

How Are Instream Flows Protected?



Water Fact Sheets #8

Italicized terms are defined in Fact Sheet #10

The allocation of water in Montana has traditionally focused on the need to satisfy off-stream uses for agriculture, industry, and domestic uses. However, Montana's rivers are well known for their outdoor recreational opportunities and world-class fisheries. Water rights, reservations and leases to keep water instream to protect fisheries, wildlife, and recreational uses have become widespread across the state.

Murphy Rights

In 1969, Jim Murphy of Kalispell sponsored legislation to provide *instream flow* protection for specified rivers in Montana. *Murphy Rights* were approved by the Legislature for 12 of Montana's Blue Ribbon trout streams. These rights have a December 1970 priority date and provide instream flow protection on the following rivers: Madison, Gallatin, Missouri, Smith, Big Spring Creek, Blackfoot, Flathead, West Gallatin, Rock Creek, Yellowstone, Middle Fork Flathead, and South Fork Flathead.

Recreational Water Rights

Recreational water rights are held by the Montana Fish Wildlife and Parks (FWP) to maintain instream flows necessary for public recreational uses. In the Clark Fork and Kootenai Basins, these rights are limited to the Bitterroot River and several lakes in the Clearwater and Blackfoot drainages. In the Upper Missouri River Basin, FWP holds a public recreation claim for 200 cubic feet per second (cfs) in the Beaverhead River from Grasshopper Creek to Clark Canyon Dam, as well as a fish and wildlife claim for 25 cfs from Clark Canyon downstream to the confluence with the Big Hole River. These claims are relatively junior, with priority dates of August 29,

1964, and February 28, 1962, respectively. The FWP also holds a year-round public recreation claim for 1,946,624 *acre feet* in Canyon Ferry Reservoir with a priority date of May 24, 1949.



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Instream Flow Leasing

In 1989, DNRC presented a section for the State Water Plan outlining options and possible strategies to protect instream flows. It created a working group representing diverse interests to review the paper. The Department of Natural Resources and Conservation (DNRC) incorporated some ideas from the working group and presented all the options to the public at public meetings throughout the state.

In 1989, following a summer that saw record low flows across the state, FWP received limited authority to temporarily lease or convert a water right to instream flow. In 1995, the Legislature extended authority to a water right owner to convert their right to instream flow, or lease the water right to a private third party for instream flow. A lease for instream flow may be entered for a term lasting up to 10 years. All leases may be renewed an indefinite number of times, but not for more than 10 years for each term. A lease up to 30 years is allowed if the leased water is made available from the development of a water conservation or storage project.

Changes of Use

Landowners that wish to preserve instream flows on their property also have the option of changing their water right from a consumptive use right to an instream flow right. This process requires the landowner to go through the change process administered by DNRC to ensure that the change of use does not negatively impact other senior water rights. These conversions are limited to a term of not more than 10 years.

State Water Reservations

In 1979, the Yellowstone River Reservations process reserved the FWP instream flow rights for a large number of streams in the Yellowstone Basin. These reservations vary by month, generally following seasonal flow patterns.

In 1992, the FWP was granted water reservations for minimum instream flows for 245 streams or stream reaches in the Upper Missouri River Basin. The reservations are intended to provide some protection to fisheries, wildlife, and recreational use values, and they have a priority date of July 1, 1985. FWP was granted similar flows for 13 streams in the Lower Missouri River Basin.

The Bureau of Land Management (BLM) has instream flow reservations for 31 smaller streams on

BLM lands in the Missouri River headwaters. A summary of BLM reservations is presented in the basin reports. These reservations, which include year-round minimum flows and peak discharges for stream channel maintenance, also have a July 1, 1985, priority date.

Federal Water Reservations

To date, there have been 18 compacts negotiated by the Reserved Water Rights Compact Commission and approved by the Montana Legislature. The Legislature has approved compacts for all of the seven Indian reservations in Montana, as well as for five federal agencies administering federal lands in the state. All of the federal and tribal compacts include some water rights to protect instream flows. Please see the individual compacts for specific information regarding these water rights.

Additional Information can be found at:

Montana State Water Plan:

<http://dnrc.mt.gov/divisions/water/management/state-water-plan>

Approved Water Compacts:

<http://dnrc.mt.gov/divisions/reserved-water-rights-compact-commission/approved-compacts>