

TIN CUP LAKE ACCESS PROJECT 2006

DECISION NOTICE

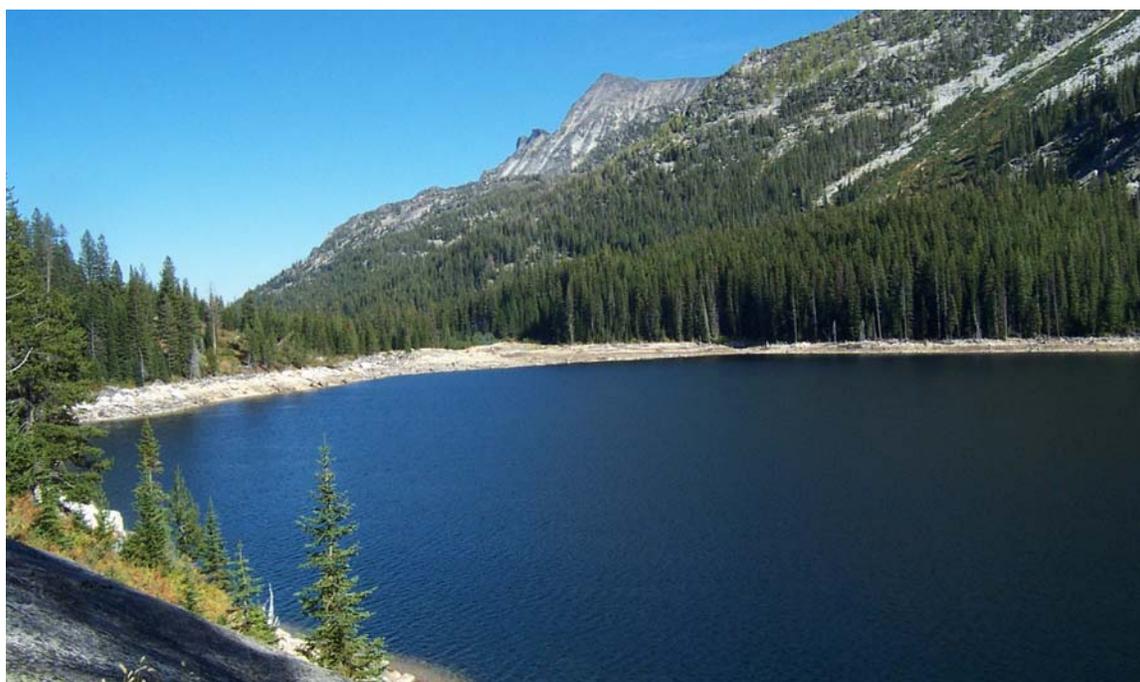
**Bitterroot National Forest
Darby Ranger District
Ravalli County, Montana**

February 2006

Lead Agency: USDA Forest Service

Responsible Official: David T. Bull
Forest Supervisor

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TIN CUP LAKE DAM PROJECT 2006**DECISION NOTICE****I. SUMMARY OF DECISION**

After careful review and consideration of the Tin Cup Lake Access Project Environmental Assessment (EA), Finding of No Significant Impact (FONSI), the public and agency comments¹, and the project record I have decided to select Alternative 3. With this decision I am authorizing Tin Cup County Water and/or Sewer District helicopter access consisting of one to two annual round-trips in early spring to their facilities at Tin Cup Lake Dam specifically for the purpose of operating and maintaining Tin Cup Dam while limiting effects to wilderness and other resources.

Operation and maintenance activities typically include closing the headgate to provide for irrigation storage, clearing logs and debris from around the intake to the outlet works, and monitoring the embankment for any signs of distress or potentially hazardous conditions before filling the reservoir.

The timeframe for helicopter flights would be limited from April 1 through May 15. Authorization of these annual flights is valid under the terms and conditions of the authorizing document. Tin Cup County Water and/or Sewer District is currently authorized under a Special Use Permit that was issued on May 30, 2001 with an expiration date of December 31, 2021. Routine access throughout the remainder of

the year would continue on foot or by stock (via Tin Cup Creek Trail No. 96).

I am also prescribing specific conditions be met during the irrigation district's access and maintenance activities within the wilderness and National Forest boundaries. These conditions will provide reasonable protections of the National Forest. My decision is described in further detail starting on page 9. My rationale for reaching this decision begins on page 10.

II. PROJECT BACKGROUND

Tin Cup Lake Dam is owned and operated by Tin Cup County Water and/or Sewer District (TCCWSD). TCCWSD has requested authorization to access their dam at Tin Cup Lake on the Bitterroot National Forest, Darby Ranger District. The irrigation district has a valid occupancy under a Special Use Permit. TCCWSD is obligated to operate and maintain a safe structure on National Forest Lands under the Special Use Permit.

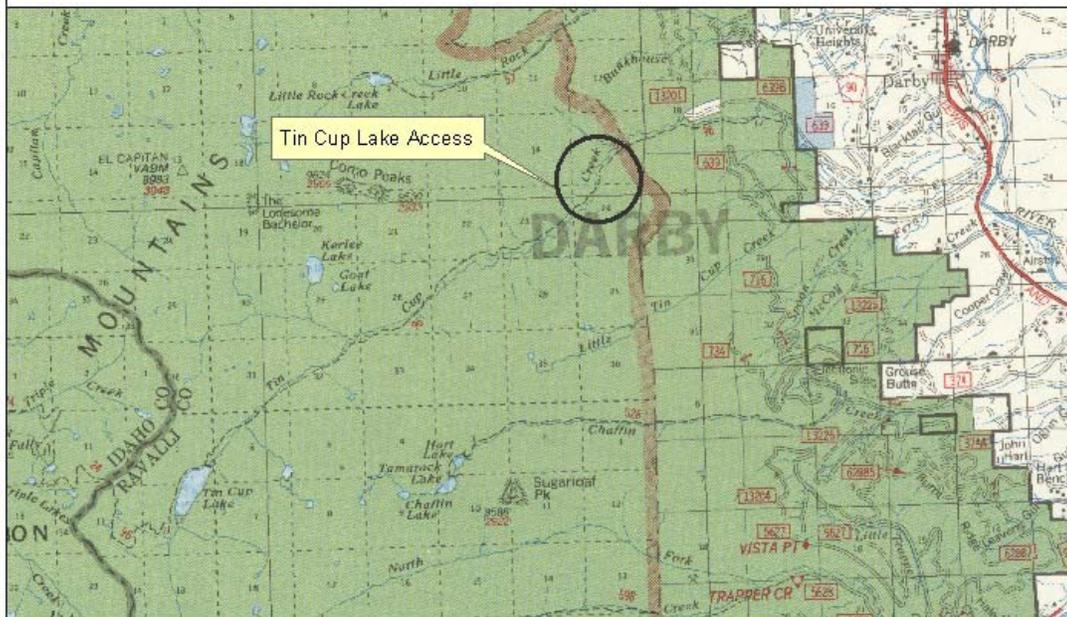
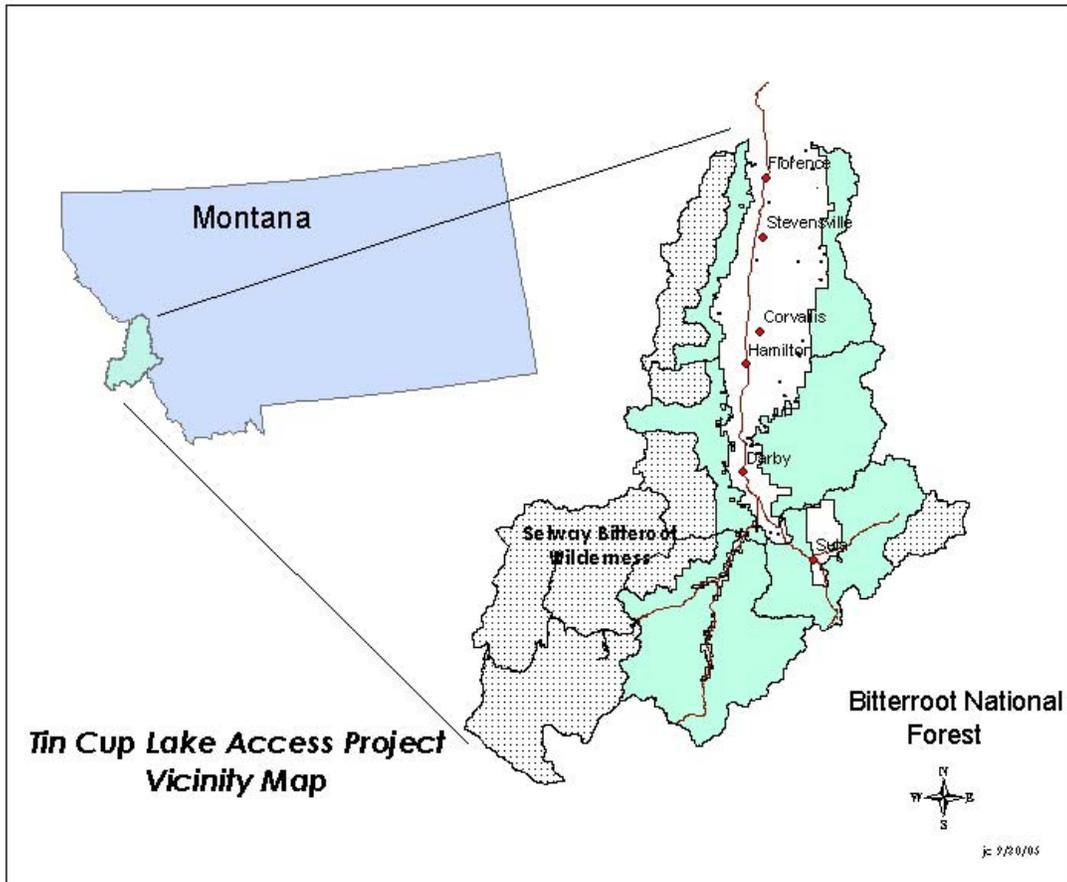
Tin Cup Lake Dam is located in the southeast quarter of Section 1, Township 2 North, Range 23 West, P.M.M., which is approximately 12 miles southwest of Darby, Montana. The dam is located approximately 8 miles inside the Selway-Bitterroot Wilderness boundary at the head of Tin Cup Creek. Public access to Tin Cup Lake is by Trail No. 96. Distance to the lake from the trailhead is approximately 10 miles (Also see Map 1).

This dam is classified as a moderate hazard dam and stores 911 acre-ft of water at the

¹ See Appendix A (Response to Comments) of this decision for each of the public comments we received.

spillway crest. The dam dimensions are approximately 24 feet high and 484 feet long. It was originally constructed in 1906.

As the dam owner, TCCWSD is responsible for repairs, operation and maintenance of Tin Cup Dam to comply with the dam safety laws and regulations.



Map 1

III. PURPOSE AND NEED

The purpose of this proposal is to authorize TCCWSD adequate access² to their facilities and to prescribe terms and conditions related to this access and their subsequent work on the facilities as necessary to protect the National Forest.

The Forest Service is required by both the Wilderness Act³ and the Alaska National Interest Lands Conservation Act⁴ (ANILCA) to authorize access to valid occupancies such as this facility held by the TCCWSD.

In this case, the Wilderness Act also requires the Forest Service to “prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness”. As such, the Forest Service has the responsibility to set reasonable terms and conditions on that access as necessary for protection of the National Forest.⁵

These acts prescribe a narrow scope to the Agency’s discretion, balanced between requirements to allow for the proponent’s rights and responsibilities pertaining to the use of their facility and the Agency’s responsibility to provide protections for National Forest and Wilderness values.

A number of factors help define and narrow the Agency’s discretion in this case, and therefore they also define the scope and

purpose of this proposal and are discussed further below.

TCCWSD has requested access during early spring when conditions along the trail are typically hazardous because of heavy snow pack conditions and potential for avalanche occurrences, or high stream flows causing difficult or treacherous conditions while crossing Tin Cup Creek on foot or stock. This alternative not only benefits the personal safety of TCCWSD representatives accessing the dam, but also benefits the long term safety and performance of the dam embankment and outlet works - which ultimately affects public health and safety of people and property located within the inundation zone downstream Tin Cup Dam.

There are several factors related to the safety of Tin Cup Lake Dam which influence the decision of TCCWSD to close their control gate in the spring. This operational strategy improves the overall condition of the dam by eliminating several elements that accelerate the deterioration of the dam. Closing the control gate in the spring also reduces the time of exposure or risk of dam failure by several months during the year, and therefore, provides a benefit related to protection of public health and safety.

Tin Cup County Water and/or Sewer District personnel have requested helicopter access for the last five consecutive years for the purpose of closing the headgate to the outlet works. Letters dated May 2 and September 4, 2005 were received from TCCWSD requesting helicopter access during the first two weeks of April 2006 to close the control gate at Tin Cup Dam. See the section entitled “Effects on Public Health and Safety” under “Key Topics” in the EA for the rationale for closing the headgate in the spring.

This course of action is for the purpose of addressing TCCWSD’s responsibilities and liabilities under dam safety laws and regulations (Appendix A of the EA).

² Defined at FSM 2320.5.15 as “The combination of routes and modes of travel that the Forest Service has determined will have the least-lasting impact on the wilderness resource and, at the same time, will serve the reasonable purposes for which State or private land or right is used.”

³ Wilderness Act, Sec. 5(b); codified at 16 U.S.C § 1134; and the implementing regulations at 36 CFR 293.13 Access to Valid Occupancies.

⁴ ANILCA, Pub. L. 96-487, title XIII, Sec. 1323; codified at U.S.C. § 3210

⁵ Concomitantly, the Forest Service also has authority under its general grant from Congress to protect the National Forests (16 U.S.C. § 551) to regulate reasonably their occupancy and use in order to achieve the purposes for which the national forests were reserved, and the Selway-Bitterroot Wilderness was designated.

The Forest Service has reviewed the TCCWSD's preliminary request for access and has determined that:

1. Based on preliminary environmental review by the interdisciplinary team, it appears the irrigation district's proposed plans are, or could be made consistent with environmental laws.⁶ The interdisciplinary team developed the proposed terms and conditions based on this preliminary environmental review (p. 9).

2. A minimum requirements process was used to assist with the analysis of TCCWSD's request.⁷ The process indicates the proposal would meet Forest Service Manual 2326.1 conditions under which use of motorized equipment and/or mechanical transport would be allowed within wilderness⁸ (Appendix B of the EA).

IV. PROPOSED ACTION

The proposed action is to authorize the Tin Cup County Water and/or Sewer District adequate access to their facilities with the terms and conditions described in further detail as Alternative 3. The Forest Service would authorize a maximum of two helicopter trips in early spring to allow the work to be done safely and effectively. The

⁶ These include the Clean Air Act, Clean Water Act, Endangered Species Act, Historic Preservation Act, National Forest Management Act, etc.

⁷ The Minimum Requirement Decision Process was developed by federal agencies to help provide consistency to the way project proposals in wilderness are evaluated. This decision guide is a means to document the analysis process.

⁸ Forest Service Manual, 2326.1 – Conditions Under Which Use May Be Approved. Allow the use of motorized equipment or mechanical transport only for: 1. Emergencies where the situation involves an inescapable urgency and temporary need for speed beyond that available by primitive means. Categories include fire suppression, health and safety, law enforcement involving serious crime or fugitive pursuit, removal of deceased persons, and aircraft accident investigations. 4. Access to surrounded State and private lands and valid occupancies (FSM 2326.13). 5. To meet minimum needs for protection and administration of the area as wilderness, only as follows: a. An essential activity is impossible to accomplish by non-motorized means because of such factors as time or season limitations, safety, or other material restrictions.

timeframe for helicopter flights would be limited from April 1 through May 15.

Authorization of these annual flights is valid under the terms and conditions of the authorizing document. Tin Cup County Water and/or Sewer District is currently authorized under a Special Use Permit that was issued on May 30, 2001 with an expiration date of December 31, 2021. Routine access throughout the remainder of the year would continue on foot or by stock (via Tin Cup Creek Trail No. 96).

The Forest Service also proposes to require conditions be met during the irrigation district's operation and maintenance activities within the wilderness and National Forest boundaries. These conditions address resource concerns such as dam safety, wilderness character and water and fisheries. They are listed on page 9 as mitigation measures, terms and conditions required for Alternative 3.

V. PUBLIC INVOLVEMENT AND ISSUE IDENTIFICATION

On May 2 and September 4, 2005 letters were sent from TCCWSD requesting the use of a helicopter to close the control gate at Tin Cup dam during the first two weeks of April, 2006. Because of the on-going requests for helicopter access in early spring during hazardous access conditions along the trail accessing Tin Cup Dam, the Forest Service decided to complete an environmental assessment, rather than completing the required NEPA documents on an annual basis each spring. On October 4, 2005, the Forest Service received another letter from TCCWSD requesting that the Forest Service postpone the process for completing an environmental assessment until easement issues affecting dams in the Selway-Bitterroot Wilderness, including Tin Cup Dam, are resolved in court. TCCWSD believes the outcome of this current litigation process will resolve their outstanding easement issues which will

likely affect access issues related to Tin Cup Dam. The Forest Service has decided to continue with the completion of the environmental assessment because of the unknown timeframe and potential delays associated with the pending litigation.

The following is a discussion of how the public responded to the proposed action, which the Forest used to help identify and develop potential issues. A legal notice soliciting comments on the proposed Tin Cup Dam Project was published in the Ravalli Republic on November 3, 2005, marking the beginning of the 30 day comment period pursuant to 36 CFR 215. We also mailed a letter soliciting comment on the proposed action to 88 people potentially interested or affected by the proposal. The Tin Cup Dam Project was placed on the April 1, 2005 edition of the Bitterroot NEPA quarterly.

Thirteen responses were received as the result of the public involvement efforts during the thirty-day scoping and comment period. All comments were evaluated and considered, and substantive comments relevant to environmental concerns were incorporated or addressed through analysis, mitigation or otherwise in this environmental assessment. Other comments are more appropriately addressed in the decision and other supporting documentation.

The Forest Service identified 3 key topics or issue themes raised during scoping and the 30 day comment period. These issues were: 1. dam safety and public safety, 2. questions, concerns and support surrounding adequate access and 3. the potential for adverse effects on wilderness character.

The Forest Service found no significant issues or significant unresolved conflicts that warranted detailed consideration of alternatives other than those identified in the scoping letter. Alternatives 1 through 5 address the issues brought forward by the public in their comments (also see "Other

Alternatives Not Given Detailed Study" later in this document).

Public and agency comments are attached as Appendix A (Response to Comments) of this decision notice.

VI. ALTERNATIVES, INCLUDING THE PROPOSED ACTION

This section describes the proposed action and alternatives. This section also discusses mitigation measures proposed to lessen the project's impacts.

ALTERNATIVE 1 - NO ACTION

The No Action alternative is required by the National Environmental Protection Act (NEPA) and will serve as a baseline condition with which to compare other alternatives.

Under this alternative, the Tin Cup County Water and/or Sewer District personnel would continue to walk in to their dam or request helicopter access on a case by case basis each spring during difficult on-the-ground access conditions, which could delay the ability to close the headgate each spring in a timely manner. The concern is the timing to close the headgate before the reservoir level rises and overtops the rock barrier around the outlet works, which could draw debris into the headgate and trash-rack structure and render the headgate inoperable. The ability to open and close the headgate is required both for irrigation storage and release purposes, as well the ability to draw down the reservoir in emergency conditions.

ALTERNATIVE 2-NEW STREAM CROSSING

This alternative would consist of re-routing the trail and constructing a new stream crossing that is less hazardous than the existing crossing located in T3N, R22W, Section 24. Based on preliminary surveys

this new stream crossing would require 1000 lineal feet of tread construction through difficult, boggy terrain and would also be located in Section 24. Numerous portions of the new access trail will require large amount of fill to eliminate the boggy wet conditions, piping in fills, ditching as well as tree clearing. In addition the construction of a new ford with a downstream structure (log or rock) will be needed as well as hardening the immediate approaches to either side of the new ford.

This alternative eliminates the first hazardous creek crossing for personnel and stock, but does not mitigate the second and third crossings or the potential avalanche hazards along sections of the trail further up the drainage.

ALTERNATIVE 3-PROPOSED ACTION

This alternative was developed to address the purpose and need for action.

This alternative was developed to authorize adequate access to Tin Cup Dam to perform operation and maintenance activities on the dam while limiting effects to wilderness and other resources.

The Bitterroot National Forest proposes to authorize Tin Cup County Water and/or Sewer District helicopter access to operate and maintain their facilities at Tin Cup Dam. The Forest Service would authorize up to two helicopter trips within a limited timeframe in early spring for the purpose of operating and maintaining Tin Cup Dam. The timeframe for helicopter flights would be limited from April 1 through May 15. Operation and maintenance activities typically include closing the headgate to provide for irrigation storage, clearing logs and debris from around the intake to the outlet works, and monitoring the embankment for any signs of distress or potentially hazardous conditions before filling the reservoir. Access for the remainder of the year would continue to be via stock or foot travel on Trail No. 96.

Alternative 3 provides helicopter access during early spring when conditions along the trail are typically hazardous because of heavy snow pack conditions and potential for avalanche occurrences, or high stream flows causing difficult or treacherous conditions while crossing Tin Cup Creek on foot or stock. This alternative not only benefits the personal safety of TCCWSD representatives accessing the dam, but also benefits the long term safety and performance of the dam embankment and outlet works - which ultimately affects public health and safety of people and property located within the inundation zone downstream Tin Cup Lake Dam.

Motorized access is anticipated to occur within a 1 to 2 day timeframe in early spring. The maximum flight time for 2 round trips would be approximately 1 hour. This flight time includes time over private and non-wilderness lands.

ALTERNATIVE 4-CONSTRUCTION OF BRIDGE AT FIRST STREAM CROSSING

This alternative consists of constructing a new bridge at the first stream crossing of Tin Cup Creek along Trail No. 96. This crossing is typically the most difficult crossing for people and stock in early spring runoff during increased flow velocities in the stream channel. Immediately downstream of this crossing, the gradient of the stream channel increases and the cross section narrows through a rocky chute. If people or stock lose their footing while crossing the stream at this location, they could be carried downstream through the rocky channel below. The combination of flow velocities and steeper channel gradients would make it difficult for both people and stock to get out, and likely cause serious injury.

Because the span at the first crossing of Tin Cup Creek is approximately 60 feet long, a packable bridge would not be adequate. (The limit on span length for a packable bridge is approx. 36 feet). The required

width for stock is 6 to 7 feet wide, with curbs or rails, respectively. This alternative would include approximately 4 helicopter trips to transport the stringers to the site. In addition, there would now be a bridge in the Tin Cup drainage where no bridge structure had been before. A bridge structure requires on-going annual maintenance and eventual replacement of the structure.

This alternative is similar to alternative 2 in that it eliminates the first hazardous creek crossing for personnel and stock, but does not mitigate the second and third crossings or the potential avalanche hazards along sections of the trail further up the drainage.

ALTERNATIVE 5-CLOSING THE HEADGATE IN THE FALL

This alternative consists of closing the headgate in the fall when the trail is typically clear of snow and the water in the creek crossing is low. Therefore, no special access provisions would be authorized under this special use permit.

Alternative 5 eliminates the hazards to personnel accessing the dam in early spring. However, this alternative affects the long term performance of the dam embankment. There are several reasons for not closing the headgate in the fall: 1) an empty reservoir does not present a risk to downstream life and property, and 2) reduced storage time decreases the degree of saturation of the embankment, which increases the reliability of the structure, 3) damage from freeze/thaw cycles and wave action is reduced, etc. Additional information regarding the timeframe for closing the headgate is included under key topics (dam safety and public safety) in the EA.

VII. OTHER ALTERNATIVES NOT GIVEN DETAILED STUDY

In the course of evaluating TCCWSD's request and prior to scoping, the Forest explored a number of access alternatives

that were made available at time of scoping (PF C-01). These concepts were evaluated and helped lead to the design of the proposed action. Public comments on the proposal did not offer any additional alternative access scenario suggestions (DN Appendix A).

In all, these scenarios ranged from considerations of whether the site could be accessed solely through non-mechanized means to other scenarios such as building a bridge or considering closing the headgate in the fall instead of in the spring. These scenarios were formulated into alternatives 1 through 5 and are included in this analysis. Additionally, a lower standard, or sub-standard, trail was considered. This sub-standard trail would be constructed specifically for TCCWSD personnel only. However, the trail is likely to be used by the general public at times, and the intent of exclusive use by TCCWSD could not be enforced. This situation could potentially result in resource damage particularly by stock through the wet, boggy terrain where the trail would be re-routed in order to avoid the hazardous creek crossing. For these reasons, the sub-standard trail was not analyzed in detail.

The sixth alternative, building an 8 foot wide road from Tin Cup Trailhead to Tin Cup Lake, was considered but not given detailed study. There are reasonable, feasible and viable means of access suitable to the current proposal which would result in fewer and less severe impacts on the public resources.

VIII. DECISION

As the Responsible Official for this project, I have selected Alternative 3 as described here and in the EA. With this decision I am authorizing Tin Cup County Water and/or Sewer District a maximum of two helicopter trips each spring from April 1 through May 15 to allow TCCWSD to operate and maintain their facility. Operation and maintenance activities typically include

closing the headgate to provide for irrigation storage, clearing logs and debris from around the intake to the outlet works, and monitoring the embankment for any signs of distress or potentially hazardous conditions before filling the reservoir.

This decision is consistent with TCCWSD's responsibilities under federal dam safety laws and regulations and consistent with their rights and responsibilities under terms of their authorization (Appendix A of the EA).

Authorization of these annual flights is valid under the terms and conditions of the authorizing document. Tin Cup County Water and/or Sewer District is currently authorized under a Special Use Permit that was issued on May 30, 2001 with an expiration date of December 31, 2021. Routine access throughout the remainder of the year would continue on foot or by stock (via Tin Cup Creek Trail No. 96).

My decision incorporates the following features designed to reduce impacts on resources or to enhance resource values. These management practices, mitigation measures, and monitoring items will be incorporated into the project and implemented as normal agency requirements.

The following items are TCCWSD's responsibility:

Table 1 - Terms and Conditions (TCCWSD)

Tin Cup Lake Access – Terms and Conditions	
Dam Safety	
1.	TCCWSD will have an updated Emergency Action Plan in place to respond to potentially hazardous situations or emergency conditions, such as excessive seepage or potential flooding conditions caused from heavy rain or heavy runoff from snowmelt.
2.	TCCWSD will provide a schedule in advance of maintenance work to be accomplished at Tin Cup Dam, then, at the end of each field season, will also submit an account of the operation and maintenance work that was accomplished in the form of an operations log. Any unusual or potentially hazardous conditions will be monitored and reported to appropriate Forest Service personnel as outlined in the Tin Cup Dam Emergency Action Plan.
Wilderness Resource, Recreation and Wildlife	
3.	All flights will be limited to the timeframe between April 1 and May 15. Airlift flights in the valley will be routed to minimize noise near residences. When possible helicopters will avoid flying directly over trails.
4.	Pilots will minimize potential helicopter disturbance to peregrine falcons and mountain goats by restricting the flight path to the south side of the canyon for the first three miles (until the canyon bends to the south).
5.	Schedule helicopter use and other motorized equipment to weekdays and non-holiday days if possible.
6.	Tin Cup Trailhead will be posted, alerting the public to the helicopter activity. If flights require sling loads, trail closures may be posted for public safety.
7.	All solid wastes will be removed from National Forest lands.
Heritage Resource	
8.	If previously unknown sites are discovered during implementation, project activities in the vicinity of the site must be halted and the Forest's Heritage Program Manager notified.
Revegetation and Reclamation	
9.	All equipment and supplies will be inspected and cleaned of weed-seed prior to entering the wilderness.
10.	Inspect, and remove and properly dispose of weed seed found on clothing and equipment.
11.	Use weed-free helibases when flying into the wilderness.
12.	Inspect, remove and properly dispose of weed seed found on cargo netting used for transporting materials into the Wilderness.

ENVIRONMENTAL MONITORING

Monitoring Plans

Monitoring is the gathering of information and observation of management activities to provide a basis for periodic evaluation of Forest Plan goals and objectives and includes administration of this project. The purpose is to determine how well objectives have been met and how closely management standards and mitigation measures have been applied.

Monitoring and Inspection that is TCCWSD's Responsibility

TCCWSD will provide an annual schedule of operation and maintenance activities to be accomplished. At the end of the field season, TCCWSD will submit an annual operations log that describes the operation and maintenance that was completed on the dam.

TCCWSD will report immediately to the Forest Service any signs of distress or hazardous conditions that are discovered during their routine operation and maintenance work on the dam. This notification process is included in the Emergency Action Plan developed for Tin Cup Dam. This document will be updated on a routine basis.

Monitoring that is Forest Service's Responsibility

A Forest Service engineer will monitor the both the schedule of work and annual operation and maintenance activities submitted in an annual log. The wilderness ranger will provide feedback to ensure access and project work meet mitigation and protection standards.

IX. RATIONALE FOR THE DECISION

My decision is based on how well the alternatives analyzed in the EA address the purpose and need of the project, and consideration of issues that were raised during the scoping and comment process. I considered Forest Plan standards and guidance for the project area and laws governing access to and safe operations of these private facilities. I also took into account competing interests and values of the public.

A. Meeting the Purpose and Need

The purpose and need for the project stems from Tin Cup County Water and/or Sewer District's existing rights and obligations to operate and maintain Tin Cup Lake Dam consistent with federal dam laws and regulations. It is also built on other pertinent laws and regulations that govern TCCWSD's use of their valid occupancy and the protection of National Forest System lands.

I believe Alternative 3 provides TCCWSD with reasonable access for their proposed operation and maintenance work on their dam while also providing an effective and reasonable combination of protections, both long and short term, for the National Forest.

Alternative 1, the "no-action" alternative, does not meet the purpose and need to access Tin Cup Lake Dam because it does not provide the dam owner with adequate access during the critical timeframe for closing the control gate from a dam safety perspective. The Forest Service is required by both the Wilderness Act and the Alaska National Interest Lands Conservation Act (ANILCA) to authorize access to valid occupancies such as this occupancy held by the TCCWSD. Therefore, the authorization of adequate access to TCCWSD for the valid use of its facility is non-discretionary. From a public safety and

legal perspective, I cannot choose Alternative 1.

Alternatives 2 and 4 eliminate the first hazardous creek crossing for personnel and stock, but they do not mitigate the second and third crossings or the potential avalanche hazards along sections of the trail further up the drainage. Alternative 4, the construction of the bridge, could have long term effects on apparent naturalness and solitude within the Selway Bitterroot Wilderness. Apparent naturalness is indicated by how the environment looks to most people using the area. A bridge would be perceived as apparently not natural, an indication of man's presence that would be long lasting and affect the wilderness character. Solitude could be affected by an increase in encounters in the spring.

Alternative 5 eliminates hazards to personnel accessing the dam, but does not adequately address dam safety and public safety. This rationale is described in detail in the dam and public safety section of the EA.

B. Consideration of the Issues

The key issue topics raised during scoping and comments, "dam and public safety", "access" and "wilderness character," capture the major cross section of concerns raised by the public⁹ and the primary uses I had to consider and balance in reaching this decision.

My decision recognizes TCCWSD's right to reasonable and adequate access and use, which is inherent in their valid occupancy, and provided for by both the Wilderness Act and the Alaska National Interest Lands Conservation Act. I also understand that motorized and helicopter use in wilderness areas is typically undesirable and contrary to wilderness values. However, in this case Congress knowingly made the dam part of the Selway Bitterroot Wilderness while also

reaffirming and making allowance for the pre-existing occupancy¹⁰.

Consideration of the issues raised during scoping led me to explore a number of less mechanized alternatives. In all cases, alternatives to the proposed action would have either exposed TCCWSD personnel accessing the dam to unnecessary risks, or compromised the integrity and safety of the dam facility. In most cases these changes would simply not meet state of practice techniques for the most effective operation and maintenance strategy of Tin Cup Lake Dam, or they would exacerbate environmental or safety risks. Others, upon further evaluation, provided little or no additional advantage for wilderness.

My discretion in this case lies primarily in determining reasonable terms and conditions necessary to protect the National Forest. I believe my decision accomplishes that.

XI. FINDINGS RELATED TO OTHER LAWS AND REGULATIONS:

I have reviewed this decision for compliance with laws, regulations, and policies. My decision is consistent with all laws, regulations, and policies. Findings required by major environmental laws, the Forest Plan, and the Environmental Justice Executive Order are summarized below. Compliance with other laws, regulations, and policies are listed in the EA, the project file, and the Forest Plan.

Consistency with the Forest Plan (16 U.S.C. 1604(i)): The Bitterroot Forest Land and Resource Management Plan establishes management direction for the Bitterroot National Forest. This direction is described in forest-wide and management area-specific standards. Designing and implementing projects consistent with this direction is the means to move the Forest

⁹ See Appendix A (Response to Comments).

¹⁰ 16 USC § 1134

toward the desired future condition as described in Chapter II of the Forest Plan. Management area and Forest-wide direction in the Forest Plan established sideboards for the development of alternatives to the proposed action while responding to public issues. After reviewing the EA, I find my decision is in full compliance with the Bitterroot National Forest Land and Resource Management Plan standards, guidelines, goals, and objectives, as amended.

Dam Safety and Security Act: My decision is in full compliance with the Dam Safety and Security Act of 2002. The Dam Safety and Security Act reauthorizes the National Dam Safety Program. The Dam Safety and Security Act codifies FEMA's ongoing relationship with other federal agencies, the states, and private interests to focus attention and energy on improving the safety and security of America's dams.

Endangered Species Act: This project is in full compliance with the Endangered Species Act. In accordance with Section 7(c) of the Endangered Species Act, as amended, The Bitterroot Forest prepared Biological Assessments addressing potential impacts to federally listed wildlife and fish (PF K-02, K-07). The project is not likely to adversely affect any threatened or endangered species.

Clean Water Act and Montana State Water Quality Standards: Upon review of the project EA, I find that activities associated with my decision will comply with the Clean Water Act, State of Montana water quality standards, Best Management Practices, and associated monitoring requirements (page 9).

National Historic Preservation Act: The project is in full compliance with the National Historic Preservation Act. Heritage surveys of the Tin Cup Lake Dam area have not identified any heritage resources requiring protection ("Heritage Resources" section of the EA). Consultation with the Tribal

Preservation Office of the Confederated Salish & Kootenai Tribes was completed on March 24, 2005 (PF K-01).

Environmental Justice Order: Executive Order 12898 requires fair treatment and meaningful involvement of all citizens regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This decision would not disproportionately impact any minority or low-income population. We have treated all citizens fairly and allowed meaningful involvement to every person regardless of race, color, national origin, or income (PF K-13). I find that this project and its NEPA analysis comply with the Environmental Justice Executive Order.

XII. IMPLEMENTATION DATE

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur before the 15th business day following the date of appeal disposition (36 CFR 215.9).

XIII. ADMINISTRATIVE REVIEW AND APPEAL OPPORTUNITIES

A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the (newspaper of record, City, State). It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be mailed to:

USDA Forest Service, Northern Region
ATTN: Appeal Deciding Officer
P.O. Box 7669
Missoula, MT 59807

Or hand-delivered to:

USDA Forest Service, Northern Region
ATTN: Appeal Deciding Officer
200 East Broadway
Missoula, MT 59802

Office hours: 7:30 a.m. to 4:00 p.m.

Electronic appeals must be submitted to:

appeals-northern-regional-
office@fs.fed.us

In electronic appeals, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why my decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;

- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C;
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

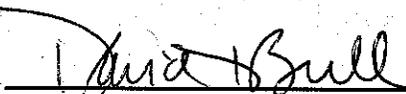
If an appeal is received on this project there may be informal resolution meetings and/or conference calls between the Responsible Official and the appellant. These discussions would take place within 15 days after the closing date for filing an appeal. All such meetings are open to the public. If you are interested in attending any informal resolution discussions, please contact the Responsible Official or monitor the following website for postings about current appeals in the Northern Region of the Forest Service: http://www.fs.fed.us/r1/projects/appeal_index.shtml.

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

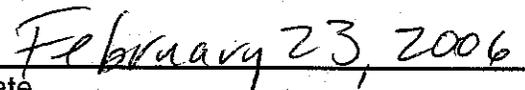
XIV. CONTACT PERSON

Copies of the Tin Cup Lake Access Project 2006 EA, FONSI, or Decision Notice, or information from the Project File, may be requested by contacting Hamilton Supervisor's Office at (406) 363-7100.

For more information or questions concerning this decision or the appeal process, please contact Chuck Oliver, Darby District Ranger, 712 N. Main, Darby MT 59829, phone: (406) 821-3913, or Debra Gale, 6735 West Fork Rd., Darby, MT 59829, phone: (406) 821-1217.



DAVID T. BULL



Date

Tin Cup Lake Access 2005
Appendix A - Response to comments

Decision Notice

RECEIVED
NOV 8 2 21 PM '05
DARBY RANGER DISTRICT

Forest Supervisor
Bitterroot National Forest
Darby Ranger Station
712 N. Main
Darby Mt 59829

Ed Bloedel
574 Harvey LN
Corvallis Mt 59828
406-961-4061

11/5/05

Comments on Tin Cup Lake Access Project:

- 1.1 For 100 years, and before Helicopters were in operation, the Dam users have been able to access the Tin cup Dam by foot or horseback and do the maintenance needed each year to keep the Dam in operation. Now they are unable to do it without the aid of motorized transportation? What has changed? Are the people that do the maintenance unable to ride horses or walk? Is the creek is bigger and faster?
- 1.2 In the past the logs were removed during the summer months and the headgate was closed in the fall. Is it too much to ask that this maintenance be continued to maintain the wilderness values of solitude, peace and quiet, and an unmotorized use area? The federal law called the Wilderness Act has as much authority as the Dam Safety Acts you quote in your initial analysis. However you seem to lean toward the Dam acts as if they were more important.
- 1.3 If you have to reroute the trail for safer access (FOR ALL WILDERNESS VISITERS), then do that, but stop this annual request for helicopter use for routine maintenance of Tin Cup and other dams in the Selway-Bitterroot Wilderness now! Helicopters should only be considered for a major reconstruction or for genuine emergencies and not for routine maintenance.
- 1.4 Remember Wilderness can be lost a little at a time with decisions that erode Wilderness Values. If you approve this routine use every spring the next request will come in for other routine uses, from other dam users, from outfitters, from your own FS people who lack an understanding of the Wilderness Resource. Everyone likes comfort and convenience, which is where these requests are really coming from.

Sincerely,
Ed Bloedel
Ed Bloedel

Commentor	Forest Service Response
1.1 Ed Bloedel	Throughout the last 100 years, many changes have been made to advance the safety of design, construction, and operation and maintenance of dams. Some of these changes are dictated by laws and regulations (please refer to Appendix A and B) and other changes include operational strategies, such as closing the headgate in the spring. From a dam safety perspective, the benefits of a spring headgate closure include: 1) reduction in the amount of time that water is stored behind the dam, which decreases the degree of saturation of the embankment; therefore increasing the reliability of the dam, and 2) improved long-term performance of the structure because of reduced erosion and decreased damage from wave action, freeze/thaw cycles, etc. The creek is probably not bigger and faster, but the dam tenders are definitely older and slower.
1.2	You are correct in that the headgate was closed in the fall – the operational change was made based on an increased level of dam safety awareness by the dam owner, which has become paramount after 1998. Please refer to the section regarding dam safety and public health and safety in the EA regarding the issues related to spring vs. fall gate closure. In regards to the issue of protecting wilderness character and protecting public safety and property (which includes wilderness), there are limits of line officer discretion related to the reasonableness of terms and conditions placed on access for dam operation, maintenance, and reconstruction activities. The associated rights of the dam owners, whose facilities are located within the Selway-Bitterroot Wilderness, have long since been established by Congress through several laws, including the Wilderness Act itself. In response to your comment about protecting dam safety over wilderness, the impacts to wilderness from helicopters may be viewed as temporal, as compared to other alternatives, such as a bridge or road, which are permanent. After the gate is closed in the spring, TCCWSD plans to continue to access their dam for routine operation and maintenance purposes by foot or on horseback.
1.3	The proposed helicopter access is to be limited to early spring when access conditions on Tin Cup Trail are hazardous. During this timeframe, there are typically a limited number of wilderness visitors in the Tin Cup drainage for the same reasons that TCCWSD finds it difficult to access their dam. Because of legal liability issues in the event of a dam failure, it is important to emphasize an effective dam safety program, not only in the major reconstruction efforts, but also in routine operation and maintenance activities. Tin Cup Water and/or Sewer Company can be legally responsible for damages caused by negligence from operation and maintenance of their facilities as well as design and reconstruction. Outstanding easement issues, in addition to the recognition of the dam owner’s legal liability for the safety of Tin Cup Dam, limits line officer discretion and the reasonableness of conditions placed on access for dam operation, maintenance, and reconstruction activities.
1.4	Comment Noted. Thank you for your comments and interest in this project.





"John T. Caldwell"
 <jtcaldwell@direcway.com>
 To: comments-northern-bitterroot-darby@fs.fed.us
 cc:
 Subject: Proposed EA for Tin Cup Lake Access
 12/06/2005 04:24 PM

Dec 2, 2005 (delayed to Dec 6 due to mitigating circumstances)

Dear Mr. Oliver and Mr. Bull,

We are requesting special consideration for my input on the indicated "Tin Cup Lake Access Project" public commentary period. First, as a member of the Tin Cup County Water and/or Sewer District Board of Directors I obviously am a very interested stake holder. Second, I have been active in this matter for a very long time--having attended several of your public meetings on this topic--as well as numerous internal TCCWSD meetings covering this subject matter--and at which I registered officially with my name, address, etc. thinking, apparently incorrectly, that this effort assured me of receiving from you a mailing of documents and notification of time periods for response to such matters as your recent call for public comment regarding an EA covering Tin Cup Dam access possibilities. Third, I am a voting and tax paying citizen of the USA, Ravalli county and Montana--but I do not subscribe to nor am I a regular reader of the Ravalli newspaper nor do I have any independent assurance of "getting notified" when matters like this occur. I feel this puts me personally at a great disadvantage in being able to respond in a timely manner to matters I have a great deal of interest in and some considerable expertise as well. Fourth--and most importantly--we were out of town during much of this time period, including the immediate past two weeks.

I note, for the record, that the "official 30 day response" time period included the official Thanksgiving holiday period. I would hope you would grant me the few days of "amnesty" between Dec 2 and Dec 6 based on my 4 personal reasons and the fact the "official 30 days", in effect, really were "short changed" several days because of the included holiday disruptions.

My comments, which I sincerely hope you will allow into the official record are attached. I also hope you will add me to the official copy receipt list for future documents as well--electronic copies to jtcaldwell@cybermesa.com, mail to John Caldwell, P.O. Box 967, Darby, MT 59829.

These comments are attached as a Microsoft Word document.

We thank you for the opportunity (hopefully) to have these comments heard on the official record.

John Caldwell
 P.O. Box 967
 Darby, MT 59829
 406-821-1831
 Fax: 406-821-1838
 jtcaldwell@cybermesa.com



EA for Tin Cup Dam and Lake Access.doc

2.1

Commentor	Forest Service Response
2.1 John Caldwell	We understand your concerns as an interested stakeholder and your comments have been incorporated into the record. We apologize for any inconvenience for the timeframe of the response period.



EA for Tin Cup Dam and Lake Access—comments by John and Elizabeth Caldwell, stake holders, Darby, MT.

2.2

1. For those of us who are responsible members and/or officers of TCCWSD this matter is primarily one of safety concerns. That is, a safe and prompt/timely access to our legitimate property (ie the dam and the waters impounded by it) must be assured so that we can fulfill our overall safety responsibilities:

- 1.1. To our members during transit to/from TCD--if they have volunteered to carry out safety/maintenance missions at TCD.
- 1.2. To our employees--if we have hired people--normally local citizens--to carry out these vital direct safety and safety related maintenance functions.
- 1.3. To our friends and neighbors in the Tin Cup drainage areas—who could be severely affected in the event of a catastrophic event at the dam—caused by our not having been allowed to perform proper and timely safety/maintenance functions.

2.3

2. Safety and safety related maintenance at TCD is not an academic exercise—it is a real and ever present concern. The events, claims and actions of 1997-1998, whether exaggerated or not, brought home to everyone living in the Darby area just how catastrophic an unsafe dam/associated structure might be.

2.4

3. The shocking and potentially catastrophic overtopping of TCD that occurred during the relatively modest 2003 spring runoffs (in spite of the “breached and supposedly safe” TCD structure provided by the “official “ remediation actions of 1998) brought home to all of us in TCCWSD just how important regular, timely and no-nonsense “checkups” at TCD are. One must not assume—just because “the experts” have told us it is true—that TCD is “...safe for 50 years...”. Clearly—all responsible citizens no matter where they live—must share with TCCWSD the concerns for clear and no-nonsense access to TCD for regular, preventive maintenance safety reasons.

2.5

4. In the back drop of the recent past history of TCD outlined above—just what is the appropriate access that will address and hopefully achieve a better and safer future? Only alternative #3 meets the test at the present time. It must be emphasized that only timely helicopter access gets the right people to TCD at all the times when it is or may be needed on short notice. The people needed to perform safety and safety related functions may not be able to hike the trail—no matter how much it has been improved—nor ride a horse up the trail.

John and Elizabeth Caldwell, Darby, MT

Commentor	Forest Service Response
2.2 John Caldwell	Your concerns regarding the ability to operate and maintain Tin Cup Dam in a safe, efficient and timely manner have been incorporated in the proposed action and purpose and need for action.
2.3	Your comment regarding dam safety has been noted and incorporated into the proposed action.
2.4	Your comment regarding the ability to check or inspect the embankment has been incorporated into the proposed action. Refer to additional information under the effects on public health and safety on pages 12-17 of the EA.
2.5	Your comments regarding timely helicopter access to Tin Cup Dam have been incorporated into the proposed action and purpose and need for action. Thank you for your comments and interest in this project.



Tin Cup County Water and/or Sewer District
P. O. Box 292
Darby, MT 59829
November 31, 2005

Chuck Oliver
Darby Range Station
712 North Main
Darby, MT 59829

Reference: Proposed EA for Access to Tin Cup Dam

Dear Mr. Oliver,

I made a mistake in paragraph 3 of my comment letter on the Proposed EA for Tin Cup Dam.

I would like to amend paragraph 3 to read:

3.1

Out of the six options that you have listed for this proposed EA, Number 6 meets the needs of the Districts best, but not totally. Number 3 is needed also to access the dam when it is too hazardous to do it any other way. Number 5 is not acceptable at all; it is not a safe way to operate the dam. The other three are all things that could be done.

Respectfully submitted,

Robert Dollman
General Manager
TCCWSD

Commentor	Forest Service Response
3.1 Robert Dollman TCCWSD	Comment noted. Thank you for your interest in this project.



Tin Cup County Water and/or Sewer District
 P. O. Box 292
 Darby, MT 59829
 November 31, 2005

Chuck Oliver
 Darby Range Station
 712 North Main
 Darby, MT 59829

Reference: Proposed EA for Access to Tin Cup Dam

Dear Mr. Oliver,

The District owns the Tin Cup Dam, which is located in the Selway-Bitterroot Wilderness, and the dam has existed in that location long before the wilderness was established. The District has had the responsibility to Operate and Maintain a safe dam for almost one hundred years. As time has pasted the standards for the operation and maintenance of the dam have changed. Along with a change in standards there is also a change in the tools that are used.

The District does not have a choice when it comes to operating and maintaining a safe Dam. The people that live down stream of the dam, the State of Montana and the Forest Service require that our dam be safe. It is then the responsibility of the District to use the best means available to them to access the dam when there is a need to do so. The District is a responsible Ravalli County entity and always has the best interest of the forest in mind when any work is done at the dam.

Out of the six options that you have listed for this proposed EA, Number 6 meets the needs of the Districts best, but not totally. Number 2 is needed also to access the dam when it is too hazardous to do it any other way. Number 5 is not acceptable at all; it is not a safe way to operate the dam. The other three are all things that could be done.

I, as General Manager of the Tin Cup County Water and/or Sewer District, believe that the District should be able to use any means available to access Tin Cup Dam when they need to do anything at the Dam. This is not recreation it is life and death if the dam should fail.

Respectfully submitted,



Robert Dollman
 General Manager
 TCCWSD

3.2

3.3

3.4

Commentor	Forest Service Response
3.2 Robert Dollman TCCWSD	Your comments regarding the ability to operate and maintain a safe dam have been incorporated into the proposed action and purpose and need for action.
3.3	Please see the discussion on the 6 th option, on page 11 of the EA. Alternative 3 (not Alternative 2 as you corrected in your cover letter) has been incorporated into the proposed action. Please see the discussion on Alternative 5 on page 8 as well as throughout the affects analysis section.
3.4	Please refer to the information provided in the purpose and need section on of the EA.
	Thank you for your comments and interest in this project.



12-06-2005 9:46AM FROM MTI TESTING LAB INC 1 406 821 3908 P. 1

Tin Cup County Water and/or Sewer District
Post Office Box 292
Darby, Montana 59829
December 01, 2005

Mr. Chuck Oliver
Darby Ranger Station
712 N. Main
Darby, MT. 59829

Subject: Proposed EA for Tin Cup Lake Access

Dear Sir,

We believe that having the ability to access our dam utilizing helicopter access in the early spring, alternative (3), and at other times when trail access is extremely dangerous has provided us with a degree of safety that really needs little elaboration.

4.1

Closing of our control gate in early spring before spring thaw storage occurs has proven very effective in minimizing or eliminating debris build-up at and around our control gate structure.

Deep snow, snowslides across the trail and high water at creek crossings, especially the first crossing, prevents conventional horseback access or foot access to close our control gate in early spring before our reservoir starts to fill.

4.2

A bridge across the first crossing, alternative (4), would certainly help once deep snow and avalanche conditions along the trail no longer pose a threat, but would be more visually intrusive than an occasional 15-30 minute helicopter flight.

4.3

A road would provide year round access utilizing various means of mechanical travel but does not totally address the spring avalanche issues and high water conditions without modifications to the first creek crossing, alternative (2). However, alternative (6), would provide a more immediate means of getting men and equipment to the dam to perform anticipated upcoming work to regain the storage lost in 1998.

4.4

Alternative (5), closing the control gate in the fall, has negative dam safety implications. A full reservoir during winter and early spring months without immediate access is asking for potential catastrophic consequences.

4.5

Alternative (1) poses the threat of delays in closing the control gate and the potential of large debris damaging the control gate structure making alternative (5) our only option compromising the safety of our dam and one which would be unacceptable to us as responsible dam owners and operators.

Commentor	Forest Service Response
4.1 Tex Marsolek	Your first three paragraphs have been incorporated the proposed action and purpose and need for action.
4.2	Please see the discussion of Alternative 4 on Page 8 as well as throughout the affects analysis section.
4.3	Please reference Page 11 of the EA for a discussion on other alternatives not given detailed study.
4.4	Please reference page 8 of the EA for a discussion of Alternative 5 as well as throughout the affects analysis section.
4.5	Your comments regarding Alternative 1 posing delays which could affect the intake structure and the hazards to personnel accessing the dam for operation and maintenance activities have been incorporated into the proposed action and purpose and need for action.



Commentor	Forest Service Response
4.6 Tex Marsolek	Comment Noted. Thank you for your comments and continued interest in this project.

05-205 9:47AM FROM MIL TESTING LAB INC 1 406 821 3805

4.6

TCCWSD
SFS EA
page 2

Until such time that alternative (6) might become available to us, from a dam safety standpoint, alternative (3) makes the most sense and creates the least immediate or potential impact on the Tin Cup Canyon's resource, both visual and environmentally. The only negative attribute to alternative (3) is the availability of the helicopter. This would be less of a problem during the spring than later in the year during fire season.

Respectfully submitted,

Tex R. Marsolek

Tex R. Marsolek
Assist. Gen. Mgr. TCCWSD
Phone: (406) 821-3534



Nov 3, 2005

Debra Hale, Project Leader
Tin Cup Dam Project
Harby Ranger District
Haley, Mt. 59829
Debra Hale -

- 5.1 Access to the west side dam never fails to cause some controversy, but in this case, it seems to me that the controversy over the use of helicopters for opening or closing the outlet, could be avoided by clearing out the debris which has accumulated near the outlet during the summer, at the end of the season, & then closing the outlet. This timing would also assist the snow on the trail in the early spring, ice in the lake in early spring, & ^{earlier removal of} logs etc from the lake. What I don't know, however, is if the lake can support a full pool of water during the winter.
- 5.2 A bridge over the first crossing is probably desirable regardless of what time of year the lake is cleared & closed.
- 5.3 Back to helicopter use, I have no problem with helpter use to carry heavy materials for major repair or re-building dams, but I support the use of the simplest tools when it comes to minor repair & opening, clearing, & closing the dams. This is in a wilderness area where simple tools are expected to be used when feasible -

363-1705
Sincerely,
Dora Wilner
65 Rockville Rd
Hemlock, MT 59840

Commentor	Forest Service Response
5.1 Doris Milner	There are several reasons for closing the headgate in the spring which improves the long term performance and safety of the dam (please refer to pp's 12-17 of the EA and Appendix D). Your comment regarding a full pool behind the reservoir through the winter is also addressed in this section.
5.2	Your comment regarding a bridge has been noted. Please see discussion of Alternative 4 on page 8 as well as throughout the affects analysis section.
5.3	Because of legal liability issues in the event of a dam failure, it is important to emphasize an effective dam safety program, not only in the major reconstruction efforts, but also in routine operation and maintenance activities. Tin Cup Water and/or Sewer Company can be legally responsible for damages caused by negligence from operation and maintenance of their facilities, as well as damage resulting from negligence associated with design and major reconstruction projects. Outstanding easement issues, in addition to legal liability for the safety of Tin Cup Dam, limits line officer discretion and the reasonableness of conditions placed on access for dam operation, maintenance, and reconstruction activities.
	Thank you for your comments and interest in this project.





Nick Hazelbaker /R1/USDAFS
 11/23/2005 01:27 AM

To Debra D Gale/R1/USDAFS@FSNOTES
 cc
 bcc
 Subject Re: Tin Cup EA

Hi. I didn't have any Tin Cup calls on my message service.
 Tuesday, 11/1/05 Jeanine Nelson left a message on my phone concerning Tin Cup EA she had received.
 She said using the helicopter for access in the spring is a "wonderfu" idea; she thinks that eliminates a
 safety concern early in spring.

nick hazelbaker
 west fork ranger district
 darby, mt 59829
 406-821-3269
 nhazelbaker@fs.fed.us
 nhazelbaker/r1,bitterroot
 Debra D Gale/R1/USDAFS



Debra D Gale/R1/USDAFS
 11/21/2005 09:02 AM

To Nick Hazelbaker/R1/USDAFS@FSNOTES
 cc
 Subject Tin Cup EA

Nick, looks like they did a typo on the scoping letter and put your phone number down as the number to
 call. Can you check your messages and make sure you don't have any Tin Cup messages I need to know
 about. Also, you mentioned Jeanine Nelson called about Tin cup? Could you write up that conversation
 and let me know.

Commentor	Forest Service Response
6. Jeanine Nelson	Your comment in support of helicopter access in the spring has been incorporated into the proposed action.
	Thank you for your interest in this project.



RECEIVED
NOV 07 2005
DARBY RANGER DISTRICT

November 4, 2005

SUBJECT: Tin Cup Lake Access Project

TO: Dave Bull - Bitterroot National Forest Supervisor

I am writing to express my individual comments and concerns about the Tin Cup Lake Access Project. Please, keep my name on the mailing list for this project. I do have some general and specific concerns with this project.

First, my general concerns are in regard to past experience with the Forest Service and the Tin Cup Water Users. There is solid policy, law, regulation, and past precedent to help direct this decision.

The decision must allow the Tin Cup Water Users to manage their water facility within federal dam safety laws and regulations; and also, allow agency management to do its best with a decision that will minimize impact and preserve the wild character and values of the Selway Bitterroot Wilderness. I view this decision as one of the easier concerning dam maintenance / operation and Wilderness preservation on the Bitterroot National Forest.

7.1 I understand that when folks don't get the Concept of Wilderness, someone may not be pleased with a minimum tool type decision that may require traditional and possibly labor intensive tools or transport. Especially, when the current Tin Cup Water User's attitude is that they can only operate their water facility with a 8 foot road and motorized ground access to their dam. Or, some within the agency may feel Wilderness is wasted space, or that minimum tool type requirements are foolish and ridiculous in today's world of modern tools and new dam safety regulations.

7.2 Neither of these agency or water user attitudes in my opinion, experience, and knowledge seem to be very considerate or caring concerning the management and preservation of Classified Wilderness. Its just about the water users demanding ease and convenience in the operation of their water facility without any concern or understanding of the Concept of Wilderness, and agency personnel not honoring existing Wilderness/Congressional Law and Forest Service Policy in Classified Wilderness.

I hope we can all get past this and get on with the job to determine the best way within the parameters of Classified Wilderness to safely operate a water facility. Its certainly not easy, but it's the job that is required. Each of these decisions can help demonstrate and educate all involved - agency, dam users, and concerned public. I consider it a blend of needs, some compromise, and especially consideration of multiple factors.

Commentor	Forest Service Response
7.1 Bob Oset	<p>Helicopter access in early spring provides a reasonable access alternative that recognizes the dam owners' rights and responsibilities associated with their valid occupancy. This access mode affects the ability of TCCWSD to effectively operate and maintain their dam. If the dam is not prudently cared for and emergency conditions arise, there could be other consequences - not only affecting the safety of the structure, but also resulting in negative impacts to wilderness. Helicopter access in early spring impacts wilderness on a temporary basis, and flights would occur during the time of year when the number of wilderness users are minimal because of difficult access conditions. Some wilderness users support this decision for temporary helicopter access over construction of another man-made structure, such as a bridge, which has permanent impacts to wilderness character.</p> <p>Please reference Appendix B for the minimum requirements worksheet.</p>
7.2	<p>We also value and appreciate your concerns and desire to protect wilderness. However, the Wilderness Act itself recognizes valid occupancies for appropriate use and enjoyment. The management and preservation of wilderness lands on the Bitterroot National Forest includes the recognition of existing private rights (Section 4 (c) of the Wilderness Act). The Forest Service has the responsibility to authorize adequate access and reasonably regulate this access to this valid occupancy within wilderness (please refer to the purpose and need section of the EA).</p>



My specific comments are as follows:

7.3

In my opinion, the best solution would be to close the dam in the fall when the trail is clear of snow with no high water in the crossings. The headgate would be closed by a person riding livestock or hiking. This option would eliminate the need for helicopter access accomplishing the task and preserving Wilderness values of no motorized or mechanized transport.

But, I understand that the dam may not be structurally sound to withstand a full pool all winter. With all the work that was done by the agency with tax dollars and dam users, why is this? (not a question, just a statement)

7.4

If structural safety is indeed the case, then a spring fill is the next option. I do realize in the spring that the creek fords in high water, especially the first one, can be tricky and dangerous since it drops hard and fast. The obvious solution is a trail relocation on the south side of Tin Cup from the first ford to the second, but the south side terrain is extremely difficult and may be very expensive to locate a trail. Its worth checking. A bridge on the first ford may be the answer.

7.5

I usually do not support bridges in Wilderness; but for this situation to provide the water users safe access without motorized access, I support a bridge for hikers and livestock on the first ford only. The remaining two fords can be re-constructed to provide a safe crossing during high water since their sites are wider and spread out. High water will be shallow and slow moving, safe for livestock, rider, and hiker. Usually a hiker can pull boots and socks to keep them dry, and safely cross in bare feet. If needed, foot logs are options for the 2nd and 3rd fords.

Now, for the last part of the puzzle - the snow slide area close to the lake that in the spring will require snow shoes or skis if we have a good snow winter. Someone could ride livestock to this point, but would be foolish to try and continue to ride through this area if the snow was deep. The horse could flounder and fall. But if the winter snow pack was light, not deep; might be able to ride all the way.

But if the snow is deep, back to snowshoes or skis. Sometimes if you travel early morning or late evening while the snow is still cool and hard crusted, one can walk on top without sinking.

Commentor	Forest Service Response
7.3 Bob Oset	Please refer to pages 12-17 in the EA as well as Appendix D regarding the risks of closing the headgate in the fall. You are correct – emergency repairs were completed on Tin Cup Dam in 1998 and 2003. However, these repairs do not eliminate the need for an effective operation and maintenance program that incorporates improved practices, such as closing the headgate in the spring.
7.4	Your comment regarding trail relocation has been noted. Please reference the discussion on Alternative 2 on page 7 of the EA as well as throughout the affects analysis section.
7.5	Your comment regarding a bridge has been noted. Please reference the discussion on Alternative 4 on page 8 of the EA as well as throughout the affects analysis section.



Page 3

7.6 So my preferred option as presented previously with the bridge and good fords is that the Tin Cup Water and Sewer District can safely ride horses to the snow slide if present, and hike / snowshoe the remainder of the way. If the Tin Cup Water Group is not in shape to handle a hike, there are plenty of people around that could be hired and would be very enthusiastic to make a paid hike in some beautiful country. For the Tin Cup Water Group there cost to accomplish the closing of the headgate would be \$100 to \$200 versus \$1600.00 for a helicopter.

It seems a win, win to me. The headgate is closed, the water group saves some money, and the access is safely done without motorized access preserving Wilderness values. From a safety standpoint I'd rather walk or ride on the ground than be in a bucket of bolts helicopter, trying to fly apart.

7.7 Until the bridge is funded and constructed, the helicopter may be an option, case by case. When the snow pack is heavy and deep with the creek crossings running fast and full; helicopter - motorized access may be appropriate. But, if the snow pack is light and shallow with creeks low; then riding or hiking without motorized access is the way.

THANK YOU. I appreciate the opportunity to respond. Lets keep it wild, and the irrigation water flowing.

Sincerely,

Bob Oset

Bob Oset
394 Lost Horse Road
Hamilton, MT
59840
phone 406-363-4048

Commentor	Forest Service Response
7.6 Bob Oset	The bridge and ford will address the high creek flows as you describe, but not potential detrimental snow conditions and avalanche hazards. Additionally, the impacts to wilderness from helicopters may be viewed as temporal, as compared to other alternatives, such as a bridge or road, which are permanent. We have also recommended the possibility of TCCWSD hiring someone to who is enthusiastic about snow-shoeing into Tin Cup Dam to close the headgate in the spring. However, representatives from TCCWSD have informed the Forest Service that they want someone familiar with their dam operations. As explained in the dam safety and public safety section in the EA, there are several routine maintenance items, as well as observations of the embankment, that need to be included in this early spring site visit. As the owner and operator of the dam, TCCWSD has chosen to elect a dam tender that has past experience with their particular operations.
7.7	After the gate is closed in the spring, TCCWSD plans to continue to access their dam for routine operation and maintenance purposes by foot or horseback after trail conditions have improved. Yes, this situation has been and continues to be wild! Thank you for your comments and interest in this project.





Earl Phillips
<philips@montana.com
>

12/05/2005 04:52 PM

To: comments-northern-bitterroot-darby@fs.fed.us
cc:
Subject: Tin Cup Lake Access Project

I have enclosed the Bitterroot Back Country Horsemen comments relative to the Tin Cup Lake access project. I will send a written copy as a followup to this document that includes my signature.

My address and the address of the Bitterroot Back Country Horsemen is listed below.

Sincerely,
Earl Phillips
725 Mihara Lane
Corvallis, MT 59828
(406) 961-0101

Earl Phillips
President
Bitterroot Back Country Horsemen
P.O. Box 1083
Hamilton, MT 59840
Phone: (406) 961-0101
E-mail: philips@montana.com



tin cup1.DOC
Earl Phillips
725 Mihara Lane
Corvallis, MT 59828

Commentor	Forest Service Response
8. Earl Phillips	Comment noted.



To: Dave Bull
 Forest Supervisor
 Bitterroot National Forest

From: Earl Philips
 President Bitterroot Back Country Horsemen
 P.O. Box 1083
 Hamilton, MT 59840
 Phone: (406) 961-0101

Re: Tin Cup Lake Access Project

8.1 We recently had the opportunity to discuss the Tin Cup Lake Access Proposal that was sent to the Bitterroot Back Country Horsemen. We recognize that there are at least three crossings and one avalanche chute that, in some years can create a problem for travel to the Tin Cup Dam during the early spring. We also realize that the Bitterroot Wilderness is a pristine place that is deserving of special protection. Our experience has shown that in every place where we have a road near a wilderness boundary, there is a buffer area established which is detrimental to the values of this fragile wilderness area. No matter how strict you make the rules, eventually the road will negatively affect the wildlife, the water, the habitat, the spread of weeds, and the character of an area that is cherished by many people.

8.2 Bitterroot Back Country Horsemen support some of the options for improving the non-motorized trail system to the Tin Cup Dam such as constructing bridges or rerouting trails to support non-motorized trail travel to the dam. Although we believe that in most years travel to the dam could be accomplished more economically by a variety of methods, (hiking, horseback, and snowshoe), in years where there is an emergency situation or extremely hazardous conditions such as heavy snow in the spring, we would support the authorizing of helicopter access. We do not support the building of a road up to the dam.

Sincerely,

Earl Philips
 President
 Bitterroot Back Country Horsemen

Commentor	Forest Service Response
8.1 Earl Phillips	Your comments regarding hazardous access conditions, which are typical of spring access conditions, have been incorporated into the proposed action and purpose and need for access. Your concern regarding the construction of a road to Tin Cup Dam has been noted. Please reference page 11 of the EA, other alternatives considered but not studied in detail.
8.2	Constructing a bridge and re-routing the trail was analyzed in this decision document. Please reference pages 7 and 8 of the EA for a discussion on Alternative 4 as well as throughout the affects analysis section. Thank you for your comments and interest in this project.



Tin Cup Lake Access 2005
Appendix A - Response to comments



Peg Platt
5488 US Highway 93 S
Conner, MT 59827-9710

November 7, 2005

Chuck Oliver, District Ranger
Darby Ranger Station
712 North Main Street
Darby, MT 59829

Re: Tin Cup Access EA
2720-3 3/7510-1

The following is in reply to your letter of October 31.

9.1

Obviously some action is necessary to alleviate the problem. Alternatives 1, 5 and 6 are unacceptable. This leaves 2, 3 and 4, for which you have developed no cost estimates.

Alternative 2 would have the greatest impact on the environment, especially the streambed, and would be costly.

Alternative 3, at two trips each spring appears to be the most expensive over a 5-year period and violates the Wilderness Act.

Alternative 4, although costly, could be accomplished through cooperation between the Tin Cup County Water and Sewer District, the Back Country Horsemen and the Forest Service. It would also provide the most benefit to hikers, hunters and horse back users not to mention the TCCW&SD.

9.2

You need to develop cost comparisons/estimates and long term impacts/benefits.

Thank you for the opportunity to comment.

Sincerely,


Peg Platt

Decision Notice

Commentor	Forest Service Response
9.1 Peg Platt	Discussions of the alternatives are on pages 7-11 of the EA as well as throughout the affects analysis section.
9.2	The Minimum Requirements Worksheet in Appendix D includes a table with cost comparisons for the various alternatives. Please refer to the EA for the impacts, or effects, to the various resources associated with each alternative. Thank you for your comments and interest in this project.



comments-northern-bitterroot-
darby
Sent by: Debra D Gale
11/10/2005 04:10 PM
To "Rose, Sharon" <shrose@mt.gov>
cc Debra D Gale/R1/USDAFS@FSNOTES
bcc
Subject Re: Tin cup Lake Access--deadline?

Sharon, you have until December 3, 2005 to comment. Thanks!
"Rose, Sharon" <shrose@mt.gov>



"Rose, Sharon"
<shrose@mt.gov>
11/01/2005 04:51 PM
To: <comments-northern-bitterroot-darby@fs.fed.us>
cc:
Subject: Tin cup Lake Access--deadline?

Hi.

What is the deadline for comments on this proposal (scoping notice dated
10-31-05)?

Thank you.

Sharon Rose
Comments Coordinator
Region 2, MT Fish, Wildlife & Parks
3201 Spurgin Rd, Missoula, MT 59804
Phone 406-542-5540
Fax 406-542-5529
Email shrose@mt.gov

Commentor	Forest Service Response
10. Sharon Rose, Montana Fish, Wildlife and Parks	No comment needed. Thank you for your interest in this project.





"Siroky, Laurence"
 <lsiroky@mt.gov>
 11/18/2005 04:12 PM

To: "David Bull" <comments-northern-bitterroot-darby@fs.fed.us>
 cc: "Schock, Larry" <lschock@mt.gov>, "Lermieux, Michele" <mlemieux@mt.gov>
 Subject: Comments on Tin Cup Lake Access Environmental Analysis

Dear Mr. Bull,

RE: Solicitation of Public Comments on Tin Cup Lake Access Environmental Analysis

Our agency is responsible for regulation of dams in Montana pursuant to the Montana Dam Safety Act per Chapter 16, Title 85 of the Montana Code Annotated. Although federal dams are exempt from the Act, private dams located on federal lands are exempt from the state regulatory requirements provided they are subject to dam safety review by a federal agency, 85-15-107(2), MCA.

11.1

Clearly the proposed action is to assure that dams on federal properties are operated and maintained in a safe manner so as to not unduly threaten the lives or property of people that live downstream. About half of the dam failures in the U.S. occur because of issues related to a lack of or improper maintenance. Adequate and timely access is key to the proper maintenance and ultimately the safety of the dam. Maintenance is required not just from normal weathering and aging, but significant events such as snow slides, high winds, and unusual rainfall events just to name a few of the factors always at work.

11.2

I support the proposed action. There will be substantial environmental impacts if proper care is not provided for the dam and dam failure flooding impacts occur from the dam site to the town and area around Darby, Montana.

Laurence Siroky, Chief Water Operations Bureau
 Montana Department of Natural Resources and Conservation
 1424 Ninth Avenue
 P.O. Box 201601
 Helena, Montana 59620-1601
 Office phone: 406-444-6816

November 18, 2005



- comments above

Commentor	Forest Service Response
11.1 Laurance Siroky	Your comments regarding adequate and timely access related to the operation and maintenance of Tin Cup Dam have been incorporated into the proposed action. The Forest Service supports the safe operation and maintenance of dams on National Forest System Lands to reduce the risk of catastrophic failure as you point out.
11.2	Your comment regarding the potential environmental consequences related to an unsafe dam has also been noted. Thank you for your interest and comments regarding this project.



RECEIVED
 NOV 15 2005
 DARBY RANGER DISTRICT

November 12, 2005
 795 Bowman Road
 Hamilton, Montana 59840

Debra Gale, Project Leader
 Darby Ranger Station
 712 North Main
 Darby, Montana 59829

Dear Debra,

In regard to the "Tin Cup Lake Access Project", I have the following comment.

The Tin Cup County Water and/ or Sewer District must maintain their dam to comply with state and federal dam safety laws.

12.1

Safety is the most important factor for all water storage dams. Maintenance and operation for wilderness dams, such as the Tin Cup Dam, is especially difficult and can be very dangerous during the spring. High water flow in the spring and the possibility of snow slides make travel to wilderness dams by trail very questionable.

Therefore, it would be wise to authorize, as a standard operating procedure, helicopter access to the Tin Cup Dam for early spring maintenance and operation.

12.2

Please keep me on the mailing list for this project.

Evon L. Stephani
 Commissioner
 Mill Creek Irrigation District

Commentor	Forest Service Response
12.1 Evon Stephani	Your concerns regarding difficult and dangerous access conditions for the dam tenders have been incorporated into the proposed action and support for helicopter access to Tin Cup Dam in early spring.
12.2	Thank you for your interest and comments regarding this decision.



RECEIVED

NOV 09 2005

DARBY RANGER DISTRICT

Darby Ranger Station
712 N. Main
Darby, MT. 59829

November 07, 2005

Atten: Mr. Chuck Oliver

Re: Initiation of an EA for Tin Cup Lake Access

Dear Sir,

We appreciate the opportunity to comment on the proposed Tin Cup Lake Access.

- 13.1 Providing the owners of Tin cup Lake Dam adequate access to operate and maintain their facility in a responsible manner to current dam safety standards seems to us like a no brainer.
- 13.2 The access corridor to this facility located approximately 10 miles west of the Trail #96 trailhead and the facility itself, in our opinion, should have been excluded from the designation of wilderness in the first place. It is a man made structure and its footprint presence defies the definition of wilderness per the Wilderness Act of 1964. This exclusion would have provide the dam owners less restrictive or unrestricted access.
- 13.3 Any water storage facility that poses any type of threat to persons and property downstream, should failure occur, demands the access necessary to adequately maintain and operate that facility on short notice. Current access is by foot or horseback which takes a minimum of four to five hours to reach the dam under ideal trail conditions.
- 13.4 With the reduction of funding for trail maintenance, the trail in some places is in disrepair and in some instances, such the first crossing is unsafe to horse and rider during high water conditions. Avalanches and blow downs across the trail also pose a hinderance to immediate access.
- 13.5 A well maintained facility with adequate access poses less of a threat to the environment than the damage caused by any failed facility where failure could be attributed to restrictive access and the inability to adequately maintain and operate the facility in an efficient manner and in accordance with current dam safety laws.
- 13.6 Alternative #1 asks for a potential reoccurrence of the 1998 fiasco without early helicopter access. The cost to the taxpayers for determining approval or denial of the request would be ongoing.
Alternative #2 would allow safer access during high water conditions, and would be an additional cost to the taxpayers.

Commentor	Forest Service Response
13.1 Larry and Janice Townsend	Your concern to authorize adequate access by helicopter in early spring for the purpose of operating and maintaining Tin Cup Dam has been discussed in the purpose and need section of the EA on page3.
13.2	Your comments regarding the access corridor excluded from wilderness designation is outside the scope of this decision.
13.3	The Forest Service encourages the safe operation and maintenance of Tin Cup Dam, and decisions related to access for emergency conditions in which the dam poses an imminent threat are outside the scope of this decision.
13.4	The proposed action should eliminate these hazards associated with early spring access.
13.5	Comment noted –see responses above.
13.6	Your comments regarding the various alternatives have been noted and incorporated into the proposed action.



Tin Cup Lake Access
Page 2

Alternative #3 would provide immediate access with the least amount of impact on the access corridor due to the time of year when that access is proposed. Although more costly than alternatives #1 and #5, the duration of the human presence is also minimized and all costs would be borne by the dam owners and not the tax payers.

Alternative #4 would provide a safer crossing during high water to the dam owners as well as safer access to the back country for the general public but would exhibit a more visual impact than alternative #2 and be a major cost to the taxpayers.

Alternative #5 creates a full lake storage situation at a time when monitoring and immediate emergency action are inhibited by inclement weather. This does not appear to be an acceptable safe alternative.

13.7 Alternative #6 would provide year round access to the facility and restrict failure liability exclusively to the dam owners since they are the ones who benefit the most from the existence of the dam and storage reservoir. This alternative would exhibit the greatest immediate visual impact to the access corridor, but with time would be appear the same as the existing pioneer road created in the early 1960's. All costs would be borne by the dam owners.

13.8 Therefore, in the short term, alternative #3 appears to be the most acceptable alternative exhibiting the least impact on the access corridor. This alternative would also eliminate the need to close the control gate in the fall leaving the reservoir empty during the less accessible winter months. All costs would be borne by the dam owners.

13.9 As a generation of founders of the southern end of the Bitterroot Valley we can appreciate the value of these late season storage reservoirs as well as their potential hazard to life and property should failure occur. Since liability and responsibility for the dams and reservoirs fall solely on the shoulders of the dam owners, we feel they should be afforded any access that they deem adequate for the operation and maintenance of their facilities.

We appreciate the opportunity to comment on this proposal and hope our comments indicate immediate support for Alternative #3.

Sincerely,


Larry E. Townsend


Janice Townsend

Commentor	Forest Service Response
13.7 Larry and Janice Townsend	Please reference page 11 for the discussion on other alternatives not given detailed study.
13.8	Please reference page 7 of the EA for discussion of the proposed action.
13.9	Please refer to the section entitled "Purpose and Need for Action" on page 1 of the EA. Thank you for your comments and interest in this project.

