



ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL QUALITY
COUNCIL. 2003-2004

July 20, 2004

Ex. No. 4

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

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COMMITTEE STAFF
KRISTA EVANS, Research Analyst
LARRY MITCHELL, Research Analyst
TODD EVERTS, Legislative Environmental Analyst

Memorandum

To: Environmental Quality Council

From: Krista Lee Evans, Research Analyst

A handwritten signature in cursive script that reads "Krista".

RE: Water Policy information for July 20 EQC Meeting

Date: July 7, 2004

We will be discussing numerous water policy issues at the July 20 E.C. meeting. I've enclosed information that you might consider reviewing prior to the meeting. The water adjudication funding work group is still in the process of establishing a funding mechanism. If the work group is able to develop a funding alternative prior to July 20, I will be sending it to you for review.

This packet includes:

- Public comment on the draft report
- Public comment in general
- Articles pertinent to water supply, water use, and drought
- Reservoir content report as of May 31, 2004



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LARRY MITCHELL, Research Analyst
TODD EVERTS, Legislative Environmental Analyst

Memorandum

To: Environmental Quality Council Members

From: Krista Lee Evans, Research Analyst

RE: Public Comment on Draft HJR 4 Report

Date: July 6, 2004

Attached please find copies of the public comment that I received regarding the HJR 4 draft report that has been out for review for a month. We will be discussing the comments at the July 19 - 20 EQC meeting so please be prepared to address them.

If you have questions or comments, please do not hesitate to contact me at 444-1640 or kevans@state.mt.us

C10429 4174klxa.

Evans, Krista Lee

From: Hall, Tim
Sent: Tuesday, June 08, 2004 1:22 PM
To: Evans, Krista Lee
Cc: Smith, Kevin (DNRC)
Subject: FW: Draft Report comments

Krista,

Here are some corrections for your draft, "Montana's Water, etc." from Anne Yates, one of our attorneys who is familiar with the Tongue River Dam and Toston. Tim

-----Original Message-----

From: Yates, Anne
Sent: Tuesday, June 08, 2004 11:55 AM
To: Hall, Tim
Subject: Draft Report comments

Corrections on EQC's report should be made on page 38,

- half way down under, Toston Revenues, Past Uses, First Line, - the total 47 million includes federal and state funds and should be corrected to just include state funds. the state dis not contribute 47 million to tongue river rehab.
- future uses of Toston revenues, last line - Tongue River "Loan" not "Bond"

Evans, Krista Lee

From: Everts, Todd
Sent: Wednesday, June 30, 2004 8:31 AM
To: Evans, Krista Lee
Subject: FW: Comments on EQC report due June 30



QC GW-SW letter
final.doc

Just forwarding these along. Todd

-----Original Message-----

From: Kendy, Eloise (Reid) [mailto:Eloise_Kendy@reid.senate.gov]
Sent: Tuesday, June 29, 2004 2:16 PM
To: teverts@state.mt.us
Subject: Comments on EQC report due June 30

Thank you for inviting comments on EQC's recent draft report, "Montana's Water - Where is it? Who can use it? Who decides?" Attached please find comments from Eloise Kendy, Bill Woessner, and Willis Weight. To make the deadline, we are emailing these comments without signatures. A hardcopy with signatures will follow.

~~~~~  
Eloise Kendy, Ph.D.  
Congressional Science Fellow  
Office of Senator Harry Reid  
Assistant Democratic Leader  
528 Hart Senate Office Building  
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Ph: (202) 224-3542  
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# University of Montana

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Senator Walter McNutt, Chair  
Environmental Quality Council  
P.O. Box 201704  
Helena, MT 59620-1704

June 29, 2004

**Re: “*Montana’s Water – Where is it? Who can use it? Who decides?*”? (EQC 5/26/04)**

Dear Chairman McNutt:

As leaders in Montana’s hydrologic science community, we commend the Environmental Quality Council for tackling the difficult topic of water distribution in Montana. As you know, the goal of managing a limited resource with unlimited demands at times can seem elusive, if not altogether daunting. To help guide the Legislature along its path toward sustainable water management, we feel compelled to comment upon the subject draft report.

Sound water-management policies strive to achieve sustainable water use by balancing the water budget. Simply put, this means balancing outflows from a basin with inflows to and changes in water storage in that basin. With virtually no control over inflows, policy makers are left to manage outflows and storage, which, in Montana’s hydrologic basins, consist primarily of streamflow, evapotranspiration, and reservoir storage. Any increase in one necessarily causes a decrease in the other. For example, an increase in evapotranspiration—say, by increasing the acreage of irrigated land—will decrease streamflow and may also lower the water table.

Your juxtaposition of water diversion and depletion rates (p. 34) indicates that EQC recognizes the importance of depletion, or evapotranspiration, in balancing the water budget. It is only by reducing depletion – not necessarily diversions – that water can actually be saved. EQC clearly recognizes that water-use efficiency improvements alone will not solve problems of overallocation. As the report states, “efficiency of water use has pros and cons associated with it. For example, in some instances, more efficient use of irrigation water means less return flows and aquifer recharge” (p. 10). EQC astutely concludes that “the state must look at ways to reduce evapo-transpiration [sic] rates while still protecting existing water users from adverse affects [sic]” (p. 39).

EQC’s treatment of the interconnection between ground water and surface water (Appendix B), in contrast, appears to ignore basic water-balance principles. By focusing on the size and shape of the cone

of depression caused by ground-water pumping (a useful concept for tracking contaminant migration, but not for calculating streamflow depletion), EQC fails to recognize that ground-water pumping reduces flow in a hydraulically connected stream. Most of the streams in Montana are hydraulically connected to ground water in underlying aquifers. It is ground water, in fact, that provides the baseflow that keeps streams flowing year-round, even when direct runoff from precipitation or snowmelt has stopped. When an aquifer and a stream are hydraulically connected, any consumptive use of groundwater in the basin -- regardless of whether a well's cone of depression reaches a stream -- impacts streamflow. The amount of streamflow reduction equals the amount of ground water consumed.

Thus, at the Statewide or the basin scale, it is not true that "the surface water – ground water connectivity issue is complex and site specific" (p. 10). This report finding effectively shifts responsibility for managing ground-water/surface-water interactions away from the Legislature and back to scientists to "determine the level of connectivity, if any, in a given area" (p. 10). We want to make it clear that ground water in Montana's basin aquifers is hydraulically connected to surface water, and that ground-water depletion rates cannot increase without depleting streamflow.

This important principle is the basis for water augmentation policies successfully implemented in other western states. If water in a basin is fully allocated, then applicants for new uses of either ground water or surface water must "augment", or replace, their proposed depletions by retiring other, existing water rights of equal or greater depletion rates. This judicious approach allows for economic development without adversely affecting existing water users. An explicit legal framework for water-right augmentation would encourage and facilitate its practice in Montana.

We thank you for this opportunity to comment on your draft report. Should you wish to discuss this letter or any other hydrologic concerns, please do not hesitate to contact any of us.

Respectfully signed,

William W. Woessner, Ph.D.  
Professor of Geology/Hydrogeology  
University of Montana  
Missoula, MT  
(406) 243-5697

Eloise Kendy, Ph.D.  
Congressional Science Fellow  
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Willis D. Weight, Ph.D., P.E.  
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39 Swift Water Drive  
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26 June 2004

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JUN 25 2004

LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

Senator Walter McNutt, Chair  
Environmental Quality Council  
P.O. Box 201704  
Helena, MT 59620-1704

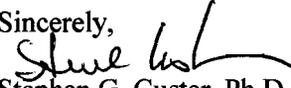
Dear Chairman McNutt,

I am an associate professor of geology and have taught hydrology at Montana State University for 28 years. The views expressed below are my views and do not reflect the views of my employer.

I am writing specifically about Joint Resolution 4. The EQC has correctly recognized the importance of the water budget in hydrologic systems. There is no question that ground water is connected to surface water and there is no question that ground water cannot flow unless there is discharge usually to a stream or to evapotranspiration. The primary question that Appendix B raises is how to identify immediate and direct connection to surface water. While it is ultimately true that any ground water removed from the flow system and evapotranspired to the atmosphere is lost to the discharge area, what is unclear is when and where that effect will be felt. This determination can be quite complex and may well extend beyond analysis of cones of depression from pump tests. The effect of withdrawal and consumption of ground water on a stream may occur far from the withdrawal at a time distant in the future in some cases, and directly adjacent to the river and very soon in other cases. The problem under current law is to determine when the impact will be felt and where the impact will occur. Montana water should be managed as a system not at a point in either space or time.

One approach that does not appear to be in Joint Resolution 4 is water-right replacement where flow reduction due to ground-water withdrawal is replaced by retiring another right to beneficial use. Even this approach will be fraught with controversy because the timing and location of the benefit of the use retired will need to be understood (back to immediate and direct connection to the surface water). I urge you to incorporate water-right replacement as a topic for study in your resolution.

I have severe reservations regarding item 7 in Joint Resolution 4. The implication is that Montana might cut trees and shrubs to reduce evapotranspiration and thus increase stream flow. This approach has been researched elsewhere (I am familiar with Arizona and Colorado experiments). While this approach does produce a short term increase in flow, the increase is often short lived because some type of vegetation regenerates and transpiration rises to pre-treatment levels relatively quickly. The ecosystem cost of this approach is higher than the benefit in my opinion, and does not have the permanence of a retired water right. I think item 7 should be deleted or at least that water augmentation in general be the topic of study. In current form, item 7 is a forest clearing-fire-suppression study under the guise of water conservation.

Sincerely,  
  
Stephan G. Custer, Ph.D.

DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION



JUDY MARTZ  
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074  
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601  
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918  
<http://www.dnrc.state.mt.us/wrd/home.htm>

48 NORTH LAST CHANCE GULCH  
PO BOX 201601  
HELENA, MONTANA 59620-1601

TO: Krista Lee Evans  
Legislative Environmental Policy Office

FROM: Jack Stults, Administrator  
Water Resources Division *Jack*

DATE: June 30, 2004

RE: Comments on Draft Report

The report is impressive. You have researched, compiled, and written out a large amount of information on many of the critical concerns facing Montana today. This will be helpful to a wide array of people involved in working to continually improve how we manage water in Montana.

You have asked for comments. I have a few recommendations for changes to the text, a few suggestions for minor edits, and have noticed a few of the inevitable typos. In this memorandum I provide the recommendations. I have attached a copy of the draft report on which I have noted the minor edits and errors.

Recommendations:

Page 19 – Add an entry in the matrix for the DNRC Hearings Decisions Index from 1973 to Present accessible at <http://www.dnrc.state.mt.us/wrd/home.htm>.

Page 33 – Clarify that budget figure is for DNRC only, and not Water Court and RWRCC, too.

Page 36 – At “Task Force Recommendations” it is not clear that these were in the past and have been acted on as evidenced under the following headings.

Page 38 - Under “Rehabilitation of St. Mary...” Add a first bullet stating that the project is owned by the US Department of the Interior, Bureau of Reclamation.

Page 38 – In third bullet under “Rehabilitation...”: “...that the rehabilitation of the dam is should be a high priority...”

Page 38 – In last bullet under “Rehabilitation...”: “...it does not have the funds, ~~but is willing to assist the state and that rehabilitation is not a priority for the BOR at this time.~~

Page 39 – Under “Opportunities...” in second bullet” Remaining sites will cost more to build and maintain”. Also say “Biggest” at two separate bullet points: can’t have two superlatives.

Page 39 – Under “The Balancing Act” second bullet: “Today, many ~~new~~ basins are ~~over~~ fully appropriated and become dewatered...”. Like it or not, prior appropriation law like Montana’s 1973 Water Use Act allows the complete appropriation of streams, so legally there is no such thing as over appropriation. What we have is the need to incorporate into the system protections for “newer” societal priorities. This is true throughout the prior appropriation states. Montana is working with some success through state reserved water rights, leasing statutes, and Bean Lake III to make that incorporation. We have a long way to go, and in getting there the policy choice has been to avoid invocation of the public trust doctrine. The term “over appropriation” is a public trust concept. We need to discipline ourselves to clarify our thinking. Being more precise in our terms is a good way to do this.

Page 39 – Under “The Balancing Act” last bullet: “...rights was become a challenge and will ~~only get worse~~ more difficult.”

Page 42 – Under “Effect on water rights”: The big issue is not fear of abandonment. That is easy to solve and has been in every place that has banks. The big issue is how to ensure no adverse effect to other water rights. The “fixes” to this range from ignoring it, to letting a local “bless” the banks transactions, to more rigorous reviews that are virtually a change authorization review.

Page 46 – Fourth paragraph “According to the court...”: It is very important to state that the court also found that the DNRC has the discretion under the law to establish a test and that the DNRC has the discretion on what that test should be, so long as it is not arbitrary. The court said it did not have enough evidence to determine whether our test is not arbitrary. In the Settlement accepted by the court for the first part of the case, it is concluded that DNRC does has a policy and is following that policy.

Pages 46 & 47 – The last two paragraphs of this section are now moot. They should be deleted.

Page 56 – Under “Enforcement”: A Water Court decree must meet statutory criteria to be enforceable. See 85-2-406(4).

Page 56 – “Chapter X”, first sentence of second paragraph: “..., which is for ~~adjudication~~ negotiation of reserved rights.”

Thank you again for both the quantity and quality of the information in this report. You have provided a valuable service to the work we are all doing to improve the management of water in our state. I hope these comments are helpful. Naturally, if you have any questions (especially in deciphering my notations on the attached copy of the draft) or think I can help in any way, please don't hesitate to contact me.

Attachment: Copy of draft report with notations



# WESTERN STATES WATER

June 4, 2004  
Issue No. 1568

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JUN 07 2004



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LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

## THE WEEKLY NEWSLETTER OF THE WESTERN STATES WATER COUNCIL

942 E. North Union Ave / Suite A-201 / Midvale, UT 84047 / (801) 561-5300 / FAX 255-9642 / [www.westgov.org/wswc](http://www.westgov.org/wswc)

Chairman - Karl Dreher; Executive Director - Craig Bell; Editor - Tony Willardson; Subscriptions - Julie Groat

### CONGRESSIONAL UPDATE FY2005 Budget Allocations

On June 2, House Appropriations Committee Chair Bill Young (R-FL) released FY2005 302(b) spending allocations, which set appropriation ceilings for thirteen individual bills. Some of the amounts are: Agriculture - \$16.78B, down from \$16.84B in FY2004; Defense - \$392.14B, up from \$366.38B; Energy and Water - \$27.99B, up from \$27.26B; Interior \$19.73B, up from \$19.54B; and VA-HUD (including EPA spending) \$92.93B, up from \$90.8B.

Chairman Young said, "The non-defense allocations in an already tight budget are even tighter. We are fully funding our national security requirements while providing some additional resources to bolster our homeland security. The austere funding levels for the remaining subcommittees will make it challenging to move bills through the legislative process."

Senate leaders are still trying to reach agreement on a budget resolution to guide appropriators. Without a new budget, they must work within last year's \$814B discretionary spending limit, though amendments could be made to individual appropriations bills in committee or on the Senate floor. Senate action is expected to begin soon on the Homeland Security and Military Construction appropriations bills.

### WATER RESOURCES

#### Colorado River/Drought/Nevada

In a May 28 meeting in Las Vegas, Senators Harry Reid (D-NV), John Ensign (R)-NV, Assistant Secretary of Interior Bennett Raley, and Pat Mulroy, General Manager of the Southern Nevada Water Authority, discussed what has been done and what still needs to be done to reduce the area's dependence on water from the Colorado River. According to Mulroy, in the 1950's the Las Vegas Valley got all its water from local ground water, but today the Colorado River provides 90% of its water. In the future, she hopes to reduce that draw to 60% and is working with regional leaders to develop strategies for developing in-state water resources,

including the Muddy and Virgin Rivers in Lincoln County (and ground water filings in a number of counties north of Las Vegas). Meanwhile, despite an aggressive water conservation campaign, growth and the drought continue to stress existing supplies, with Lake Mead still dropping. Senator Ensign exclaimed, "Something has to give unless we do a better job." (Las Vegas Sun, 5-28-04)

Southern Nevada is also discussing possible water sharing solutions with other Colorado River Basin states. Nevada already participates in the Arizona Ground Water Bank, and recent talks raised the possibility of Las Vegas acquiring agricultural rights to water with the approval of other lower Colorado River Basin states. Unlike Arizona and California's major metropolitan areas, there is no significant agricultural development around Las Vegas. In the past, the idea of Las Vegas funding desalination operations in California and "trading the water upstream" has been raised. Mr. Raley has warned Interior may have to act as watermaster to protect existing storage along the Colorado River, if the Lower Basin states are unable to reduce their current uses and reach some agreement on solutions.

Upper Colorado River Basin states continue to deliver 7.5 million acre-feet of water from Lake Powell (which has also dropped precipitously due to drought) to the Lower Basin states under the Colorado River Compact. In addition, they are providing water to meet one-half the required 1.5Maf delivery to Mexico.

### WATER RESOURCES/WATER RIGHTS

#### Montana/Snow Survey/Wyoming/Yellowstone River

The Yellowstone River Compact was negotiated between the states of Montana, North Dakota and Wyoming, and the federal government, in 1950 and ratified by the Congress in 1951. It apportions the flows of four major tributaries, the Big Horn, Clarks Fork, Powder and Tongue Rivers. These all have their headwaters in Wyoming and flow northerly into the Yellowstone in Montana. The Compact Commission is made up of Jack Stults, Administrator of Montana's Water Resources Division and Pat Tyrrell, Wyoming's State Engineer, with James Kircher, U.S. Geological

Survey, as the Chairman. A majority of the annual flow in the Yellowstone Basin arises from snowpack, and the state commissioners signed a joint May 6 letter urging Ann Veneman, U.S. Department of Agriculture (USDA) Secretary, and Bruce Knight, Chief, Natural Resources Conservation Service (NRCS) to adequately fund the federal snow survey program, which provides data that is "...immensely valuable to our two states as we estimate the flows and timing of the water supply each year." The letter expressed "concern about recent events" and "the budgetary degradation of the program over the years."

The extended drought and dearth of snowpack in the Yellowstone River Basin this year has caused severe water shortages in interstate tributaries and Montana has made a "call" for water under the Yellowstone River Compact to protect Montana's pre-1950 water rights on the Powder and Tongue Rivers (WSW #1567). In a letter dated May 18, Mr. Stults wrote, "The continuation of the extreme drought seriously affects us all. [Our] states can best serve the water needs of their citizens by developing a workable process for timely release of waters necessary to meet calls on valid pre-1950 rights in addition to providing for the compact apportionment of all waters developed after 1950."

In a May 24 response, Mr. Tyrrell said, "I appreciate that this multi-year drought has caused unprecedented low streamflow in many areas of both of our states. The lack of water is taking its toll on our water users as well and we are experiencing similar conditions to those outlined in your letter. We too are regulating water rights back to the 1880's in the Tongue and Powder River basins, and have numerous pre-1950 rights going unfulfilled. But, that is the priority system--the right to make beneficial use of water, in priority, when it is available. Neither of our states can guarantee a water right will always be fulfilled just because it gets water in more normal years."

The letter continues, "Our states have discussed in the past that the Yellowstone River Compact does not provide an explicit mechanism for administration.... Because the Compact itself contains no provision describing how a "call" would occur, we find ourselves as the states' commissioners heading into uncharted territory. While I understand the pressures that led to your sending your letter, it is not at all clear what Wyoming's obligations are in response.... Wyoming is committed to making the Compact work..., but I am not aware that Wyoming has stored any post-1950 water except when it has had a right to do so." The letter explains, "In the mid-1980s, both states delved into the complexities of administration of the Compact, although in the end no formal system was adopted. Clearly, even then, it was understood to be far more complicated than simply releasing water when one party claimed a shortage."

Further, the letter declares, "[T]he Compact makes no provision for any state to make a call on a river. The Compact does not apportion direct flow at the state line, nor does it establish or direct the establishment of an interstate priority schedule.... Wyoming does not read the Compact as an agreement to deliver any of Wyoming's pre-1950 direct flow water to Montana for Montana's pre-1950 rights." Rather, Wyoming suggests the Compact "...simply expresses that the status quo of January 1, 1950 within each state is preserved."

Wyoming field staff are checking current storage in the Yellowstone Basin and the letter asked that Montana also provide "an accounting of its storage...." Mr. Tyrrell then suggests he and Mr. Stults "talk face-to-face." His letter concludes: "I hope that we can come to an understanding...without having to invoke formal procedures or elevating the issue unnecessarily."

## **WATER RESOURCES**

### **Montana/Ft. Peck Reservoir**

Water levels in Ft. Peck Reservoir on the Missouri River have fallen to the lowest recorded since the 1950s, when water was released to help fill Lake Sakakawea behind the newly built Garrison Dam in North Dakota. Ft. Peck's full pool elevation is 2,246 feet. It dropped to 2,209 feet in April 1991. Last month, it dropped to 2,204 feet. The Army Corps of Engineers controls releases for navigation downstream along the Missouri, and other purposes. While inflows at Ft. Peck are at about 6,000 cubic feet per second (cfs), releases through May were at approximately 11,000 cfs. Several boat ramps remain usable, and the Corps has promised to extend ramps this summer if needed. (Billings Gazette, 5-25-04)

### **Utah**

Utah's Weber River is running at 39% of average, the Virgin 29%, Bear 28% and Sevier 25%. March was unseasonably warm and dry, with a corresponding loss of snowpack and runoff. May precipitation was less than half of average. While selected Utah reservoirs usually gain some 300,000 acre-feet of water in May, this year only 7,900 came down...State and local water officials are pushing water conservation, especially outdoors.

## **PEOPLE**

**Joe Harkins**, 65, is leaving his position as acting Director of the Kansas Water Office, to become the new Director of Natural Resources Policy in the office of Governor Kathleen Sebelius. Harkins also led the Water Office from 1982-1991 under Governors John Carlin and Mike Hayden. According to Harkins, the move will allow him to undertake research and analysis necessary to provide the Governor with the best advice possible, while making room for a new leader that can make a long-term commitment to the Water Office.

**The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.**



Monday, April 26, 2004

## Colorado begins to plan for water nightmare

The Associated Press

Monday, April 26, 2004

DENVER - A five-year drought has Colorado thinking about the unthinkable: A demand to let go of some precious Colorado River water to make sure California gets its legal share.

So far, Lake Powell has had enough water to give California, Arizona and Nevada their due under the 82-year-old Colorado River Compact.

But Lake Powell, on the Colorado River in Utah and Arizona, is already down to 42 percent of capacity. Federal officials say it could drain completely if the drought continues for two or three more years.

If that happens, Colorado and the other upstream states would have to leave more water in the Colorado River. That could hammer big Front Range cities that pump water across the Continental Divide from the Colorado River basin.

"There are a number of large users, like cities, that really can't shut off water completely," said Scott Balcom, the state's representative to the seven-state Colorado River Commission. "The increment used by cities will have to be made up by other sources," he said.

The state's largest water users, including the Denver Water Board, the Northern Colorado Water Conservancy District and the Colorado River Water Conservancy District, are expected to begin formulating contingency plans this year. No meetings have been set, but Colorado Water Conservation Board director Rod Kuharich said the board is counting on the group to tackle several difficult issues.

The 1922 Colorado River Compact requires the upstream states \_ Colorado, Wyoming, Utah and New Mexico \_ to provide 7.5 million acre-feet of Colorado River water each year to California, Arizona and Nevada.

Most of the trans-mountain diversion projects that supply cities along Colorado's Front Range were developed after 1922, so they have a lower priority than the water promised to the lower-basin states.

Some Colorado officials say the state is entitled to another 600,000 acre-feet from the Colorado River under the 1922 compact. But some hydrologists have questioned whether that water is really there.

"We're definitely going to have to reassess the amount of water available to us in the upper basin," Balcom said.

When Balcom appeared before the Legislature's Joint Agriculture Committee last week, State Sen. Jack Taylor, R- Steamboat Springs, asked whether he supported new dams to create more storage.

"If this drought lasts much longer, it's going to change the rules by which we evaluate new storage projects," Balcom

replied.

"If there's ever a call (a demand by other states for their legal share), any new reservoir storage would be junior to the compact, and, bingo, we wouldn't be able to fill new reservoirs."

---

On the Net:

[Colorado Water Conservation Board](#)

## **Related Links**

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from the April 27, 2004 edition - <http://www.csmonitor.com/2004/0427/p03s01-usec.html>

## West faces a sixth year of epic drought

**In some areas, conditions rival 1930s Dust Bowl**

**By Todd Wilkinson** | Correspondent of The Christian Science Monitor

**DILLON, MONT.** - With a cloud of dust behind his pickup truck, Larry Martin drives through miles of barren ranch land. In a "normal spring," he'd be surrounded by green fields of alfalfa and barley stems half a foot high.

But in passing his empty irrigation canal, then striding in cowboy boots along a barbed-wire fence buried in parched tumbleweed and windblown topsoil, Mr. Martin admits he's given up hope for a crop this year.

Today, he's praying that he can get by with a reduced cattle herd and hold on to the family ranch. Last week he watched a neighbor lose his property to foreclosure, and rumors are that scores of other ranching families may follow.

"We were always told that tough times will make you bend, but a drought will break you," says Martin.

What hasn't broken here is the sixth consecutive year of drought, with portions of the usually verdant Rockies looking more like the Mojave Desert. In what scientists call a combination of drought cycles and global warming, nine Western states are seeing extreme dryness:

- In California, the high Sierra snowpack is melting faster and earlier than during any spring in 80 years.
- In Colorado, sinking reservoirs have brought restrictions for 1.2 million Denver water users, who now can irrigate their lawns only twice a week. Without spring rains, water use could be radically curbed and made more costly.
- In Arizona, where forests and soils are the driest in a century, fire danger is extremely high.
- And in New Mexico and Nevada, low rivers may spur fights between farmers and cities over scarce water sources.

Meanwhile, Montana's tensions are rising: Even outfitters who make their living guiding trout anglers on the streams worry their business could come to an early halt.

"Historically, there have been more people shot in the state of Montana over water than women," Mr. Martin says with a laugh. Yet on a somber note, Dennis Miotke, who oversees water allocation from the Clark Canyon Reservoir, says desperate ranchers call him daily.

"This is reminiscent of the Dust Bowl," says Larry Laknar, disaster and emergency services coordinator for Beaverhead County, Mont.

While a huge swath of the West is gripped by "severe" and "extreme" drought conditions, the Jefferson River Basin, which encompasses Martin's ranch, is classified on the latest federal index as "exceptional drought" - one of the driest areas west of the Mississippi.

According to the National Weather Service, little relief is in sight even with the official start of summer seven weeks away. That's only exacerbated predictions of economic calamity in cattle country while fueling anticipation of an epic wildfire season, an eruption of water wars, and serious shortages in cities.

Mr. Miotke recently told 75 families that no water will flow through their irrigation ditches, a virtual guarantee that some may be pushed into bankruptcy.

The Jefferson River Basin, known as Montana's "beefbasket," produces more cattle and hay than any other part of the state. But now this anchor of Montana's \$1 billion agriculture industry is reeling.

The trauma, Miotke notes, has trickled down to affect thousands, from ranchers to grocery stores, restaurants, auto dealerships, and schools that will be receiving less tax revenue. "A lot of ranchers over the last several years sank everything they had into irrigating their pastures. But if they don't have water, it's like trying to run a bank without money," Miotke says. "I never thought it would come to this."

Four decades ago, the Clark Canyon Reservoir was built with federal dollars as an insurance policy against dry spells, but drought has reduced it to 36 percent of capacity - and less every day. The reservoir is in its 47th month of below-average flows. Behind it, the Lima Reservoir is 20 percent full.

The scene is remarkably similar to Utah's Lake Powell, which is half-full and shrinking as inflow from the Colorado River Basin falls short of the amount lost to evaporation and Glen Canyon Dam. Some hydrologists believe the artificial lake bed could be dry by fall, prompting conservationists to ask Congress to decommission the dam.

While that's unlikely, lawmakers are considering the option of federal disaster relief for drought-stricken areas. For evidence of water shortages, Mr. Laknar points to the crater of Clark Canyon Reservoir. The National Weather Service's Gina Loss says it would take months of rain to bring levels back to normal.

"For five years, we've been going into each autumn trying to tell ourselves it can't get any worse than this," Larry Martin adds. "The reality is there might not be a next year for some of us. Even if it rains, it won't be enough."

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## Rocky Mountain News

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### Water study: No easy fix

#### Process raises suspicions on both sides of the divide

By Jerd Smith, Rocky Mountain News  
May 1, 2004

GLENWOOD SPRINGS - The Colorado and Gunnison river basins - long thought to be a solution for future Front Range water needs - have little of the precious liquid to spare, according to the preliminary results of a new state study.

"People have always had the impression that there was more water than there might really be," said Rick Brown, project manager for the \$2.7 million Colorado Water Conservation Board appraisal.

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"There are some areas in these basins where you see huge flows (in the rivers). Is that water available to go to the Front Range? Not necessarily. It's not that simple," Brown said.

For the past 11 months, the state has been collecting data in each of Colorado's eight major river basins, looking at how much water each basin has available, how much demand is likely to grow by 2030 and how that new thirst can be quenched.

The study, whose final results will be published in November, is being watched closely in part because it is the first time a statewide analysis of each river basin has been conducted. It also comes at a time when the drought and population growth have strained existing supplies and jump-started a massive effort by Colorado's urban areas to find new water sources.

But even as the study moves forward, there is deep skepticism statewide of the entire process. Almost all agree, however, that bringing everyone to the table will prove helpful.

On the Western Slope, environmentalists and ranchers are concerned that the final report will simply open the door - once again - to more urban water development projects.

In Montrose, Paonia, Ouray and Delta, such undertakings are known simply as water raids. Locals monitoring the study process are deeply worried the state is seeking the water data only to lay the groundwork for a massive state-backed water project.

"We all knew this was going to be the study from hell," said Bill Ferguson, Ouray County commissioner. "But everyone's concerned about how this data is going to be used."

Other concerns exist on the Front Range. Urban water utilities worry that Western Slope water demands are being intentionally exaggerated to block additional diversions, even though Denver - among other cities - already owns Western Slope water that isn't yet being delivered here.

"Suspicion is endemic to this process," said Rod Kuharich, director of the Colorado Water Conservation Board. "We've had to move forward as best we can."

Still, the dozens of people involved in the process - each river basin has a technical roundtable made up of local water officials - credit the state for attempting to analyze, finally, how much water the state has and how much it needs.

"There's no question the process is needed," said David Gann, a member of the Nature Conservancy.

To date, though, the research hasn't suggested any easy ways to meet Colorado's future water needs.

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The Colorado River Basin, for example, provides drinking water to millions of people in seven states, from here to California. But doing so adequately is becoming increasingly difficult.

In Colorado alone, the basin faces a population boom that could bring 255,000 more people in the next 26 years, nearly doubling the head count dependent on it. Such a surge of newcomers would mean the region faces a water shortfall, according to a preliminary analysis of supplies.

Those shortages would be partially offset by construction of small regional water projects. But the study indicates a remaining shortfall of about 13,300 acre-feet of water. An acre-foot equals about 326,000 gallons, enough to supply one to two families for up to one year.

The Gunnison Basin also faces a dramatic influx of people. Its population is expected to jump 87.3 percent, with nearly 173,000 new people arriving by 2030. Most of its future water needs can be met by adding additional local storage, according to a preliminary analysis. Whether it has any to spare is a question that is yet to be answered.

At a series of Western Slope meetings this week, local water officials were sharply critical of the early research that's been done, saying it understates the water needs of the people and the environment. The Gunnison Basin is home to, among other sites, the Black Canyon of the Gunnison National Park.

"People don't come to the Gunnison Basin to see dry streambeds," said Steve Glazer, a member of the High Country Citizens' Alliance.

"My feeling is that they are significantly understating the needs within the (Gunnison) basin and overcalculating our ability to meet those needs," said Kathleen Curry, a member of the Gunnison study board. "We've got to do more work."

The study also uses the drought of the 1950s, instead of the current drought, to model minimum water supplies that may be available in the future.

But Western Slope water officials believe the current drought is more severe and should be used as the benchmark.

"If you don't take into account a (record-breaking) drought, you're seriously missing the point," said Ed Warner, resources division manager for the U.S. Bureau of Reclamation based in Grand Junction. "By not using the best data available, they're creating a credibility gap that is only going to grow."

Brown said the state hasn't had time to reprogram existing water models to include current drought data, but added that such information could be added at a later date.

Still other study participants are angry because state water officials haven't included any public discussion of potentially controversial projects that would divert water from the Western Slope to the Front Range, so-called transbasin diversion projects.

"That we're not even talking about potential transbasin diversion projects is troubling to me," said Ouray County's Bill Ferguson.

Enough study participants have argued for such a discussion that Brown said the state would schedule a public forum on potential diversion projects before a final report is submitted to lawmakers.

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## Releases to Bighorn River cut

By LORNA THACKERAY  
Of The Gazette Staff

Grim prospects for water in Bighorn Lake have prompted a joint decision by state and federal officials to cut to the absolute minimum releases into the Bighorn River.

Tim Felchle, Montana reservoir operations chief for the Bureau of Reclamation, said Monday that consequences to the fishery will be major, but year after year of drought has left few choices.

Last Friday, after consulting with Montana Fish, Wildlife and Parks Department, releases into the river, one of the nation's premier trout streams, were reduced from 1,500 cubic feet per second to 1,300 cubic feet per second. Releases of 1,500 cfs are considered the bare minimum necessary to maintain the health of the Blue Ribbon fishery.

Felchle said that the releases will stay at 1,300 cfs until mid-June, when they will be returned to 1,500 cfs so the state can do its annual sampling of the fish population. After the sampling is complete, a decision will be made on how to manage the Bighorn system in Montana for the rest of the summer.

Record low inflows have plagued the 70-mile-long lake for the last four years, with 2004 the worst ever.

"It's just been horrible," he said. "People are going to remember the 2000s."

Releases have been at 1,300 cfs before - the last time during the winter of 2002-2003. The result of those low flows was reduced fish population, he said.

He expects that will happen again, but said there is no way of knowing the extent of the effect until next year's count.

Snowmelt runoff from Wyoming mountains that feeds the Bighorn system will help, he said.

But Felchle said he is not sure if it will be enough to keep the lake straddling the Montana-Wyoming line open for boating.

"But, if we can't put boats in the water this summer, we did everything we could," he said.

Bighorn Canyon National Recreation Area, in a normal year, sees about 250,000 visitors - most from Montana and Wyoming.

The decision to reduce releases to the river was prompted by the continuing decline in the lake level. On Monday, the lake was less than 3 feet above minimum launch level, and the level was still falling.

Inflows have picked up some from snowmelt, Felchle said, but not enough to offset water taken out of the river for irrigation. Irrigation demand was about 400 cfs on Monday.

Felchle said that 1,300 cfs is the "absolute lowest" releases will go. Any lower than that, and water users with priority rights senior to BOR's will not get the water to which they have rights, he said.

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## 'There's no green anywhere': Central Montana residents can only watch as drought gets worse

By LORNA THACKERAY  
Of The Gazette Staff

After seven years of drought, Keith Hill, ditch rider for the Upper Musselshell Water Users Association, didn't think the situation could get worse.

On Monday, he had to admit it could.

"I've never seen it this dry everywhere," said the man who operates Bair and Martinsdale reservoirs on the 200-mile-long central Montana stream. "There's no green anywhere, except in the borrow pits and coulees where the snow stayed a little longer."

Grass isn't even growing in the higher elevations around Martinsdale, he said, and that's scary. Snow melting too slowly from the nearby mountains is being sucked up by dry soils instead of cascading into the streams and reservoirs, he said.

If the grass doesn't grow, ranchers have to feed hay. If irrigation water doesn't fill the reservoirs, there won't be much hay. Hill figures that ranchers who rely on Bair and Martinsdale will get 25 percent of the water they contract for this year.

"Twenty-five percent is not enough to finish the first irrigation," he said.

On Deadmans Basin, the other major irrigation association on the Musselshell, customers will probably get somewhere in the 30 percent range of their contract water, said ditch rider Teri Hice. Last year, thanks to spring and early summer rains, Hice was able to deliver about 75 percent of each allotment.

Ranchers may have enough water for a first cutting of hay, but that's all they're likely to get, she said. Normally irrigators in the Musselshell get two to three cuttings a year.

Deadman's Basin Reservoir contained only 20,123 acre feet of water as of Monday. Last year at this time, it had about 24,000 acre feet, said Ronald Roman, water-resource specialist for the State Water Projects Bureau. Long-term average for this time of year is 55,000 acre feet, he said.

An acre foot is the amount of water it takes to cover an acre of land to a depth of one foot.

Both Hice and Hill say they will start releasing water this week. Hill said he expects the water to go fast. Customers will want their water early, he said, "because they know if they wait three or four days, there isn't going to be any."

Martinsdale and Bair reservoirs have about 6,000 acre feet of useable water between them, Hill said. Normally, they would have 16,000 acre feet. Capacity is 30,000 acre feet.

This is the seventh year in a row that the reservoirs on the Musselshell have not filled. Since last year, the North and South Forks of the Musselshell, as well as the mainstem, have been under the supervision of a state district judge, who has assigned ditch riders to make sure no one takes more water than he is entitled to, Roman said.

Under Montana law, date of a water right determines first right to the water. Hill said the only landowners getting water on the Upper Musselshell now are those whose water rights date back to 1890. Bair, Martinsdale and Deadman's basins were built in the 1930s during the Great Depression, so water users have a low priority.

Roman said that, as a result, the reservoirs stopped storing water last month so the demands of those with earlier priority dates could be met.

There is still some water to melt out of the mountains, but Roman said he is not sure that it will change the situation much.

"The problem this year is the soil deficit is so big," he said. "The moisture is going into the ground and not going into the river. What

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"we really need now is rain."

Last year, despite low flows in the Musselshell, ranchers had a pretty good year because spring and early summer rains produced grass and reduced the need for early irrigation, Hill said. More irrigation water also was available. Ranchers who had sold off stock during the previous years of drought kept replacement heifers and were starting to rebuild their herds, he said.

"Now they are going to drop off again," Hill lamented.

Without grass, they will have to feed hay, and the chance of a plentiful hay crop aren't high. Some will probably decide to sell early and save the cost of feeding the livestock, he said. Moving cattle and sheep to greener pastures, won't be attractive with the price of fuel at \$2 a gallon.

At least if ranchers have to sell, they'll get good prices for their beef, he said.

Waiting for a good year gets more depressing each spring, especially when things started out well as they did this winter - up until February and March, Hill said.

"It changes how and when it gets you," he said. "But it comes back and gets you."

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### Legal leaks spring from water-supply dike

#### Cities' fingers crossed after ruling to protect fish, wildlife habitat

**By Deborah Frazier, Rocky Mountain News**  
**May 4, 2004**

A judge's ruling that protects waterways on federal land below dams may reduce supplies for hundreds of Colorado cities and water suppliers, an attorney said Monday.

"It's poking a hole in dams and draining out drought water supplies," said attorney James Witwer, who represented Greeley, one of the parties in the 1995 case.

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Last week, U.S. District Judge William Downes said the U.S. Forest Service can't allow streams below the dams to dry out, destroying fish and wildlife habitat.

Since most cities, farms and other water users in Colorado rely on dams on federal land, those dams will have to release some water year-round instead of storing all water for release in summer, when cities and farms need it most, Witwer said.

"These flows are the ones that are now stored for drought supplies," Witwer said.

The flows, known as bypass flows because they bypass the dam, are usually small, but maintain fish, plants and wetlands.

"There are probably a hundred cities and towns and irrigation companies that will have to get their permits, dust them off and read the fine print," he said.

The flow issues, raised by Fort Collins, Boulder and dozens of other cities, have rattled around in the courts for almost 20 years, he said.

In some water projects, bypass flows were guaranteed, but not in others. Witwer said Colorado Springs and Aurora agreed to bypass flows for the Homestake project that tapped water near Vail.

But other communities store all the water they can for drought years and for new developments, he said.

The state of Colorado, which sided with Greeley in the case, hadn't read the ruling and declined comment, as did other Front Range water suppliers.

Trout Unlimited filed suit after the Forest Service renewed a land-use permit for Water Supply and Storage's Long Draw Dam and Reservoir, which sealed off winter flows.

The dam is in the Arapaho- Roosevelt National Forest, next to Rocky Mountain National Park.

The water flows into the Cache la Poudre watershed are used by cities and irrigators.

Trout Unlimited filed the suit almost 10 years ago, saying the Forest Service violated federal laws requiring protection of fish and wildlife habitat below dams.

Downes, a Wyoming federal judge who helped Colorado federal judges with their backlog of cases, agreed and sent the case back to the Forest Service to fix.

"We now have a decision that says the Forest Service must mitigate the effects of existing dams on federal lands," said Melinda Kassen of Trout Unlimited.

"There are many ways to do it, since we have so many reservoirs in the state," she said. "There are lots of creative ways to move water without a loss of yield."

Kassen said she expects that Greeley, Colorado and others will appeal.

She also expects Rep. Scott McInnis and Sen. Wayne Allard, both R-Colo., to try to change the law requiring year-round flows.

Then-Rep. Wayne Allard and Sen. Hank Brown, both R-Colo., attempted to kill the bypass-flow requirement in the early 1990s, but failed, she said.

McInnis held hearings on the issue in 2002, but the year's forest fires diverted interest in the issue, Kassen said.

"This decision helps streams, but it doesn't have to hurt municipal supplies," she said. "It would be nice to think the controversy is over, but it probably isn't."

Witwer agreed.

"If this decision is upheld, it is open season on existing water supplies that originate on federal land," he said.

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Slim water supply means higher costs for Idaho Power ... Company seeks to avoid passing them on to ratepayers while it pursues base rate increase

By Jennifer Sandmann Times-News writer

TWIN FALLS -- Deep in hydropower country, Idaho Power Co. customers over the past year consumed most of their juice from a combination of coal and natural gas power production.

Blame repeated years of below-average water supplies that will continue to influence power costs and reliance on fossil fuels for the next year.

Idaho Power's base rates could go up an average of 3 percent to more than 14 percent, but actual increases may look different on power bills. Annual power supply costs still must be factored into the mix, and in some cases they could lower the overall increase -- at least for a year. The Idaho Public Utilities Commission is expected this month to decide new rates that would go into effect June 1.

What the new combined rate may look like is unclear for a number of reasons. Idaho Power originally requested an average base rate increase of 17.7 percent. PUC staff analyzed the request and recommended the commission approve only a 3 percent average increase. Idaho Power responded by lowering its original request to 14 percent and reducing its operating revenue request from \$86.6 million to \$70 million.

The company did not break out the new proposal for specific rates among customer groups and has left that up to the PUC, said Dennis Lopez, an Idaho Power spokesman.

The new base rates ultimately chosen by the PUC will be the starting point for the annual cost adjustments. Idaho Power has proposed the PUC structure 2004-05 power costs to soften the effects of a base rate increase, which would be the first in 10 years.

With forecasts for Idaho Power's key reservoir at Brownlee Dam estimating half a normal year's water, the company's hopes to significantly offset its proposed base increase didn't materialize.

"It was our hope that there would be sufficient snow this winter ... that would help offset any increases from our proposed general rate increase," said Idaho Power manager Greg Said in a company statement.

In a normal water year, about 60 percent of Idaho Power's electricity is generated by its 17 hydroelectric plants on the Snake River and its tributaries, the company says. Another 30 percent comes from the company's five plants fueled by coal, natural gas and diesel. The rest is bought on the wholesale market.

"In times when we have good water, we share those benefits with our customers," Lopez said.

In short years like the past several, the company relies more heavily on its thermal generation sources that include part ownership in three coal plants in Wyoming, Nevada and Oregon, and natural gas and diesel plants in Idaho.

In 2003, about 42 percent of Idaho Power's electricity was generated by its thermal plants, with the bulk coming from coal plants, Lopez said. Dams generated about 37 percent. About 21 percent was bought on the wholesale market.

While dealing with another poor water year and projected power supply costs of \$129.8 million, the company is asking the PUC to defer \$2 million in power costs until 2005 to help soften the impact of the proposed base rate increase.

It's a fraction of a cent when spread out over the company's customer base of more than 400,000, but the effect would be to maintain at their existing levels the portions of residential and large commercial customers' rates that reflect power costs.

Decreases of 3.6 percent for small commercial, 6.6 percent for industrial, and 15.7 percent for irrigation customers would be realized because these groups have finished paying off deferred costs in extreme rate hikes from the out-of-

control energy market in 2000 and 2001.

Should the PUC approve its staff proposal of a 15 percent increase in irrigation rates, Idaho Power's proposed reduction of 15.7 percent in power supply costs would cancel out an increase.

But that would only be for one year.

John O'Connor, who farms near Buhl, said an increase in base rates still would position irrigators for increases when future years of high power costs hit. Farmers don't have the ability to raise commodity prices to compensate for increased production costs, he said. What irrigators need is a rate decrease.

"This is a crossroads. There is going to be less farmers and less farming very soon," he said.

Idaho Power and PUC staff say irrigation rates are subsidized by other customer classes, but moving irrigators to the full cost of service would be too much of a rate shock. PUC staff calculated it would amount to a 47 percent increase in base rates.

But the way irrigators see it, they shouldn't have to pay large increases to support the company's growth in other areas. Growth in customer base and load demand are among the reasons Idaho Power says it needs a rate increase.

Times-News writer Jennifer Sandmann can be reached at 733-0931, Ext. 237, or [jsandmann@magicvalley.com](mailto:jsandmann@magicvalley.com).

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 Idaho Power responds to regulators' review Staff for the Public Utilities Commission recommended it not allow Idaho Power Co. to pass on a number of costs to customers. Here is how Idaho Power responded in rebuttal testimony on some issues: \* Dues -- The company defended membership dues for civic clubs and organizations as a cost of doing business by participating in community groups and sharing information and resources with industry. When evaluating memberships to the exclusive Arid Club in Boise for the company's four top executives, PUC staff did not take into account that the executives reimburse the company for personal expenses, Idaho Power said. \* Contributions -- Idaho Power agreed that \$2,000 in donations to the Democratic and Republican parties should not be included in customer rates and said that they were done so inadvertently. The same held true for community charitable donations totaling about \$36,000. \* Legal expenses -- About \$350,000 in legal fees surrounding the energy crisis were incurred by Idaho Power, not its unregulated holding company IDACORP. A separate law firm was hired to represent Idaho Power to secure the company refunds for high electrical costs, should any be awarded. \* Cloud seeding -- Idaho Power defended costs of \$1.1 million for a cloud seeding program the PUC staff said had not provided evidence of producing measurable precipitation. The company said it has been researching seeding for a number of years and last year began its first wide-scale project. \* Total adjustments -- Overall, the company adjusted its rate request downward from \$86.6 million to \$70 million. How to comment \* Submit written comments on Idaho Power Co.'s proposed one-year deferral in annual power cost adjustments by May 14. Comments can be submitted online at [www.puc.state.id.us](http://www.puc.state.id.us) by clicking on "comments and questions." Include case number IPC-E-04-9. Comments can be mailed to P.O. Box 83720, Boise, 83270-0074, or faxed to 208-334-3762.  
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ARTICLE PUBLISHED MAY 6, 2004

## Idaho Power won't help refill aquifer Company won't raise rates or risk its water rights

Idaho Power Co. has drawn a line in the sand over water.

As the state considers options for recharging the Snake River Plain Aquifer, a company executive said Wednesday that Idaho Power will not put any of its water rights at risk.

One of the options would ask users like Idaho Power to divert water for recharge.

"If we reduce flows at (hydroelectric power) plants for recharge, our rates go up," John Prescott, Idaho Power vice president for power supply, said in an interview with The Idaho Statesman. "We have an obligation to our customers to defend our rights."

The dispute over managing the Snake River aquifer resurrects tensions between Idaho Power's use of the river to produce power and farmers whose wells divert water away from the river. At stake is the price of power and Idaho's rural economy. Prescott said when the company doesn't have enough water, it must either generate power from more expensive sources of electricity or buy it on the wholesale market. When that happens, power rates usually go up.

"We're not against managing the problem, but we will defend our rights if they directly impact customer rates," Prescott said.

"They have a water right and they're entitled to their water right," said Lynn Tominaga, executive director of the Idaho Irrigation Pumpers Association. "The problem with that is that they might protect their customers, but what will happen if those customers go out of business because they don't have any water?"

The aquifer, a 10,000 square-mile underground reservoir running from Ashton to King Hill, is a main source of ground water for southern Idaho.

Farmers and other users have been warned since the 1970s that the new groundwater wells they were drilling were in danger of depleting the reservoir, but state leaders and water users are only now looking at solutions.

In the last session of the Legislature, lawmakers formed a Natural Resources Interim Committee to look at the recharge options.

Solutions being considered could include recharging the aquifer by seeping excess surface water into the aquifer again, converting some groundwater to surface use, or curtailing some water users.

The committee will meet from 9:30 a.m. to 4 p.m. today in the Boise City Council chambers.

Prescott, who will outline Idaho Power's position on recharge, said Idaho Power has senior water rights on the Snake River that date back to the early 1900s. The company uses that water to generate power through their hydropower dams.

Recharging the aquifer would require excess water, or require some parties to relinquish a portion of their surface water rights. This is not the first time Idaho Power has moved to protect its water rights.

In 1977, a group of Idaho Power customers sued the company over declining streamflows at dams on the Snake River. They said the company wasn't doing enough to prevent upstream farmers from using water that would otherwise power its hydroelectric turbines. That meant less electricity and, thus, higher prices.

Idaho Power then sued the farmers and their irrigation companies, contending they were using its water illegally. In 1983, the Idaho Supreme Court ruled for Idaho Power.

In 1984, Idaho Power and the state struck a deal, known as the Swan Falls Agreement, based on the name of the dam for which the company had historic water rights. Idaho Power took less water than it had a right to claim; the state agreed to determine who owned what water and decide whether any was left for new development.

In 1987, every water user in Idaho was required to refile or file their claims with the Idaho Department of Water Resources. The agency sorts through claims and makes recommendations to the state court about who owns what amount of water. The court then rules on the validity of the claims.

This process, called the Snake River Basin Adjudication, is working through 180,000 claims at a cost to Idaho of more than \$40 million.

Tominaga said Wednesday he hopes there is still room for compromise with Idaho Power.

"What we hope is that we can take a look at recharge when the power company isn't using its water to its fullest benefit," he said.

Tominaga suggests that there are times during the year when the company may not need all its water to generate power or could buy power on the open market at lower prices, which would allow some diversion of the water.

Prescott said Idaho Power also doesn't think recharge will completely solve the problem.

"We can't create water. The problem is that the water in the southern part of the state is over-allocated," Prescott said.

House Speaker Bruce Newcomb, R-Burley, who irrigates his own fields with well water, agrees that recharge isn't a "silver bullet." He also doesn't rule out curtailing water use.

"Curtailment will have to be part of the plan if we want to reach an agreement," Newcomb said. Despite Idaho Power's stance, Newcomb believes a solution can be found.

"There's always room for a compromise," he said. "We'll go hard and strong at it this year, but it has to be an ongoing project. We can't take a problem that took 50 years to create and solve it in one year."

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Local News - Thursday, May 6, 2004

**SUBSCRIBE TO THE GREAT FALLS TRIBUNE**

## Summer water forecast dismal Delegates seek disaster declaration for all of Montana

**By Becky Bohrer and Eve Chen**  
Associated Press Writer

BILLINGS -- Warm temperatures are melting the snowpack earlier than usual, creating concerns about the availability of water this spring and summer, a water supply specialist said Wednesday.

"May and June are our larger rain months, and they're very important to us, especially in years like this," said Roy Kaiser of the Natural Resources Conservation Service in Bozeman, which released its snowpack report Wednesday.

The report said streamflows this spring are expected to crest about a month earlier than average and that streams won't surpass their "snowmelt peaks" without plenty of rainfall.

"The rain won't help so much for the long-term, deep drought, but rain is what we need to get us through," Kaiser said.

Streamflow forecasts through July are generally far below average, he said, meaning there will probably be significant water shortages later this spring and summer. "Water users and water managers need to plan for possible water shortages greater than those experienced last year," he said in a statement.

Meanwhile, Montana's congressmen are asking the federal government to declare the entire state a disaster area.

"The current drought status is challenging alone, but compounded by the consecutive years of drought that Montana has suffered ... it is devastating," Sen. Max Baucus, D-Mont., said in a letter to the president Wednesday.

However, the governor is required to initiate a presidential disaster declaration, and Gov. Judy Martz has not yet done so, said spokesman Chuck Butler.

"If the governor were to request it, there's a good chance the White House would approve it," Butler said. "But the drought advisory council has not requested it."

At the council's request, Martz had asked Agriculture Secretary Ann Veneman to declare 13 counties as disaster areas, Butler said.

Currently 12 counties and three tribal areas, including the Blackfoot Indian Reservation, are eligible for federal disaster relief through USDA.

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Rep. Denny Rehberg, R-Mont., wrote Veneman on Wednesday, urging her to expand eligibility to all 56 counties.

Sen. Conrad Burns, R-Mont., said he supported the efforts of both Rehberg and Baucus.

"Congressman Rehberg and the senators are certainly entitled to seek whatever avenues they can to provide for the people of Montana," said Butler.

"The governor has her drought advisory council. If they recommend she seek further disaster designation, we will follow the appropriate process," he said. "As of this moment, the governor has not requested further drought disaster declaration from the White House."

The classification would give farmers greater access to federal loans and give ranchers more flexibility in selling and rebuilding herds without tax penalties.

In the meantime, Baucus is also pushing for legislation on the Senate floor to allow the head of the USDA to issue the same measure.

Beyond providing federal aid, Rehberg wants the USDA to allow ranchers to graze cattle on Conservation Reserve Program land. He has also drafted legislation that would exempt farmers from having to repay the USDA for overpaid grain subsidies from 2003.

"Even if it's only a little amount of money, it's a good psychological boost if farmers don't have to repay that," Big Sandy farmer and Montana Grain Growers Association president Lochiel Edwards said of the subsidies. "Farmers are a little discouraged. The drought's been going on so darn long."

Martz spokesman Kris Goss noted "the governor and the lieutenant governor are very aware of the drought conditions throughout Montana, in almost every county." He said the state advisory council would "continue monitoring the issue very closely" and seek federal aid as it saw fit.

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## Water 'holy war' rages in central Utah

by Joshua Zaffos

### Will taxpayers foot the bill on a federally subsidized fossil?

PRICE, UTAH — Michael Milovich is a bank president, so he knows a few things about what makes a sound loan. When he looks over the financial numbers for the proposed Gooseberry Narrows Dam, he doesn't like what he sees.

"This thing gives me heartburn," says Milovich, who is also a commissioner here in Carbon County.

The proposed dam would create a 17,000 acre-foot reservoir on the headwaters of the Price River near the confluence of Gooseberry Creek and Fish Creek. (An acre-foot is enough water for a family of four for a year.) The reservoir is the last vestige of a half-century-old federal program to promote small farms. Its water would be piped under the Wasatch Plateau and into the Great Basin and neighboring Sanpete County.

Milovich says the dam could mean trouble for his county, which gets its drinking water from Scofield Reservoir, downstream of the proposed dam. And he believes that the U.S. Bureau of Reclamation is slanting the ledger to ensure a \$24.3 million taxpayer-funded federal loan, not for the sake of Utah's farmers, but to subsidize development in growing bedroom communities for Provo and Salt Lake City.

#### A sweetheart deal

In 1956, the Bureau of Reclamation established the Small Reclamation Projects Act to help Western farmers finance dams. It was a sweet deal: Irrigation districts had to provide just 25 percent of the total price up front; the Bureau of Reclamation would loan, or even give outright, two-thirds of the remaining cost, while state governments or other financiers covered the rest. If a project was exclusively for agriculture, the federal loans were interest-free; even if it wasn't, water users had 40 years to pay back the loan, at a highly discounted interest rate.

A scathing 1991 audit by the Department of the Interior's Inspector General found that Reclamation lost over \$70 million in unrealized revenue and uncollected interest from the program. Two years later, the Bureau got out of the loan business. But the Sanpete Water Conservancy District, which has a 70-year-old water right on Gooseberry Creek, had already invested significant money in its application for the Narrows Project, starting in the 1980s.

Today, Sanpete County is more desperate than ever for the water — but not because its farmers need it. Between 1990 and 2000, its population grew 40 percent, from 16,000 people to almost 23,000. Some forecasts say the population will almost double by 2020; the county already has an estimated shortage of 15,000 acre-feet of water.

Sanpete County is already planning to "roll over" irrigation water from the Narrows Project so it can be used by towns. "It's (now) a municipal-industrial need," says Bruce Blackham, Sanpete County Commissioner. "Agriculture hasn't been

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flourishing."

#### Dam buster

The Narrows Project has a checkered past. In 1947, the Bureau of Reclamation declared it "economically unfeasible," but Sanpete County revived the project several times, most recently with the help of the Small Reclamation Projects Act. In 1995, the Bureau signed off on an environmental impact statement that approved the project. But Carbon County and environmentalists protested that the Sanpete Water Conservancy District's own project engineer had written the document. The Bureau rescinded its approval, citing "procedural issues," and went to work on another study; an updated version is due out later this year.

Michael Milovich and other residents of Carbon County say the new study fails to address economic impacts to their county, which draws water from a reservoir downstream of Gooseberry Creek. "The Bureau of Reclamation is supposed to be a neutral party," says Milovich, "but they are an advocator and a promoter."

"This is a holy war," fires back Joel Bikman, who works for a public relations firm hired by the Sanpete Water Conservancy District. Bikman says dam opponents act "almost as if the Seventh Seal (of the apocalypse) is being opened if this water project happens."

Kerry Schwartz, the Bureau's environmental impact statement coordinator for the Narrows Project, denies that his agency has any bias. Once the updated study is complete, says Schwartz, the agency will take a hard look before it decides whether the project should receive the government loan.

The Narrows Project also stands to receive grants for "fish and wildlife enhancement" from the federal government and the state of Utah, despite the fact that the dam could harm endangered fish, a popular trout fishery, and stream stretches that the Forest Service has identified as eligible for Wild and Scenic River designation.

Critics of the project point out that conserving water by lining existing canals to prevent leakage and updating irrigation systems — measures already included in the larger dam proposal — would provide up to three times as much as the dam itself. But Milovich isn't optimistic that the critics will be heard: "The Bureau of Reclamation, by damn, is going to build a reservoir."

---

The author writes from Paonia, Colorado.

Carbon County Commission, Michael Milovich, 435-636-3272

Soter Associates, Joel Bikman, 801-375-6200

U.S. Bureau of Reclamation , Don Merrill, 801-379-1074

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## Evans, Krista Lee

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**From:** NewsLinks [NewsLinks@metnet.state.mt.us]  
**Sent:** Friday, May 14, 2004 12:16 PM  
**To:** kevens@state.mt.us  
**Subject:** Montana Power Council Members Discuss Water Conditions and Libby and Hungry Hor

Contributed by kberg@nwcouncil.org, Internet:

For Immediate Release  
May 14, 2004

Contact:† John Hines, Montana Member, Northwest Power and Conservation Council†  
†††††††† †† Ed Bartlett, Montana Member, Northwest Power and Conservation Council  
†† Kerry Berg, Policy Analyst, Northwest Power and Conservation Council  
†† (406) 444-3952

### Montana Power Council Members Discuss Water Conditions and Hydro Operations at Libby and Hungry Horse

HELENA, Mont. -- At a recent meeting of the Northwest Power and Conservation Council (Council) Montana's representatives heard disappointing news regarding the deteriorating water conditions in the Columbia Basin.† The key water supply estimate of Columbia River runoff dropped from a January forecast of 96 percent of normal to an end of May forecast of 74 percent of normal.

Unfortunately the weather is something we can not control,† Montana Member Ed Bartlett said.† The forecasts from January have shifted in a manner that is not unprecedented, but very rare.† If the weather continues down this path, this could be one of the worst droughts on record in the Columbia Basin and everyone in the region will have to help respond.† At the meeting the Council learned that since record keeping began in the late 1920's, the Columbia Basin has had only one worse four-year stretch of water years.

In April of last year the Council adopted a Mainstem Plan† that calls for new summer operations at Libby and Hungry Horse dams.† The Montana Council members have been pushing for the implementation of the modified Libby and Hungry Horse operations since that time.† The plan calls for more stable, or flat flows from those facilities through the end of September. The plan also limits the drafts of those reservoirs to ten feet from full.† However, the plan also permits a draft of 20 feet at Libby and Hungry Horse reservoirs in the lowest 20 percentile water years.† The Council heard from the Army Corps of Engineers that the Columbia Basin has reached the lowest 20-percentile threshold.

The water supply forecast was a disappointment to us because it virtually eliminates the opportunity to limit the drafts at Libby and Hungry Horse to ten feet this summer,† Montana Member John Hines said.† However, we continue to expect the federal agencies to implement the proposed Libby and Hungry Horse reservoir operations this summer, including the extension of stabilized river flows through September.† If implemented, in future years when we have a more normal runoff in the basin, drafts in the reservoirs behind Libby and Hungry Horse can be limited to ten feet.†

Both Hines and Bartlett noted the need for the federal agencies to take the needs of Montana's interests into consideration when making decisions on the operation of the hydro system in the Northwest.† Dam operations at Libby and Hungry Horse affect Montana fish and wildlife, recreational opportunities, and the economy as a whole in Northwest Montana.† Too often, Montana's interests are overlooked and water is shifted out of Montana's reservoirs for questionable benefits to salmon in the lower Columbia river, they said.

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## West can no longer take water for granted

By **PAT WILLIAMS**

Senior fellow and regional policy associate  
O'Connor Center for the Rocky Mountain West

**T**hroughout the Rocky Mountain West, the headlines of our newspapers give dire warnings: "Colorado Snowpack Poor"; "Wyoming Drying Up"; "Montana Drought May be Here to Stay"; "New Mexico Prepares for Low Runoff;" "Drought Pushes Idaho Utility to Expensive Sources."

From the Southwest to the northern Rockies, the ominous facts behind the grim headlines are the stuff of crises. Lake Powell, the reservoir of both first and last resort to the states of Arizona, Nevada and California, is at 42 percent of capacity and predicted to receive only half of normal spring runoff. Just downstream, Lake Meade sits at less than 60 percent of capacity.

High and dry docks ring the shoreline of the largest fresh water lake west of the Mississippi, Montana's Flathead Lake. The little Montana town of Fairfield, following seven years of drought, is out of water. Its aquifer no longer fully recharges, forcing the town's citizens to buy bottled drinking water and use outhouses.

Snowpack in New Mexico's Sangre de Cristo Mountains is 50 percent of normal. The Rio Grande is low and dropping. Snowpack in the high watersheds of Colorado and Idaho are at near-record lows. No western state is escaping the grim reality of water shortage.

The story of Western water is about plumbing. From the earliest pumping windmills to the centrifugal water pumps and pipelines, from the mainstream dams to the ditches, we have tapped the aquifers and diverted the rivers. In creating this hydraulic society, both the West and America have economically prospered.

However, as our headlines attest, the crosshairs of drought and development are aligning and bringing into focus the reality of tomorrow's limits.

Our Western forebearers fought fiercely over water, but today's Westerners seem to understand neither water's limits nor costs. The almost mindless depletion of our aquifers continues at an unsustainable rate, while both population and temperatures soar.

Two-thirds of the nation's ground-water withdrawal occurs in the West, with 78 percent of it going for a single use: agriculture.

People living in the seven states of the Rocky Mountain West get, on the average, more than 60 percent of their drinking water from underground sources.

Surely we recognize that drought, perhaps very long-term drought, combined with increased demand is depleting that life-giving resource.

Serious water use reform is required: inter- and intra-state cooperation, conservation, development limitations, minimum flow standards, respect for the commons, and the use of financial penalties as well as incentives.

One of the most controversial reform trends is the commodification or privatization of the distribution and management of water. Any effort to privatize water must be accompanied by iron-clad recognition of the social and ecological importance of water. Access must be made available to those who would likely be bypassed by market solutions, including the West's small farmers and small towns.

Without wisdom and understanding, our pursuit of a well-watered future may come to the same ignominious end that surprised German soldiers who were imprisoned as POWs near Phoenix, Ariz., during World War II. Having secured a map, those soldiers studied escape routes that would lead them to a large nearby river shown on the map. The Germans labored for months digging a 200-foot tunnel under the camp and toward the river. When completed, 25 POWs crawled through the 3-ft. wide tunnel and once outside the camp, they walked through the night toward the promised river upon which they intended to float to Mexico and freedom.

They found only the banks of a dry river bed; the water had been diverted years earlier by upstream dams. Here in the West water is elusive; planning alone is often not enough to secure it. And yet without water, the freedom to live, develop and prosper will be impossible.

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*Pat Williams served nine terms as a U.S. Representative from Montana. After his retirement, he returned to Montana and is teaching at The University of Montana where he also serves as a Senior Fellow at the Center for the Rocky Mountain West.*

**[Back to Headwaters News](#)**

ARTICLE PUBLISHED MAY 16, 2004

## **Tribe, farmers, Idaho make historic water deal**

### **'One of the single most important milestones in our state's 114-year crusade to control its water'**

Idaho's Nez Perce Tribe has struck a deal with the state of Idaho, the federal government and irrigators that would provide wide-ranging benefits for endangered salmon, legal cover for Idaho water users, and cash, water and land for the tribe.

The \$193 million deal negotiated over the past five years was unveiled Saturday in a ceremony at the Idaho Shakespeare Festival site in Boise. If approved, the deal crosses the final hurdle for completing a 17-year review of water rights in the Snake River Basin in Idaho that has cost more than \$40 million and examined more than 180,000 claims.

The fate of the historic deal remains uncertain. It must be approved by Congress, the president, the Idaho Legislature and the Nez Perce Tribal Executive Committee by March 31, 2005.

The agreement also depends on the U.S. Bureau of Reclamation getting approval from fisheries agencies for programs to help salmon. Idaho also has a big job ahead in identifying and negotiating minimum-stream flows in the Upper Salmon River Valley and negotiating a salmon protection plan for the Lemhi and Pahsimeroi river basins — all by March 2005.

"This is just the the first step in what will be a long journey," Interior Secretary Gale Norton said. "We will need to continue to work together, collaboratively and with creativity, as we draft the important legal documents that will implement our vision." Failure would result in a long and costly legal fight that could threaten the state's economy and keep all sides in limbo on a variety of water, salmon and endangered species issues.

"We now need help from others," said Anthony Johnson, chairman of the Nez Perce Tribal Executive Committee. "We need the support of our neighbors, non-Indian and Indian, throughout Idaho. We need the support of our fellow tribes and other neighbors in Oregon, Washington and Montana."

"This is one of the single most important milestones in our state's 114-year crusade to control its water," Idaho Gov. Dirk Kempthorne said. The agreement

Under the terms of the deal, the Nez Perce Tribe will drop all its claims to the water in the Snake River Basin, based on the right to fish on the lands it ceded to the federal government in an 1855 treaty with the United States.

In exchange, the federal government and the state made commitments to ensure that at least 427,000 acre-feet of water from southern Idaho are available annually to increase flows for salmon and steelhead. The federal government and the state also made commitments to protect stream flows and to restore fish habitat in the Salmon and Clearwater rivers and their tributaries.

The tribe is to receive \$90 million for a variety of projects; take over management of the Kooskia federal hatchery on the Clearwater River; and get \$7 million worth of federal land within its 88,300-acre reservation in north-central Idaho. The agreement also recognizes the tribal claim to 50,000 acre-feet of water for use on the reservation, which won't dry up other users.

However, some crop lands could dry up under this plan, which provides \$11 million for the federal government to purchase the rights to 60,000 acre-feet of water currently diverted from the river between Buhl and Murphy. The farmers who pump water out of the Snake River and irrigate lands on the high plateaus in the area could dry up tens of thousands of acres.

Counties would get a total of \$2 million in a fund to make up for the economic impacts of drying up farms.

In the Salmon and Clearwater basins, timberland owners and farmers who change their practices to help endangered fish can sign up to get protection from prosecution under the Endangered Species Act.

More hurdles

The fishermen, environmentalists and fishing-related businesses who have partnered with the Nez Perce in their fight to save salmon have a chance to kill the deal by challenging Bureau of Reclamation dam operations that need approval in Congress. Pat Ford, executive director of Save Our Wild Salmon, which represents those interests, said the group was reserving judgment until talking to the tribe and learning all the details. But he said the amount of water proposed for increasing flows in the river falls short by more than a third.

"The scientific verdict is that with the four lower Snake River dams in place, salmon need a great deal of water from Idaho to assure recovery," Ford said.

Idaho Power Co. had long been a major party to the negotiations but later pulled out. Yet the company remains a key player because any water that is made available to increase flows from the Snake River in southern Idaho must go through Brownlee Reservoir. How and when Idaho Power releases this water is critical for migrating salmon.

A key issue is the temperature of the water that is released. Federal officials say fall chinook benefit when warmer water is released early in the summer and when cooler water is released later. They are in negotiations with Idaho Power seeking a solution.

"We would much prefer to resolve the Idaho Power issues at the same time since they are interrelated," said Robert Lohn, National Marine Fisheries Service Northwest director.

Idaho Power pulled out of the talks because it considered the process for relicensing its Hells Canyon dams a more proper venue for

addressing the flow issues, said John Prescott, Idaho Power vice president for generation. Other interested parties, including Oregon, couldn't take part in the talks because they weren't part of the water rights case.

"We are continuing our discussions on the issues Bob Lohn talked about but we are talking about them in the context of relicensing," Prescott said.



<http://www.billingsgazette.com/index.php?display=rednews/2004/05/30/build/state/35-drought.inc>

## Drought taking its toll on business

### Associated Press

LIMA (AP) - Randy Bernard's family hardware business here has survived recessions, floods and terrible livestock markets over the past 55 years. But six years of drought has accomplished something Bernard never thought he'd see - a for-sale sign hanging from the front of the Lima Lumber and Hardware Co.

"In my 29 years of running this business, I've never seen it so tough," Bernard said. "We've put every bit of our savings into this business just to keep the doors open."

Bernard's been lucky to see three or four ranchers walk through the door this spring. He's not surprised.

"I know they can't spend it because they just don't have it," he said. "They're having to sell off their cows. Some are looking for jobs elsewhere. They're doing whatever they have to to survive."

Irrigation pivots and wheel lines sit idle all along the Red Rock River between Clark Canyon Reservoir and Lima in extreme southwestern Montana.

For the first time in 40 years, farmers and ranchers along the East Bench north of Dillon won't receive any irrigation water from Clark Canyon Reservoir. Larry Laknar, Beaverhead County Disaster and Emergency Service director, said about 50 to 60 families depend on that water to irrigate nearly 22,000 acres of land along the bench.

Wally Klose is among those who figures he'll have to sell some of this prize shorthorn cattle to survive.

"I just don't have enough pasture to make it through," he said. "There's no point in fooling yourself sooner or later you'll have to bite the bullet."

Bill Wehri of Williams Feed and Seed in Dillon said the drought has both hurt and helped the business.

On the plus side, some ranchers have received drought subsidies to help buy feed and supplements. Others with irrigation water have spent additional money on fertilizer because they anticipate high hay prices this fall.

But on the flip side, the drought on East Bench has cut deeply into seed and fertilizer sales, Wehri said.

"From our standpoint, the East Bench is a big chunk of our market area," he said. "It impacts us in a big way for seed and fertilizer sales."

"This drought goes both directions as far as our business goes, but my gut feeling is there will be a lot more negative impacts," he said. "If the drought continues for another year and especially if we don't get some snowpack to help fill Clark Canyon, then I think it's going to be a back breaker for a number of farmers and ranchers around here."

Recent rains, sometimes heavy in some areas, helped conditions, at least temporarily.

"It was a million-dollar little storm," Wehri said.

The deepening drought has forced area ranchers to make difficult decisions.

Laknar said one long-time rancher in the Dell area said he'd already sold his replacement heifers as well as a third of his cow herd. He planned to wait and see if there was any sign of relief before selling another third.

In Beaverhead County, cattle numbers have steadily declined since 2000, when numbers of cattle 24 months and older were at 121,232. In the 2003 tax year, those numbers had dropped to 98,540.

Statewide, Montana has lost about 50,000 head a year beginning in 2000 when the state's cattle numbers stood at 2.6 million.

"That's people's livelihoods that we're talking about," said Peggy Stringer, Montana Agricultural Statistics Service's director. "They're trying to keep together whatever they can, but that's hard to do when you start culling so heavily."

Beaverhead County producers have been among the hardest hit, Stringer said.

"Beaverhead County has been the brownest of the brown on our drought maps forever and ever," she said. "I feel for those people. I pray it rains and rains and rains."

Bernard is hoping that someone back east might take note of how small towns and people making their living off the land are struggling to survive. He's hoping that maybe someone can provide help to get them through this tough spot.

"We have folks out here who can't pay their bills," he said. "It's killing these small towns. They're going to dry up and blow away."

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# Water Rights & Water Fights

States no longer take water for granted. Having laws in place helps when disputes over the precious commodity arise.

By Larry Morandi

The Ailsa Craig juts from the Firth of Clyde off the west coast of Scotland. A rocky island, it has become part of Scottish golf lore, rising close by the Turnberry links. Undaunted by the often turbulent weather, the locals proudly explain, "If you cannot see the Ailsa Craig, it means it's raining. If you can see it, it means it's gonna rain."

George William Sherk, a Colorado water attorney, ascribes a similar comparison to the water conflicts that now grip many states. "There are two kinds of states," he notes, "those that are involved in an interstate water conflict, and those that are going to be involved in one."

The reasons are simple: Water does not adhere to lines drawn on a map, and growth is occurring where water isn't.

## WATER FIGHT IN THE SOUTH

The tri-state dispute among Alabama, Florida and Georgia over water in the Apalachicola, Chattahoochee and Flint river system illustrates the problems facing humid Eastern states, which had seldom faced supply problems in the past. Atlanta's rapid growth and recurring regional droughts have landed the three states in federal court over who gets how much of an increasingly scarce resource. Georgia and Alabama need to satisfy growing urban drinking and waste water needs, while Florida is concerned about reduced flows into a bay that supports 90 percent of its oyster harvest.

All three states rely on the "riparian doctrine" of water use, which allows for "reasonable use" of water subject to equally reasonable uses in other states. The problem is that what is reasonable varies in time, place and in response to changing needs. There is no certainty. And because there has been an abundance of water in the East, there has been little pressure to establish more secure and equitable water management systems. "The Eastern states do not have a tradition of water shortage," Sherk points out. "Therefore, they have few laws to address one when it happens."

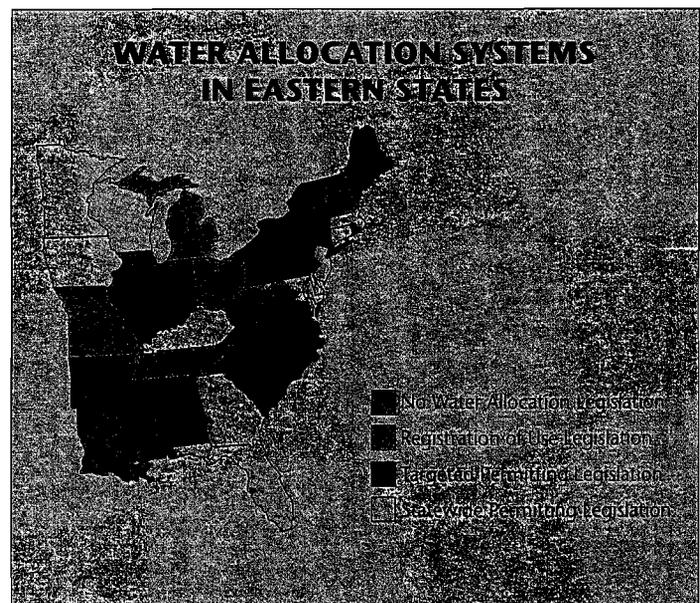
## LACK OF CERTAINTY

This lack of certainty was one of the reasons that drove West Virginia, one of the few states east of the Mississippi River without some statutory water allocation system, to enact a law this session. There was concern that with rapid growth in the Washington, D.C., sub-

urbs, residents of West Virginia's panhandle (a rapidly growing area itself that sends increasing numbers of commuters to D.C. each year) might face reduced flows on the Potomac River as demand increases. Economic development also was a factor. If the state couldn't ensure sufficient supplies to businesses that relied on the resource, those companies might locate where there was better water management.

Senate Bill 163 begins by declaring that "the waters of the state of West Virginia are hereby claimed as valuable public resources held by the state for the use and benefit of its citizens ... The state shall manage the quantity of its waters effectively for present and future use and enjoyment and for the protection of the environment." Innocuous sounding enough, but an important first step in a state where water rights had always been determined in court with few guiding principles.

The bill requires the Department of Environmental Protection to survey surface and groundwater withdrawals in the state, and requires every person who uses more than 750,000 gallons per month to register with the department. After three years, the department must recommend to the Legislature a way for managing water use in areas that are currently facing shortfalls or are likely to be. The law combines two of the three options adopted by most Eastern states—registration of use and, potentially, targeted permitting.



The bill was opposed by industries that did not want to see their rights—never clearly defined under riparian law—diminished. Senator John Pat Fanning, chair of the Natural Resources Committee and a leader in passing the legislation, noted that "there was this perception that the state was going to start charging them for water." He was able to disarm much industry opposition by assuring them that "we're not trying to penalize anybody, we're just trying to get a handle on what we have." At the same time, he was able to make everyone understand that the approach would be light as long as there was cooperation. Cooperation ... a word often replaced by litigation when resolving water disputes.

West Virginia appears to have taken a prudent first step in determining where it is before deciding how much further to go.

Larry Morandi directs NCSL's Environment, Energy and Transportation program.

ARTICLE PUBLISHED JUN 4, 2004

## **Scientist: Climate changes could hurt Idaho's farms, fish Resources panel considers what expert has to say**

Idaho's snowpack could drop by 35 percent over the next 50 years, worsening the state water shortage, one of the nation's top climate scientists told a legislative committee Thursday.

Temperatures that are expected to rise, on average, 7 degrees over those five decades will reduce the amount of snow in lower elevations, including the mountain ranges around Boise, said Philip Mote, a University of Washington climate scientist.

That could make it harder to store water in reservoirs and reduce the natural recharge of the expansive Snake River Plain Aquifer that provides water for much of southern Idaho. In a state where dairies, fish farmers and cities are fighting over limited water supplies, the changes could hurt Idaho's economy. Salmon also could face more challenges. Some changes, predicted by models accepted by a consensus of scientists, are already apparent, Mote said.

"Most of the West has seen an increase in March flows just as the models predict," Mote told the Idaho Legislature's 36-member Expanded Resources Interim Committee looking at water issues statewide.

Mote spoke to an audience of lawmakers, water experts and lawyers that was largely skeptical about human-caused global warming. The consensus of scientists, Mote said, is that humans are changing the global climate by dramatically increasing the concentration of carbon dioxide and other gases in the atmosphere.

These gases trap the heat of the earth like a greenhouse.

"I've never really bought on big to the whole global warming theory," said Sen. Dean Cameron, R-Rupert. "But I was impressed by the way he laid out the evidence."

Mote said allowing more flexibility in spring river management could aid Idaho and other Northwest states in addressing the changing snowfall and rain patterns he predicts. "We'd have less concern for flood control and more concern on keeping reservoirs full in the summer," he said.

Rep. Scott Bedke, R-Oakley, a cattle rancher, said Mote's predictions support farmers' call for building more reservoirs and raising the level of existing dams.

"If indeed these changes are in our future, then I think it speaks for increased storage," Bedke said.

Rep. Doug Jones, R-Filer, said the early snow melt this year was largely lost. "We look at this year, we thought we were in good shape until March," Jones said.

Mote said the current drought can't be tied by the data to global warming. But the trends show that the human-caused warming has changed nature since 1960.

Several lawmakers asked about the impact on endangered stocks of salmon in the Northwest. Mote said it would affect salmon differently during their life cycle. In some streams, flooding will increase, scouring out eggs at critical times.

In other places, high temperatures and lower stream levels will hurt fish in the summer.

"There will be some stocks of salmon that will have a difficult time with global warming," Mote said.

## **Yellowstone River flow hits record low**

*By The Associated Press*

BILLINGS, Mont. (AP) -- The Yellowstone River here reached a daily record low flow of 6,730 cubic feet per second Wednesday.

The previous low reading for June 2 was 7,140 cfs.

Normally, the Yellowstone would be rising at this time of the year, generally cresting before mid-June.

Officials said this year's crest occurred on May 9 and at less than one-fourth of normal.

Poor snowpack and an early melt resulted in the early peak, which will make it difficult to sustain strong flows during the summer months.

Record low flows were also reported Wednesday on the Milk River at Harlem, the Stillwater at Absarokee, the Boulder at Big Timber, Rock Creek at Red Lodge, the Clarks Fork of the Yellowstone at Belfry and Edgar, the Little Bighorn River at Wyola, Lodge Grass Creek at Wyola, the Tongue River at Decker and Ruby Creek at Alder.

Most river gauges in southcentral and southeastern Montana were running at less than 10 percent of their normal volume for this time of year.

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Local News - Friday, June 11, 2004

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## Fish, Wildlife & Parks warns water holders of summer shut-offs

By Mike Dennison

Tribune Capitol Bureau

HELENA -- The state might be asking a "significant number" of junior water-rights holders to shut off their water use this summer to protect fish, state fisheries officials says.

In fact, the Department of Fish, Wildlife & Parks already has sent letters to 600 water-users whose rights are junior to the state, warning them of a possible shut-off.

"It's hard to imagine a situation that's any more grim," said Bill Schenk, in-stream flow specialist for the state Fisheries Division. "In spite of the recent rains, we're going to be in rough shape as far as stream flows go."

Schenk spoke Wednesday at a work session of the state Fish, Wildlife & Parks Commission in Helena.

The state holds water rights to maintain in-stream flow for fish on many streams in the Missouri and Yellowstone river basins, as well as 12 blue-ribbon trout streams. The rights in the Missouri and Yellowstone river basins date back to the 1970s and 1980s.

Thousands of water-users in these and other basins have rights that are "senior" to the state, meaning they get first right to the water and aren't affected by state requests to stop using water.

However, there are several hundred water-users whose rights are "junior" to the state, meaning they were obtained in the past 20 to 30 years.

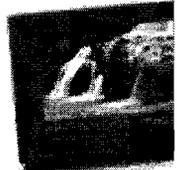
These junior holders face a possible request to cease their water use this summer, to allow the state to maintain adequate flows for fish survival, he said.

"We're going to suffer very low flows this summer," Schenk said. "We do what we can, and that affects a rather small percentage of water-rights holders in the state."

Chris Hunter, head of the Fisheries Division, also noted that any requests essentially are just that, because the state doesn't have the resources to enforce every shut-off order.



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"We don't have a way to make them turn off (their water use)," he said. "We're basically asking them to. Enforcement of these things is incredibly difficult and costly."

Most of the junior water-rights holders who received notices last week are irrigators, while some are individual cabin owners, who have a right for domestic water use, Schenk said.

On the Missouri River below Holter Dam, the river flow already is below the amount reserved by the state's water right.

Schenk said this year won't be the first time the state has notified junior right holders that they may face a shut-off to preserve in-stream flows for fish.

However, he did say the notifications are more widespread than ever.

The only areas that didn't receive notices are the Blackfoot River, where local users are working on a cooperative agreement to maintain flows, and the Musselshell River in central Montana, which has water being distributed by court-ordered water commissioners.

He said the state will watch flow levels, compare them to the state's in-stream right and consider snowpack data in the specific drainage. If it looks like the flows won't be improving, the call may go out to junior holders to stop their water use, he said.

"We'll call the rights and we won't do it selectively," Schenk said. "We'll call all juniors (on the stream)."

The state also has closed two rivers to fishing: The upper Big Hole River and Red Rock River in southwestern Montana.

Hunter said fishing closures and restricting water use are two different issues.

Closures occur when the water temperature gets too high, which increases the stress on fish, he said. So far, the Red Rock and Big Hole closures are the only ones statewide.

"We're not talking about any more for now," Hunter said. "We're just praying for rain."

**Dennison can be reached by e-mail at [capbureau@mt.net](mailto:capbureau@mt.net), or by phone at (406) 442-9493.**

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**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**  
**WATER RESOURCES DIVISION - STATE WATER PROJECTS BUREAU**

**RESERVOIR CONTENTS REPORT**

**May 31, 2004**

All Contents in Acre-Feet

| Reservoir           | Capacity<br>(Useable<br>Contents) | Content<br>Records<br>Available | Average<br>#YRS of Record<br>(1960-2003) | % Average<br>5/31/2004 | Contents  |            |           | % CAPACITY<br>PRESENT<br>5/31/2004 | Reading<br>Date | Comments                               |
|---------------------|-----------------------------------|---------------------------------|------------------------------------------|------------------------|-----------|------------|-----------|------------------------------------|-----------------|----------------------------------------|
|                     |                                   |                                 |                                          |                        | Last Year | Last Month | Present   |                                    |                 |                                        |
|                     |                                   |                                 |                                          |                        | 5/31/2003 | 4/30/2004  | 5/31/2004 |                                    |                 |                                        |
|                     |                                   |                                 |                                          |                        |           |            |           |                                    |                 | <b>MID MONTH DATA</b>                  |
| ACKLEY              | 5,815                             | 34                              | 4,700                                    | 89                     | 3,230     | 1,720      | 4,200     | 72                                 | 6/1/04          |                                        |
| BAIR                | 7,005                             | 43                              | 5,950                                    | 55                     | 3,840     | 3,300      | 3,290     | 47                                 | 5/31/04         | 2,920 AF on 6/10                       |
| CATARACT            | 1,478                             | 4                               | 554                                      | 86                     | 550       | 400        | 479       | 32                                 | 6/7/04          |                                        |
| COONEY *            | 28,140                            | 22                              | 20,930                                   | 100                    | 25,740    | 22,690     | 20,930    | 74                                 | 6/1/04          |                                        |
| COTTONWOOD          | 1,900                             | 3                               | 1,300                                    | 85                     | 2,005     | 1,020      | 1,100     | 58                                 | 6/1/04          |                                        |
| DEADMAN'S BASIN     | 72,220                            | 43                              | 55,830                                   | 24                     | 24,040    | 20,820     | 13,210    | 18                                 | 6/1/04          |                                        |
| E.F. ROCK CREEK *   | 16,043                            | 32                              | 10,280                                   | 61                     | 7,120     | 7,185      | 6,240     | 39                                 | 5/31/04         | 6,880 AF on 5/27/04                    |
| FRENCHMAN           | 3,752                             | 32                              | 5,070                                    | 85                     | 3,870     | 3,870      | 4,290     | 114                                | 5/31/04         | 5/31 Storage est'd; 4,330 AF on 6/6/04 |
| MARTINSDALE         | 23,112                            | 42                              | 16,770                                   | 25                     | 5,875     | 5,800      | 4,220     | 18                                 | 6/1/04          | 3,670 AF on 6/10                       |
| MIDDLE CREEK *      | 10,184                            | 11                              | 9,460                                    | 105                    | 7,500     | 7,630      | 9,930     | 98                                 | 6/1/04          |                                        |
| NEVADA CREEK *      | 11,152                            | 37                              | 11,130                                   | 72                     | 10,580    | 9,150      | 8,060     | 72                                 | 6/1/04          |                                        |
| NILAN               | 10,092                            | 39                              | 8,380                                    | 77                     | 8,900     | 5,830      | 6,450     | 64                                 | 5/31/04         | 6,290 AF on 5/28; 6,820 AF on 6/7/04   |
| N.FK. SMITH RIVER * | 11,406                            | 43                              | 10,120                                   | 107                    | 8,550     | 8,210      | 10,860    | 95                                 | 6/2/04          | 10,700 AF on 6/10                      |
| RUBY RIVER *        | 36,633                            | 37                              | 37,640                                   | 75                     | 37,620    | 33,790     | 28,120    | 77                                 | 6/1/04          |                                        |
| TONGUE RIVER *      | 79,071                            | 5                               | 58,100                                   | 80                     | 55,760    | 49,420     | 46,300    | 59                                 | 6/1/04          |                                        |
| W.F. BITTERRÖÖT     | 31,706                            | 29                              | 32,010                                   | 104                    | 30,740    | 25,020     | 33,160    | 105                                | 5/31/04         |                                        |
| WILLOW CREEK        | 17,731                            | 43                              | 16,690                                   | 89                     | 18,000    | 15,370     | 14,890    | 84                                 | 5/29/04         |                                        |
| YELLOWWATER         | 3842                              | 12                              | 1,550                                    | 19                     | 403       | 311        | 300       | 8                                  | 5/27/04         |                                        |

\* Note: Ruby River capacity reflects capacity at concrete crest elevation; capacity at top of flashboards is 37,612 A.F.

\* Note: Middle Creek capacity reflects capacity after 1993 dam rehabilitation; prior capacity was 8,027 A.F.. Average storage shown is for post rehabilitation data.

\* Note: Tongue River capacity reflects capacity after 1999 dam rehabilitation; prior capacity was 68,040 A.F.. Average storage is post rehabilitation data.

\* Note: Cooney capacity reflects capacity after 1982 dam rehabilitation; prior capacity was 24,195 A.F.. Average storage shown is for post rehabilitation data.

\* Note: NFK Smith capacity reflects capacity at top of flashboards; capacity at concrete crest elevation is 10,698 A.F.

\* Note: Nevada Creek Reservoir Capacity reflects live storage capacity survey conducted in year 2000. Prior live storage capacity documented as 12,723 AF.