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A LEGISLATIVE PROPOSAL TO GIVE OR SELL WATER RIGHTS BACK TO STREAMS

Montana Department of Fish, Wildlife & Parks has been a leader in protecting perennial stream flow in the past. Year-round flowing streams are increasingly important and a large economic benefit to communities. We owe it to Montana's future to be a leader once again.

Purchase of Water Rights in Perpetuity

In order to satisfy this increasing economic and intrinsic demand for flowing streams and the values they provide, water right holders should be allowed to receive and diversify their income by selling or dedicating their water right in perpetuity to MT F.W.& P., while at the same time helping to solve the dewatering problem.

Water Leasing

Currently, Montana water leasing law allows water right holders to lease or convert all or a portion of their water right to instream flow on a temporary basis for ten years; up to 30 years if it is associated with a water conservation project with the potential for one 10-year renewal. Upon termination of the lease, the water right reverts to its former use. At this time MT F.W.& P. is not allowed to convert a water right to instream use in perpetuity. They can lease for short term, but they cannot buy. The leasing program has worked as an expensive, temporary, short-term fix which only causes the deferment of the dewatering problem. It is inconsistent with the long-term goal of keeping fish in streams. Authority to purchase in perpetuity (willing seller) would be a long-term solution. Both state and federal Superfund programs, as well as Montana's Natural Resource Damage Program (Upper Clark Fork) require long-term restoration of damaged rivers. The temporary water leasing law is inconsistent with long-term restoration requirements.

Water Law

Water law in the West encourages the maximum diversion and use of water from our streams. Under current law, if a water right holder abandons his right, the water becomes available for appropriation by other diverters. A water right holder can sell his/her right, in perpetuity, to another water diverter, but he cannot sell his right to MT F.W.& P. in perpetuity.

As land use changes and land holdings with senior water rights are subdivided, we need to ensure that opportunities to solve Montana's long range dewatering problems are not missed. Both traditional water users and newcomers buying into lands with water rights want the option of giving their water back to the stream and to see it protected there. They would rather continue to divert their water than abandon their water as is now required under existing circumstances.

What is needed is a law allowing water right holders to sell or dedicate their water rights back to streams for whatever term they choose, including permanently. It would be helpful to better resolve in-stream flow problems by allowing a water right holder to get financial assistance in exchange for dedication of his/her right to keep the stream from severe dewatering.

Tax authorities rule that tax benefits are not available for donating water right dedications, if it is not in perpetuity. Conservation easements can be granted or sold in perpetuity for tax benefits. Water right holders should also be granted the right to decide what to do with their property interests and for how long. It is their water right – it should be their decision. Communities and participants want long range solutions, not temporary leasing fixes. States like Washington, Oregon, Wyoming and Colorado have enacted purchase in perpetuity authority.

Joe Gutkoski, President
Montana River Action
P.O. Box 8298
Bozeman, MT 59773
406-587-9181
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