

MONTANA'S WATER ALLOCATION SYSTEM AND RIVER FISHERIES^{AFS}

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To understand how Montana's water allocation system may change in the 21st Century, we need to understand past changes. California miners brought the water law doctrine of first in time, first it right or the Prior Appropriation Doctrine to Montana in the 1860s. It is still alive and well. Before 1973, Montana did not have a water law to guide the orderly use and appropriation of state's waters. There was more than one way to obtain a water right. The passage of the 1973 Water Use Act changed this. The Act set up a centralized system of all water right records, one process for obtaining water rights, a system to adjudicate pre-1973 water rights and a statute to reserve water for future consumptive uses and to maintain instream flows. Even though our State Constitution requires that we "shall maintain and improve a clean and healthful environment for present and future generations", our water law allows streams and rivers to become fully appropriated and go dry. A number of changes in Montana's water law, however, have occurred over the past 30 years that recognize the importance of leaving water instream for fish and wildlife, recreation, and water quality dilution. These laws include water reservations, water leasing, basin closure, pre-1973 claims for fish and wildlife, and Murphy water rights. But the demand for more water by agriculture, industry, municipalities and instream users will only increase. The tools in our toolbox may not be enough. Everyone will need to work together to create new tools and solutions in the 21st Century.