

I. RECOMMENDATION SUMMARY

The following are summaries of recommendations found in Sections V and VI below. The page number of the full recommendation is noted in each instance.

A. BASIN CLOSURE (Page 43)

The legislature should close the upper Clark Fork River Basin to the issuance of most new surface and ground water use permits and reservations. The area closed should include the entire Clark Fork and Blackfoot River drainages above Milltown Dam. The closure is not intended to affect water uses that do not require a water permit. It should be conditioned so that it would not preempt new permits for the development of:

- 1) Storage for beneficial uses;
- 2) Stock water;
- 3) Ground water for domestic use;
- 4) Expansion of zero-consumptive hydropower generation at existing projects; and
- 5) Superfund remedies, except for dilution, required by the U.S. Environmental Protection Agency for Superfund sites designated as of January 1, 1994.

"Domestic use" means use of water common to family homes, including use for culinary purposes, washing, drinking water for humans and domestic pets, and irrigation of a lawn or garden of less than 1 acre, not to exceed a total of 3.5 acre-feet per year. The term includes municipal uses for expanded domestic use but does not include commercial or industrial use.

The exemption for Superfund remedies should expire after five years on January 1, 2000, so that applications for new water rights permits for this purpose would have to have been filed on or before December 31, 1999.

The closure and the exemptions will be reviewed by the on-going basin-wide committee every five years, and necessary changes will be recommended to the legislature. The closure can be modified or ended by action of the legislature after the review.

B. ON-GOING WATER PLANNING AND MANAGEMENT MECHANISM (Page 45)

The legislature should provide for an on-going basin water planning and management mechanism including a basin-wide committee and watershed committees. The mechanism should not be vested with legal authority to compel any action by any water user or water interest. Its purposes should, instead, include:

- 1) Providing a forum for all interests to communicate about water issues;
- 2) Providing education about water law and water management issues;
- 3) Identifying short-term and long-term water management issues and problems and alternatives for resolving them;
- 4) Facilitating resolution of water related disputes via consensus-based collaborative processes including mediation;
- 5) Providing coordination with other basin management and planning efforts, such as county drought committees and the Tri-State Section 525 Water Quality Implementation Council;

- 6) Advising the government agencies about water management and permitting activities;
- 7) Consulting with the basin's local governments; and
- 8) Reporting periodically to some entity with water management authority such as the legislature.

For the first two years the members of the basin-wide committee will be appointed by the Director of the Department of Natural Resources and Conservation. Members will include representatives of the following local basin water interests: agriculture organizations; conservation districts; environmental organizations; industries; local, state, and federal governments; reservation applicants; utilities; and water user organizations. The on-going basin-wide committee will recommend modifications of the selection process to the 1997 Legislature if another method is identified that better ensures local input to member selection while maintaining the broad range of member representation of basin water users. The basin-wide committee will continue to decide the membership of watershed committees.

C. PROTECTION OF EXISTING WATER RIGHTS (Page 46)

Any action taken by the legislature or any executive branch agency in response to this plan must be predicated on preserving existing water rights, permits and certificates in effect as of July 1, 1995.

D. WATER ADJUDICATION SYSTEM (Page 46)

The Montana Reserved Water Rights Compact Commission should make the U.S. Forest Service a high priority among the federal agencies in actively negotiating a reserved water rights compact. Further, if the commission takes a geographical approach to the Forest Service's reserved water rights claims, the Rock Creek drainage should be studied as a test case of a basin where Forest Service claims are downstream of state-based private water rights claims.

E. WATER STORAGE (Page 48)

1. Structural Storage

The on-going basin-wide committee will continue the investigations of the priority new and expanded existing water storage sites identified in the Upper Clark Fork River Basin Steering Committee study of possible increases of multiple use water storage in the basin. In particular, it will identify the potential beneficiaries of and a funding mechanism for these priority sites.

The Steering Committee was unable to consider and make recommendations concerning the existing Georgetown-Storm-Silver Lake system because ownership of the facilities and water rights associated with it were clouded by litigation. When this litigation is resolved, this system should be studied to determine if it contains unused storage capacity that might benefit basin water users.

The on-going basin-wide committee should also create some means to examine additional storage options in the basin as they arise.

2. Nonstructural Storage

The on-going basin-wide committee should continue to support the Flint Creek return flow study to encourage better understanding and management of return flows to benefit in-stream and diversionary water uses. The on-going committee should promote similar studies of the role of return flows in watersheds throughout the basin.

F. WATER QUALITY (Page 49)

1. Toxic Metals and Stream Dewatering

Proposed new storage or other management activities that could change the flow regime in the Clark Fork River must incorporate careful consideration of impacts on water quality and, particularly, toxic metal concentrations.

2. Nutrient Pollution

The on-going basin-wide committee will:

- a. Encourage and assist other basin communities that have not already done so to ban the sale of phosphate detergents;
- b. Continue to encourage and assist the City of Deer Lodge, the National Park Service, and the Department of Health and Environmental Sciences (DHES) in implementing this land application project, and encourage other communities such as Butte, Galen, Warm Springs, Drummond, Philipsburg and Missoula to evaluate alternatives to direct discharge of their municipal waste water; and
- c. Encourage Department of Natural Resources and Conservation (DNRC) to resolve water rights questions surrounding land application.

3. Non-Point Pollution Strategy

The on-going basin-wide committee will continue to encourage upper Clark Fork Basin watershed committees to participate in the development of voluntary, local non-point pollution control strategies and will provide assistance when requested and able to do so.

G. FISHERY (Page 51)

The on-going basin-wide committee and watershed committees will continue to provide a communications link through which the Department of Fish, Wildlife, and Parks (DFWP) and willing landowners can discuss the opportunities for leasing water, for cooperative storage projects, for implementing the trial in-stream flow program outlined in this plan, or for otherwise arranging to relieve dewatered stream sections. The DFWE should continue to seek willing landowners to help solve dewatering problems to improve stream habitat on private land. It will also continue to utilize River Restoration Program funds (earmarked fishing license revenue) and fish kill mitigation money (ARCO settlement in 1989 fish kill) to fund habitat improvement projects on private land.

H. IN-STREAM FLOW PILOT STUDY (Page 53)

The legislature should authorize a ten year in-stream flow pilot study in the upper Clark Fork River Basin. The study will test allowing a public or private entity to lease an existing water right for instream flows from a willing lessor, or allowing an existing right holder to convert an existing right to an in-stream use, and then protect the lease

or conversion against appropriation by junior users for the period of the study. To obtain and protect a lease for in-stream flows or to convert an existing right to an in-stream use in a specific stream reach, an entity would be required to proceed through the water rights change process and demonstrate that no other water right holder would be adversely affected by the lease or conversion. The pilot study will have a termination date.

The legislature should change state law so that the cost of objecting by prevailing parties in all water rights change processes will be paid by the non-prevailing party.

I. WATER RESERVATIONS (Page 54)

The legislature should continue the current suspension of Granite Conservation District's (GCD) and the Department of Fish, Wildlife and Park's (DFWP) reservation applications until such time as the basin closure is significantly modified or terminated. The May 1, 1991 priority date for these applications previously established by the legislature should remain intact during this period. If a future basin closure review recommends either that the closure be terminated or that the exemptions be significantly modified, the GCD and DFWP should retain the right to renew their reservation applications at the end of the closure period without loss of the May 1, 1991 priority date. Their renewals could include modification to their original applications if warranted by changed circumstances without loss of the May 1, 1991 priority date so long as the water quantity to be reserved does not exceed the amount in the original reservation applications and the location of the water to be reserved is not changed from the original application.