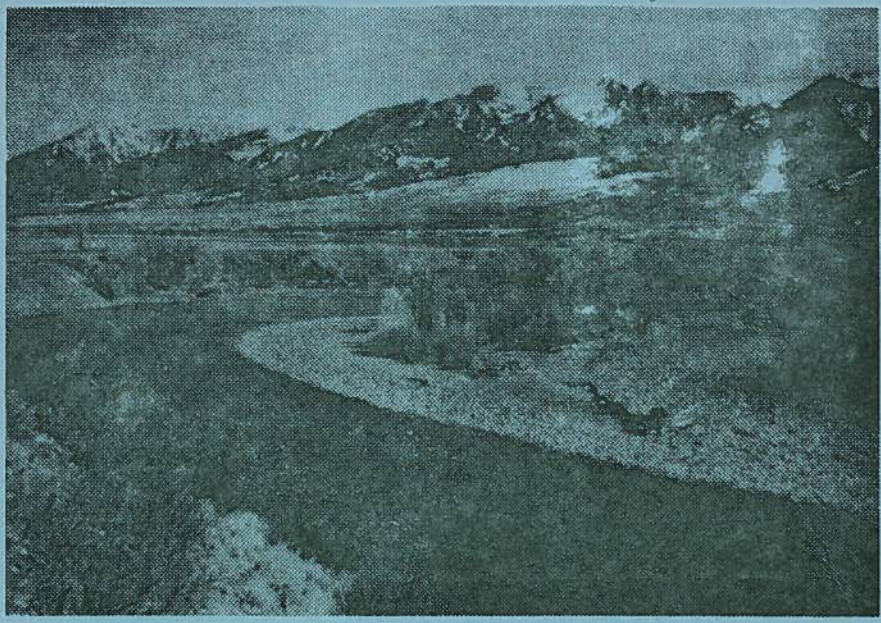
Early 1980's



The majestic Yellowstone River, the site of Montana's first major controversy over instream flow allocations.

INSTREAM FLOW ALLOCATIONS

In Montana, water is as precious as gold. And any proposal to use or conserve it automatically becomes fiercely controversial.

Perhaps the most controversial of all is a recent innovation in water use known as instream flow alloca-

tion or water reservation. Montana has only one instream flow allocation--on the Yellowstone River. But this concept will be pursued on other Montana streams.

As with most controversies, the lay public often gets technical--and conflicting--answers to their nontechnical questions. Although this concept is very technical, here are some nontechnical, factual answers to questions commonly voiced on the instream flow concept.

If water isn't used, it will be lost to downstream users, right?

"Use it or lose it" is a slogan, nothing more. When carried to the extreme, it has resulted in the complete dewatering of many streams in Montana. Those who promote water management by slogan must accept its only logical goal--the total depletion of all Montana rivers and streams. There are several good reasons to avoid this.

First, downstream users, such as irrigators, could be robbed of their water by upstream users--creating economic hardship and conflicts between water users. The water user farthest upstream may not have the best water right, but he always has the advantage.

Second, it would destroy aquatic systems throughout the state. Few Montanans want this.

Third, it would severely impair Montana's third largest industry, recreation, and result in a large loss of jobs and income to the state.

What most people don't understand is that fish, wildlife and recreation are beneficial uses of water under Montana's Water Use Act, and instream flow allocations protect those uses. So when such a flow is designated, the water is used to support instream users--not just fish, wildlife and recreationists, but also agriculture and municipalities.

In addition to having enough water, irrigators must also have clean water. An instream flow helps keep water clean enough to use for irrigation. At low flows, pollutants and salts in the water aren't always diluted sufficiently, making the water unsuitable for irrigation.

Ironically, it's illegal to dump chemicals into a stream and poison fish and other aquatic creatures,

but a stream can legally be dewatered, devastating the entire aquatic system. An instream flow can minimize such dewatering.

Basically, instream flows guarantee that there will always be water in the streambed. This acts as a convenient--and free--insurance policy for existing users who can then rest easy about upstream users removing too much water from the stream.

Likewise, instream flows guarantee that municipalities will always have enough, drinkable water for their all-important needs.

In summary, declaring an instream use is hardly "losing" the water. Instead, it protects it, not only for anglers and canoeists, but for all existing users.

Don't instream flow allocations have a severe negative impact on Montana's economy and result in a large loss of jobs?

Recreation--or tourism as some call it--is the third largest industry in Montana. And stream-based recreation--fishing, floating, camping, etc.--accounts for a large part of this. Although exact figures aren't available, it's safely said that many jobs depend on Montana's nationally famous waterways--guides and outfitters, sporting goods dealers, resort jobs--to name a few.

At the same time, these streams attract recreationists who, in turn, spend plenty of money on a thousand items and services. Certainly, Montana's free-flowing, trout-filled streams support a respectable chunk of the state's economic base.

Instream flow allocations can protect these streams and thus, this economic base. There are other ways to protect it, of course, but this is one of the best since it also provides for a multitude of commercial or "consumptive" uses such as agriculture.

Actually, instream flows can have a positive economic impact--more jobs--on Montana, recreation-oriented industries aside. If a stream is dewatered by an upstream user, for example, it's an economic hardship to the irrigators and other downstream users. If a large corporation acquires a right to withdraw a sizeable slice of a stream's flow, it could destroy an existing user's livelihood--especially small users who can't compete economically or politically with

multi-national corporations. Montana already has some of the world's largest corporations eagerly seeking the state's limited water supplies.

Do instream flows really protect existing water rights?

Definitely. All existing water rights acquired prior to instream reservation--large or small--have priority over an instream flow allocation. Without an instream right, there may be confusion about who owns the water--especially when the stream gets very low. With the instream flow, there will be water in the stream which will reduce conflict between downstream and upstream users.

Further, instream flows protect water quality. Streams can become too salty when overused, rendering them actually dangerous for certain agricultural uses.

Does an instream flow reservation lock the water up forever?

Absolutely not. The water can be reallocated by the Board of Natural Resources and Conservation if the water reservation is found to be in excess of what is actually needed.

Without an instream flow, water users risk overappropriation--a situation where demand for water exceeds supply and the stream can be dewatered. In addition to the obvious loss of aquatic life and recreation, this can cause economic hardship for some users.

When a stream is overappropriated--as is the case with many Montana streams--a new user may find it impossible to secure a water right. However, with an instream flow, the new user at least has a chance to ask the state to reallocate the water and provide for his needs. Most important, new users will know how often they can reliably get water before they invest in expensive equipment or inadvertently interfere with existing users.

Do we have any major instream flow allocations in Montana?

Only one. In December, 1978 the Montana Board of Natural Resources and Conservation granted the Department of Fish, Wildlife and Parks and the Deaprtment of Health and Environmental Sciences an instream flow in the Yellowstone River.

If Montana doesn't use the water in the Yellowstone River, can't North Dakota claim it?

The Yellowstone River flows 30 miles through North Dakota before merging with the Missouri which, in turn, flows for about 15 miles before pouring into Garrison Reservoir.

Most of this 30 miles is already under heavy irrigation which reduces the potential for additional future water withdrawals. Actually it's unrealistic to worry about North Dakota even being able to use 8.8 million acre-feet (average flow at Sidney) or even 5.5 million acre-feet (instream flow allocation).

Industry in North Dakota would likely go to the Garrison Reservoir for water. To industry, this more accessible supply of water would be more dependable and stable than trying to appropriate from a free-flowing river.

Thus, the probability of North Dakota claiming the major share of the Yellowstone's water as it flows over the border is remote.

On top of that, it would be illegal for North Dakota to do so. Through the water reservation process, Montana has a prior right to this water in the form of an instream flow allocation. In reality, the instream flow allocation protects Montana water and prevents other states from claiming it.

What are the priorities attached to the instream flow allocation in the Yellowstone River?

In the lower Yellowstone (from the point where the Bighorn River joins the Yellowstone to where it flows into North Dakota), the priorities legally go in this order: municipal, agriculture, instream allocations and multi-purpose. Multi-purpose includes industrial use.

In the lower Yellowstone, flows only dip below 5.5 million acre-feet (instream flow allocation) 15 out of 100 years. This means present agricultural users can always get as much water as they can now--even in the dry years since they have a priority right over instream flows. Future agricultural users probably can get water they need if they can get it from the Conservation Districts. The Conservation Districts also have priority rights over instream flows on the lower Yellowstone.

Industry, however, may not be able to get water on dry years when instream flows may take precedence over industrial withdrawals. Industry may be able to get

around this restriction by storing water off-stream to get through dry months.

Although it isn't commonly known, irrigators on the lower Yellowstone already have some trouble getting water out of the river on dry years. Without the instream flows, this situation would certainly worsen. If lower Yellowstone irrigators didn't have the instream flow, industrial withdrawals upstream could bring the river down to a point where water availability for existing users could be affected.

From the point where the Bighorn River joins the Yellowstone upstream to Gardiner, the priority differs, going like this: municipal, instream allocations, agriculture and multi-purpose.

This means that new consumptive users will not always be able to get water, especially when the river is extremely low. However, existing agricultural users will have as much water as they have now since existing users have priority over the instream flow allocations.

In short, the water reservation doesn't negatively affect existing users. They may have the same trouble getting water as they've had in past years, but the water reservation assures that this situation doesn't get worse.

Perhaps equally important to water in ample quantity is having water of proper quality for agricultural and municipal uses. An instream flow helps assure that all of the effluents and return flows to the Yellowstone River are sufficiently diluted. This helps keep the water useable for everyone, an especially vital fact for lower Yellowstone users since one-third of the state and much of its industry is upstream from their main diversions.

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