



Forest Service
U.S. DEPARTMENT OF AGRICULTURE

Lolo National Forest, Missoula Ranger District

November 2023

***Draft* Decision Notice for the Terms and Conditions for McKinley Lake Dam Decommissioning and Restoration Project**

**Lolo National Forest
Missoula County, Montana**



Cover photo: McKinley Lake Dam and eroded spillway in the Rattlesnake Wilderness

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Decision

Based on the Minimum Requirements Analysis Framework (MRAF) and the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the Terms and Conditions for McKinley Lake Dam Decommissioning and Restoration Project, I approve Alternative 2 in the environmental assessment for authorizing limited motorized equipment/mechanical transport use and limited helicopter and vehicle access to the McKinley Lake Dam in the Rattlesnake Wilderness to implement the breaching/decommissioning of the dam to be undertaken by the City of Missoula. This Decision Notice serves as their permit for access.

The remote 100-year-old McKinley Lake Dam is owned and operated under easement by the City of Missoula. My decision authority is limited to these terms and conditions to be placed upon the legal holder of the easement as a valid occupancy within a wilderness area.

This Decision is responsive to the Forest Service and City of Missoula's intent to use traditional (non-motorized equipment/non-mechanical transport) skills and means where they are feasible and compatible with public safety and dam safety objectives.

To protect national forest values and resources, the terms, conditions, mitigation measures and monitoring below in Tables 1 and 2 are required during access and work periods authorized under this Decision.

This decision notice incorporates the environmental assessment and Finding of No Significant Impact.

The following items are the City of Missoula's responsibility:

Table 1. Terms and Conditions

Measure
Dam Safety
1. Plans and specifications will be reviewed in accordance with federal laws and Forest Service standards and criteria for dams. It is critical that the City, through their engineering representative and licensed contractor, implement the project according to the professional standard of care and generally accepted industry standards, especially for critical elements that affect the overall safety and integrity of the embankment.
2. The dam owners are responsible to provide their own radio, satellite telephone or other device for remote communications.
3. During the construction period, the City of Missoula and their engineering representative will have an updated emergency action plan in place to respond to incidents, such as flooding and potential filling of the reservoir from a major storm event during critical portions of the work.

Measure
Wilderness Resource, Recreation and Wildlife
4. The work crew will camp in an established campsite(s) or existing hardened site(s), as specified by the USFS Wilderness Specialist, preferably 200 feet from water.
5. Human waste will be consolidated in a trenched latrine and/or temporary, backcountry latrines flown in and out for the duration of the project. If a trenched latrine is used, it will be located at least 200' from water and filled in at the end of the project.
6. Stock used to support project work will be tied and/or held in the wilderness in such a way as to minimize soil disturbance and avoid loss of native/desirable vegetation. Pack stock used for resupply will not be allowed to linger or overnight at McKinley Lake.
7. Pack stock and helicopter transportation for project activities will be restricted to weekdays when possible. Helicopter will avoid flying directly over trails to minimize impacts to wilderness visitors.
8. To minimize disturbance to wildlife, especially grizzly bears, the helicopter will take as close to the same flight path as possible for each trip to and from the dam site on the mobilization and demobilization days. Helicopter operation below 500 feet above ground level (AGL) should be limited to the direct vicinity of the dam site.
9. All human trash will be removed from National Forest System lands during and at the completion of the project. Trash cannot be placed in the latrine, nor can it be burned or buried on site.
10. Use of the main Rattlesnake corridor (Road #99/Trail #515) will be limited to that which is necessary for project implementation. If using multiple vehicles, travel will occur in a convoy, when possible, to limit disturbance to forest visitors.
11. Motorized access inside the wilderness on Trail #534 will be limited to the existing drivable roadbed and that which is necessary for crew transportation and City of Missoula inspections. Vehicles will be parked outside the wilderness boundary.
12. Motorized tool use and mechanical transport will be restricted to the uses approved in the MRAF (Appendix C) and minimized in project work.
13. Limit motorized tool use and mechanical transport to daytime hours (1/2 hour before sunrise to 1/2 hour after sunset) if possible.
14. Dam breach design and project materials will be compatible with the wilderness setting.
15. Any old dam materials (e.g., log cribbing, metal piping, etc.) remaining on site shall be scattered, if native material, or removed from National Forest System lands at the end of the project.

Measure
16. Any onsite borrow sources created for obtaining gravel and fine material will be weed-free, located off trail, and naturally rehabilitated to minimize evidence of use. Rock will be collected across a dispersed area to avoid removing noticeable quantities from any single concentrated area.
17. The Northern Continental Divide Ecosystem (NCDE) Food Storage Order will be followed for the duration of the project (see details and definitions in special order). During daytime hours, all attractants, including human food and garbage shall be stored in a bear resistant manner. During nighttime hours, all attractants, including human food and garbage shall be stored in a bear resistant manner unless it is in immediate control, being prepared for eating, being eaten, being transported, or being prepared for storage. Attractants shall not be buried, discarded, or burned in an open campfire.
18. Contractors and their employees should carry bear spray and know how to use it. Contractors and their employees will be prohibited from carrying firearms. To resolve a bear-human conflict situation, project activities may be modified, cancelled, suspended, or temporarily ceased, as needed.
19. If any threatened, endangered, or sensitive species are encountered during project implementation, the botanist, wildlife biologist, or fisheries biologist should be notified. Project activities may be modified, cancelled, suspended, or temporarily ceased, as needed to protect these resources.
20. Staging areas, fuel storage and containment area, and camping site for McKinley Lake Dam will be identified by the City of Missoula prior to initiation of project.
Water and Fisheries
21. If possible, all work will be accomplished outside of standing or running water.
22. If used, silt fence shall be employed in accordance with engineering specifications.
23. Water pumped over the dam during implementation to maintain a dry work area should flow into sites that would not erode.
24. Disturbed areas, including soil borrow areas, as much as is practical, shall be confined to within the high-water mark of the existing lake.
25. All fuel shall be stored in an approved spill containment structure that shall be of sufficient capacity to contain all the fuel stored in the structure. The basic containment structure shall include an HDPE-lined basin and berm to contain spills or leaks. Fuel will be stored more than 100 feet from the surface water. All hazardous material will be removed from the site at the end of the project. A hazardous spill kit will be on site.
26. Excavated areas shall be graded to a stable slope.
27. Areas of ground disturbance should be covered in slash for erosion control.

Measure
28. The stream channel at the outlet should be rehabilitated to meet the natural form and dimensions.
29. The City of Missoula and their contractors are responsible for obtaining needed permits and ensuring compliance with those permits.
Soil Resource
30. Scarify compacted areas using typical hand tools and cover with available wood debris.
Heritage Resource
31. Portions of the dam on either side of the breach shall be left intact.
Whitebark Pine
32. Protect individual and clumps of whitebark pine trees from blast zone as practicable.
33. Relocate any moveable whitebark pine that have established on top of the dam to an area outside the blast zone prior to any blasting.
Invasive Plants
34. All vehicles, equipment and supplies will be inspected and cleaned of weed-seed prior to entering the wilderness. The helicopter base used for staging equipment to be transported into the wilderness is to be free of noxious weeds (FSM 2080). All equipment transported into the dam site should be cleaned prior to entering the wilderness to ensure no weed seed is introduced.
35. Contain stock in areas free of spotted knapweed and other visible noxious weeds at Elk Meadow in the NRA when used as a camp for the project resupply.
36. Weed-seed free feed is required for all stock while at Elk Meadow and recommended as feed for a few days prior to entering the wilderness. Low impact camping techniques should be used to reduce the risk of introducing weeds or creating habitat suitable for seed germination. Areas of bare soil will be revegetated as soon as possible after work is completed.

The following items are Forest Service (FS) Responsibility:

Table 2. Mitigation measures (Forest Service)

Measures
1. The work crew will be briefed by a USFS Wilderness Specialist on minimum impact/leave no trace ethics prior to starting work in the wilderness and will follow minimum impact/leave no trace ethics while working and camping in the wilderness. USFS personnel will periodically inspect the project area to ensure compliance with minimum impact/leave no trace ethics.

Measures
2. Information will be posted at affected trailheads and the wilderness boundary to inform forest visitors about project work and potential impacts to recreation use and access. Project information will also be provided to the local newspapers, on the Forest web page, and through the Forest's social media.
3. Monitoring for the presence of noxious weeds at the project site, campsite and along the access trail will be required during and one year following the completion of the project. If noxious weeds are found to be present in the area, control and eradication measures will be implemented immediately.
4. Monitor location to ensure appropriate vegetative growth is occurring after implementation. If desired vegetative response is not occurring within the impacted area in the following two seasons, work with appropriate Forest Service personnel to seed with native species or transplant those species.
5. To provide for crew and public safety, the area directly around the dam site will be closed the entire duration of the project. Visiting McKinley Lake will still be allowed, but recreational camping will be prohibited.

The Rationale for Approval

Due to the failing spillway at McKinley Lake Dam, the City of Missoula will be breaching the dam to stop the erosion of the spillway as soon as is practicable. This has been deemed a high hazard dam by the State of Montana and the Forest Service. I have conducted a minimum requirements analysis using the MRAF and have determined the minimum necessary tools to safely implement the work within the Rattlesnake Wilderness within one field season. I am placing these terms and conditions on access and implementation to breach this remote dam.

The Rattlesnake National Recreation Area and Wilderness Act of 1980, which established the Rattlesnake Wilderness, states that “[n]othing in this Act shall be construed to permit the Secretary [of Agriculture] to affect or diminish any water right which is vested under either State or Federal law on October 19, 1980, nor the rights of the owner of such water right to the customary and usual access, including necessary motorized use over and along existing roads and trails to any facilities used in connection therewith, and the right to operate and maintain such facilities.” Montana Power Company built roads into the Lake and Wrangle Creek drainages in the 1950s for logging. The City of Missoula, and Mountain Water and Montana Power Company before them, have annually flown into the eight lakes and ten dams in the Rattlesnake Wilderness for maintenance and inspection, as well as traveling on the existing roadways in the NRA and wilderness. Therefore, I am limiting helicopter use to one day to bring in equipment and supplies for the expected 12 to 13-week work window, and one day to remove equipment and supplies. This avoids the negative impacts that approximately 48 pack train trips (round-trip) would have on the trail and work area and enables the work to be completed in one field season (see MRAF attached to the EA).

While the City has a right to access the site over existing roads and trails within the Rattlesnake Wilderness for the maintenance and operation of water facilities, vehicular traffic for implementing the dam breach and decommissioning exceeds normal and customary use. I authorize this increased use to

drive approximately two miles on the existing roadbed (Trail #534) within the wilderness boundary to drop off work crews twice a month. They may not leave vehicles within the wilderness boundary overnight but may park in the National Recreation Area (NRA). Workers will travel on foot the remaining 2.5 miles to McKinley Lake on Trail #534. Resupply will be undertaken using pack strings traveling on Trail #534 from the wilderness boundary, and stock will stage at Elk Meadow in the NRA. Stock will not remain at McKinley Lake.

Exceptions to the plain language of the Wilderness Act are allowed under 36 CFR 293.6(c). The MRAF has determined that a motorized pump is the minimum required tool to dewater the site at the area of the breach. This motorized pump is expected to be needed for a very brief time (approximately <five minutes) to begin the dewatering process and start the water moving through the siphon tubes. This tool is significantly more dependable than a hand pump and ensures a dry work area. A dry work site is critical to the success of the project to protect water quality, ensure that common construction standards and BMPs are met and to protect overall safety. Without a reliable and repeatable method to quickly drain water from the work site in the event of a siphon failure or large rain event, impounded water could compromise dam drilling and dam stability during the deconstruction process or lead to an uncontrolled release of turbid water that would impact the environment and potentially threatened species downstream.

For the safety of the blasting operation, I am allowing the use of a power auger for creating the holes to the depth needed for the blast charges. Hand drilling in rock is imprecise, and this lack of precision creates additional significant risks, both for cooperator safety and potential negative impacts to resources. The blasting specialist on the interdisciplinary team visited the dam in September and has confirmed a power auger is necessary for deep bore holes. Auger use is expected to be limited to two days or less, and in actual operation a few hours each day, at most.

Finally, I am also allowing the use of wheeled carts/barrows to allow the labor crew to move rock away from the breach site. These are limited exceptions to the Wilderness Act and are allowed under 36 CFR 293.6(c). This consideration will minimize exposure associated with manually lifting heavy materials (soil, rocks, and boulders) and will avoid unnecessarily prolonging the amount of time to complete the work. All cooperators involved, as well as the Montana Department of Environmental Quality and Watershed Education Network, agreed that the work should be completed in one field season to avoid having to secure the breach site for overwintering and risk a failure that could threaten important downstream fishery resources. This plan also allows the disruption to wilderness recreationists and wildlife to be limited to a single season.

Summary of Public Comments and How They Were Considered

All persons and entities who commented on the Forest Service's documents were in support of breaching and partially removing the McKinley Lake Dam; however, there was not full agreement on how it should be implemented.

Many people held the opinion that "because the dam was built with mules and men, it can be taken down with mules and men." Under today's concerns for the natural resources in the wilderness, we disagree. It is likely that the area took decades to recover from the disturbance that stock and humans created at the site during construction in 1923. There is no evidence that this dam was constructed with methods that considered "wilderness ethics", only that they employed methods compatible with a remote mountain location in that time period. There is very little flat ground around this glacial cirque lake and no area to hold or pasture stock. It will already be tight for ten persons to camp there.

Additionally, the dam was constructed on dry ground. It now is a dammed lake with a higher water level, and therefore the work site is not dry ground. Water must be siphoned from the lake to dewater the work area, and stock impacts on this site would likely create a muddy and unsafe worksite with significant potential adverse impacts to soil and water resources.

Some commenters were opposed to the use of explosives and thought the breaching should be done the “old-fashioned way.” Explosives are indeed an old and traditional tool, and they are an efficient and accepted long-used wilderness tool. Notes from the construction of this dam in 1923 indicate blasting powder was used to “loosen dirt”. Blasting charges will create a very brief but largely insignificant disturbance, as conducted by an expert blaster.

We can be certain that wheelbarrows and wheeled carts were used in the original construction of the dam, and I am allowing this use as well, as a result of the minimum requirements analysis. Hauling rocks in buckets is not only labor-intensive and time-consuming, but it also creates undo challenges for the City of Missoula with respect to staffing contractors for this type of arduous work. As a telling example of this challenge, a local conservation organization who regularly undertakes backcountry and wilderness projects stated that they would refuse to undertake this job with solely traditional means.

The Forest Service was asked through other comments to require the City of Missoula to use primitive or traditional tools only, without helicopter access. The City of Missoula has accessed the site by helicopter and on existing roads under the Rattlesnake National Recreation Area and Wilderness Act of 1980, as a valid occupancy under the Wilderness Act of 1964. The City’s predecessor-in-interest constructed, accessed, and operated the McKinley Lake Dam, as well as several other dams within the Rattlesnake Wilderness, prior to the wilderness designation in 1980 and when some of the land, including the location of the McKinley Lake Dam, was privately-owned. In consideration of wilderness values, I have provided reasonable restrictions and am limiting helicopter use to only two days. A minimally invasive motorized pump will be used for only a few minutes to start the water siphon; it will not be used to pump water. The power auger will allow for effective placement of blasting charges and ensure the safety of the workers on site. The pump, the auger, and the wheeled carts are exceptions to the Wilderness Act allowed when a minimum requirements analysis determines their necessity, will not leave any lasting trammeling effects on the wilderness, and will allow the work to be completed in one field season.

Some were concerned that this project sets the precedent for the remaining dams in the Rattlesnake drainage. While we will undoubtedly learn from the challenges and accomplishments of this breaching effort, all the Rattlesnake Wilderness dams are different sizes and have different levels of accessibility. Each dam will be assessed on its individual characteristics, and future environmental assessments will be completed according to law and policy.

Some comments indicated that the authors misunderstood what was shared in the EA, imploring us to not build dams in the National Parks. Dam construction is not proposed, nor is a National Park involved. Others commented on the EA produced by the Montana Department of Natural Resources written under the Montana Environmental Policy Act, instead of on the EA we conducted for Terms and Conditions for the City of Missoula to breach McKinley Lake Dam. Some commentors objected to the use of heavy equipment, making many helicopter trips, and destroying the wilderness. A local wilderness advocacy group encouraged members to comment on the project, and many form letters were received which indicated an unfamiliarity with the content of the Forest Service EA. Contrary to the understanding indicated in the contents of these form letters, heavy equipment is not proposed for use in the

alternative we carried forward, helicopter use is very limited, and destruction of wilderness values is not anticipated. In fact, evidence of man's influence on the site will be lessened after partial removal of the dam structure. The full set of comments and responses are here: [Lolo National Forest - Home \(usda.gov\)](https://www.usda.gov/land-management/forests/loco-national-forest).

The advocacy group asserted that the job could be done with ten men in 30 days, but this group did not provide any proposal with worksheets or calculations for this dam. They did provide case studies, which I reviewed. Some were relevant, some were not. Each project has its own considerations. I visited McKinley Lake Dam in July 2023, and I am confident in the findings made by an engineering firm whose consultants have been to the site and assessed this dam's particular characteristics, as well as the findings by my own resource and wilderness specialists.

Findings required by other laws and regulations applicable to the decision at the time of the decision

Wilderness Act of 1964

The Chief may authorize occupancy and use to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, helispots may be used to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources (36 CFR 293.6(c)). Breaching/decommissioning the McKinley Lake Dam is an action to protect and administer resources in the Wilderness. A minimum requirements analysis for this project was used to compare alternative methods of implementing the project, allowing us to determine the minimum tools needed to complete the project in one field season. Traditional tools were considered for feasibility for each task. The MRAF (Appendix C) details this consideration. The Chief may permit, subject to such restrictions as he (they) deem(s) desirable, the landing of aircraft and the use of motorboats at places with any Wilderness where these uses were established prior to the date the Wilderness was designated as a unit of the National Wilderness Preservation System (36 CFR 293.6(d)). Previous easement holders Montana Power Company/Mountain Water used helicopters to access this dam prior to and after 1980, when the Rattlesnake Wilderness was designated. (A Montana Power Co. helicopter crashed there in 1977, as reported in the *Missoulian* on 9/6/1977). No road reaches this remote lake; therefore, it is reasonable to assume that yearly maintenance checks were carried out with helicopter access, as the City of Missoula has continued to do.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall 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 (36 CFR 251.53(i) and 293.13). This Decision Notice, when signed, will be that permit, along with the proposed terms and conditions limiting that access.

The City of Missoula holds such a valid occupancy. The terms and conditions are reasonably necessary to preserve the Rattlesnake Wilderness. The City will relinquish the easement for this dam and their water rights for McKinley Lake (76M 26367 00) when the decommissioning is completed and the area is stabilized, ending their valid occupancy at McKinley Lake.

Rattlesnake National Recreation and Wilderness Area Act of 1980

Water Rights Provision Language:

Section 4. “Nothing in this Act shall be construed to permit the Secretary to affect or diminish any water right which is vested under either State or Federal law at the time of enactment of this Act, nor the rights of the owner of such water right to customary and usual access, including necessary motorized use over and along existing roads and trails to any facilities used in connection therewith, and the right to operate and maintain the facilities.”

Consistent with the Wilderness Act of 1964 and the Rattlesnake National Recreation and Wilderness Area Act of 1980, this Decision does not diminish any water rights and recognizes customary and usual access with reasonable terms and conditions imposed for the decommissioning of McKinley Lake Dam.

Endangered Species Act

Under provisions of this Act, Federal agencies are directed to seek to conserve endangered and threatened species and to ensure that actions are not likely to jeopardize the continued existence of any of these species. The U.S. Fish and Wildlife Service provided a species list which required evaluating for this project. The McKinley Lake Dam Terms and Conditions are consistent with the Endangered Species Act. Pursuant to Section 7(c) of the Act, effects to grizzly bear, Canada lynx and lynx critical habitat, wolverine and whitebark pine were documented in biological assessments, which were transmitted to the US Fish and Wildlife Service. Biological assessments for bull trout and yellow-billed cuckoo resulted in findings of “no effect”. This decision will not be signed until consultation is completed; consultation is expected to be completed in the spring of 2024.

National Forest Management Act

The Lolo Forest Plan provides management direction for the Rattlesnake National Recreation and Wilderness Area, identified as Management Area 12. The maximum party size is 10 persons and 10 horses. The terms and conditions comply with this direction. See EA page 10.

National Historic Preservation Act

A Memorandum of Agreement has been drafted and sent to the State Historic Preservation Office.

Expected implementation date

It is expected that the City of Missoula will undertake the breaching of McKinley Lake Dam as soon as the snow has melted from the site, which is estimated to occur any given year mid to late June. These terms and conditions will be in effect immediately.

Pre-decisional Administrative review opportunities

Electronic copies of the McKinley Lake Dam Decommissioning Terms and Conditions EA are available at: <https://www.fs.usda.gov/project/lolo/?project=63564>. The supporting project file is available for review online.

The responsible official for this decision is Lolo Forest Supervisor, Carolyn Upton. Individuals or organizations who submitted specific, written comments in response to the scoping period have standing to object under 36 CFR 218, Subparts A and C.

Issues raised in objections must be based on previously submitted timely, specific, written comments regarding the project unless the issue is based on new information arising after the designated comment opportunities.

The following address should be used for objections sent by regular mail to:

Objection Reviewing Officer
USDA Forest Service, Northern Region
P.O. Box 7669
Missoula, MT 59807

Objections sent by private carrier or hand delivery must go to:

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Office hours are Monday through Friday, 8:00am to 4:30pm, excluding federal holidays.

Electronic objections must be submitted

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=63564> with McKinley Lake Dam in the subject line. Electronic submissions must be submitted in a format that is readable with optical character recognition software (e.g., Word, PDF, Rich Text) and be searchable. An automated response should confirm your electronic objection has been received.

The objection must meet the content requirements of 36 CFR 218.8(d) and include the following information:

- The objector's name and address, with a telephone number or email address, if available;
- A signature or other verification of authorship upon request (a scanned signature for email may be filed with the objection);
- When multiple names are listed on an objection, identification of the lead objector as defined in 36 CFR 218.2 (verification of the identity of the lead objector shall be provided upon request);
- The name of the project being objected to, the name and title of the responsible official, and the name of the national forest and ranger district on which the project will be implemented;
- A description of those aspects of the project addressed by the objection, including specific issues related to the project and, if applicable, how the objector believes the environmental analysis of draft decision specifically violates the law, regulation, or policy; suggested remedies that would resolve the objection; and supporting reasons for the reviewing officer to consider; and
- A statement that demonstrates the connection between prior specific written comments on the particular project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity for formal comment. With certain exceptions (36 CFR 218.8(b)), all documents referenced in the objection must be included with the objection.

An objection, including attachments, must be filed with the appropriate reviewing officer within 30 calendar days following publication of the legal notice of the objection filing period in the newspaper of record, the *Missoulian*. The publication date in the newspaper of record is the exclusive means for

calculating the time to file and objection. Objectors should not rely upon the dates or timeframe information provided by any other source. It is the objector's responsibility to ensure objections are available for public inspection during and after the objection process. Responses that do not adhere to these requirements make review of an objection difficult and are conditions under which the reviewing officer may set aside an objection pursuant to 36 CFR 218.10.

Contact Information

For more information about the McKinley Lake Dam Decommissioning Terms and Conditions, contact Project Leader, Kim Smolt at 406-360-8996 or kimberly.smolt@usda.gov.

Approved by:

CAROLYN UPTON

Lolo Forest Supervisor

Date