

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION



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STATE OF MONTANA

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HELENA, MONTANA 59620-1601

SEP 30 2004

Cover Letter

LEGISLATIVE ENVIRONMENTAL POLICY OFFICE
September 29, 2004

TO: Governor's Office, Barbara Ranf, Rm. 204, State Capitol, P.O. Box 200801, Helena, MT 59620-0801
Environmental Quality Council, Capitol Building, Room 106, P.O. Box 201704, Helena, MT 59620
MT Dept. of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901
Director's Office
MT Dept. of Natural Resources and Conservation, US F&G Bldg. 1625 11th Ave. Helena, MT 59620
Director's Office
Information Services Section
Water Resources Division, 1424 9th Ave., P.O. Box 201601, Helena, MT 59620-1601
Regional Manager, MT DNRC Water Resources Division, Lewistown Regional Office, 613 NE Main, Suite E, Lewistown, MT 59457-2020
MT Dept. of Fish, Wildlife & Parks, 1420 E. 6th Ave. Helena, MT 59620
Director's Office
Regional Supervisor, MT Dept. of Fish, Wildlife & Parks, Region 4 Office, 4600 Giant Springs Rd. Great Falls, MT 59405
MT Historical Society, State Historic Preservation Office, P.O. Box 201202 Helena, MT 59620-1202
MT State Library, 1515 E. Sixth Ave., P.O. Box 201800, Helena, MT 59620
Fergus County Commissioners, 712 N. Main, Lewistown, MT 59457
U.S Army Corps of Engineers, Helena Regulatory Office, 10W 15th St. Suite 2200, Helena, MT 59626
U.S. Fish & Wildlife Service, MT Field Office, 100 N. Park Ave. Helena, MT 59601
Edward and Connie Heggem, P.O. Box 178, Winifred, MT 59489
Helen Popnoe, P.O. Box 76, Winifred, MT 59489
Ron and Judy Heggem, P.O. Box 25, Winifred, MT 59489
Montana Environmental Information Center, P.O. Box 1184, Helena, MT 59624
Montana Audubon Council, P.O. Box 595, Helena, MT 59624
Northern Plains Resource Council, 2401 Montana Ave. Suite 200, Billings, MT 59101-2336
Wildlife Federation, P.O. Box 1175, Helena, MT 59624
Trout Unlimited, P.O. Box 7186, Missoula, MT 59807

Ladies and Gentlemen:

The enclosed Environmental Assessment (EA) has been prepared for the North Winifred Water Project Release of Easement and Transfer of Water Rights and is submitted for your consideration. Please feel free to contact Timothy Kuehn at (406) 444-6655, (e-mail tkuehn@state.mt.us) should you have any questions or comments. Comments will be accepted until 5:00 p.m., Friday, October 29, 2004. Comments can also be mailed to: MT Dept. of Natural Resources and Conservation, State Water Projects Bureau, 1424 9th Ave. P.O. Box 201601, Helena, MT 59620-1601, attn. Timothy Kuehn. Copies of the EA are available upon request. The draft EA can also be viewed on the DNRC website at www.dnrc.state.mt.us. Thank you.

Sincerely,

Handwritten signature of James P. Domino in cursive.

James P. Domino
Environmental Specialist
State Water Projects Bureau

ENVIRONMENTAL ASSESSMENT

North Winifred Water Project Release of Easement and Transfer of Water Rights

This Environmental Assessment (EA) has been prepared to comply with the Montana Environmental Policy Act (MEPA).

Part I. Proposed Action Description

1. **Type of Proposed State Action:** Release of existing easements and transfer of existing water rights.

2. **Agency Authority for the Proposed Action**

Owner: MT Dept. of Natural Resources and Conservation; Sec. 85-1-210, 85-1-211, 85-6-109 (5) (1997) MCA.

3. **Name of Project:** North Winifred Water Project Release of Easements and Transfer of Water Rights.

4. **Name, Address and Phone Number of Project Sponsor**

MT. Dept. of Natural Resources & Conservation, 1424 9th Ave., P.O. Box 201601, Helena,
MT 59620 – 1601 (406) 444-6646

5. **Estimated Commencement Date** November, 2004
Estimated Completion Date January, 2005

6. **Location Affected by Proposed Action (county, range and township)**

Fergus County – Township 21N, Range 18E, Section 27

S1/2 NW 1/4- 30 acres; NW1/4 SW 1/4-7.5 acres; NE1/4 - 50 acres

7. **Project Size:**

87.5 acres - includes reservoir / surrounding land

8. Map/site plan:

Map attached.

9. Narrative Summary of the Proposed Action.

The proposed action calls for the release of easements related to the North Winifred Water Project. The North Winifred Water Project consists of a dam and reservoir on 87.5 acres of property. The project is located in Fergus County, Township 21 North, Range 18 East, section 27. The project is located entirely on private land. This water project is currently inactive and no longer provides benefits to the State. The easements and associated water rights are tentatively proposed for transfer to the current landowners in fall of 2004. The original easements were initiated in 1938, with the dam completed that same year. The dam has been classified as low hazard, which means there is a low potential for loss of life should the dam fail (85-15-106, MCA). The transfer of these easements and water rights will absolve the State of any liability associated with the project and reduces the State's administrative duties. The easements and water rights would be transferred to the existing landowners, listed below:

Edward and Connie Heggem, P.O. Box 178, Winifred, MT 59489
Helen Popnoe, P.O. Box 76, Winifred, MT 59489
Ron and Judy Heggem, P.O. Box 25, Winifred, MT 59489

The attached project map delineates the easements associated with each current landowner. Also attached is a general abstract of the DNRC owned water rights.

10. Listing of any other Local, State or Federal agency that has overlapping or additional jurisdiction.

(a) Permits:

Agency Name Permit Date Filed/#

N/A

(b) Funding:

Agency Name Funding Amount

N/A

(c) Other Overlapping or Additional Jurisdictional Responsibilities:

Agency Name Type of Responsibility

N/A

11. List of Agencies Contacted during Preparation of the EA:

MT State Library, Natural Resources Information System

MT State Historic Preservation Office

MT Dept. of Natural Resources and Conservation

Part II. ENVIRONMENTAL REVIEW

Whenever possible, effects to the environment will be avoided. Where effects cannot be avoided, they will be minimized to the extent possible.

1. Environmental Impact Checklist

An environmental checklist has been included as **Appendix A**.

2. Environmental Consequences

Air No impacts to air quality are anticipated.

Water

No impacts to water resources are anticipated. The water rights associated with the reservoir would be transferred to the existing landowners. A general abstract of the DNRC water rights is attached.

Vegetation No impacts are anticipated.

Fish and Wildlife

No impacts to fish or wildlife are anticipated. A file search was conducted by the MT Natural Heritage Program. No impacts are anticipated to any threatened, endangered or species of special concern.

Noise No Impacts.

Land Use There will be no change in land use.

Taxes The tax base will not be affected.

Recreation

Recreational opportunities may be improved by the proposed action, as a private individual has expressed interest in developing the reservoir into a recreation area.

Cultural Resources

A file search conducted by the State Historic Preservation Office found no known archeological sites in the area. No impacts are anticipated.

Part III. Alternatives and Evaluation

ALTERNATIVES

1. No Action Alternative

This would result in continued State liability for the property and continue the need for administrative oversight. The Project is inactive and no longer provides benefits to the State. The dam would continue to deteriorate, with an increasing safety risk due to the potential for failure in the event of a flood episode.

2. Breach the dam and complete any needed reclamation.

This would incur a significant cost to the DNRC. A breach analysis was conducted in 1981 by the DNRC. An estimated cost of \$180,150 was provided in the 1981 report. Using a conservative 2% annual inflation rate, this equates to an estimated \$285,000 in 2004 dollars. The DNRC would abandon ownership of the property after the dam is breached and needed reclamation performed under this alternative.

3. Release the easements and transfer the water rights to the existing property owners.

This will have the beneficial effects of eliminating the State's liability and administrative oversight of the property without incurring the cost of breaching the dam and completing any needed reclamation, as proposed under alternative 2. The landowners would still assume ownership of the dam and reservoir. An additional benefit is the potential development of the reservoir as a recreation site. A local individual has expressed interest in funding the rehabilitation of the dam and developing a recreation site. This potential benefit would be eliminated under alternative 2.

4. Preferred Alternative

Alternative 3 is the preferred alternative (Release of Easements / Transfer of Water Rights).

Under Alternative 1, the no action option, the dam and reservoir would continue to be liability to the state. The structural integrity of the dam would continue to deteriorate and the DNRC does not have the funding to adequately rehabilitate this structure. Alternative 2 is not a feasible due to the high cost and lack of funding for breaching and performing the reclamation work.

(a) Public Benefits of Preferred Alternative

Public benefits from this project include the elimination of State liability and administrative tasks, and the transfer of the dam, reservoir and water rights to the existing landowners, who are the only parties currently benefiting from the project. No impacts are anticipated as a result of this proposed action. The potential rehabilitation of the dam and development of the area as a recreation site by a private party would also be a significant benefit.

5. Need for an Environmental Impact Statement

Based on the significance criteria evaluated in this EA, an EIS is not required. The EA is the appropriate level of analysis for this proposed action due to the absence of any negative impacts, and the beneficial outcome in allowing the State to absolve itself of the liability and administrative oversight responsibilities for this property.

6. Public involvement:

The appropriate level of public involvement for this proposal is the distribution of the draft EA to those agencies, groups and individuals listed on the EA cover page for review and/or comment. This is an appropriate level of public involvement considering the absence of any negative impacts associated with the proposed action.

(a) Duration of comment period:

Comments will be accepted until 5:00 p.m., Friday, October 29, 2004 and should be submitted to DNRC at the address listed below:

Timothy Kuehn, Project Management
State Water Projects Bureau, Water Resources Division
Montana Department of Natural Resources and Conservation
1424 9th Ave., P.O. Box 201601, Helena, MT 59620-1601,
(406) 444-6655. e-mail - tkuehn@state.mt.us

7. Name, title, addresses and telephone number of the Person(s) Responsible for Preparing the EA:

Copies of the EA can be obtained from the address listed below:

James P. Domino, Environmental Specialist, Department of Natural Resources and Conservation, Water Resources Division, State Water Projects Bureau, 1424 9th Ave., P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6622. e-mail jdomino@state.mt.us

Part IV. Narrative Evaluation and Comment

The project as proposed does not have any identified negative impacts. The public benefits of eliminating the State's liability and administrative oversight responsibilities for a water project that no longer provides benefits to the State are ample justification for the proposed release of the easements and transfer of water rights. An additional potential public benefit would be the rehabilitation of the dam and development of the area as a recreation site by a private party. The dam has been classified as low hazard, meaning there is a low potential for loss of life should the dam fail. Public health and safety would not be negatively impacted by the proposed action.

Appendix A. Environmental Checklist Review

1. PHYSICAL ENVIRONMENT

	<u>IMPACTS</u>				Comment Index
	Unknown *	No Impacts	Minor Impacts*	Potentially Significant Impacts*	
<p>1. <u>LAND RESOURCES</u></p> <p>Will the proposed action result in:</p> <p>a. Soil instability or changes in geologic substructure?</p> <p>b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil which would reduce productivity or fertility?</p> <p>c. Destruction, covering or modification of any unique geologic or physical features?</p> <p>d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?</p> <p>e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?</p> <p>f. Other: _____</p>		X			
		X			
		X			
		X			
		X			

PHYSICAL ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>2. <u>AIR</u></p> <p>Will the proposed action result in:</p> <p>a. Emission of air pollutants or deterioration of ambient air quality?</p> <p>b. Creation of objectionable odors?</p> <p>c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?</p> <p>d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?</p> <p>e. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p>				

PHYSICAL ENVIRONMENT

IMPACTS

Unknown*	No Impact	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
3. WATER					
Will the proposed action result in:					
a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?	X				
b. Changes in drainage patterns or the rate and amount of surface runoff?	X				
c. Alteration of the course or magnitude of flood water or other flows?	X				
d. Changes in the amount of surface water in any water body or creation of a new water body?	X				
e. Exposure of people or property to water related hazards such as flooding?	X				4e
f. Changes in the quality of groundwater?	X				
g. Changes in the quantity of groundwater?	X				
h. Increase in the risk of contamination of surface or groundwater?	X				
i. Violation of the Montana Non-Degradation Statute?	X				
j. Effects on any existing water right or reservation?	X				
k. Effects on other water users as a result of any alteration in surface or groundwater quality?	X				
l. Effects on other users as a result of any alteration in surface or groundwater quantity?	X				

4e.) The N. Winifred Dam has been classified as low hazard, meaning there is a low potential for loss of life should the dam fail (85-15-106 MCA).

PHYSICAL ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be mitigated*	Comment Index
<p>4. <u>VEGETATION</u></p> <p>Will the proposed action result in:</p> <p>a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?</p> <p>b. Alteration of a plant community?</p> <p>c. Adverse effects on any unique, rare, threatened, or endangered plant species?</p> <p>d. Reduction in acreage or productivity of any agricultural land?</p> <p>e. Establishment or spread of noxious weeds?</p> <p>f. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>				<p>4c</p>

4c.) A file search on plant species of special concern was conducted by the Natural Resources Information System of the Montana State Library. No threatened, endangered or listed plant species of special concern are known to exist on the property. The Montana Department of Fish, Wildlife and Parks (DFWP) and the U.S Fish & Wildlife Service (FWS) will also have the opportunity to comment on the proposed action. Any comments or recommendations received from the DFWP and/or the FWS will be incorporated into the Final EA and Notice of Decision.

PHYSICAL ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
5. FISH/WILDLIFE					
Will the proposed action result in:					
a. Deterioration of critical fish or wildlife habitat?	X				5a
b. Changes in the diversity or abundance of game animals or bird species?	X				5b
c. Changes in the diversity or abundance of nongame species?	X				5c
d. Introduction of new species into an area?	X				5d
e. Creation of a barrier to the migration or movement of animals?	X				5e
f. Adverse effects on any unique, rare, threatened, or endangered species?	X				5f
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?	X				5g
h. Other: _____					

5 a – g) A file search on animal species of special concern was conducted by the Natural Resources Information System of the Montana State Library. No threatened, endangered or listed animal species of special concern are known to exist on the property. The Montana Department of Fish, Wildlife and Parks (DFWP) and the U.S Fish & Wildlife Service (FWS) will also have the opportunity to comment on the proposed action. Any comments or recommendations received from the DFWP and/or the FWS will be incorporated into the Final EA and Notice of Decision.

2. HUMAN ENVIRONMENT

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>6. <u>NOISE/ELECTRICAL EFFECTS</u></p> <p>Will the proposed action result in:</p> <p>a. Increases in existing noise levels?</p> <p>b. Exposure of people to severe or nuisance noise levels?</p> <p>c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?</p> <p>d. Interference with radio or television reception and operation?</p> <p>e. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p>				

**HUMAN ENVIRONMENT
(Continued)**

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
7. LAND USE					
<i>Will the proposed action result in:</i>					
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?	X				
b. Conflict with a designated natural area or area of unusual scientific or educational importance?	X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?	X				
d. Adverse effects on or relocation of residences?	X				
e. Increased regulatory restrictions on private property rights?	x				
f. Other: _____					

HUMAN ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>8. <u>RISK/HEALTH HAZARDS</u></p> <p>Will the proposed action result in:</p> <p>a. Risk of an explosion or release of hazardous substances (including but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?</p> <p>b. Affect an existing emergency response or emergency evacuation plan or create a need for a new plan?</p> <p>c. Creation of any human health hazard or potential hazard?</p> <p>d. Other: _____</p>	X				
	X				
	X				

HUMAN ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>9. <u>COMMUNITY IMPACTS</u></p> <p>Will the proposed action result in:</p> <p>a. Alteration of the location, distribution, density, or growth rate of the human population of an area?</p> <p>b. Alteration of the social structure of a community?</p> <p>c. Alteration of the level or distribution of employment or community or personal income?</p> <p>d. Changes in industrial or commercial activity?</p> <p>e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?</p> <p>f. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>				

HUMAN ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>10. <u>PUBLIC SERVICES/ TAXES/UTILITIES</u></p> <p>Will the proposed action:</p> <p>a. Have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:</p> <p>b. Have an effect upon the local or state tax base and revenues?</p> <p>c. Result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?</p> <p>d. Result in increased use of any energy source?</p> <p>e. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p>				

HUMAN ENVIRONMENT
(Continued)

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>11. <u>AESTHETICS/ RECREATION</u></p> <p>Will the proposed action result in:</p> <p>a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?</p> <p>b. Alteration of the aesthetic character of a community or neighborhood?</p> <p>c. Alteration of the quality or quantity of recreational opportunities and settings?</p> <p>d. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p>				

IMPACTS

HUMAN ENVIRONMENT
(Continued)

	Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>12. <u>CULTURAL/HISTORICAL RESOURCES</u></p> <p>Will the proposed action result in:</p> <p>a. Destruction or alteration of any site, structure or object of prehistoric, historic, or paleontological importance?</p> <p>b. Physical change that would affect unique cultural values?</p> <p>c. Effects on existing religious or sacred uses of a site or area?</p> <p>d. Other: _____</p>		X				12a
		X				12b
		X				12c

12 a, b & c) A file search conducted by the State Historic Preservation Office (SHPO) indicated no previously recorded historic or archeological sites within the designated search local. The SHPO indicated there was a low likelihood of impacting any cultural resources and did not recommend a cultural resources inventory. It is not anticipated that any cultural or historic resources would be impacted by the proposed action.

**3. SIGNIFICANCE
CRITERIA**

IMPACTS

Unknown*	No Impacts	Minor Impacts*	Potentially Significant Impacts*	Can Impacts be Mitigated*	Comment Index
<p>13. <u>SUMMARY EVALUATION OF SIGNIFICANCE</u></p> <p>Will the proposed action, considered as a whole:</p> <p>a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources which create a significant effect when considered together or in total.)</p> <p>b. Involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?</p> <p>c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?</p> <p>d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?</p> <p>e. Generate substantial debate or controversy about the nature of the impacts that would be created?</p> <p>f. Other: _____</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>				

