, 2005 Letter from Larry Lakner, a CCWS Director, to the CCWS Board of Directors – Larry Lakner addressed the issue of EBID increasing its acres: "For years Clark Canyon Water supply either legally or just by chance allowed at first the Bureau and then EBID to manage the operations and water supply. Why was the expanded acres issue not enforced by the Bureau at the beginning of the project or later by EBID?"

19. August 18, 2005 Assessment Letter to Beaverhead and Madison County Treasurers – Describing irrigated acreage as 22,634.55 for EBID.

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


These documents and numbers show that the original contracted acres are significantly different from the approximately 55,000 acres for CCWSC and approximately 30,000 acres for EBID depicted in the location map in the Draft EA. These numbers are also significantly different from the 23,706 acres for Clark Canyon and the 27,137 acres for East Bench listed in the Revised Draft EA as the currently irrigated acres (i.e., the no action alternative). EA at 11-12. These expanded acres have not had the necessary NEPA analysis. The Revised Draft EA states, "[b]oth alternatives carried forward for analysis would divert roughly the same volume of water and would irrigate approximately the same number of acres; however, there are subtle differences." EA at 11. The only NEPA analysis that has occurred is one on "subtle differences." There has been no NEPA analysis and no explanation of the difference between the original contract amount, the amount of expanded acres irrigated since 1970, and the acres the Bureau says the districts are currently irrigating (i.e., the amount of land irrigated in both the no action alternative and the preferred alternative). Because the Bureau claims that the amount of water in both analyzed alternatives is the same as it has always been, they fail to properly evaluate the environmental consequences related to 14,000 increased acres being irrigated by the EBID and CCWSC, such as: water supply, water quality, wildlife, endangered species, and recreation. EA at 52, 53, 66, 67-68, 71, 72.

1.2: See response to Comment 1.1
1.3: There was a map at the beginning of the revised draft EA and the same map is at the beginning of the final EA. Provisions to develop a new GIS based map that delineates specific acres will be included in the negotiated repayment contracts.
The Council on Environmental Quality defines the No Action Alternative for water contract renewal as renewing the existing (expiring) contracts with minor changes. Minor changes would be updating administrative language and/or updating legal clauses in the contract to comply with current policy, regulations, and laws. The term "no action" does not mean doing nothing.
by the Bureau meet four elements: (a) quality; (b) utility (referring to the usefulness of the data for its intended purpose); (c) objectivity (data must be accurate, reliable, and unbiased); and (d) integrity.

In addition to the DQA, NEPA imposes an affirmative duty on federal agencies to "insure the professional integrity, including scientific integrity, of the discussions and analysis in the [EA]." City of Saugus v. O'Neill, 366 F.3d 1186, 1213 (9th Cir. 2004) quoting 40 C.F.R. § 1502.24; see also Earth Island Inst. v. United States Forest Serv., 351 F.3d 1291, 1302 (9th Cir. 2003) (claim will succeed "if Plaintiffs are able to convince the district court that the agency unreasonably relied upon inaccurate data"); United for Better Transp. v. United States Dep't of Transp., 305 F.3d 1152, 1182 (10th Cir. 2002). The impact analysis under NEPA is supposed to be objective and unbiased.

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

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

- Montana Tech water study
- Montana State university water study
- 1990's DNRSC water study - Barretta to Dillon
- Bureau's 1991 water study
- Various historical aerial, satellite, high altitude images from USGS and NRCS
- Bureau maps
- Bureau brochure and website information
- Bureau's Definite Plan Report ("DPR")
- Irrigated recharge reports to MDOR
- River Commissioner Reports
- HCM Report

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

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

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

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

C. The Revised Draft EA is inconsistent with formally adopted and approved plans of state and local government. One of the purposes of the regulations implementing NEPA is to “[e]nsure[] cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adverse comments on a completed document.” 40 C.F.R. § 1501.3(b). During the scoping process, the Bureau is required to “[i]nvite the participation of affected Federal, State, and local agencies.” 40 C.F.R. § 1501.7(a)(1). The Bureau has failed to do this.

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

VII. ENDANGERED SPECIES ACT

1.6 Although the Bureau claims that there are no bald eagle nests in the area (Revised Draft EA at 39), there are bald eagles seen in the area and the area is suitable for nesting. The Bureau must consult with the U.S. Fish and Wildlife Service to ensure that this action will not jeopardize the bald eagle and other listed species. 35 U.S.C. § 1536(a)(2). The Bureau states that the U.S. Fish and Wildlife Service agrees that bald eagles may be found in the area (Revised Draft EA at 39), but does not explain the results of any consultation. This must be done.

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

1.8: See response to Comments 1.6 and 1.7
June 12, 2006
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VIII. CONCLUSION

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

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

Sincerely,

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

cc: Robert Van Doren
    Michael Casdick
### EXHIBIT A

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<th>EBID Acres</th>
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<td>22,684.55</td>
<td>10,000</td>
<td>August 18, 2005 Assessment Letter to Beaverhead and Madison County Treasurers.</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>15,000</td>
<td>85,000</td>
<td>Proposed irrigated acre on location map in Draft EA.</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>33,706</td>
<td>27,137</td>
<td>No Action Alternative – Current irrigated acres. Revised Draft EA at 11-12, 73.</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>28,055</td>
<td>60,843</td>
<td>Revised Draft EA at 33, &quot;The Preferred Alternative includes an additional 918 that might become part of EBIS.&quot; See also Revised Draft EA at 5.</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>33,706</td>
<td>27,137</td>
<td>Preferred Alternative in Revised Draft EA, ??</td>
<td></td>
</tr>
</tbody>
</table>

1 This figure has never before appeared in any Bureau documents, yet now the Bureau claims that this vastly expanded acreage represents the historic use.
June 12, 2006

Bureau of Reclamation
ATTN: MT-231
3000 9th Avenue North - Ste 501
Billings, MT 59101
Via E-Mail: clarkecanyon@permlh.gov

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

Dear Planning Coordinator:

I am receipt of a letter dated June 12, 2006 prepared on behalf of Open A Ranch of Dillon, Montana.

I am not entirely familiar with all of the documents and the analysis concerning some of the action taken by the government that was referenced in that letter. I want to state for purposes of comments for the Revised Draft Environmental Assessment that I disagree with many of the items stated by Open A Ranch in their letter of June 12.

Calvin and Brooke Erb own a ranch that borders Open A Ranch. We, too, are concerned about water quality, natural flows and the impact the expansion of Open A Run may have on the quality and quantity of water available. As Open A, we are not signers, that is, we are not members of Clark Canyon Water Supply. Because of some difficulties we have had in the past with Clark Canyon in maintaining the stream flows and delivering the water as required under Montana law, as well as what we perceive as interference with our water rights, we believe we have an interest in whatever negotiations are in progress with Clark Canyon Reservoir. While we believe that Clark Canyon Water Supply has attempted to address several issues that we previously have been concerned about, we are not sure at this time whether in the final analysis that every issue which impacts our property has been adequately addressed. Brooke and I both believe that a negotiated settlement with all of the people interested in the water availability and the quality of the water is in the best interest to the community as a whole. Therefore, we feel it is necessary to provide this letter to you and state that we adopt the comments provided to you by Hertha L. Land on behalf of Open A Ranch.

Sincerely,

CALVIN J. EBB

E-Mail: Andy - arcand@tctnet.net; Cal: clarkecanyon@permlh.gov; Fax - conneranh@tctnet.net; landercalvin@tctnet.net
16

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

3.2: The 1958 water service contract with CCWSC was entered into under authority of subsection 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196). Reclamation does not agree that the shareholders of CCWSC obtained a vested water right to the supplemental water delivered under the 1958 water service contract as the commenter suggests.
3.3: The hydrology model used 74 years of data in order to predict what would happen to the reservoir for the next 40 years. The August end of month content of Clark Canyon Reservoir was below 50,000 af in 18 of 74 years. Thus, 24% of the time, the drought management plan would be triggered. The final EA has been updated to reflect these numbers.

THE DROUGHT MANAGEMENT PLAN AND SHOULDER SEASON

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

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

OTHER MATTERS

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

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

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

Sincerely,

John E. Bloomquist
Thomas E. Davis
Attorneys for Gooduck Land & Cattle, L.L.C.
Mr. Jeff Baumberger
U.S. Department of the Interior - Bureau of Reclamation
Montana Area Office
P.O. Box 30137
Billings, MT 59107-0137
ATTN: MT-231

Re: Clark Canyon Water Supply Company Comments on Revised Draft EA

Dear Mr. Baumberger:

Please be advised that this law firm continues to represent Clark Canyon Water Supply Company (CCWSC) of Dillon, MT. Please accept the following comments on behalf of CCWSC regarding the Revised Draft Environmental Assessment for Clark Canyon Contract Renewal. We are simultaneously submitting these comments via fax to 406-247-7336 and via email to clarkcanyon@mt.usgs.gov.

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

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

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

   4.2: Noted.

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

4. CCWSC appreciates the manner in which the Revised EA makes it clear to the public that its shareholders retained their underlying natural flow water rights and contract for supplemental water from Clark Canyon Reservoir.
4.3: CCWSC believes the Revised EA clearly distinguishes between water service contracts and repayment contracts, and clearly identifies the irrigation entities' legal right and ability to renew their contracts and to elect between the two types of contracts. CCWSC does in fact intend to enter into a repayment contract with Reclamation.

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

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

4.3: Noted.

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

4.5: Noted.
Sincerely yours,

DAVIS, WARREN & HRITSCO

By

William A. Britto

WAF:oc

c: CCWSC Board of Directors
Steve Cotrum, President EBID
5.1: The economical recreation benefits listed on page 45 of the revised draft EA were based on visitor use days at Clark Canyon Reservoir. Economic recreation benefits and values for the Beaverhead River were added to the final EA.

5.1

After attending most of today’s meeting I would like to point out that the economic factor of fishing as reported in the report is greatly underestimated. I feel the water rights plan should be flexible and not set to never be changed. The plan needs to reflect the social and economic situation of 2002 and be flexible to handle growth in the future. Minimum stream flows need to be set to allow for the sustained viability of the Beaverhead as a “blue ribbon” trout stream because the Beaverhead is not only a state treasure, but a national treasure.

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

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

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

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

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

9.2: Reclamation has no jurisdiction on what the MT FWP should do in times of a drought.
10.1: See response to Comment 9.2.

10.2: Noted. Also, see response to Comment 9.2.
11.1: See response to Comment 6.1.

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

11.3: The minimum flow criteria are guidelines and will be used as a starting point to determine winter releases. The guidelines were designed such that it would not limit the supply of irrigation water in any measurable amount. The model run did not result in any further restriction on irrigation supply. The model was first run with the 25 cfs minimum release and the irrigation needs and then additional runs were made adjusting the minimum flow up in years with a better water supply to a point that it did not impact the irrigation supply.
12.1

See response to Comment 6.1.

12.2

See response to Comment 11.3.

From: fisherman64@pol.com
To: clarkcanyon@pam.usbr.gov
Date: 6/26/08 2:49 PM
Subject: Clark Canyon Dam Renewal Contract

To Bureau of Reclamation:

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

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

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

12.2

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

Sincerely yours,

Jerry Carl
3433 Pipe Organ Road
Dillon, MT 59725

CC: <O_Cullen@umwestern.edu>
13.1: See response to Comment 5.1.

13.2: See response to Comment 6.1.
I'd just like to take a moment to express my concern over the Beaverhead River and the Clark Canyon Dam. This is far too important a fishery to continue to be destroyed. Winter flows of 25-35 cfs are not sufficient to sustain this fishery. Agricultural needs are only part of the equation when considering flows. Fish numbers, especially larger fish, are at an all time low right now. This is a direct result of water management policies over the past years. Please rethink these policies and find a way to restore and preserve this amazing resource.

Best Regards,
Chad Brodsky
Butte Montana

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

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

To Whom it May Concern,

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

Best Regards,
Mike Marcum
Butte Montana
From: "Walter Morris" <eqflame.morris@hotmail.com>  
To: <clarkcanyon@gs.usbr.gov>  
Date: 9/2006 9:21PM  
Subject: Response to draft environmental assessment

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

As an introduction, my name is Walter Morris. I was born in 1844 approximately 2 miles south of the Beaverhead Rock. I lived in that location for the next thirteen years and had much time and opportunity to observe the Beaverhead River. My family members recorded the level of the Beaverhead River, for their records to be used in later years.

We moved to the Stephens ranch which is on the river app. 1 miles N.E. of the Beaverhead Rock, in 1859. At this location I had the privilege of bringing our milk cows from the river pasture across the river on many occasions during the ensuing years. The river was low enough to walk in the rocks and keep leather work shoes dry. The only water in that stretch of the river in the summer would be below an incoming stream and to the next headgate where the river would again be dry. Consequently there was no fishing in the Beaverhead except for a few spots where there was springs or springs.

I worked on most of the ranches between Dillon and Silver Star Mts. during the late 1890's and early 1900. I was also able to observe most of the conditions of the river and irrigation methods and patterns.

My wife and I purchased units 126 and 134 on the east bench in 1955 and put a sprinkler system on unit 134. We purchased a sprinkler system and tank on the bench in 1968, this being the first year of water but not officially the beginning as the government said there wouldn't be any water for irrigation on the bench until 1968.

The original E.I.B.I.D. board of directors consisted of Jeff Cox, Leo Staudenmeyer, and Pete Reckich Sr. When Jeff Cox's term expired, he asked me to fill his position. This began one of the greatest opportunities for me, as a young man in the days of the normal handspigot of knowing everything. I learned much from the irrigation knowledge and experience of those older and wiser men of knowledge and experience.

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

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

The E.I.B.I.D. tried to make sure everyone used their water in a prudent manner but didn't have the power to police where people used their water. This lead to many people irrigating additional acreage. Numerous comments have been made as to the prejudice of those actions which may have been
No part of this Federal action will give new stake holders water rights nor will this Federal action take any water rights away. Water rights are under the jurisdiction of the Montana DNRC. Reclamation has a right under Montana statute to impound and store water behind Clark Canyon Dam. Reclamation, in turn, supplies water to entities holding water contracts with Reclamation.
are willing to let those that don't have any true stake in the game make
the dwellers and everyone inside on being promised something that isn't
there, we will all lose and those with nothing at stake will be the big
winners. Contrary to many statements, most ranchers and agriculture people
are good and have the good of our natural resources at heart. If we cannot
make a living, this rich will own it all and then we will all be the losers.
An equitable conclusion to this mess is all I hope for. Please return this
project to what it once was and could be again.
Bureau of Reclamation
Attn: MT231 Clark Canyon Comments
crcentree@pa.usbr.gov
June 10, 2006

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

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

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

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

Comment submitted by John Cargill.
18.1: See response to Comment 6.1.

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

18.3: See response to Comment 5.1.

We disagree with the figures and method used to calculate the economic benefits realized by the recreational community in the Beaverhead Valley. Even if no other portion of the recreation industry were considered, the average rate for a two-person guided fishing trip on the Beaverhead ($370) multiplied by the 2004 outfitter use levels recorded with the Montana Board of Outfitters for the Beaverhead (3652 individuals served, typically two clients per trip) equals $660,515, nearly 94% of the total $694,000 estimated by the BoR in their documents.

Since our figure includes only the recorded guided activity on the Beaverhead River, we are satisfied that if the amounts associated with Clerk Canyon Reservoir guided fishing, non-guided activity, camp fees, gear, and support services to the entire migrating population in the area, and just those fishing, would be much larger than the balance of 6% or $38,065 remaining in your original figure.
18.4: See response to Comment 6.1.

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

We urge full consideration of our simple request, the need for more water and active participation by the Joint Board with the NPS/WRP to take creative, necessary steps to ensure sufficient water for the Beaverhead River that maintains our service industry in that area.

Thank you in advance for your consideration.

Robin Cunningham
Executive Director
Fishermen Outfitters Association of Montana
info@fwom-montana.org
406.763.5436
Reclamation and MT FWP have agreed through a MOU to examine opportunities to improve the environmental health of the Beaverhead River. This partnership will identify problems and possible solutions to improve the environmental health (possibly a springtime flush when water is available) of the Beaverhead River while continuing to provide water the Reclamation water contract holders. This springtime flush will be coordinated with many entities; including, but not limited to the Beaverhead Watershed Committee and landowners along the Beaverhead River.
below Anderson Lake Bridge, with no mechanism to monitor and moderate the flows appropriate to the section of the river.
June 11, 2006

Dear Sirs,

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

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

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

20.1: See response to Comment 5.1.
I also do not fully understand the significance of comparing the tourist's dollars to the agricultural dollars. I am wondering how much ranchers actually spend on lodging, restaurants, and in local shops, excepting the food stores and other specialty stores that cater to the tourism industry. I would guess that there are many hotels that depend heavily on fishing tourists for their revenue and do not get much from the Ag industry.

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

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

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

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

Sincerely, a very concerned fisherman tourist,

Steve Hull
Living and fishing in Dillon for the summer
21.1: The proposed Federal action is to renew long-term water service contracts or convert the existing contracts to repayment contracts. The President’s Council on Environmental Quality recommends that Federal agencies include “reasonable alternatives” to accomplish the purpose and need of the Federal action. The two alternatives in the Draft EA are reasonable alternatives to achieve the purpose and need of the proposed Federal action. As part of the Preferred Alternative, Reclamation will enter into a MOU with the MT FWP to examine opportunities to improve the environmental health of the Beaverhead River. Other alternatives evaluated are in the “Reasonable Alternatives Considered, but Eliminated” section in Chap. 2 of the final EA.


21.3: An EA is written for Federal actions where effects are undetermined and which may or may not require an EIS. An EA is used to clarify the issues and the environmental effects. During the EA process, if impacts of the proposed Federal action are found to significantly affect the quality of the human environment, an EIS is prepared. The Clark Canyon Contract Renewal Draft EA compared the environmental effects of the Preferred Alternative to the No Action Alternative. There is little difference between the two alternatives, mainly an additional 918 acres for EBID and the change in priority use for water. The analysis in the Draft EA has not demonstrated that an EIS is warranted. Mere opposition to the Federal action does not warrant preparation of an EIS.
To: Jeff Baumberger  
Bureau of Reclamation  
Montana Area Office  
PO Box 30137  
Billings, MT 59107-0137  
Attn: MT-234

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

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

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

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

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

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

Thank you for opportunity to comment.

Larry Lakner CCWS irrigator  
85 Lost Trail  
Dillon, MT 59725

22.1: Noted.
June 8, 2006

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

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

Dear Mr. Sawatzke:

Trout Unlimited thanks you for the invitation to provide additional comment on the “Revised Draft Environmental Assessment for the Clark Canyon Contract Renewal” (Bureau of Reclamation, May 8, 2006) (hereinafter, “Revised Draft EA”), and we look forward to continuing to work with the Bureau of Reclamation on this process. As we expressed in our January 2005 and December 2005 comment letters, and our discussion at the May 23, 2006 public meeting in Butte, Montana, Trout Unlimited believes that the Beaverhead River faces a crossroads. On the one hand, working together we can improve water delivery, water quality, and the health of the Beaverhead River by thinking creatively and working on known resource problems. On the other hand, these problems could simply be ignored, and the River could continue its decline, putting the viability of the river, and the irrigators who depend on that river, at risk. We believe the more optimistic approach is within reach and fully supported by the Bureau of Reclamation’s “Water 2025” philosophy of responsible water management for the 21st century.

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

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

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

23.2: Noted.

23.3: TU's issue with indirect project benefits is noted. Recreation, fish, and wildlife are considered incidental project purposes because they are not the primary project purposes as authorized by Congress. Further explanation regarding incidental project benefits is described in Chapter 1, Project Development History.
"The Clark Canyon Dam and Reservoir is included in the comprehensive plan for the development of the Missouri River Basin on page 62 of Senate Document 191. Senate Document 191, at page 19, indicates that consideration for the protection of fish and wildlife and for recreation were included in the overall plan for the development of the Missouri River Basin, as well as flood control, irrigation, and power." United States v. 361.91 Acres at p. 3.

In addition, the Clark Canyon Water Supply Company's ("CCWSC's") 1958 contract explains that water will be impounded for irrigation, flood control, and "other purposes." See United States Department of the Interior, Bureau of Reclamation, East Bench Unit, Missouri River Basin Project, Contract Between the United States and the Clark Canyon Water Supply Co., Inc., for Water Service and For a Supplemental Supply, Contract Number 14-06-400-3590, at Preliminary Statement Made in Explanation (a). These are later identified as "fish and wildlife." (A 1964 attachment to the 1958 Clark Canyon Contract states the project costs are to be allocated to irrigation, flood control, and "fish and wildlife." Memo from ROR Regional Director dated June 12, 1964).

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

Yours truly,

[Signature]

Bruce Rehwinkel

Cc: Governor Brian Schweitzer
    Susan Camp, Fisheries Natural Resources Specialist, BOR
    George McKechnie, MDEQ. Water Quality Planning Bureau Chief
    Pete Stade, MDEQ, TMOI, program
    Chris Hunter, PWP
    Dick Oswald, PWP
    Bill Sehler, PWP
    Bruce Farling, Montana Trout Unlimited
    Dave McKernan, President, George Grant Chapter of Trout Unlimited

Trout Unlimited Comments on Revised Draft EA

- 3 -
24.1: See response to Comment 6.1.

24.2: See response to Comment 5.1.

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

24.4: Reclamation did not admit the dissolved O2 sampling was in error because the dissolved O2 was a by-product of the water quality parameters being sampled. Reclamation sampled dissolved O2 in the afternoon when the other parameters were being sampled. We realize this was not the best time of day to sample O2, but since in was a secondary parameter; it was better to have any sample rather than not sample at all.
25.1: Winter releases out of Clark Canyon Dam have exceeded 100 cfs in the past and will likely exceed 100 cfs in the future. This will occur regardless of what alternative is implemented. Clark Canyon Reservoir has a total capacity of 253,442 acre-feet. Depending on reservoir storage, precipitation, temperatures, snowpack, and current inflows; there are times that winter releases will exceed 100 cfs to evacuate storage for future inflows. These normal operating procedures attempt to balance inflows, reservoir storage, and Beaverhead River flows.

25.2: Noted and see response to Comment 25.1.

25.3: See response to Comment 19.1.
In the County Disaster and Emergency planning and mitigation efforts we have identified as potential projects in our approved Pre-disaster Mitigation Plan. The flooding problems in the Blacktail Creek and Beaverhead River are due to stream encroachment and winter icing. A summary of flooding events is listed in the County Pre-disaster Mitigation plan. Mitigation efforts have not specifically been identified at this point for the Beaverhead River but will require an engineered study to determine the scope of the mitigation efforts to improve channel capacity. When stored water was available previous to the drought, we have worked with the management of the Clark Canyon Dam to increase winter/spring flows to maintain the channel capacity of the Beaverhead River to decrease the flooding impacts.

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

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

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

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

Sincerely, Larry Lakan
DES Coordinator
Dear Sirs;

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

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

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

26.1: Noted.

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

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

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

--

Terry Throckmorton
27.1: See response to Comment 5.1.

27.2: See response to Comment 6.1.

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

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

27.5: See response to Comment 5.1.
Detail on item 2:

A. The social and economic impact of this renewal is very great on the
   Beavershead/Dillon area. The figure of $604,231 that the fishing industry
   contributes is extremely undervalued (page 45 Table 3.12 of Bureau's EA).
   Example: Fish, Wildlife and Parks along with the Montana Board of Outfitters
   had compiled a detailed study of usage on the Beavershead River. (A partial
   copy is attached) For guided use the highest use year was 1999, the lowest use
   year was 2003 for guided use. (Report date Feb 15, 2005 with data thru
   2003) The total benefit value of non-agricultural use in 1999 was conservatively
   $9,446,977, $7,442,758 (see note 1. below) from fishing directly and $2,004,219
   indirectly from people not fishing themselves. (Taken from page 45 of EA draft
   prepared by the Bureau of Reclamation on the CC Dam = total recreation activities
   minus fishing 2005 figures. 2005 figures are lower than either 1999 or 2003.) The
   non-agricultural benefit in 2003 was conservatively $6,730,618, $4,726,399
   (see note 2. below) from fishing directly and $2,004,219 indirectly from people
   not fishing themselves (same as above). Much of this decrease from 1999 to
   2003 and on into 2005 has been attributed to low water flows in the winter leading
   to decreased fish populations. We would like to know where the figure on
   page 45 came from in Table 3.12 of $57,666 - 2005 value of a fishing visit.

B. The figures for dry land farming economic impact is $75.29/acre the
   incremental increase for irrigation is $45.38/acre. Assuming that dry
   farming would still occur, the dam's economic impact due to agriculture is
   $2,802,714 (28,000 x $5,376/acre x 0.45) Not $7,452,700. (Page 45 dry land
   agricultural settlements began as early as 1862)

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

D. Concerning the 25CRS minimum: If you were to go back historically and
   view the inflows in the winter months to the reservoir, even in the drought
   years, the inflows were not that low. I do not know if the data is available
   before the dam was built but a year-by-year inflow in more recent years can
   be viewed at http://www.usbr.gov/gp-bk/krewke_crr.pl When storage in
   the dam was approved was the intent to dry up the reservoir or to even allow
   that as a possibility? Montana DNRC gave the Bureau approximately
2800CFS water storage right. Did this mean that they were first in line for all usage? What about people with senior water rights and the health of the river itself?

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

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

Note 1:

Over 50% of the guided trips to the area are from lodges. Lodges are charging an average of about $500/day to 2006 per person for guided trips which include lodging and meals and transportation. Example of some lodges in the area with prices displayed on the web are www.foxtonelage.com, www.rubyspringslodge.com, www.tvlodge.com, www.bluebirdlodge.com. Page 27 of EA prepared by FWP on the Beaverhead and Big Hole Rivers (withdrawn) shows 1999 as the high year for outfitted use on the Beaverhead river 5,173 and 2003 as the low year and latest figure in report 2,462. Page 23 of the same EA shows the total (Beaverhead river angler use) in 1999 39,622 and in 2003 26,968.

For 1999 the economic value is approximately $5,446,977. 5,173 X .5 X $600 = $1,585,108 for guided lodge trips and 5173 X .5 X $233 = $664,304 for non-lodge guide trips. ($333 = guide trip $187.50/person, license$12,50, Meals $38, Gear $25, Lodging $50, sundries & Est $20, does not include tips, accommodations tax, auto rental, utilities, fuel, etc.) Non-guided fishing days 39,622-2,173=34,449 unguided. 3,449 X $14=$502,954. Non-fishing recreation $2,804,219 (page 45 of CC Dam EA). A majority of the people recreating in the area accompany fishermen to the area. *$140=$333-guide trip=187.50.
Note 2:

For 2003 the economic value is approximately $6,730,618. 2462 X .5 X $900 = $1,138,090 for guided lodge trips and 2462 X .5 X $333 = $409,228 for non-guided guided days. ($333 = guide trip $187.50/person, licenses $2.50, meals $38, gear $25, lodging $30, supplies & Ent. $20, does not include tips, accommodations tax, auto rental, airlines, fuel, etc.) Non-guided fishing days 26,969 X 2,462 = 65,900 non-guided. 24,580 X $146 = $3,577,876. Non-fishing recreation $2,004,219 (from page 45 of CC Dam BA). A majority of the people recreating in the area accompany fishermen to the area.

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

Sincerely,

[Signature]

Tom & Mary Smith

426 South Atlantic Street

Dillon, Montana 59725
Tom Swatske
Manager, Resource Management Division
Bureau of Reclamation
P.O. Box 26900
Billings, MT 59107-0137

Dear Tom,

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

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

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

Sincerely,

[Signature]

Chris Harris
Fisheries Division Administrator
COTTONE SEED, INC.
PO Box 445 Dillon, 1750 East Bench Road, MT 59725

June 9, 2006

RE: Revised Draft Environmental Assessment, Clark Canyon Contract Renewal

Dear Mr. Baumberger,

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

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

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

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

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

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

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

In regards to the minimum winter release guidelines, I think it is critical that the minimum release be allowed to go to 50cfs during times of extreme drought. Irrigators recognize this is far from optimum for the river fishery, but the additional storage provided below the reservoir fishery, is very valuable to agriculture, and it actually being the river fishery in the following summer by providing more summer flows. During the recent drought cycle, which has been one of the most extreme on record, winter releases have been 25-30 cfs. The fishery has still survived through this and I have read fishing reports indicating good fishing has occurred all throughout this drought. In contrast the EBD had severely reduced allotments for 3 years and no water in 2004. This has created extreme financial hardship on producers who have not had a decent crop or any crop throughout this drought.

Thank you for the opportunity to submit these comments.

Sincerely,

Steve Cotton
Cotton Seed Inc.

29.2: The minimum winter release guidelines remained the same from the revised draft EA to the final EA. These guidelines are set to protect (not enhance) the fishery in times of extreme drought while continuing to provide stored water to entities holding water contracts with Reclamation. The minimum release guidelines may be modified in the future if, through the MOU between Reclamation and MT FWP, it has been determined that a higher minimum flow can be achieved while continuing to provide stored water. Also, see response to Comment 11.3.
30.1: The 25 cfs minimum winter releases are not the standard release regime. The 25 cfs minimum is set to protect the fishery during times of extreme drought while continuing to provide stored water to entities holding water contracts with Reclamation. Also, see the response to Comment 25.1.
31.1 Please consider implementing a minimum flow out of Clark Canyon Reservoir. Twenty five (25) cfs is not enough water to sustain this world class fishery. I do not believe the accuracy in the low figures (2500-5000) previously stated that this fishery contributes to our area. This should be re-examined. We are also not looking at the extensive impact this fishery has had on Real Estate prices in our County over the last ten years. Recreational property prices are sky-rocketing. The upper Sevierhead River is an integral part of our economy. It is a National Treasure and an world-wide draw to Southwest Utah. Providing this River with an increased, biologically proven minimum flow only makes sense for our economy and community.

Thank you,

Bill Kemple
Quarter Circle 9 Outfitters
(435) 653-5601

31.2 See response to Comment 5.1.
32.1: See response to Comment 5.1.

32.2: See response to Comment 5.1.

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

32.4: Noted.
To Whom It May Concern:

As a citizen of Montana and Beaverhead county, I urge that an adequate minimum flow level of at least 67.5 CFS at the Clark Canyon Dam on the Beaverhead River. This minimum flow is necessary to maintain and sustain the trout populations in the Beaverhead that support considerable commerce in the Dillon and Twin Bridges area.

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

Sincerely,

Richard Storey
602 E. Poinsette St.
Dillon, MT 59725

33.1: See response to Comment 6.1.
Dear Sirs,

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

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

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

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

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

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

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

Thank you for your consideration.

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

34.1: See response to Comment 6.1.
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Comments submitted during the 1st comment period were addressed in the revised draft EA. The range of alternatives and the scope of analysis were consistent with the proposed Federal action. Due to the complexity of the Beaverhead River system including water rights, irrigation interests, and fishery interests; many comments were generated because commentors did not fully understand the Federal action.

The preferred alternative contains minimum reservoir levels, minimum river flows, a drought management plan, and winter release guidelines. These criteria and plans were developed to protect resources during times of severe drought while continuing to supply stored water to entities holding water contracts with Reclamation. None of the previously mentioned criteria or plans was part of the original (expiring) contracts with CCWSC and EBID. By implementing these plans and criteria, it is anticipated that the proposed action will not negatively influence one of the primary prey items for bald eagles, as the commenter suggests. The Service recommended a change in the determination based on the possibility of reduced prey abundance. Reclamation will not follow the recommended change as described in Comment 35.3 response. In addition, it is noted that bald eagle populations are increasing and have been proposed to be delisted from the Threatened and Endangered Species list.
35.3: Reclamation informedally consulted with the Service in February 2005 and January 2006 on the proposed action. Through discussions with the Service, Reclamation determined that the proposed action would have no effect on the five threatened species present, including the bald eagle. Written concurrence on Reclamation’s determination was not requested from the Service. After the 2nd comment period ended (June 12, 2006), the Service recommended that Reclamation change the effects determination that the proposed action "may affect, not likely to adversely affect" the bald eagle, based on possible reduced prey abundance. Reclamation disagreed with the Service's recommendation based on the Preferred Alternative maintaining or increasing fish and prey abundance for bald eagles. Reclamation remained with their original determination of no effect.

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

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

35.6: Comment noted. Many issues identified in FWP’s (state’s) comment letter have been addressed in the revised draft EA and the final EA. The issues not addressed will be identified and investigated through processes listed in the MOU that Reclamation and FWP have agreed to. Reclamation has ensured that fish and wildlife resources have been given full consideration. To respond further to the Service’s concern; in January 2005, Reclamation requested the Service's input and technical expertise to ensure fish and wildlife resources were protected. The request also provided funding to the Service for staff time in order to ensure that fish and wildlife issues addressed in this EA were adequate. The Service declined the request. The Service has been on the mailing list from the beginning of this project and given many opportunities to comment on this Federal action.
Comment #36

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

Copies of the documents can be obtained by requesting the number and title at the following address:
Bureau of Reclamation, Montana Area Office
Attn: MT-231
PO Box 30137
Billings, MT 59107-0137

The following comments and documents have been noted.
3) Various documents (emails, charts, website disclaimer statements, etc) regarding the quality of data. 33 pages.
4) HKM report, Figure 1, March 21, 2005. 1 page.
5) Various East Bench Unit historical documents including:
   a. Senate Document 191 from 1944. 2 pages.
   b. MT 5th District Court Decree creating EBID in 1957. 17 pages.
   d. Testimony by attorney for CCWSC and EBID before Congress on September 22, 2004. 3 pages.
6) Reclamation’s “Unit Operation Summaries” and “Operating Plans” for Clark Canyon Reservoir for water years 1997 to 2006. 128 pages.
7) Various information brochures and website information from Reclamation including:
   c. Reclamation’s webpage “East bench unit Project Data”. 1 page.
8) Montana State University water studies for 2004 and 2005 including:
9) Various information handouts from the Spring of 2005 including:
   b. Documents from Bureau Technical Meeting March 8-10, 2005
   c. 2005 Canal Sealant Project. 1 page.
   e. CCWSC 1956 List of Signers and acres. 8 pages.
   f. CCWSC "Information Sheet", March 14, 2005. 7 pages.
   g. EBID "Information Sheet", April 5, 2005 meeting. 6 pages.
10) Various letters from Reclamation and Exhibit A from the draft water contracts including:
   d. Bureau letter to Open A Ranch dated March 27, 2006. 5 pages.
   e. Draft Exhibit A for Bureau water contracts with EBID and CCWSC, January 23, 2006. 4 pages.
11) Letter dated May 30, 2006 from Open A Ranch to Beaverhead County Director of Disaster and Emergency Services, with newspaper article and photos. 24 pages.
12) Various CCWSC information including:
   b. CCWSC shareholders dated June 1966. 5 pages.
   c. CCWSC stockholder minutes dated March 13, 2000. 3 pages.
   d. CCWSC director minutes dated March 12, 2001. 3 pages.
   f. CCWSC stockholder minutes dated March 12, 2000. 2 pages.
   g. CCWSC memo dated February 12, 2003. 1 page.
   h. Letter from Larry Laknar to CCWSC Board dated July 7, 2005. 1 page.

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20) Various correspondence between Reclamation and the Bureau and the BLM Dillon Field Office, including:
   a. Bureau comments on BLM Dillon DEIS and RMP, July 12, 2004. 1 page.
   b. BLM Dillon comments on Bureau Draft EA, December 19, 2005. 3 pages
22) Various EBID information including:
   a. Minutes of the March 8, 2000 EBID meeting. 2 pages.
   b. Minutes of the April 4, 2000 EBID meeting. 2 pages.
   d. Minutes of the January 6, 2004 EBID meeting. 2 pages.
   e. Minutes of the July 6, 2004 EBID meeting. 2 pages.
   f. Minutes of the September 7, 2004 EBID meeting - 2 pages
   g. Memo from EBID board to CCWSC board. 2 pages.
   h. EBID letter to Madison County Assessor, August 12, 2001. 1 page.
   i. EBID 2003 Beaverhead County Assessments. 11 pages.
   j. EBID 2003 Madison County Assessments. 10 pages.
   k. EBID August 18, 2004 Assessments Letter and Certificate. 2 pages.
24) Various Montana State University, Water Resources Center studies on return flows in the Beaverhead, including:
25) Various USGS aerial and satellite images dated after June 30, 1973, including:
   a. Landsat image #34, July 16, 1973 - USGS #LM1042029007319790
   b. Landsat image #21, August 12, 1974 - USGS #LM1043028007422990
   c. SkyLab image #3-185, August 5, 1973 - USGS #ARG30B08315500
   d. SkyLab image, September 11, 1973 - USGS #ARG30B06226600
   e. USGS Color Infrared image 1899-1242, August 16, 1974 –USGS #AR5740018991242
   f. USGS Color Infrared image 1889-1248, August 16, 1974 – USGS #AR5740018991248
   g. USGS Color Infrared image 1899-1252, August 16, 1974 – USGS #AR5740018991252
   h. USGS B/W image #36
   i. USGS DOQQ image, August 1995.
26) Various USBR maps dated before June 30, 1973, including:
   a. Three Forks Division map, August 1958, USBR #613-604-600
   b. Jefferson Sub-Basin map, August 1958, USBR #613-604-601. 2 pages
   c. Vicinity map, Three Forks Division, May 11, 1964, USBR #RS MRB-7141A. 1 page.
   d. West Bench Unit map, January 1965, USBR #965-604-100. 1 page.
   e. West Bench Unit Land Classification map, December 1965, USBR #965-604-131. 1 page.
   g. EBID Land Classification map March 22, 1960, USBR #699-604-361. 1 page.
   h. EBID Land Classification map, March 22, 1960, USBR #699-604-362. 1 page.
   i. EBID Land Classification map, March 22, 1960, USBR #699-604-363. 1 page.
   j. CCWSC Land Classification map, June 28, 1955, USBR #699-604-598. 1 page.
   k. CCWSC Land Classification map, June 28, 1955, USBR #699-604-599. 1 page.
   l. CCWSC Land Classification map, June 28, 1955, USBR #699-604-591. 1 page.
   m. CCWSC Land Classification map, June 28, 1955, USBR #699-604-592. 1 page.
   n. Ownership map, February 1, 1960, USBR #699-604-599. 1 page.
   o. Ownership map, February 1, 1960, USBR #699-604-600. 1 page.
27) Miscellaneous information including:
   a. CCWSC 2003 Assessments list. 3 pages.
   b. BLM Dillon response to USBR comments in FEIS and RMP, April 2005. 4 pages.
   c. 5th District Court Order Appointing Water Commissioner, May 16, 2006. 2 pages.
   d. Letter from Beaverhead Disaster and Emergency Services Coordinator, June 8, 2006. 2 pages.
   e. Errata list for Comments and Exhibit A submitted by Budd-Falen Law Offices, June 12, 2006. 1 page.