

MILK RIVER WATERSHED NEWS

June 2000
VOLUME 3 NUMBER 2

"The June and September issues will focus on the Fort Belknap Reserved Water Right Negotiations."

~The Editor

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Public Meetings Held on Draft Water Rights Compact

By Paul Azevedo

On May 16-18, the Milk River International Alliance (MRIA), in conjunction with the Montana Reserved Water Rights Compact Commission, hosted four public informational meetings on the draft of the Fort Belknap water rights compact. The compact—which is being negotiated between the State of Montana, the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, and the federal government—will settle the Tribes' water right claims in the Milk River Basin. The meetings were designed to provide basin residents with the opportunity to learn more about the compact and proposed mitigation measures. The meetings also provided an opportunity for water users to have their questions answered and to express their concerns to the negotiating parties. Approximately 130 water users attended the meetings, which were held in Havre, Chinook, Malta, and Glasgow. Before the meetings, copies of the draft compact were distributed to libraries, conservation districts, irrigation



Sixty people attended the public informational meeting in Chinook.

districts, and county extension offices in Hill, Blaine, Phillips, and Valley counties.

At each meeting Barb Cosens, legal council for the compact commission, stressed the point that the compact is still being drafted. She noted that the draft does not identify those measures or projects that would mitigate the impacts of the Tribal water rights. Cosens stressed that there are a number of issues still being negotiated between the state, tribal and federal governments. The negotiating parties have not yet

(See Draft on page 2)

Representatives on the Milk River JBC include the following:

Kay Blatter
Hugh Brookie
Melvin Novak
Lee Cornwell
Jack Gist

Chairman
Vice-Chairman
Secretary
Member
Member

Fort Belknap Irr. Dist.
Malta Irr. Dist.
Glasgow Irr. Dist.
Glasgow Irr. Dist.
Alfalfa Valley Irr. Dist.

Casey Kienenberger Member
Knut Kulbeck Member
Bim Strausser Member
Brad Tilleman Member
Steve Tremblay Member

Malta Irr. Dist.
Harlem Irr. Dist.
Paradise Valley Irr. Dist.
Zurich Irr. Dist.
Dodson Irr. Dist.



Draft copies of the Fort Belknap Reserved Water Rights Compact are on display at:

- Fort Belknap Tribal College Library
- MSU at Northern College Library in Havre
- Blaine, Hill, Valley, and Phillips county extension offices, conservation districts, & libraries
- DNRC regional offices in Havre and Glasgow
- Milk River Irrigation District Offices

The Montana Office of the Bureau of Reclamation in Billings pays the cost for printing and mailing this newsletter.

Draft

(Continued from page 1)

agreed on the proposed mitigation measures. Each measure will continue to undergo further study and refinement. According to Cosens, the negotiating parties have agreed to release early drafts of the compact at the request of local water users. Each proposed mitigation measure was described, allowing the public to have a better understanding of them and an opportunity to provide comments.

After presentations by representatives of the Compact Commission and the Bureau of Reclamation, the floor was opened for questions and comments. The two most frequent concerns related to the cost of the mitigation projects and the enforcement provisions outlined in the compact. A number of landowners raised concerns over the cost of the final mitigation measures, noting that they are already paying as much as they can afford. In response, Cosens assured them that, although the cost-sharing agreements had yet to be worked out, no one assumed that the cost of the mitigation would be born by the water users. The negotiating parties realize that Milk River producers can not afford higher assessments on their land. As currently envisioned, funding for the mitigation measures would be sought through a combination of state and federal sources. The compact will contain language allowing the state to opt-out of the agreement if the federal government does not appropriate sufficient funding.

To ensure that all the parties adhere to the provisions of the draft compact, the negotiating parties are proposing the formation of an umbrella organization called the Milk River Authority (MRA). It is being proposed that the nine member Authority will include: two representatives of the Tribes; three from the Joint Board of Control; one from each, Department of Natural Resources and Conservation (DNRC), Bureau of Reclamation, and Bureau of Indian Affairs (BIA); and the ninth

member being selected at large by the other eight members. The two advisory members would be the U.S. Geological Survey and the U.S. Fish and Wildlife Service. The MRA would be responsible for coordinating storage and release of water in the basin, as well as the enforcement of the delivery and distribution of water at diversion points on the mainstem of the Milk River. The MRA would not have the authority to determine water rights. The irrigation districts, BIA, and the Tribes would continue to manage water distribution within canal systems once the water leaves the mainstem of the Milk River.

The proposed compact will not go into effect until the Montana Legislature, Tribal Government, U.S. Congress and the Montana Water Court approve it. The public will have an opportunity to comment on the compact at each phase of the process. According to Cosens, however, the

current negotiation phase is the best time to influence provisions within the compact. The public comment period for the current draft compact will close at the end of July. Comments should be sent to Chris Tweeten at the Montana Reserved Water Rights Compact Commission; PO Box 201601 Helena; MT 59620-1601. You may also call Barbara Cosens or Bill Greiman at the Compact

Commission in Helena, (406) 444-6841. The Compact Commission expects to release another draft in August of 2000.

Kay Blatter, Chairman of the MRIA, stated, "the meetings were informative and our effort to plan and organize them was worthwhile. It is critical for our water users to become informed about the compact and involved in the negotiation process." Asked if the MRIA will organize additional public meetings on the compact, Kay responded, "the MRIA will continue to monitor the progress of the negotiations and would consider organizing another series of meetings in the fall if doing so would be beneficial to the basin water users." ■

"It is critical for our water users to become informed about the compact and involved in the negotiation process."

~Kay Blatter

A Unique Perspective of the Milk River Valley

By Gene Etchart

When Rich Moy asked me to write something about the current water activities in the Milk River Valley, he commented that I should have a unique perspective of this valley because I am a long-time resident here and have served as a member of the Montana Reserved Water Rights Compact Commission for several years. If my view is at all unique, it's primarily because of longevity. My association with irrigated agriculture goes back to 1926 when, as a ten year old, I moved with my family to an irrigated farm at Tampico, just west of Glasgow on the Milk River. Then too, I was a close observer of my brother Mark, a long-time legislator who worked hard on water related matters.

The Milk River Valley has plenty of ongoing problems just as in the past and, unless we all do a very good job at this time, we will have more problems in the future. Some of our problems have been self-inflicted. All of them are real. I am optimistic, however, that they can be solved in a fair and effective fashion if everyone involved pulls together.

My first vivid recollection of irrigated farming at Tampico was that horses provided the main source of power. If the land was not quite level the low spots and high spots in a field were trimmed up with horse drawn scrapers and wooden floats. To my knowledge such things as center pivots, syphon tubes and canvas dams hadn't been invented at that point, or at least weren't in use in Northeastern Montana. Most of the land had not been machine-leveled and to irrigate one had to lead the water a round on the higher ground in ditches and let it spread with the natural slope. It was quite labor intensive and seemed to me that much of the ground being irrigated was land that was, for the most part, natu-

rally flat, and free of trees and brush. In fact, I think those characteristics were the principal consideration in its original classification system. The old timers used rule-of-thumb yardsticks in evaluating land such as, "if it will grow sage brush, it will grow alfalfa."

From about 1960 on, a realization gradually developed that the Milk River Valley was water short. The idea first took hold in the lower reaches and spread upriver only slowly as those above Harlem were reluctant to believe and for quite a while thought the people in the Glasgow and Malta area were crying wolf concerning future water supply. But there is little doubt now that there isn't enough water in the valley to go around on dry years.

Looking back at the earlier years that I can recall, the perception existed that we had plenty of water and everyone sought ways and means to bring more land under production. "Everyone" in this sense truly included everyone: the irrigators, the irrigation districts, the Soil Conservation Service, the state agencies, and, of course, the Bureau of Reclamation. The big land leveling rigs soon showed up on the scene and the government farm programs gave impetus for further land development by cost sharing land leveling, irrigation structures, and providing for engineering and so on. The Bureau of Reclamation issued pumping contracts outside of irrigation district boundaries, which created still more demand for water. The point here is that there's plenty of blame to go around as to how we got into this fix!

"Most of the land had not been machine leveled and to irrigate, one had to lead the water round on the higher ground in ditches and let it spread with the natural slope."

This situation is all the more difficult because key parts of the Milk River system are aging and have lost some of their ability to deliver water. Fresno reservoir suffers from silting while the St. Mary's system needs major repairs and is now only delivering about 85% of its original capacity. Then there are the unquantified Federally Reserved Water Rights

which the Compact Commission is in the process of negotiating with the Ft Belknap Tribes, the Blackfeet Tribe, and the Bowdoin Wildlife Refuge. These reserved water rights have been recognized since the early 1900's, but to most of us they used to be merely a vague distraction not demanding much immediate attention. To fortify this

perception neither the Canadians (with claim on 30% of the total water), nor the Indian Tribes nor other federal entities were demanding all of their water.

All of the aforementioned factors have come together now to remind us that we do have problems which must be addressed in the Milk River Basin soon. Hindsight is always clearer than foresight and while settling the Reserved Water Rights issues might have been simpler 50 years ago, that opportunity is gone and we must face the situation as it exists today.

Every entity at the negotiating table seeks and desires equitable solutions that will let others survive and prosper. It should be borne in our minds that the projected water shortages that we face are shaped by

(See Milk River on page 4)

Milk River

(Continued from page 3)

two components. One is chronic and due to the miscalculations of the past and the whims of weather. The other is the impact from the Tribal Water Rights Compacts which are in the process of negotiation. Other complicating factors, such as the Canadian share of the Milk River

dry cycles, amount to as much as 30% of the needed water. These concerns go beyond compact negotiations but there have been ideas put forward in the past to help alleviate this situation. Some of them include bringing Missouri river water into the system from Virgelle,

of a healthy irrigation system in this region and strongly urge them to help face the financial challenges that lie ahead to improve it.

Also working in our favor is the availability and expertise of the staff of the Compact Commission. They are anxious to help and their focus is now on this valley. We should capitalize on all this attention and not let the opportunity to improve matters slip away. The rapport built with the Tribes and the Federal Agencies is also a positive factor and should be helpful in all future initiatives. We have now, through the Joint Board, a vehicle for coordinated and united efforts in the whole valley. There must be some innovative ideas among our membership, such as small off stream storage, damming oxbows and the like, which could have favorable impacts. And, there have been suggestions for a land-use retirement program similar to CRP which, if used in connection with dry years, could be helpful. Any impact resulting from compact provisions will not be felt immediately and gives us time. Let's use it constructively!

I urge my friends and neighbors in the Milk River Valley to get involved in the Compact negotiations and to view them as an opportunity to clear up uncertainties in our water right matters. I also urge you to recognize that many of the problems we face concerning shortages, regulations and discrepancies between our water use and water rights as filed by the Bureau of Reclamation must be solved outside of the Compact process. The lawyers working for the irrigation districts in our behalf could be enlisted to spearhead such an effort. If we work together toward all these ends, there will be rewards and these rewards can be enjoyed by many future generations who call the Milk River Valley home. ■



Gene Etchart standing next to one of his irrigated alfalfa fields on May 25, 2000.

and the Bowdoin Refuge claims, further cloud the picture.

Put simply, the immediate goal in the water rights negotiation would be to maintain as a minimum, existing water supplies for irrigators in the valley while providing the necessary water to fill the reserved water right demands. Our engineers tell us they can mitigate the development of the Tribes' water right. Many ideas have been advanced to accomplish this. Some of these suggestions would include: enlarging Fresno reservoir; enlarging Nelson reservoir and adding a pump station from the river to facilitate filling in a shorter time, and new storage dams on the Ft. Belknap Reservation.

The previously mentioned mitigation efforts would only maintain the status quo. They would not alleviate any of the existing chronic shortages that we are told could, in worst case

figuring a way to get Fort Peck Lake water into the Glasgow irrigation district, and numerous other suggestions.

I said in the beginning of this article that I was optimistic for the future, even though this would be hard to detect up to this point, but there are some positive aspects to our situation. Let me mention a few.

There are a couple of fairly large storage dams proposed to be built on the Ft. Belknap reservation. If built, these would surely be helpful to the overall situation. The Compacts, when finalized, will remove clouds of uncertainty from our lands and will bring more stability and predictability for the future. It will encourage us to take a fresh look at the situation now and see how we might all work together to improve it. We need to call to the attention of the federal and state governments the economic importance

Fort Belknap Water Rights Negotiations

QUESTIONS AND ANSWERS

Part One--Part two will be continued in the next newsletter

By Reserved Water Rights Compact Commission Staff

Q. What is a reserved water right?

A. A reserved water right is a water right created by federal law when land is reserved for a specific purpose that requires water.

Q. How does a reserved water right differ from a state-based water right?

A. Three primary attributes distinguish reserved and state-based water rights. First, a state-based water right prior to 1973 was created by the act of diverting water to a beneficial use. In contrast, a reserved water right is created by the federal Act, Treaty, or Executive Order creating a reservation of land. Second, the priority date of a state-based water right created prior to 1973 is the date of the diversion to a beneficial use. In contrast, the priority date of a reserved water right is the date of the Act, Treaty, or Executive Order creating the reservation of land. Third, the measure of a state-based right is the quantity of water applied to a beneficial use. In contrast, the measure of a reserved water right is the "purpose" of the reservation, which varies from reservation to reservation. Most reserved water right negotiations focus on the difficulty of quantification of the water rights.

Q. What is the Montana Reserved Water Rights Compact Commission?

A. The Montana Legislature created the nine-member Reserved Water Rights Compact Commission in 1979, the same year that it created the Montana Water Court, as part of the state-wide water adjudication process. The purpose of the Commission is to negotiate on behalf of the State of Montana, with Indian Tribes and federal agencies claiming reserved water rights within the state. While they are being negotiated, the claims of the tribes and federal agencies are suspended from adjudication in the Water Court. A

negotiated settlement must be ratified by the Montana Legislature, the Tribal Council (in the case of Indian reserved rights), and approved by the appropriate federal authorities. If financial contributions to settlement are involved, the compact must go to Congress for approval. The members of the Commission are appointed to four year terms by the two houses of the Legislature, the Governor's office and the Attorney General's office. The Commission has an eleven-member staff in Helena.

Q. What is the adjudication?

A. The Montana Water Court was created to determine the attributes, such as quantity and points of diversion of all pre-1973 appropriative water rights in the State. Water users were required to file claims stating the attributes of their water rights. As the court issues decrees in each of the 85 subbasins in the State, people may object to the claims of their neighbors. Objections may be resolved through settlement or by the court. The end result will be a final decree determining pre-1973 state-based water rights.

Q. How does the Compact process fit with the adjudication?

A. The Commission was formed as part of the adjudication. The legislature recognized that the different attributes and senior nature of tribal water rights could be very difficult and costly to quantify in court. The Commission was established to attempt to negotiate those rights, in part to relieve the financial burden of litigation on water users and in part to try to find practical solutions that would not destroy existing investments in water development when Tribes or federal agencies develop their water. A resulting compact is entered in a decree and subject to objection by other water users

prior to being finalized by the Water Court. If the Commission is unable to reach a settlement, the reserved water right may be litigated before the Water Court.

Q. What was the Winters case?

A. The United States Supreme Court ruled in 1908 in the case of *Winters v. United States*, 207 U.S. 564, that, in creating the Fort Belknap Reservation, the United States had reserved water for the agricultural purpose of the Reservation with a priority of 1888. The Court upheld a lower court injunction against upstream diversion on the Milk River that prevented the Tribes from using their diversion.

Q. Didn't the Winters case determine the reserved water rights of the Fort Belknap Tribes?

A. No. The Winters case involved only the mainstem of the Milk River and the Court granted an injunction. The basis for the injunction was the recognition that the Tribes held a right senior to upstream irrigators. The injunction required that 5000 miners inches (125 cfs) be bypassed to the Reservation because that was the size of their existing diversion. The U.S. Supreme Court did not have the question of quantification of the entire right before it, although subsequent cases have ruled that a reserved right extends to both present and future uses as necessary to fulfill the purpose of the Reservation. The compacting process is intended to quantify present and future uses on other water sources on the Reservation.

Q. What is the Tribes' proposed water right on the Milk River?

A. Under the Tribes' proposal they would be able to take the lesser of: 645 cfs; the United States share of the natural flow of the Milk River; or the amount they

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Negotiations

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could physically, divert. Because the United States share of the natural flow of the Milk River is not often more than the existing 125 cfs diversion during irrigation season, the Tribes propose a new off-stream reservoir to allow storage of water during spring runoff.

Q. Are the Tribes giving up their 1/7 storage in Fresno?

A. No. The Tribes' proposal took into account the 1/7 storage in evaluating their new storage capacity.

Q. Can the Tribes lease their water?

A. Yes. The current draft of the Compact allows lease of water once stored or developed by the Tribes. State-based water users have the same right to market their water although the Project may have other limits imposed by federal law.

Q. How does the Blackfoot Tribe's water right on the Milk River affect the Fort Belknap negotiations?

A. Both the Blackfoot and Fort Belknap claim the entire natural flow of the Milk River. Thus, in most cases, the impact is between the two reservations which is an issue they are talking to each other about. Because there is a physical limit on the diversion rate proposed for Fort Belknap of 645 cfs, any time the Milk River flow exceeds 645 cfs or the Tribes are not diverting their full amount, the Project and other water users on the Milk River can use natural flow water. When Blackfoot irrigation is modeled using the HyDROSS Model, the impact on the Milk River Irrigation Project is 3000 acre-feet in the worst year.

Q. What additional water rights would the Tribes have on the Reservation?

A. The Fort Belknap Reservation is included in three other Water Court subbasins: Peoples Creek, Beaver Creek; and Little Suction Creek (a tributary of the Missouri River).

On Beaver Creek and Little Suction Creek the Tribes propose to protect their existing junior uses. This will maintain the status quo. On Peoples Creek there are currently state-based irrigation water rights upstream from the Reservation. The Tribes are willing to consider subordination to that existing use if the claims can be reviewed and, if necessary, modified to reflect that existing use. The parties are working with the water users and the Water Court to set up a process to accomplish that task. The Tribal water right would be to the remaining water in Peoples Creek and its tributaries on the Reservation.

Q. How will development of the proposed Tribal Water Right impact water availability on the Milk River?

A. Technical experts for the negotiating teams have utilized a model of water supply and use on the Milk River, referred to as the HyDROSS model, to simulate the impact of development of the proposed Tribal Water Right. The model and its results are discussed in the next issue.

Q. What is the proposal to eliminate that impact?

A. The basic concept offered by the State asks the Tribes to subordinate their senior water rights to users on the tributaries of the Milk River, with make-up water from the Milk River Project, while on the mainstem Milk River Project water use would be protected through improvements to the Milk River Project. The parties are looking at numerous "mitigation" measures to enhance water supply in the Milk River basin. Among the measures under discussion are the enlargement of Nelson Reservoir through a secondary dam and installation of a pump lift to help move water into Nelson Reservoir. Together these measures would add 16,000 acre-feet of storage capacity to the basin.

Other possible alternatives to increase the water supply would include restoring St. Mary's to the original design capacity; possible enlargement of Fresno although

this falls into the high-cost category; tributary storage perhaps including Peoples Creek, Thirty-mile Creek, Beaver Creek among others; and off-stream storage including possibly use of lakes at Bowdoin National Wildlife Refuge.

Q. What is the difference between mitigation and subordination?

A. Subordination is an administrative remedy. It means that a senior water right, such as that of a tribe, is treated as junior. This remedy is applied to water use on tributaries to the Milk River.

Mitigation is a water supply remedy. Water supply is enhanced through such measures as new storage, improved management, and conservation.

Q. Why does the mainstem of the Milk River make up water for tributary water use protection in the proposed Compact?

A. Cost and practicality are two factors that have to be considered in choosing between subordination and mitigation. It is not possible to build storage for every irrigator and to mitigate impact on tributaries where water use is individual and flood type is impractical. Thus, subordination is the only practical way to protect tributary water use. In contrast, the Milk River with considerable infrastructure in place provides opportunities for mitigation of impacts of a senior right such as that of the Fort Belknap Tribes.

With the water short nature of the Milk River, subordination would require purchase of the Tribes' water. Because tribes in states like Arizona, where water goes for prices in excess of \$1000/acre-foot, have obtained huge settlements for purchase of water, the expectation of tribes would probably preclude agreement on a price.

Mitigation has benefits in a basin with a variable water supply. The negotiating teams have targeted the worst case years for mitigation. Thus, new storage to make up water in high impact years will provide benefits in other years. ■

Fort Belknap Indian Irrigation Project

By Randy Perez

GENERAL INFORMATION

Total Acres: 13,000 acres
Water Price(s): \$12.50 per acre

Diversion: Fort Belknap Indian Irrigation Dam on the Milk River near Fort Belknap Agency.

Miles of canals: Main Canal is 17 miles long.

- Project is managed by the Bureau of Indian Affairs.

Number of Employees:
Full Time: Irrigation Clerk
Part Time: 1 Ditch Rider
1 Equipment Operator

Question: What is the project's water right?

Answer: Federally Reserved Water Right held by the Fort Belknap Tribes.

Question: What recent improvements (if any) have been made to the project's system?

Answer: The new diversion dam on the Milk River was built around 1970. Improvements on checks and turnouts occurred during the 80s and 90s. The drain ditches and main canal checks were reconstructed during the 90s. ■



Fort Belknap Dam.

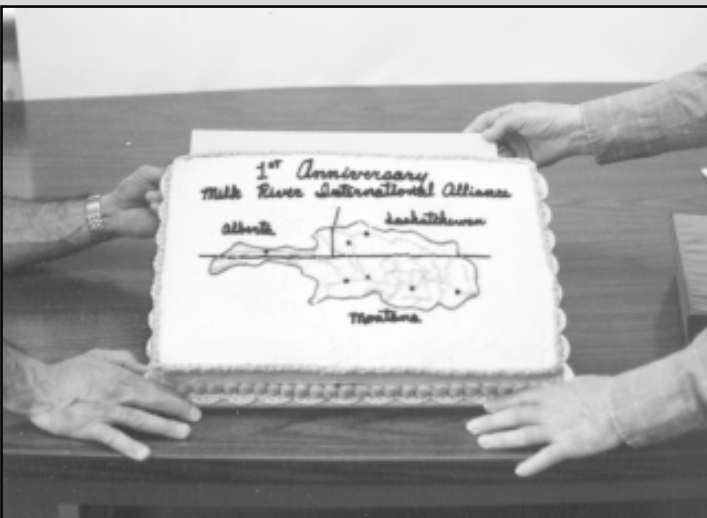
QUESTIONS

Question: How does the Project charge water users?

Answer: An annual assessment is on a per acre basis.

Question: What types of crops are grown within the project?

Answer: Alfalfa, grass hay, small grains, and other miscellaneous crops.



First Anniversary of the Milk River International Alliance. Cake baked by Carol Elliot.

Web Sites to Bookmark

The Internet is a huge information bank and finding what you are looking for can be time consuming and frustrating. Provided below is a list of web sites that relate to the Milk River Basin and Montana.

United States Bureau of Reclamation Great Plains Region

www.gp.usbr.gov
This site contains information regarding USBR activities. Click on Water Supply Management to access Agri-met and Hydromet data.

Natural Resource Information System

<http://nr.is.mt.gov>
This site contains hundreds of GIS maps that can be downloaded for free. This site also contains information on groundwater programs, the volunteer water monitoring program, and many additional links. More information is available per request, although there may be a fee associated with it.

United States Geological Survey

<http://montana.usgs.gov>
This site contains current stream conditions, various water use information and water reports.

Montana Online

www.mt.gov
Provides access to information regarding State government, education, employment opportunities, education, and announcements.

Montana Department of Natural Resources and Conservation Home Page

www.dnrc.state.mt.us
Provides Access to various DNRC activities and information including grants and loans, water rights, news and events, and water resource information. The DNRC Water Resources Regional Offices have online computers available for public use.

The Weather Channel Homepage

www.weather.com
Provides the latest weather forecasts for any city including current weather maps.

Happy surfing!

If you have ideas for articles or news items, please contact:

Michael Dailey

MT DNRC — Glasgow
Water Resources Regional Office
222 Sixth Street South
P. O. Box 1269
Glasgow, MT 59230-1269
(406) 228-2561

Kristi Kline

City of Havre
P. O. Box 231
Havre, MT 59501
(406) 265-9031

Wallace Elliot

Fort Belknap Irrigation District
Rt. 71 — Box 38
Chinook, MT 59523
(406) 357-3353

Kay Blatter

Chairman, Milk River Joint
Board of Control
RT 1 Box 105
Chinook, MT 59523
(406) 357-2931

Gary Knudsen

Irrigator
HC 72 Box 7285
Malta, MT 59538
(406) 654-2899

Milk River Watershed News

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DNRC—Water Management Bureau,
Helena (444-6637)*

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MAY STORMS PROVIDE LITTLE RELIEF

By R. Scott Guenther, USBR

The natural streamflow of the Milk River upstream of Fresno Reservoir is forecasted to be one-half of normal during June and July. This is a slight improvement over the previous months. Streamflow in the St. Mary River is expected to be about 70 percent of normal for this same period. Water from the St. Mary River is being diverted to the Milk River through the St. Mary Canal. Fresno and Nelson reservoirs will not fill unless above-average rainfall occurs across the basin in June and July. Water users have known for the past two months that a water shortage exists and not much has changed during that period. Most water users began irrigating around May 10, but timely rain fell across much of the valley on May 11. Rainfall totals ranged from 1 to 1.5 inches. Even with this needed rain, above-average release of water

was required from Fresno Reservoir during May to supply downstream irrigation demands. Another rainfall event occurred on May 31 and brought 3/4 to 1 inch of rain to the valley. These two storm events were very timely and provided substantial relief to many irrigators which, in turn, has allowed more water to be stored in Fresno and Nelson reservoirs.

Total storage in the three reservoirs that supply water to the basin (Sherburne, Fresno, and Nelson) was 68 percent of average on May 31. Water levels in the reservoirs will likely be extremely low by the end of July. The amount of water for a second irrigation depends, as always, on June rainfall. Water users must continue managing available supplies carefully to ensure there is available water for irrigation after the first hay cutting. ■

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