

ABSTRACTS

BIOLOGICAL SCIENCES - AQUATIC

THE HISTORY OF MONTANA'S INSTREAM FLOW PROTECTION PROGRAM^{AFS}

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Montana's water law is grounded in the doctrine of prior appropriation—the right to put water to a beneficial use is based on priority in time. When there is not enough water to meet all needs, the user with the earliest priority date gets water first. The conventional wisdom was that water left instream was not a beneficial use. In the 1960s, the idea of an instream beneficial use for fish first gained credibility. In 1969, the legislature passed legislation allowing the Montana Fish and Game Department to appropriate water for instream use on twelve streams. The Department filed claims on those streams in early 1970s. In 1973, the legislature codified Montana's water law into the Water Use Act. In addition, the legislature authorized state, local, and federal agencies to apply for instream flow reservations. There have been three instream reservations in Montana—the Yellowstone, the upper Missouri, and the Lower Missouri. The Water Use Act was amended in 1976 to require a statewide adjudication of water right claims filed prior to 1 July 1973. State and federal agencies claim instream rights in the adjudication. In 2002, the Montana Supreme Court affirmed that right of the agencies to file those claims. In 1989, the legislature authorized a pilot instream leasing program allowing the Montana Fish, Wildlife, and Parks to lease existing water rights with priority dates intact. In 1995, the legislature passed two statutes authorizing pilot programs for instream leases to be held by private entities.

Title footnote indicates organization, location and date presentation was made:

^{AFS} Montana Chapter of the American Fisheries Society Annual Meeting, Great Falls, MT, February 11-14, 2003

^{MAS} Montana Academy of Sciences Annual Meeting, Missoula, MT, April 19-20, 2003

^{TWS} Montana Chapter of the Wildlife Society Annual Meeting, Lewistown, MT, February 25-27, 2003