



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Medford District Office  
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Medford, Oregon 97504  
email address: Medford\_Mail@blm.gov

IN REPLY REFER TO:  
1792(M060)

MAY 27 2010

Dear Interested Public:

This letter transmits to you a copy of my decision, including my rationale for the decision, regarding the Little Hyatt Dam Long Term Management Project. As stated in the Decision Record and Finding of No Significant Impact, "I am making a conditional decision...if certain conditions are met at the conclusion of the bidding process," the Bureau of Land Management (BLM) will implement Alternative 3 and buttress the dam. The implementation of Alternative 3, primarily depends upon the net cost (after community contributions from matching grant funding) being equal or less to the cost of Alternative 4. These conditions are described in more detail in the enclosed Decision Record. The decision is also dependent on BLM obtaining a fish passage waiver from the Oregon State Fish and Wildlife Commission.

I appreciate the efforts of the community in working together to find solutions that would meet BLM's objectives to provide for safety and to eliminate financial liability, while providing for the community's desires to maintain the Little Hyatt Dam and reservoir. Background information concerning this collaborative process is also included in the enclosed Decision Record. While the collaborative process did not result in the selection of the Community Repair solution (Alternative 2), this conditional decision will allow the BLM to move forward to design and receive bids on two alternatives, either of which would meet BLM's stated objectives. If the community is successful in acquiring the matching funds needed to equalize the costs of the Alternatives, my approach to this decision will also provide for the community desires to maintain the dam and reservoir, an important feature of their community. If you have any questions regarding my decision for this project, please contact me at (541) 618-2438.

Sincerely,

John Gerritsma  
Field Manager  
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**DECISION RECORD**

**and**

**FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**LITTLE HYATT DAM LONG TERM MANAGEMENT**

(DOI-BLM-OR-M060-2010-0001-EA)

**BACKGROUND**

Little Hyatt Dam was constructed in 1923 as a water diversion point for irrigation purposes in the Rogue Valley. The dam was abandoned in the 1950's.

Since the 1950's, the reservoir has been used for recreation. The BLM acquired the dam from the Talent Irrigation District in 1993, and is currently responsible for its maintenance and safe operation. The BLM does not hold title or easement to approximately two-thirds of the land flooded by the current reservoir.

Noting its poor condition and lack of funds to repair the dam, BLM proposed to remove it in 1999. The surrounding community strongly objected and the BLM instead made a decision in 2003 after an environmental analysis to repair the structure. The BLM, however, was unable to secure funds for repair, estimated in 1999 to be between \$400,000 and \$500,000.

In December of 2006, a BLM inspection of the dam revealed it to be in "critical" condition, and the Medford District was advised to make preparations for a drawdown of the lake and a breach of the dam to avoid a potential catastrophic failure of the dam. Tempered by assessment information for the 2003 environmental study that addressed the issue of catastrophic collapse, the Medford District did not take immediate action, but began the environmental process for drawing down the lake and breaching the dam; the latter action would require a new decision and environmental study.

In May of 2007, the BLM notified community members who had expressed opposition at the previous BLM proposal to breach the dam, and began a series of public meetings to explain the current situation. However, in August of 2007, photographic monitoring of the dam revealed a greater than usual stream of water leaking from the right abutment. I made a decision to declare an "emergency", and preparations began to begin drawing down the lake. Because drawing

down the lake alleviated the safety threat, and because the environmental process for breaching the dam was not complete, I took no further action.

Based on community interest to save the dam, I made a decision to expand the EA in progress (for making a new decision to breach the dam) to look at other alternatives other than breaching or repairing the dam. That effort was concluded with the completion of the Little Hyatt Dam Long Term Management EA in October 2009.

I am sharing additional, detailed background information to help you understand the context in which I am making a decision on Little Hyatt Dam.

**Age and Condition.** The dam is 87 years old, and with the exception of work on the right abutment in 2007-8, the dam has not been maintained in over 60 years. According to the *EPRH Hydropower Plant Modernization Guide*, civil works, like Little Hyatt Dam, have an expected life of 60-80 years. Concrete dams can last much longer (e.g. Hoover Dam on the Colorado River) when they are designed and maintained with that intent. Little Hyatt Dam was not designed for more than an average lifespan, nor was it maintained.

A 2006 inspection of the dam, done in a standardized fashion by a trained expert, resulted in a “critical” condition assessment and spurred the Medford District to take actions to correct the deficiency. The area of the right abutment was considered the most vulnerable to failure because of a large void, lack of embedment compared to the left abutment, and leakage at the toe. The stabilization of the right abutment was done to alleviate the potential for this particular failure mode. But this condition was not the sole contributor to the “critical” rating in 2006. Other factors contributing to the critical rating were not addressed in the stabilization project.

The dam was re-inspected in the fall of 2009. While no longer in “critical” condition, the dam’s condition remains “poor”, despite the stabilization of the right abutment in 2008.

**Safety.** The current dam condition represents a safety hazard to people and property. The dam is rated “low” for the potential for causing harm to property and lives should a break occur, due to the lack of development and exposure to people downstream. However, low does not mean zero risk. The potential impact to property or people if a failure does occur could be severe. This potential liability is unacceptable to the BLM. This risk is also recognized by other public and private entities that turned down the opportunity to acquire a failing dam and the associated liability. A dam break would likely occur during a heavy storm event or when large amounts of water are being released from Hyatt Lake. The EA characterized the volume of water behind Little Hyatt Dam as a football field 60 feet high (or the equivalent of about 60 acre feet). A break would not release a wall of water 60 feet tall, but the analogy was made to illustrate the significant potential for damage. The entire stream system downstream is not designed to handle the sudden release of 60 acre feet of water, plus additional and continuous water from a high release or storm event. The fact remains that no one can accurately predict what the outcome of such a torrent of water would be, but the potential for damage may be catastrophic or deadly, neither of which are acceptable outcomes to the BLM. Safety is the primary Purpose and Need of the project.

**Infrastructure Maintenance and Budget.** Nationally, the BLM has a maintenance backlog for its infrastructure that exceeds one billion dollars, of which a significant share occurs on the Medford District. The national budget deficit will dictate funding for federal agencies over the foreseeable future. The Medford District is expecting a net budget loss of 6-8% annually for the next five years. There is insufficient money to fund all of the infrastructure maintenance that is needed. Little Hyatt Dam ranks below the maintenance needs for roads, bridges and other developed recreational facilities like BLM's campground at Hyatt Lake. The estimated cost of the emergency and repair dealing with the right abutment exceeded \$200,000. This is precisely the kind of maintenance liability, whether in 2007-8 or ten years from now, that the BLM wants to avoid. Hence, infrastructure maintenance is the second of two primary considerations in the Purpose and Need for the project.

The BLM has made repeated attempts to obtain funds to implement the 2003 Decision to repair the dam. Some of these attempts are documented; others are not. Each year, the District Engineer has made a determination whether it is worth the administrative effort to apply for funds related to repairing Little Hyatt Dam. The Medford District BLM must compete for these funds against all other BLM Districts in Oregon and Washington. Repairing Little Hyatt Dam has not been a priority given the limited funds and the long list of needs across the region. It is a testament to the lack of available maintenance funding when some funds were acquired for Little Hyatt Dam *only* when a potential emergency existed.

In addition, certain funding opportunities were foregone because BLM did not have a valid right to store water behind Little Hyatt Dam (the issuance of a water right permit was originally conditional on having construction drawings to repair/replace the dam, a chicken and egg dilemma). BLM was issued a permit to impound water in 2010. The costs associated with maintaining the siphons and bi-weekly inspections (estimated at \$15,000 annually) are the type of continuous maintenance liability for which funds are extremely limited.

**Social Attachment.** People have a passionate, spiritual attachment to the dam, the lake, and the setting. This is undeniable. The attachment is real, intense, and runs deep. Some people feel the lake is a unique setting because it is small, undeveloped and usually without other people present, characteristics they do not find to the same degree at the other lakes in the region.

**Collaboration.** Community interest in retaining the dam and lake for as long as possible has been passionately voiced. Representatives from the community spent many hours of volunteer time to forge ideas that would work for both BLM and the community. One of those ideas, the sale of the dam, lake and surrounding lands, was developed in detail in the EA. In responses to the EA, not one community member supported this suggested alternative.

The BLM approached finding solutions with the intent of eliminating long term maintenance liability and any safety concerns related to an aging structure in poor condition. Meeting the BLM's goals meant a transfer of ownership of the dam to another public or private entity. The community and BLM were unable to find a viable entity to which ownership of the dam could be transferred, even "as is".

Part of the community's frustration over finding a collaborative solution comes from the community's desire to have BLM maintain ownership of a repaired dam, a goal that inherently

conflicts with BLM's desire to shed itself of infrastructure BLM cannot afford to maintain. Consistent with BLM's goal to reduce the amount of lower priority infrastructure was BLM's denial to support the community effort in creating an earmarked appropriation for repair/replacement of the dam. BLM recognized that legislative earmarks simply move money from one project to another and the Medford District did not wish to shift higher priority maintenance funds to pay for lower priority projects.

In 1999, when the Medford District proposed removal of the dam, the community rallied to retain the dam and ultimately in 2003 the BLM made the decision to repair the dam. Given the circumstances of the time, it was the right decision. The area was being managed for recreation purposes, there seemed to be funding opportunities and technical options to repair the dam, and the national economy gave indications that federal budgets would be plentiful. All of that has changed. The BLM's budgets were reduced about 25% from 2004 to 2009 and funding for facility maintenance continued to lag behind maintenance needs. This trend continues today and for the foreseeable future. Shedding lower priority infrastructure has become a necessity.

In 2007, the BLM took a different view of the dam and made the decision to find solutions different from what was decided in 2003. I communicated the change with area residents and supporters of Little Hyatt Dam. In an email message to the Greensprings Hyatt Dam supporters I stated, "I am not going to sugarcoat the fact that we are rapidly heading down the path of either breaching or removing the dam before winter sets in..."

BLM's position since 2007 has not changed. Community members continued, with BLM assistance at times, to attempt finding alternative solutions. BLM's focus on the position to remove/partially remove the dam should not be interpreted as being two-faced with the community. While hoping for a solution that would satisfy both BLM and the community, the BLM realistically continued to pursue its position to breach/remove the dam, given its poor condition and safety threat. Not doing so would be shirking our responsibilities to correct an unsafe situation.

**Fish Passage.** The water storage permit application is an event that "triggers" provisions of Oregon State Statute 509.585 requiring the BLM to provide for fish passage. The Oregon Department of Fish and Wildlife has determined that the portion of Keene Creek on which the dam resides meets the requirement that migratory native fish may now or historically, be present.

Section 509.585 (9)(a) provides for obstructions (Little Hyatt Dam) without fish passage being exempt from the requirement to provide fish passage if the State Fish and Wildlife Commission "(C) Finds there is no appreciable benefit to providing fish passage." The BLM is not pursuing an exemption because there are other alternatives (waiver) that will currently satisfy the fish passage requirements. The BLM *is* pursuing a waiver, which may be granted if there are acceptable alternatives to fish passage that provide a greater net benefit than if fish passage were to be implemented at the site.

Because the creek system above and below Little Hyatt Dam is highly regulated, stocked with hatchery fish, supports populations of non-natives, and is blocked on both (Hyatt Dam above and Keene Creek Reservoir Dam below), there is no meaningful opportunity to provide net benefit at the site.

The BLM and the Oregon Department of Fish and Game have jointly developed a waiver proposal to submit to the State Fish and Wildlife Commission. The proposal is the restoration/remediation of an area along Keene Creek below Keene Creek Reservoir heavily impacted by an existing primitive road resulting in substantial erosion/siltation into the creek. The cost (approximately \$20,000) is equally considered in each of the alternatives.

**Implementation Costs.** Costs can only be determined accurately when the project is fully designed (to fully address safety and maintenance criteria) and when final bids are received. However, it became necessary to further refine cost estimates since cost appears to be a key decision factor on this project. Subsequent to the release of the EA, the BLM participated with the community in a joint fact finding process to better estimate the costs, and the effort resulted in estimates that indicate relatively little difference between notching the dam (Alternative 4) and placing a rock buttress (Alternative 3), *if* the community subsidizes the latter with the promised \$150,000 grant. Costs related to fish passage and mitigation for any long term maintenance issues are unknown until the design and bid process.

## **PUBLIC COMMENTS**

The Environmental Assessment was completed in October 2009 and mailed to 89 individuals and groups who were involved in the scoping of this project. The following key issues were raised in comments to the EA.

**Public Notification.** Several respondents suggested the availability of the EA was not properly done since the EA was not listed in the Medford District *Messenger*, nor was there any notification of availability in the media. BLM sent notices of EA availability to all those who responded with previous comments, including all the key public participants who have been involved in the project. In addition, key public participants have generated large email lists of supporters who were notified through those channels. All homeowners in the Little Hyatt Dam vicinity (based on county land records) were also notified, as were organizations and individuals who are routinely interested in BLM projects. In addition, the EA was posted on the Medford District Internet site as soon as the EA was available to the public, for download by any member of the public.

**Alternatives Not Considered.** Several respondents suggested new technologies are available to repair the dam and should have been considered in the EA. A current verbal communication with Larry Wolf of the Bureau of Reclamation, a dam expert who has visited the Little Hyatt Dam several times, indicated that technologies are available, and could extend the life of the dam, but are very expensive. In addition, he noted there are many unknowns with regard to Little Hyatt Dam because of the lack of maintenance in the last 50 years, the freeze-thaw environment, and the unknowns regarding the internal core of the dam, all of which could render a "repair" useless or much more expensive and extensive than estimated. The professional opinions of BLM engineers that the dam is not repairable are equally as valid as countering public opinions that the dam is repairable. The reality is that all the assessments of whether the dam can be economically repaired contain a high degree of uncertainty, and the various conclusions about its overall value are subjective. What is known is that BLM was unable to secure funds for repair which makes the 2003 decision (estimated at the time by BLM at \$750,000 to \$1,000,000) impossible to implement.

The question of “how” to repair the dam is not a deciding factor in this analysis. If the decision were simply a matter of which repair technique to use, a new EA would not have been needed. The 2003 decision to repair the dam would still stand regardless of the repair techniques implemented. Therefore, the range of techniques by which the dam might have been repaired is not a valid alternative for consideration under this new analysis. In addition, a decision to repair the dam does not meet the stated Purpose and Need because it would perpetuate the kind of long term maintenance liability that BLM districts across the country can no longer support in the reality of today’s fiscal climate.

**Conflicting Cost Estimates** Respondents noted that BLM and OTAK (BLM’s contracted engineering firm) had very different cost estimates for repair of the dam. OTAK’s 1999 report seems to indicate repairing the dam is comparable to or cheaper than partially removing it. Many estimates were made with late 1990s data and are simply now out of date (10+ years old). Other specifications not evaluated were simply unknown to OTAK at the time of their estimates. OTAK’s cost estimates differ significantly from BLM’s dam repair estimate of \$750,000-\$1,000,000 in several aspects. OTAK’s estimates excluded mandatory sediment and other environmental testing; omitted some of the costs associated with restoration and long term erosion control; and used significantly lower unit costs than actual market costs for drawdown and construction dewatering, riprap, epoxy patching, and concrete.

In verbal communications with OTAK during a 2007 site visit, I spoke to several representatives of the firm who estimated the right abutment stabilization work would be \$20-40,000, which substantiated my decision to move forward with the work using funds for stabilization instead of breaching. In actuality, the real costs were in excess of \$200,000 due in part to costs associated with the winter construction period. This simply illustrates the discrepancies that can arise between estimates and actual costs.

**Conflicting Alternative Costs.** A number of respondents noted that the estimated costs of alternatives differed throughout the document. We acknowledge that there were errors in the costs displayed in the summary table on page 41. The costs shown on page 41 for Alternatives 3, 4 and 5 are incorrect. The correct figures were displayed on p. 15 of the EA, but have since been refined (see attached EA Addendum). While some respondents requested specific, detailed cost data, the estimates reported are preliminary and are intended to be used in a relative sense. They are not final design estimates such as one would find in a set of bid documents. This was made clear in the EA: “Since costs are estimated, the numbers should be used in a relative sense rather than absolutes” (EA, p. 38). There was also some confusion about the annual recurring costs (bi-weekly inspections, siphon maintenance, annual inspection and drawdown, etc.).

**Sediment Inadequately Considered.** One respondent noted that sediment retained behind a partially removed dam may be impacted during a 50 or 100 year flood event, an effect not considered in the EA. The EA considered the sediments currently in the lake during implementation of the project, the first rainy events after the project is completed, and a longer-term scenario where the former reservoir bed fills with sediments, converts to a wetland, and improves water quality due to the filtration and function of a wetland (EA, p. 23). The effects of a 50 or 100-year flood would be widespread in the miles of stream channel both up and downstream of Little Hyatt Lake, and would be subject to immense conjecture as to the amount

of disturbance and sediment transport at any one point in the stream channel including the newly created wetland.

### **ALTERNATIVES CONSIDERED BUT NOT SELECTED**

The EA considered five alternatives in detail and an additional six alternatives that were eliminated from detailed study. In addition, the alternative recommended in the 2003 Decision Notice was presented as the Current Condition (not alternative) in this new EA, and an alternative that would not implement any management of Little Hyatt Dam was presented as the regulatory No Action alternative.

Alternatives considered in detail but not selected include:

**Alternative 1 (No Action)** – This alternative is required by regulation to establish a baseline. It does not meet BLM’s stated Purpose and Need for ameliorating the safety concerns of an aging structure, nor the BLM’s goal to reduce long-term maintenance liability.

**Alternative 2 (Community Repair)** – This alternative was the product of collaboration between the community and the BLM. The intent is to exchange the value of the land for the cost of repairing the dam and transfer ownership to a private party with recreation easements for continued use of the lake. None of the community respondents favored this alternative in their comments due mainly to the long sale process, the unknowns associated with the potential owner, and potential pitfalls during long real estate transactions. The government would also lose 160 acres of O&C timber lands. While this alternative meets both goals under the Purpose and Need, the loss of public land, the limited public use under proposed recreation easements, and the potential complications during a long real estate transaction (such as bankruptcy, uncooperative owners, or the failure of the dam in the meanwhile) make this alternative impractical.

**Alternative 5 (Full Removal)** – This alternative would also meet the Purpose and Need of the BLM, but would be the most expensive of all alternatives. While a restored stream channel would result, the opportunity to maintain the current wetland would be lost.

#### **Mitigation Measures (EA p.32) (Applies to Alternatives 3, 4, 5)**

The mitigation measures addressing excessive sediment and the ability to rapidly re-vegetate the site will not be implemented. I have determined that the benefit of a more accelerated re-vegetation rate does not outweigh the costs to remove the sediment from the lake. Restoration efforts will take place to ensure that noxious weeds are controlled and to promote natural vegetation. I acknowledge that restoration efforts may extend longer than if sediments were removed.

## **DECISION**

I am making a conditional decision for this project. As explained below, if certain conditions are met at the conclusion of the bidding process, the BLM will implement Alternative 3 (Buttress); if those conditions are not met, the BLM will implement Alternative 4 (Partially Remove the Dam). The conditional decision is to buttress both sides of the dam with rock to retain the lake as long as possible, primarily to meet social considerations:

- *If* the cost parameters outlined below are met and,
- *If* a fish passage waiver is granted.

*If* final design and bid show it will not be possible to implement Alternative 3 within the cost parameters, then BLM will implement Alternative 4, which will notch the dam to retain a structure height of about 6 feet, also upon the condition that a fish passage waiver is granted.

Once the bidding process identifies the costs of each of the two alternatives, supporters of the dam will have 30 days to raise and deposit into a BLM cost-share account any funds they wish to contribute toward the project. At the end of the 30-day period, the least costly alternative will be submitted for contracting.

## **DECISION RATIONALE**

Both alternatives address the issue of safety by preventing catastrophic collapse of the dam.

Both alternatives meet the need to substantially reduce (estimated to be not zero, but very minimal) the long-term maintenance liability.

Both alternatives appear to be relatively equal in cost, and this decision is based on the premise that the projected costs are reasonable. However, I am making this conditional decision because until there is a final design of the project that includes all of the pertinent construction/repair needs (including the cost of the waiver proposed to the State Fish and Wildlife Commission), and until bids are received, there is no validation that costs are relatively equal. It is my decision to provide a design and bid for both alternatives at the time of implementation, including the requirements and costs of the fish passage waiver, so the true costs will become known. The project will automatically revert to Alternative 4 when the cost for implementing Alternative 3 exceeds the cost of implementing Alternative 4. Considering BLM's anticipation of future reduced budgets and BLM's commitment and cost for completing a design and bid package for both alternatives, I consider this to be a reasonable approach. The community can increase their grant amount to offset additional costs, if desired, to maintain the costs of Alternative 3 below Alternative 4.

In addition, while the community has pledged \$150,000 toward the project (which makes current estimated costs between Alternatives 3 and 4 relatively the same), conditions may change that makes the money unavailable at the time of implementation. Thus, the decision to implement Alternative 3 depends on the community coming forth with \$150,000 *and* bids that hold true to the current estimated costs, or the community's ability to make up any additional cost differences.

The addition of new native rock to buttress the structure would change the visual appearance in the way of new form and line; the aged appearance of the current dam would be gone and the newness of the rock boulders would be apparent, especially as viewed from the footbridge of the Pacific Crest Trail. The use of native rock to strengthen the dam would help to blend the structure into the landscape, and over time the buttress would blend with the local surroundings with the growth of lichens and mosses and the darkening of the rocks. Over time, the rock buttress may become the visual focus of what is now a serene and pastoral setting, as the dam fails and the lake becomes much smaller in size. However, this change would likely be very gradual over time.

Given that Alternatives 3 and 4 equally meet safety and long-term maintenance, and appear to be relatively equal in cost, I am making the conditional decision to implement Alternative 3 because it best meets the overwhelming social desire to maintain the lake, even though there is a greater visual impact than Alternative 4.

If Alternative 4 is ultimately implemented, the dam would be lowered to about 6 feet in height, creating a 2-3 acre pond and wetland, which will provide substantial riparian wildlife habitat. A peaceful and remote setting would still exist, though not the opportunity for lake-related recreation such as swimming and fishing. Water temperature downstream would be decreased, improving fish habitat. It is likely that over time, the remaining dam structure will become so porous that only a minimal pond and riparian area will remain.

Project design features (PDF, EA p. 11-14) for both alternatives would minimize the impacts to water quality from sediments, water delivery downstream, wildlife, fish, and the Pacific Crest Trail, and would minimize the introduction of noxious weeds.

### **PLAN CONFORMANCE**

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan (RMP)*. The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan)* (USDA and USDI 1994). The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*.

On July 25, 2007, the *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* amended the 1995 Medford District Resource Management Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA

violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects (including timber sales).

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because this meets the provisions of the last valid Record of Decision, specifically the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (not including subsequent Annual Species Reviews).

### **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

I have considered both context and intensity of the impacts anticipated from the Little Hyatt Dam Project. I have determined that my decision to implement the proposal, as described in this Decision and under the Little Hyatt Dam Long Term Management EA, will not have any significant adverse effects. I considered the following criteria, suggested by CEQ, for evaluating intensity or severity of the impact of the Little Hyatt Dam Project.

The Little Hyatt Dam Project will:

- 1) *Not result in significant beneficial or adverse effects on soil, vegetation, water quality, hydrologic function (water flow), and fish and wildlife habitats.*

The Little Hyatt Dam Environmental Assessment documented the site-specific analysis of effects to the environment. Required project design features are an integral part of the Little Hyatt Dam Project, ensuring that any potential for adverse effects on resources are minimized to the extent possible. Based on the analysis documented in the EA, there will be no significant adverse or beneficial effects as a result of implementing either Alternative 3 or 4 of the Little Hyatt Dam Project EA, in summary:

- Under Alternative 3, instream work during buttressing activities could generate sediment and turbidity downstream; however, required Project Design Features would minimize or eliminate negative effects resulting from generated sediment and turbidity and no long-term changes in water quality would occur (EA p. 21).
- Under Alternative 4, sediment and turbidity levels could be substantial following the completion of partial dam removal and the return of the water to the stream channel; however, increases in sediment and turbidity would be short-term, and erosion control and restoration activities are planned to prevent much of the sediment from being transported downstream (EA p. 22). Over the long-term water quality would be improved (EA p. 23)
- Under Alternative 4, increased sediment levels could displace or kill most fish in the stream section between the Little Hyatt and Keene Creek Reservoirs; however, this portion of the stream system is already highly modified and long-term improvements in species composition are expected with improved fish passage and cessation of non-native stocking (EA p. 24).

- Under Alternative 3, impacts on wetland vegetation of dewatering the lake are anticipated to be similar to what would be experienced by many wetland areas in a severe drought, with vegetation resprouting the following spring (EA p. 21).
- Under Alternative 4, wetland and aquatic vegetation would become established along the stream channel and around the new reservoir level. Over time, as the reservoir fills with sediment, the wetland area would increase (EA p.23)
- Downstream habitat and organisms below the work area should not be substantially impacted by piping water around the dam (EA p. 21).
- Foraging opportunities for osprey, bald eagles, and other fish eating species would **not** be significantly reduced as a result of Alternative 4 or temporary dewatering under either alternative, as Hyatt Reservoir also provides foraging opportunities of this type and is only one (1) mile distant (EA p. 28).
- Under Alternative 3, impacts to wildlife species in the area would be negligible (EA p.28); under Alternative 4 the current location of wetland would migrate toward the stream channel and lower reservoir level. Mobile species would easily find and utilize the newly created habitat areas (EA p. 29).
- This project will have no known effects on special status botanical species; the project area is outside of the range of listed or candidate species, and the project area does not provide suitable habitat for sensitive fungi species (EA p. 31).
- This project will implement project design features to minimize or avoid the potential for new introductions, or the spread of existing, noxious weed populations (EA p. 11-14 and 30-32).

2) *Not result in significant impacts on public health or safety.*

Safety is the primary Purpose and Need of the project. Both Alternatives 3 and 4 would relieve the long-term maintenance liability because the dam structure would be either reinforced or would no longer exist to the extent that maintenance is required (EA p. 38-40).

3) *Have no significant, adverse effects on unique geographic characteristics or features, or on special designation areas such as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; sole or principle drinking water aquifers; or prime farmlands.*

The Little Hyatt Dam Project will have no significant effect on cultural resources regardless of the alternative chosen; any change or loss of the dam has been mitigated by recording the site with detailed photos and written descriptions. The project would not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area (EA p. 34).

Little Hyatt Dam is located within the Special Recreation Management Area (SRMA) for the Pacific Crest Trail, and is currently mapped as a Visual Resource Management (VRM) class 2, where low levels of change to the characteristic landscape may be seen, but should not attract the attention of the casual observer (EA p.34, 36-37). Under Alternative 3, the addition of new native rock to buttress the structure would change the visual appearance in the way of new form and line; however, over time, with the growth of lichens and mosses and the darkening of the rocks, the buttress would blend with the local surroundings.

Alternative 4 would lower the structure, but the rustic character of the old dam structure would remain. The reservoir level would be reduced to a smaller water body and wetland; although the changes would not detract from the surrounding area. Overall either alternative would meet VRM objectives over the long-term.

Any changes in recreational use of the Little Hyatt Reservoir area would not be significant; Hyatt Lake and Howard Prairie Reservoirs are nearby offering similar recreation opportunities for dispersed recreation such as hunting, fishing, hiking, and camping for any recreation that displaced from the Little Hyatt Reservoir as a result of implementing either Alternative 3 or 4 (EA p. 37).

4) *Not have highly controversial environmental effects.*

Community interest in retaining the dam and lake for as long as possible has been passionately voiced. The public involvement process for this project has been extensive (EA, p. 42); numerous neighborhood and individual meetings have taken place to understand local concerns and to find a solution that meets everyone's goals. While the range of values that humans place on public lands and its management are valid concerns, they do not indicate the presence of highly controversial environmental effects.

"Highly controversial", in the context of 40 CFR 1508.27(b) (4), refers to substantial disagreement within the scientific community about the environmental effects of a proposed action. It does not refer to expressions of opposition or expressions of preference among alternatives.

5) *Not have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.*

The process for estimating the anticipated effects for projects of this nature are well known and the effects of this project have been documented in the environmental assessment (EA, Section H, Environmental Consequences).

6) *Not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

This Little Hyatt Dam Project is a site-specific project developed to address public health and safety concerns that have arisen as a result of the deteriorating condition of the Little Hyatt Dam. A decision on how to proceed with the management of the Little Hyatt dam does not set precedent for future actions and analysis documented in the EA has not identified any significant effects of implementing options for managing the dam to provide for public safety.

7) *Not result in significant cumulative environmental effects.*

Cumulative environmental effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” (See definition of “cumulative impact” in 40 CFR § 1508.7).

Project design features are a required part of the project design to minimize or avoid anticipated project effects (EA p. 11-14). Considering the implementation of project design features, the anticipated effects of implementing either Alternative 3 or 4 are not anticipated to contribute to significant cumulative effects for the affected area. Analysis was performed at multiple scales, and included the consideration of past actions, as reflected in current conditions, current actions, and foreseeable future actions on both private and federal lands (EA, Section H, Environmental Consequences).

8) *Have no significant effects on scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places.*

Little Hyatt dam is a historic dam constructed around 1923 for the Talent Irrigation District. It was recorded as part of the 1990 Jackson County Cultural and Historical Resource Survey. The BLM has consulted with the State Historic Preservation Office (SHPO) on the effects of this project and the removal of the dam and recorded the site. Therefore, the loss of the dam has been mitigated by recording the site with detailed photos and written descriptions and there is no significant effect to cultural resources (EA p.34).

9) *Have no adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or have adverse effects on designated critical habitat for these species.*

No suitable nesting, roosting, or foraging habitat for the northern spotted owl would be altered by this proposed alternative. Some of the activities (e.g. blasting, heavy equipment operation) associated with this alternative could cause impacts through disturbance to breeding owls. However, seasonal restrictions will be required to avoid disturbance impacts during the critical breeding season (March 1st-June 30). (EA p.28)

This project will have no effects on special status botanical species; the project area is outside of the range of listed or candidate species, and the project area does not provide suitable habitat for sensitive fungi species (EA p. 31).

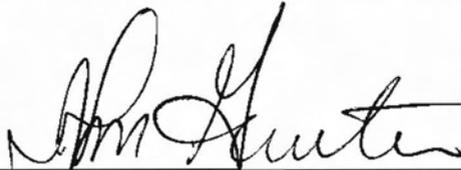
10) *Not Violate a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment.*

With implementation of required Project Design Features actions under either alternative would not threaten a violation of any federal, state, or local environmental protection laws. The project is designed to comply with the Medford District's 1995 Record of Decision and Resource Management Plan.

This project is also in compliance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979 (EA p.4).

This project was reviewed for the potential for disproportionately high or adverse effects on minority or low income populations; no adverse impacts to minority or low income populations will occur (*Executive Order 12898 (Environmental Justice)*) (EA p. 40).

I have determined the Little Hyatt Dam Long-Term Management project does not constitute a major Federal action having a significant effect on the human environment; an environmental impact statement is not necessary and will not be prepared. This conclusion is based on my consideration of the Council on Environmental Quality's criteria for significance (40 CFR § 1508.24), with regard to context and intensity of the impacts described in the EA and my understanding of the project. The Little Hyatt Dam Long-Term Management project will be implemented as I have described in the section titled Decision, above.



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John Gerritsma  
Field Manager, Ashland Resource Area  
Medford District, Bureau of Land Management

5-27-10

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Date

## **ADMINISTRATIVE REMEDIES**

The decision described in this document is a general public land management decision and is subject to appeal. Any objection raised by a person adversely affected as a result of a final decision has the right to appeal to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR part 4 and the enclosed Form 1842-1. If an appeal is taken, a notice of appeal must be filed in this office within thirty (30) days of receipt of this decision for transmittal to the Board. If your notice of appeal does not include a statement of reasons, such statement must be filed with the Board within 30 days after the notice of appeal was filed.

No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

A copy of your notice of appeal and any statement of reasons, written arguments, or briefs, must also be served upon the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW Broadway, Suite 600, Portland, Oregon 97232.

According to 43 CFR Part 4, you have the right to petition the Office of Hearings and Appeals to stay the implementation of the decision; however, you must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied,
- 2) The likelihood of the appellant's success on the merits,
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

Should you choose to file, your stay request must accompany your notice of appeal. A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, and any adverse party at the same time such documents are served on the deciding official at this office.

**Addendum to the**  
**ENVIRONMENTAL ASSESSMENT**

**For**

**LITTLE HYATT DAM**  
**(Long-Term Management)**

**United States**  
**Department of the Interior**  
**Bureau of Land Management**  
**Medford District**

**Jackson County, Oregon**

**March, 2010**

The Environmental Assessment for the Little Hyatt Dam project was made available for public review on October 26, 2009. During the public comment period, a number of respondents noted that the estimated costs of alternatives differed throughout the document. We acknowledge that there were errors in the costs displayed in the summary table on page 41. This addendum updates those costs and provides new information on a water storage permit and fish passage. This addendum also addressed the findings from the 2009 dam inspection.

### **Dam Inspection 2009**

The BLM inspected Little Hyatt Dam in the fall of 2009 and the inspection resulted in a Safety Rating of “Poor”. This is an upgrade over the previous rating in 2007 of “Critical” due to the stabilization of the right abutment. The structure is in poor condition due to major spalling, heavy scaling, wide cracks, and exposed rebar in concrete. The lake was lowered to approximately 10 feet below the top of the dam to allow more detailed examination of the dam. It was noted that the liner in the spillway canal has tears at random locations reducing its effectiveness. The report noted that rehabilitation of the structure will need to meet Oregon Department of Water Resources (ODWR) requirements, such as a gated low level conduit (e.g. means to drain the reservoir), and fish passage provisions. Any design for repair or reconstruction would have to be engineered to meet ODWR requirements.

### **Permit to Store Water**

When BLM acquired the dam in the early 1990s, there was no permit to store water. BLM has now received the permit, and is the first step toward the final certificate. The Dam Safety Coordinator may require the dam to have a workable spillway for the Buttress or Repair Alternatives. Design and cost estimates for spillway rehabilitation have not been developed, but will be incorporated into the final project design.

### **Fish Passage**

The water storage permit application is an event that “triggers” provisions of Oregon State Statute 509.585 requiring the BLM to provide for fish passage. The Oregon Department of Fish and Wildlife has determined that the portion of Keene Creek on which the dam resides meets the requirement that migratory native fish may now, or historically, be present.

Additional “trigger” events include original construction, major replacements, or structural modifications that increase storage or diversion capacity. The Oregon Department of Fish and Wildlife has determined that alternatives involving construction, replacement, or modification trigger the statute from these events.

Section 509.585 (9)(a) provides for obstructions (Little Hyatt Dam) without fish passage being exempt from the requirement to provide fish passage if the State Fish and Wildlife Commission

"(C) Finds there is no appreciable benefit to providing fish passage." The BLM could pursue an exemption because the system is highly regulated, stocked with hatchery fish, supports populations of non-natives, and is blocked on both ends by major reservoirs. An exemption, if granted, must be reviewed at least every 7 years by the commission, and if circumstances change (such as removal/abandonment of Hyatt and/or Keene Creek dams), the commission may revoke the exemption.

A waiver may be granted if there are acceptable alternatives to fish passage that provide a greater net benefit than if fish passage were to be implemented at the site. The BLM will pursue a waiver in lieu of an exemption by crafting an offsite proposal in collaboration with the Oregon Department of Fish and Game. The costs of fish passage or acceptable alternatives to fish passage have not been determined.

Fish passage requirements are applicable to all alternatives, except Alternative 5.

### **Comparison of Direct Estimated Costs to Implement Alternatives for Little Hyatt Dam**

The following table summarizes the direct costs for implementing the various alternatives proposed for the dam. Indirect costs, such as future fish passage, and long-term maintenance for fish structures, is not included. Other indirect costs, such as a value for the loss of public land (Alternative 2) are not calculated, but the general impacts are discussed in the consequences section of the EA. The "loss" of recreation/fishing in alternatives 4 and 5 is not a direct cost, and is difficult to quantify because people will generally simply recreate and/or fish elsewhere in the area.

This table represents the most current cost estimates and replaces all cost information in the EA. The costs of fish passage requirements have not been determined and will reveal themselves in the final project design and subsequent bids for the alternatives. However, the unknown costs do not change the environmental effects already disclosed, but only the total cost of the selected alternative.

	<b>1-No Action</b>	<b>2-Community Alternative Repair</b>		<b>3- Buttress</b>	<b>4- Partial Remove</b>	<b>5-Full Remove</b>
	BLM	BLM	Private	BLM	BLM	BLM
Sediment Test <sup>1</sup>			\$10,000	\$10,000	\$10,000	\$10,000
Lower Water Level and Maintain Stream Flow Downstream			\$71,305	\$71,305	\$71,305	\$71,305
Maintain Siphon System <sup>2</sup>	\$15,000/yr	\$60,000		\$30,000	\$30,000	\$30,000
Construction/Destruction <sup>3</sup>			\$1,068,224	\$509,933	\$318,000	\$554,837
Site Restoration	\$62,000 <sup>5</sup>				\$44,000	\$62,000
Land Sale Costs		\$75,000	\$25,000			
Community Grant				\$150,000 <sup>6</sup>		
<b>Total Cost to Government</b>	\$15,000/yr	\$135,000	\$1,174,529 <sup>4</sup>	\$471,238	\$473,305	\$728,142

<sup>1</sup>Required for any in-stream work. Common to all action alternatives.

<sup>2</sup>Required for the life of the dam if no action is taken to repair the dam. Annual drawdown and inspection is about a 10 day process. This cost would continue for all action alternatives until the action is complete, but estimated at two years for alternatives 3-5.

<sup>3</sup>All costs for construction or demolition are updated to account for public comments to the EA, and from subsequent meetings with community activists. Costing assumptions are the same under which ever alternative it applies (such as government contract development costs, contingencies, etc.).

<sup>4</sup>This cost is based on a 2009 government estimate of \$1,594,364 for construction costs with a 33% reduction "saved" if a contract does not involve federal funds and bureaucracy.

<sup>5</sup>Cost for future restoration. Would not occur until dam failure. Current cost not adjusted for inflation.

<sup>6</sup>Community donation for the Buttress Alternative only. Supporters of the dam have indicated these funds will be available when implementation of the Buttress Alternative occurs. However, these funds are not currently under BLM control.