

**BASIN CLOSURES, MURPHY RIGHTS AND WATER RESERVATIONS:
WILL INSTREAM FLOWS BE ADEQUATELY PROTECTED
IN THE 21ST CENTURY?^{AFS}**

Chris Hunter
Montana Fish, Wildlife and Parks
Helena, MT 59620
chunter@state.mt.us

Climate change, the legal trend toward the public trust doctrine and increasing urbanization will determine the protection that instream flows will receive in this century. Western water law is really quite young. It has changed substantially with regard to instream flows in the last quarter century. We now have the ability to reserve water for instream uses and also to lease water. The trend in water law is toward more protection for instream flow as the public trust doctrine is increasingly extended to water law. Bean Lake III is the most recent and local example. Over the course of the next century this trend will continue with more protections afforded to instream flows. Climate change will be a huge factor in how instream flows are viewed by society. Many climate change scientists believe that while flows will be higher during the winter in Montana, they will be lower and stream temperatures will be higher in the summer. The result will be a contraction in salmonid distribution in Montana. How will this affect society's view of instream flows? Will people demand that more water be left instream to try to reduce the impact on trout fisheries? At the same time it is likely that western Montana will continue to become more urbanized while eastern Montana continues to lose population. People in cities are more likely to support water for instream flows than are agricultural users. As the cities gain greater political influence in the state legislature there may be a greater political will to do more to establish and protect instream flows. My view is that during the course of the next century we will see stronger legal protection for instream flows. The public's increasing concern about instream flows due to the contraction of salmonid populations caused by climate change and the demographic/political shift to an urbanized western Montana will lead to greater protections for instream flows. By the end of the century the tools we rely on today will be a memory just like us.