



File Code: 1950

Date: September 3, 2003

Route To:

Subject: Tin Cup Dam Repair, Consultation with CEQ on Alternative Arrangements per 40 CFR 1506.11, FSM 1950.43, FSH 1909.15,08

To: Regional Forester

The Bitterroot National Forest finds it necessary to consult with the Council on Environmental Quality (CEQ) on alternative arrangements per 40 CFR 1506.11. The Forest must authorize immediate motorized access and use of motorized heavy equipment within the Selway-Bitterroot Wilderness to the Tin Cup County Water and/or Sewer District (TCCWSD) for emergency repair of their Tin Cup Dam. Tin Cup Dam has structural problems that pose an unacceptable risk of failure during a high flow event<sup>1</sup>. Consequences of a dam failure would include economic loss to downstream residents and property owners, damage to public and private natural and economic resources, and, potentially, loss of life<sup>2</sup>. Environmental damage could include adverse effects on the threatened bull trout and its habitat in Tin Cup Creek<sup>3</sup>. Repair design and logistics are still being finalized, but it currently appears that authorized motorized equipment may include heavy and/or medium lift helicopters, an excavator or "spider-excavator," one or more small loaders if a "spider-excavator" is not feasible, a soil compactor, generator, electric impact drill, water pump, and generator. TCCWSD proposed repairs entail raising and armoring a portion of the dam above the outlet pipe using soil and rock from the remainder of the dam and nearby sources. Additional work may include realigning the spillway log booms and widening the spillway<sup>4</sup>. Compliance with NEPA for authorization of similar reconstruction work on nearby wilderness dams has been met through preparation of an environmental impact statement<sup>5</sup>. The work must be completed before adverse weather sets in at this remote high elevation site<sup>6</sup>, and therefore will begin as soon as plans can be agreed on and equipment mobilized. I expect activities to begin between September 10 and September 15.

### Proposed Alternative Procedures

I must authorize access swiftly to assure that TCCWSD can complete the work during suitable weather conditions, but the Forest has recent and similar NEPA experience to help me reach an informed decision and inform the public of potential impacts of my decision. My intent is to meet the spirit of NEPA to the fullest extent the current emergency situation allows. To that end, I am implementing the following procedures: immediate public notification and opportunity for comment; up-to-date information sharing via the Internet; experienced interdisciplinary team

<sup>1</sup> Letter from Tom Pettigrew to Dave Bull, September 3, 2003 and TCCWSD Notice to FS dated Aug. 26, attached.

<sup>2</sup> Tin Cup Creek Inundation Study for The Area East of "Reach 8", September 2001, attached.

<sup>3</sup> Tin Cup Dam Repair Environmental Assessment, 1997, Chapter 4 pg 5, attached.

<sup>4</sup> Initial work list provided by TCCWSC August 27, 2003 and discussions at that time and attachment to Dave Bull letter dated August 29, 2003, both attached.

<sup>5</sup> Canyon Creek Dam and Wyant Lake Dam Project FEIS and ROD, 2003 and Bass Lake Dam Reconstruction FEIS and ROD, 1995. Both are available on the internet at <http://www.fs.fed.us/r1/bitterroot/planning/tincup.htm>

<sup>6</sup> A reliable operating season at this site is typically limited to about August 1 through September 30



advice, review, oversight, and monitoring; and use of our extensive and recent NEPA documentation and monitoring of similar actions to support my decisions and disclose environmental effects.

Immediate public comment has been solicited via letter and news releases<sup>7</sup>. I am accepting electronic, oral, and written comments.

To avoid delays in sharing information with the public, I am using the Forest's Internet web-site to post pertinent information related to this authorization. It currently includes information on the TCCWSD's proposed repairs, copies of three environmental documents which disclose the potential environmental effects of similar work on this and other local wilderness dams, and environmental monitoring results from two of these authorizations. We will update this site as additional information is available (<http://www.fs.fed.us/r1/bitterroot/planning/tincup.htm>). Hardcopies will be made available on request.

I have established an experienced interdisciplinary team with first hand knowledge of the Tin Cup area resources. They also have in-depth working experience with similar repair projects on this dam and on other local wilderness dams. This team is reviewing the proposal, other environmental documents, monitoring completed for previous projects, and public comments. The team members will provide me with their expert advice on potential environmental effects, reasonable means to minimize them, appropriate monitoring, and any necessary follow-up restoration. The team will also conduct any necessary consultation with other regulatory agencies.

We will monitor the project as it proceeds and disclose the experienced effects when monitoring is complete (after the 2004 field season).

## **Background**

Tin Cup Dam is owned and operated by TCCWSD. TCCWSD is responsible for completing any actual work on the dam<sup>8</sup>. The scope of this Forest Service authorization is limited to authorizing adequate<sup>9</sup> modes and routes of access necessary for TCCWSD to perform their emergency work and any reasonable conditions to their access and operations necessary to protect the National Forest.<sup>10</sup> The Forest Service is also responsible for regulating this dam in accordance with federal dam safety laws.

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<sup>7</sup> Ravalli Republic and Missoulian articles, September 3, 2003, are attached. Also was reported by Missoula's KPAX TV on 6pm and 10pm news September 2, 2003.

<sup>8</sup> The TCSW is authorized to maintain and operate this dam under a special use permit. TCSW has applied for prior rights (pre-FLPMA and Ditch Bill) and are awaiting a determination by the Regional Forester. First record of dam construction is 1906.

<sup>9</sup> 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 held or used."

<sup>10</sup> 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 these held by the TCSW. Therefore, the authorization of adequate access to TCSW for the valid use of its facilities is non-discretionary. 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.

Structural damage to the dam was discovered by TCCWSD on July 9, 2003. Subsequent investigations by TCCWSD and Forest Service engineers indicate a 10-20% chance of the dam overtopping in any given year during high spring flows<sup>1</sup>. In the event the water overtops the dam again, there is an unacceptably high probability of failure.

On August 27, 2003, TCCWSD's board of directors formally notified the Forest Service of its intent to access Tin Cup Dam to complete emergency stabilization of the dam structure (TCCWSD letter to Dan Ritter dated 8/6/2003, attached). That same day TCCWSD presented their proposed repair work to the Forest<sup>4</sup>. Forest Service engineering and environmental review and refinement of the proposal is underway. The estimated repair work and access requirements for TCCWSD's equipment are described in more detail in the enclosed description of work.

### **Conclusion**

I find it necessary to authorize TCCWSD immediate use of motorized access and equipment within the Selway-Bitterroot Wilderness without completing the normal NEPA procedures. Therefore I respectfully request that you notify the Director of Environmental Coordination (FSM 1950.43) so we may consult with the Council on Environmental Quality on alternative arrangements (40 CFR 1506.11).

If you have any questions concerning this request, please contact me at (406) 363-7182, or Pete Zimmerman at (406) 363-7100.



DAVID T. BULL  
FOREST SUPERVISOR

cc: Rick Roberts, Sue Heald

enclosures

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## **Attachments**

1. Letter from Tom Pettigrew, Director of Engineering, Region One, to Dave Bull, September 3, 2003
2. Notice from Tin Cup County Water and/or Sewer District (TCCWSD) to Forest Service, dated August 26, 2003.
3. Tin Cup Creek Inundation Study for the Area East of "Reach 8", September 2001.
4. Tin Cup Dam Repair Environmental Assessment, 1997
5. Initial work list provided by TCCWSD August 27, 2003 and discussions at that time
6. Letter to the public from Dave Bull, dated August 29, mailed August 30, 2003 requesting comments and attached summary of the current situation.
7. News articles September 3, 2003 from the Ravalli Republic and Missoulian.
8. Screen-shot of the internet web page as of September 2, 2003.
9. Engineering alternatives summary.