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Cover Letter

March 27, 2013

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Environmental Quality Council, Capitol Building, Room 106, P.O Box 201704, Helena, MT 59620
Montana Dept. of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901
Director's Office
Montana Dept. of Natural Resources and Conservation, 1625 11th Ave. Helena, MT 59620
Director's Office
MT DNRC Water Resources Division, 1424 9th Ave., P.O. Box 201601, Helena, MT 59620-1601
Kerri Strasheim, DNRC Water Resources Regional Office, 2273 Boot Hill Ct. Suite 110, Bozeman, MT 59457
Montana Dept. of Fish, Wildlife & Parks, 1420 E. 6th Ave. Helena, MT 59620
Director's Office
Montana Environmental Information Center, P.O. Box 1184, Helena, MT 59624
Montana Audubon Council, P.O. Box 595, Helena, MT 59624
Madison County Commissioners, PO Box 278, Virginia City, MT 59755
Wildlife Federation, P.O. Box 1175, Helena, MT 59624
Trout Unlimited, P.O. Box 7186, Missoula, MT 59807
George Reich, President, Cataract Creek Water Users Association, PO Box 195, Willow Creek MT 59760
Loralie Sather, Secretary, Cataract Creek Water Users Assoc., 2190 Breezeway, Three Forks, MT 59752
Mark Cooper, President, Willow Creek WUA, 2540 Cooper Road, P.O. Box 93, Willow Creek, MT 59760
U.S.D.A Forest Service, Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729
U.S. Army Corps of Engineers, 10 W 15th St. Suite 2200, Helena, MT 59626
U.S. Fish and Wildlife Service, MT Field Office, 584 Shepard Way, Suite 1,Helena, MT 59601

Ladies and Gentlemen:

The enclosed Finding of No Significant Impact / Decision Notice has been prepared for the Cataract Creek Dam and Reservoir Transfer Final Environmental Assessment (EA). The Final EA and Finding of No Significant Impact / Decision Notice can be viewed on the DNRC website at www.dnrc.mt.gov in the Environmental Documents section. Thank you.

Sincerely,

Tim Davis
Water Resources Division Administrator

FINDING OF NO SIGNIFICANT IMPACT / NOTICE OF DECISION
MARCH 27, 2013

Dear Reader:

On February 15, 2013, the Montana Department of Natural Resources and Conservation (DNRC) released a draft Environmental Assessment (EA) on the Cataract Creek Dam and Reservoir Transfer.

The Cataract Creek Dam and Reservoir is located in Madison County on Cataract Creek approximately 8 miles southwest of Harrison and 2-1/2 miles southwest of Pony (upstream of both communities). The dam was constructed in 1959 by the State Water Conservation Board. The Project is currently owned and administered by the Montana Department of Natural Resources and Conservation (DNRC) through its State Water Projects Bureau (SWPB) for the benefit of the Cataract Creek Water Users Association (CCWUA). The CCWUA operates the Project under a water marketing contract with the DNRC. The CCWUA is a private not for profit corporation organized pursuant to Mont. Code Ann. § 85-6-101 et seq. The dam consists of an earthen embankment, 80 feet high, 775 feet long with a concrete weir and unlined open channel spillway, and a low level outlet works that is operated with two 30-inch diameter gate valves in series. Storage capacity at the spillway crest was originally estimated at 1,478 acre-feet, however, recent storage estimates puts full pool storage at 1,157 acre-feet (DOWL-HKM Study, May 2010, *"Cataract Creek Dam Preliminary Feasibility Study"*). The Project provides limited supplemental irrigation water for 16 farms and ranches.

Seepage from the Project has been excessive since the initial filling. Because of this the reservoir rarely fills beyond 60 to 70% of capacity. Grouting efforts conducted in the 1960's did little to alleviate the problem. Even with this excessive seepage, downstream water users benefit from the Project. The reservoir serves to delay runoff, which helps to maintain downstream base flows during the irrigation season. However, seepage discharges are not controlled. Preliminary findings show the spillway capacity meets current state dam safety standards.

In 2009 the SWPB hired Dowl-HKM to evaluate rehabilitation alternatives and associated costs. Of the four alternatives presented, the CCWUA preferred modifying the Project to enable full pool storage without excessive seepage. Dowl-HKM's estimate for this alternative was $4.2 million dollars. The SWPB did not feel it could justify this expense given the limited available capacity. The SWPB preferred the alternative that reduced storage in the reservoir to below 50 acre-feet which would eliminate the current high-hazard dam classification. In this scenario, the dam would mitigate flood events while minimizing risk and liability, primarily due to the permanent lower reservoir pool and infrequent spilling. The Dowl-HKM estimated cost for this alternative was $359,000. The reduced pool alternative was not acceptable to the water users because they would lose the reservoir storage and runoff (which would pass through prior to the irrigation season). The CCWUA believed the goal of reliable full pool storage could be accomplished at substantially less cost if they assumed ownership. In response to this desire, the 2011 Montana Legislature enacted House Bill No. 568 which directed the SWPB to attempt to dispose of the Cataract Creek Project by June 30, 2013 (see MCA 85-1-211 (5)(b). The SWPB options for project disposal are limited in situations where an active water user's association is in place (e.g. Cataract; Mont. Code Ann. §§ 85-1-211(5)(a) and 85-6-109). In the case of projects with active associations, the association has a purchase preference. Also, the preamble to the 2011 legislation was clear in stating this law was prompted by the CCWUA's interest in owning the Project. The SWPB is authorized to transfer ownership to a water user association without regard to other laws that would otherwise pertain to the disposition of state property (Mont. Code Ann. § 85-1-211(5)(a). However, the SWPB is required to determine the market value of the property (Mont. Code Ann. § 85-1-211(5)(a). The determination of market value must consider all liens, encumbrances, and other limitations on the project. The Cataract Project's market value is limited because of the CCWUA transfer preference. Because of the costs and liabilities that CCWUA would assume as owners, the SWPB determined that a no fee transfer would be appropriate. Since the Project lands were purchased and the dam constructed with public funds (specifically for agricultural purposes) and the Project still provides public recreational benefits, the preferred alternative maintains these original purposes and benefits. The transfer documents will reserve public recreational access, prohibit development on the lands surrounding the

Project, and will limit the Project water rights to their historic agricultural uses. The SWPB also has the option to reacquire the site at no fee should the CCWUA dissolve or cannot properly maintain the project.

The EA was distributed for a thirty day comment period, which ended on March 18th, 2013. One comment was received (via e-mail) from the Montana Department of Environmental Quality (DEQ), presented below:

"James: Thank you for the opportunity to comment on this proposed transfer and for the open discussion we had this morning. The only substantive comment I have is that the proposed repairs to the reservoir, which seem to have a higher probability of going forward if the transfer occurs, may have an unaddressed impact on water wells below the dam. The clear evidence of seepage suggests that the seepage provides water to both the wetland below the dam and possibly to ground water wells. If the repairs are expected to be successful in stopping the seepage, the possibility of drying up the source of water to wells should be analyzed. This would not only analyze the possibility, but would serve as disclosure of possible concerns."

Bonnie Lovelace
Regulatory Affairs Manager
Director's Office
Montana Department of Environmental Quality
406-444-1760

DRNC response:

"Thank you for your comment received via e-mail on Wednesday, February 20th, 2013. Potential impacts from future rehabilitations are beyond the scope of the EA. If and when rehabilitation is planned and undertaken, it will be up to the Cataract Creek Water Users Association (CCWUA) to assess any potential impacts. If the CCWUA at some future point decides to repair the seepage issues and/or rehabilitate the dam, they will be required to obtain the necessary permits (i.e. consultation with Army Corps of Engineers on wetland impacts; local Conservation District 310 permit for stream impacts; Short-Term Exemption from Surface Water Quality Standards from the DEQ, Dam Safety Permit from DNRC Water Operations, etc.). Although CCWUA will not be required to complete an EA, potential downstream impacts will be addressed through the permitting process."

The Montana Department of Fish, Wildlife and Parks and U.S. Army Corps of Engineers were contacted and expressed no opposition to the project (i.e. no comments submitted within the official 30 day comment period). No other comments were received.

Therefore, based on the EA's disclosure, analysis of potential impacts and comments received, the DNRC concludes that the proposed action will not result in any significant impacts. The DNRC will adopt the draft EA as the final EA and proceed with the preferred alternative. Copies of the Final EA are available upon request. The Final EA and Finding of No Significant Impact / Decision Notice can be viewed on the DNRC website at www.dnrc.mt.gov in the Environmental Documents section. Please direct questions to:

James P. Domino
State Water Projects Bureau
MT DNRC, 1424 9th Ave., P.O. Box 201601
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(406) 444-6622 e-mail: jdomino@mt.gov

Thank you for your interest.

Sincerely,

Tim Davis
Water Resources Division Administrator