

MINIMUM-FLOW INSTREAM RESERVATIONS
FOR STATE AGENCIES

110. Subject to the conditions stated below in paragraphs No. 112 through 114, the Applicant, Montana Fish and Game Commission, pursuant to Application No. 17, is granted minimum-flow instream reservations as identified in subparagraphs (a) through (m) below.

(a) For the lower Yellowstone River, defined as that portion of the river at Sidney, Montana, the Montana Fish and Game Commission is granted an instream reservation at this part of the stream equal to the eightieth percentile flow less depletions. An approximation of the reservation, based on existing streamflow records as measured at the U.S. Geological Survey (herein USGS) gauging stations at Sidney, is shown in Table 0-1.

(b) For the Powder River, at its mouth, the Montana Fish and Game Commission is granted a ninetieth percentile flow instream reservation. An approximation of the reservation, based on existing streamflow records as measured at the USGS gauging stations at Locate, is shown in Table 0-2.

(c) For Rosebud Creek, the Montana Fish and Game Commission is granted the eightieth percentile flow instream reservation from Cottonwood Creek to the Yellowstone River.

(d) For the Tongue River at the inlet to the present Reservoir, the Montana Fish and Game Commission is granted an instream reservation of 244,799 a³/y (Table 0-3a).

(e) For the Tongue River at its mouth, the Montana Fish and Game Commission is granted an instream reservation of a minimum flow of 75 cfs. (Table 0-3b).

(f) For Hanging Woman, Otter, and Pumpkin Creeks, the Montana Fish and Game Commission is granted a minimum-flow instream reservation equal to the historic minimum monthly flows for these streams; Hanging Woman Creek from the mouth of the East Fork to the Tongue River; Otter Creek, from the mouth of Bear Creek to the Tongue River; and Pumpkin Creek, from the mouth of Deer Creek to the Tongue River.

(g) For the Big Horn River at its mouth, the Montana Fish and Game Commission is granted an instream reservation equal to 2,477,987 acre-feet per year. An approximation of the reservation is shown in Table 0-4.

(h) For the lower middle Yellowstone River, defined as that part of the river at the City of Miles City, Montana, the Montana Fish and Game Commission is granted an instream reservation at this point of the stream reach equal to the eightieth percentile monthly low flows less depletions to that point. An approximation of the reservation, based on existing streamflow records as measured at the USGS gauging station at Miles City is shown in Table 0-5.

(i) For the middle Yellowstone River defined as that part of the Yellowstone River at the City of Billings, Montana, the Montana Fish and Game Commission is granted an instream reservation at this part of the stream equal to 3,914,455 acre-feet per year. An approximation of the reservation based on USGS gauging data at Billings is shown in Table 0-6.

(j) For the Clarks Fork Yellowstone River, the Montana Fish and Game Commission is granted an instream reservation equal to the ninetieth percentile monthly flows for the months of January, February, March, April, May, October, November and December, and an instream reservation equal to the seventieth percentile for the months of June, July, August, and September.

(k) For the following tributaries of the Clarks Fork River of the Yellowstone, the Montana Fish and Game Commission is granted an instream reservation for the eighty-fifth percentile of the flows of the various streams:

- (1) Butcher Creek - Headwaters to West Butcher Creek to mouth
- (2) Willow Creek - Forest boundary to the Cooney Reservoir
- (3) Red Lodge Creek - Custer National Forest to the Cooney River
- (4) Clear Creek - Headwaters to mouth
- (5) Dry Creek - Headwaters to mouth
- (6) Rock Creek - Custer National Forest boundary to mouth

(7) Sage Creek - Headwaters to Crow Reservation

(8) Bluewater Creek - Headwaters to mouth

(1) For the Stillwater River at its mouth, the Montana Fish and Game Commission is granted an instream reservation for the ninetieth percentile flow of the river. This amounts to 379,795 acre-feet per year. (Table 0-7).

(m) For the following tributaries of the Stillwater River, the Montana Fish and Game Commission is granted an instream reservation for the eighty-fifth percentile of the flows of the various streams:

(1) Castle Creek - Mouth to 1,500 feet above Picket Pin Creek

(2) Picket Pin Creek - Mouth to mouth of Swamp Creek

(3) West Fork of Stillwater - Mouth to Castle Creek to Sweet Grass-Stillwater County line to Tumble Creek

(4) Little Rocky Creek - Mouth to Forest Service road #1414 crossing

(5) West Fishtail Creek - East Fishtail Creek to Richmond-Kennedy Dam

(6) East Fishtail Creek - West Fishtail Creek to its East Fork

(7) Fishtail Creek - From the confluence of east and west Fishtail Creek to mouth

(8) West Rosebud Creek - Custer National Forest boundary to Fiddler Creek to mouth

(9) East Rosebud Creek - Custer National Forest boundary to West Rosebud Creek

(n) For Bridger Creek from the headwaters to the Krone Ditch headgate and for Lower Deer Creek from the headwaters to the Interstate Highway 90, and for Upper Deer Creek from the headwaters to a point upstream from the Interstate 90 bridge, and for Sweet Grass Creek from the Forest Service boundary to the mouth the Montana Fish and Game Commission is granted an instream reservation equal to the ninetieth percentile flow of the various streams.

(o) For the Boulder River at Big Timber, the Montana Fish and Game Commission is granted an instream reservation equal to 194,163 acre-feet of water per year. This reservation is shown in Table 0-8. For the Boulder River at Contact, the Montana Fish and Game Commission is granted an instream reservation equal to 137,120 acre-feet of water per year. The reservation is shown in Table 0-9.

(p) For the East Boulder River at its mouth, the Montana Fish and Game Commission is granted an instream reservation equal to 23,146 acre-feet of water per year with an approximate monthly flow rate as shown in Table 0-10.

(q) For the West Boulder River at its mouth, the Montana Fish and Game Commission is granted an instream reservation equal to 74,853 acre-feet of water per year with an approximate monthly flow rate as shown in Table 0-11.

(r) For Big Timber Creek at its mouth, the Montana Fish and Game Commission is granted an instream reservation of 28,267 acre-feet per year with approximate monthly flows as shown in Table 0-12.

(s) For the tributaries of the Yellowstone River between the Shields and Boulder River listed below, the Montana Fish and Game Commission is granted an instream reservation for the fiftieth percentile of the stream flow for the months of January, February, March, April, October, November and December, and the ninetieth percentile flow for the months of May, June, July, August, and September.

(1) Mission Creek - Mouth to Little Bear Draw

(2) Little Mission Creek - Mouth to Little Mission Forks

(t) For the Shields River near Wilsall, the Montana Fish and Game Commission is granted an instream reservation of approximately the ninetieth percentile flow, which amounts to 21,764 acre-feet per year. The approximate monthly flows are shown in Table 0-13. For the Shields River near Clyde Park, the Montana Fish and Game Commission is granted an instream reservation of approximately the ninetieth percentile flow, which amounts to 35,434 acre-feet per year. The approximate monthly flows are shown in Table 0-14. For the Shields River at its mouth, the Board grants a ninetieth percentile flow.

(u) For the following streams in the Shields River Drainage, the Montana Fish and Game Commission is granted an instream reservation for the fiftieth percentile:

- (1) Smith Creek - From mouth to Bitter Creek
- (2) Flathead Creek - From mouth to Muddy Creek and from Muddy Creek to Cache Creek and from Cache Creek to South Fork of Flathead Creek
- (3) Cottonwood Creek - From mouth to Little Cottonwood Creek and from Little Cottonwood Creek to Trespass Creek
- (4) Rock Creek - From mouth to Forest Service West Boundary in Section 8 and from Forest Service West Boundary in Section 8 to Smeller Creek
- (5) Brackett Creek - From mouth to Sheep Creek and Sheep Creek to Skunk Creek and Skunk Creek to one mile up north, middle and south forks

(v) For the following tributaries of the Yellowstone River, the Montana Fish and Game Commission is granted an instream reservation of the twentieth percentile of the flow for the months of January, February, March, April, October, November, and December, and for the fiftieth percentile of the flow for May, June, July, August and September:

- a) Bear Creek - From mouth to the mouth of North Fork of Bear Creek and North Fork of Bear Creek to Fish Creek
- b) Cinnabar Creek - From mouth to Cottonwood Creek and Cottonwood Creek to Forest Service Boundary at Township 8 South, Range 7 West, Section 32
- c) Mol Heron Creek - From mouth to Cinnabar Creek and Cinnabar Creek to Yellowstone Park boundary

- d) Cedar Creek - From mouth to Second Fork of Cedar Creek and from Second Fork to North Fork
- e) Tom Miner Creek - From mouth to Canyon Creek and Canyon Creek to Trail Creek
- f) Rock Creek - From mouth to Steele Creek
- g) Big Creek - From mouth to Millfork Creek and Millfork Creek to Bark Cabin Creek
- h) Six Mile Creek - From mouth to the north fork of Six mile Creek
- i) Fridley Creek - From mouth to Miller Creek and from Miller Creek to Needle Creek
- j) Eight Mile Creek - From mouth to Big Draw and Big Draw to North Fork of Eight Mile Creek
- k) Mill Creek - From mouth to the East Fork
- l) Trail Creek - From mouth to West Pine Creek and West Pine Creek to the south boundary of Section 35.
- m) Suce Creek - From mouth to Lost Creek
- n) Coke Creek - From mouth to Minor Creek
- o) Billman Creek - From mouth to the mouth of Coke Creek and Coke Creek to Fork South of NE corner, Section 20
- p) Fleshman Creek - From mouth to Perkins Creek

(w) For the following Spring Creeks of the upper Yellowstone River, the Montana Fish and Game Commission is granted an instream reservation for the tenth percentile flow of the streams for January, February, March, April, October, November and December, and for the fiftieth percentile flow for May, June, July, August and September:

- a) Armstrong Spring Creek - From mouth or origin
- b) Nelson Spring Creek - From mouth to origin
- c) McDonald Spring Creek - From mouth to northern boundary of Section 32

d) Emigrant Spring Creek - From mouth to origin

(x) For the Yellowstone River from Gardiner through Livingston, the Montana Fish and Game Commission is granted an instream reservation at Livingston for approximately the twentieth percentile flow for January, February, March, April, October, November and December, and for approximately the ninety-fifth percentile flows for May, June, July, August and September, plus the dominant discharge. The approximate monthly flow of this reservation is shown in Table 0-15.

111. Subject to the conditions stated below in paragraphs 112 through 144, the Applicant, Montana Department of Health and Environmental Sciences is granted the following instream reservations for the Yellowstone River:

(a) An instream reservation at Sidney, Montana, which is equal to the eightieth percentile of the flow of the Yellowstone River less depletions in the Basin above Sidney. The approximate monthly flows of this reservation are shown in Table 0-1.

(b) An instream reservation at Miles City, Montana, which is equal to the eightieth percentile flow less depletions in the Basin above and including Miles City. The approximate monthly flows of this reservation are shown in Table 0-5.

(c) An instream reservation at Billings, Montana, which is equal to 3,914,455 acre-feet of water per year of the Yellowstone River. The approximate monthly flows of this reservation are shown in Table 0-6.

(d) An instream reservation on the Yellowstone River at Livingston, Montana, which is equal to approximately the twentieth percentile flow of the Yellowstone River for the months of January, February, March, April, October, November and December, and equal to approximately the ninety-fifth percentile flows of the Yellowstone River for the months of May, June, July, August and September. In addition the dominant discharge is granted. The approximate monthly flow is shown in Table 0-15.

112. For those certain streams or reaches where minimum-flow instream reservations or portions thereof overlap, the reservants shall possess such reservations or portions thereof jointly.

113. The reservation is ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

114. The reservation is ordered adopted subject to all existing and/or inchoate senior water rights in the source of supply, including but not limited to any decreed rights, or federal or Indian reserved rights, but not subject to any right appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 39-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit application suspended during the Yellowstone Moratorium.

115. The reservation is intended to run concurrently with and overlap, rather than run consecutively with, any other right to the instream use of water already possessed by the reservant prior to the effective date of the adoption of the reservation.

116(a). For those subject streams and reaches where at least ten consecutive years of standard U.S. Geological Survey (hereinafter USGS) gauging records exist, the Montana Department of Natural Resources and Conservation (hereinafter DNRC) shall within one year of the effective date of the adoption of these minimum-flow instream reservation convert the minimum-flow instream reservation quantities into cubic feet of water per second and acre-feet of water per month such conversions to be performed upon as many streams, reaches, or portions thereof as practicable, and to be based upon the entire period of record. Upon completion, DNRC shall submit such conversions to the Board for confirmation by the Board.

(b) For those subject streams and sites lacking ten consecutive years of acceptable streamflow records, the reservants shall mutually and cooperatively and with the DNRC develop and submit to the Board within five years of the effective date

of the adoption of the minimum-flow instream reservation a plan to convert the minimum-flow instream reservation quantities into cubic feet of water per second and acre-feet of water per month. Each reservant need cooperate only in that portion of the plan which pertains to that reservant's instream reservation location. The Board shall approve, modify, or deny the plan. The plan shall include the following:

- (1) A listing of any new stream-gauging stations in the Yellowstone Basin which are essential in obtaining streamflow data in cubic feet of water per second and acre-feet of water per month. In determining mutually beneficial sites, the reservants shall seek technical advice or assistance from the DNRC and the SWS. The plan shall identify sites for new gauges which are needed, the reach of the stream to which each gauging station applies, the types of gauges to be installed, installation schedule, cost estimates, the agency responsible for operating and maintaining the gauges, and the agencies which will benefit from the additional gauging records.

- (2) A listing of the proposed future periods of record to be used for each new gauge in the conversion plan. At least ten consecutive years of gauging records obtained using standard USGS methods and analysis of records using standard USGS methods will be acceptable. Upon prior approval of the Board, differing periods of record and/or different gauging methods may be used. All gauging data shall be adjusted to the 1978 level of development.
- (3) A listing of streams or portions of streams where the alternative conversion method, hydrologic modeling techniques, will be used in converting minimum-flow instream reservation quantities into cubic feet of water per second and acre-feet of water per month. Upon approval of the Board, hydrologic modeling techniques may be used for ungauged streams or sites, or for streams with less than ten consecutive years of record. In developing this portion of the plan, the reservants shall seek technical assistance and advice from the DNRC and from the USGS to determine appropriate streams and methods. The plan shall specify modeling techniques, the reach of stream to which modeling will be applied, schedules, cost estimates, agency undertaking the modeling, and the agencies which will benefit from the modeling results. All modeling results shall be adjusted to the 1978 level of development.
- (4) A listing of proposed allocations of cost and methods of funding all scheduled gauging and modeling efforts, including but not limited to USGS cost sharing agreement.

(c) The reservants shall comply in the intent of the Board that the gauging and modeling efforts serve both as a means of implementing the minimum-flow instream reservations and as a means of improving water measurement capabilities for various data users and purposes throughout the Yellowstone Basin.

(d) Upon approval of the Board, initiation of any portion of the minimum-flow instream reservation quantity conversion effort, including installation of any desired gauging stations, may be accomplished prior to submission of the complete plan.

117. The reservant shall submit to the Board an annual progress report on each anniversary date of the effective date of the adoption of the minimum-flow instream reservation. This requirement shall continue in effect until the completion of all work required to be performed in accordance with paragraph 116, subparagraphs (b) and (d), of this Order. The annual progress report shall set forth accomplishment toward completion of such work, a schedule of anticipated progress, and other information as may be prescribed by the Board. Feasibility studies; detailed economic, engineering, and environmental studies; construction and operating plans; contracts; and any other studies and plans prepared in conjunction with the minimum-flow instream reservation projects shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

118. Any change in use or in place of use shall be made in accordance with Sections 39-892, and 39-893, R.C.M. 1947. The Board shall approve or deny the proposed change, giving due consideration to the requirements of the public interest. No change shall be approved which does not meet all of the pertinent criteria of Section 39-890, R.C.M. 1947, for the issuance of an order adopting a reservation.

- (a) Public notice shall be given of any change in use or place of use of the reservation
- (b) The Board shall allow for the public to comment on any requests and may hold a public hearing.

119. The reservant shall not divert or consume any water reserved for in-stream purposes, except in compliance with all pertinent statutes and rules and upon prior approval of the Board.

120. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

121. Pursuant to Section 89-890(6), R.C.M. 1947, the Board shall periodically, but at least once every ten years, review the reservation, including reports and plans to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify, or revoke the reservation. Circumstances which may evidence the above include, but are not limited to , the following:

- (a) Inadequacy of reservation facilities;
- (b) Noncompliance with Montana or federal statutes or environmental standards;
- (c) Incompatibility with local or regional planning efforts;
- (d) Use of the reserved water for other than beneficial use as defined by Montana law;
- (e) Noncompliance with any of the conditions of this Order.

122. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

123. Conditions of this Order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

124. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

125. Minimum-flow instream reservations are considered to be put to beneficial use at the time of the effective date of the adoption of this Order.

INSTREAM RESERVATION

Yellowstone River at Sidney
(80%ile Less Depletions through Sidney)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	3,738	229,831
February	4,327	240,281
March	6,778	416,711
April	6,808	405,031
May	11,964	735,528
June	25,140	1,495,644
July	10,526	647,090
August	2,670	164,166
September	3,276	194,917
October	6,008	369,377
November	5,848	347,920
December	<u>3,998</u>	<u>245,814</u>
Total Reservation	(Av. 7,586 cfs)	5,492,310

TABLE 0-1

INSTREAM RESERVATION

Powder River at its Mouth
 (90%ile Flow Based on USGS Data at Locate)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	31.9	1961
February	71.8	3986
March	291	17,888
April	347	20,643
May	424	26,064
June	184	10,946
July	70	4303
August	14.5	891
September	8.87	527
October	9.43	579
November	61.6	3664
December	<u>61</u>	<u>3749</u>
Total	(Av. 131 cfs)	95,201 af/y

TABLE 0-2

INSTREAM RESERVATION

Tongue River
At Inlet to Present and/or Future Reservoir

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	160	9,836
February	160	8,883
March	200	12,294
April	200	11,898
May (1-20)	700	27,762
May (21-31)	1,200	26,175
June	1,350	80,312
July	360	22,130
August	100	6,147
September	100	5,949
October	200	12,294
November	200	11,898
December	<u>150</u>	<u>9,221</u>
Total	(Av. 338 cfs)	244,799 af/y

TABLE 0-3a

INSTREAM RESERVATION

Tongue River at the Yellowstone
(Minimum 75 cfs at its Mouth)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	75	4,611
February	75	4,164
March	75	4,611
April	75	4,462
May	75	4,611
June	75	4,462
July	75	4,611
August	75	4,611
September	75	4,462
October	75	4,611
November	75	4,462
December	<u>75</u>	<u>4,611</u>
Total Reservation	(Av. 75 cfs)	54,289 af/y

TABLE 0-3b

INSTREAM RESERVATION
Bighorn River at its Mouth

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	3,300	202,863
February	3,200	177,679
March	4,000	245,895
April	3,600	214,167
May	3,800	233,600
June	5,200	309,352
July (1-20)	3,800	150,710
July (21-31)	3,200	69,802
August	2,800	172,127
September	2,600	154,676
October	2,700	165,979
November	3,100	184,421
December	<u>3,200</u>	<u>196,716</u>
Total Reservation	3,422	2,477,987

TABLE O-4

INSTREAM RESERVATION

Yellowstone River at Miles City
 (80%ile Flows Less Depletions through Miles City)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	3,829	235,400
February	3,998	221,995
March	6,359	390,929
April	5,848	347,957
May	12,280	754,904
June	26,188	1,557,980
July	10,278	631,856
August	3,862	237,415
September	4,338	266,682
October	5,849	359,578
November	5,508	327,730
December	<u>4,009</u>	<u>246,466</u>
Total Reservation	(Av. 7,705 cfs)	5,578,892 af/y

TABLE 0-5

INSTREAM RESERVATION

Yellowstone River at Billings
(DFC Request Less Depletions through Billings)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>	<u>APPROX. % ile</u>
January	2,489	153,058	50
February	2,488	138,186	55
March	2,889	177,648	50
April	3,589	213,541	55
May (1-20)	5,143	204,006) 85 for May
May (21-31)	12,224	266,658	
June (1-7)	17,268	239,708) 85 for June
June (8-30)	19,068	869,707	
July (1-20)	10,310	408,904) 85 for July
July (21-31)	5,510	120,194	
August	4,090	251,457	65
September	3,415	203,185	65
October	3,589	220,680	50
November	3,489	207,591	50
December	<u>2,789</u>	<u>171,501</u>	50
Total of Months	(Av. 5,312 cfs)	3,846,025	
Plus Dominant Discharge of	34,507 cfs	+ 68,430 af/y for one 24-hour period	
Total Reservation	(Av. 5,406 cfs)	3,914,455 af	

TABLE 0-6

INSTREAM RESERVATION
 Stillwater River at Mouth
 90%ile Flow

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	200	12,294
February	205	11,382
March	210	12,909
April	225	13,385
May	560	34,425
June	2,075	123,447
July	1,030	63,318
August	480	29,507
September	480	28,555
October	380	23,360
November	225	13,385
December	<u>225</u>	<u>13,831</u>
Total Reservation	(Av. 524 cfs)	379,795 af/y

TABLE 0-7

INSTREAM RESERVATION
Boulder River at Big Timber

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	80	4,920
February	80	4,441
March	80	4,920
April	80	4,760
May	300	18,445
June	1,690	100,540
July	490	30,122
August	60	3,690
September	95	5,650
October	130	7,995
November	80	4,760
December	<u>80</u>	<u>4,920</u>
Total Reservation	(Av. 269 cfs)	195,163 af/y

TABLE 0-8

INSTREAM RESERVATION
Boulder River at Contact

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	50	3,075
February	50	2,875
March	50	3,075
April	50	2,975
May	150	9,220
June	1,080	64,265
July	380	23,365
August	170	10,450
September	110	6,545
October	85	5,225
November	50	2,975
December	<u>50</u>	<u>3,075</u>
Total Reservation	(Av. 189 cfs)	137,120 af/y

TABLE 0-9

INSTREAM RESERVATION
East Boulder River at Mouth

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	15	922
February	15	832
March	15	922
April	15	892
May	20	1,229
June	165	9,815
July	50	3,073
August	22	1,352
September	20	1,189
October	18	1,106
November	15	892
December	<u>15</u>	<u>922</u>
Total Reservation	(Av. 32 cfs	23,146 af/y

TABLE 0-10

INSTREAM RESERVATION
West Boulder River at Mouth

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	50	3,073
February	50	2,776
March	50	3,073
April	50	2,974
May (1-20)	50	1,983
May (21-31)	300	6,543
June	300	17,847
July (1-20)	300	11,898
July (21-31)	200	4,362
August	75	4,601
September	75	4,462
October	75	4,610
November	60	3,569
December	50	3,073
Total Reservation	(Av. 103 cfs)	74,853 af/y

TABLE 0-11

INSTREAM RESERVATION
Big Timber Creek at Mouth

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	10	615
February	10	555
March	10	615
April	20	1,190
May	85	5,225
June	180	10,710
July (1-20)	100	3,967
July (21-31)	30	655
August	25	1,535
September	20	1,190
October	13	800
November	10	595
December	10	615
Total Reservation	(Av. 39 cfs)	28,267 af/y

TABLE 0-12

INSTREAM RESERVATION

Shields River near Wilsall
 (Approximately 90% Flows, as per USGS Gauging Station at Wilsall)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	7	430
February	7	389
March	9	553
April	24	1,430
May	111	6,824
June	119	7,079
July	27	1,660
August	12	737
September	11	655
October	12	737
November	11	655
December	<u>10</u>	<u>615</u>
Total Reservation	(Av. 30 cfs)	21,764 af/y

TABLE 0-13

INSTREAM RESERVATION

Shields River near Clyde Park
 (Approximately 90%ile Flows as per USGS Gauging Station at Clyde Park)

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>
January	26	1,598
February	29	1,610
March	44	2,704
April (1-15)	93	2,766
April (16-30)	39	1,160
May (1-10)	83	1,645
May (11-20)	137	2,716
May (21-31)	184	4,012
June (1-10)	189	3,747
June (11-20)	157	3,113
June (21-30)	105	2,082
July	22	1,352
August	13	800
September	13	773
October	30	1,845
November	27	1,606
December	<u>31</u>	<u>1,905</u>
Total Reservation	(Av. 49 cfs)	35,434 af/y

TABLE 0-14

INSTREAM RESERVATION
Yellowstone River at Livingston

<u>Month</u>	<u>CFS</u>	<u>AF/Y</u>	<u>APPROX. %</u>
January	1,330	81,760	20
February	1,320	73,292	20
March	1,350	82,989	20
April	2,490	148,132	20
May (1-10)	2,500	49,575) 95 for May
May (11-20)	1,900	37,677	
May (21-31)	4,700	93,202	
June (1-10)	7,700	152,693) 95 for June
June (11-20)	9,000	178,472	
June (21-30)	8,000	158,642	
July (1-10)	5,400	107,083) 95 for July
July (11-20)	3,800	75,355	
July (21-31)	2,500	49,575	
August (1-10)	1,600	31,728) 95 for August
August (11-31)	2,125	88,492	
September	1,555	92,508	95
October	2,350	144,463	20
November	1,790	106,488	20
December	1,490	91,596	20
Total of Months	(Av. 2,553 cfs)	1,843,722 af/y	for one 24-hour period
Plus Dominant Discharge of	18,200 cfs	36,091 af	
Total Reservation	(Av. 2,596 cfs)	1,879,813 af/y	

TABLE 0-15

INSTREAM RESERVATIONS
FOR FEDERAL AGENCIES
AND CONSERVATION DISTRICTS

127. Subject to the conditions stated below in paragraphs No. 127 through 14, the Applicant, the North Custer County Conservation District, pursuant to Application No. 9947-r42M, is granted an instream reservation on the Yellowstone River of 4,000 cfs at the Kinsey Pumping Station near Miles City.

128. Subject to the conditions stated below in paragraphs No. 127 through 14, the Applicant, the United States Bureau of Land Management, pursuant to their Applications, is granted minimum flow instream reservations as identified in paragraphs (a) through (d) below:

(a) For the tributaries of the Little Powder River which include Hay Creek, Allison Creek, Dry Creek, Horse Creek, the North Fork of Bowers Creek, Horse Creek, Wright Creek, the South Fork of Wright Creek, Ranch Creek, Williams Creek, Prairie Creek, an instream reservation is granted of 1 cfs for each named stream.

(b) For the tributaries of the Powder River which include Mizpah Creek, Sheep Creek, the North Fork of Sheep Creek, the South Fork of Sheep Creek, Horse Creek, Meyers Creek, Locate Creek, Archdale Creek, Snow Creek, Cole Creek, Boldon Creek, Dislocate Creek, and Ten Mile Creek, an instream reservation is granted of 1 cfs for each named stream.

(c) For the Little Powder River, an instream reservation of 3 cfs is granted.

(d) No instream reservation is granted for the following: the Powder River, the Tongue River, the Big Horn River, the Clarks Fork of the Yellowstone River, the Boulder River, Bridger Creek, the Stillwater River, Upper Deer Creek, Lower Deer Creek, the Yellowstone River, Bluewater Creek, Bear Creek, Cottonwood Creek, Five Mile Creek, Sage Creek and Cricket Creek.

129. The reservation is ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana Law.

130. The reservation is ordered adopted subject to all existing and/or inchoate senior water rights in the source of supply, including but not limited to any decreed rights or federal or Indian reserved rights, but not subject to any right to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone Moratorium.

131. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior water right in the source of supply as set forth in the proceeding paragraph.

133. The reservant may only appropriate water pursuant to the reservation such times when to so appropriate will not adversely affect any prior water reservation as adopted by the Board.

134. The reservant shall submit to the Board an annual progress report on each anniversary date of the effective date of the adoption of the reservation. This requirement shall continue in effect until the complete development of the reservation. The annual progress report shall set forth accomplishments toward the complete development of the reservation, a schedule of anticipated progress and other information as may be prescribed by the Board. Feasibility studies; detailed economics, environmental, and marketing studies;

; water contracts; and any other studies and plans prepared in conjunction with the reservation projects shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

136. Any change in _____ place of use, use, _____
_____ submitted to and approved by the Board shall be made in
accordance with the procedures established by Sections 89-892 and 89-893, R.C.M.
1947. The Department shall approve or deny the proposed change, giving due
consideration to the requirements of the public interest. No change shall be
approved which does not meet all of the pertinent criteria of Section 89-890,
R.C.M. 1947, for the issuance of an order adopting a reservation.

(a) The Department may provide for a public hearing on any change in
_____ place of use.

137. The DNRC, may with the approval of the Board, issue temporary permits
for the use of reserved water, provided such temporary permits are subject to
the terms and conditions it considers necessary for the protection of the objectives
of the reservation.

138. The reservant shall participate in and adhere to water management
operations that may be implemented in the future by the State of Montana.

139. Pursuant to 89-890(6), R.C.M. 1947, the Board shall periodically, but
at least once every ten years, review the feasibility studies,
environmental statements, and annual reservation, including reports, to ensure
that the objectives of the reservation are being met. Where the objectives of
the reservation are not being met, the Board may at its discretion extend,
modify, or revoke the reservation.

(1) Circumstances which may evidence the above include, but are
not limited to, the following:

- (a) Failure of the anticipated demand for water for the purpose of the reservation to materialize;
- (b) Inadequacy of the reservation facilities;
- (c) Noncompliance with Montana or federal statutes for environmental standards;
- (d) Incompatibility with local or regional planning efforts;
- (e) Use of the reserved waters for other than beneficial use as defined by Montana law;
- (f) Noncompliance with any of the conditions of this Order.

(2) the Board may give notice and provide for a public hearing on whether to extend, modify or revoke a reservation. The public hearing will be held pursuant to the procedures of the Montana Administrative Procedure Act.

140. The reservant shall perfect the reservation by the year 2000 or by such extended period of time as the Board in its discretion may designate.

141. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

142. Unless otherwise stated, conditions of this Order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

143. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

144 a.) Paragraphs No. 110 through 144, granting and conditioning all instream reservations for streams in the Yellowstone River Basin above the mouth of the Bighorn at the Yellowstone River, but excluding the watershed of the Bighorn River, are ordered and adopted effective at 4:13 o'clock P. M. on the 15 day of December, 1978.

Rocil C. Leeding
Chairman, Board of Natural Resources
and Conservation

Wm. J. Bickel
Paula L. May
Wilson J. Clark
Greg E. Huff

1445. Paragraphs No. 110 through 144, granting and conditioning all instream reservations, for streams in the Yellowstone River Basin below the mouth of the Bighorn River at the Yellowstone River, and including the watershed of the Bighorn River, are ordered and adopted effective at 4:21 o'clock P. M. on the 15 day of December, 1978.

Cecil Weeding
Chairman, Montana Board of Natural
Resources and Conservation

Wm. H. T. Bertsche

Robert L. Koss

Wilson F. Clark

Ray H. Hoff