Joe Gutkoski

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Sent: Saturday, August 28, 2010 8:54 PM
Subject: Comments for WPIC draft report

Comments to WPIC Draft Report "Boiling It Down" July 2010.

Submitted by Montana River Action, 304 North 18th Ave., Bozeman, MT, 59715

Joe Gutkowski and Stephen Hunts.

Comments on Draft Findings and Recommendations.

Agency and Program Monitoring-Water right ownership update- *MRA agrees that the water right adjudication process linking parcels of land with water rights is a priority and should be completed in a timely manner. Water cannot be owned but is permitted by the state. Many streams are over appropriated and many water permit holders will loose their water permits. MRA believes that the adjudication period will be a painful one for many people who believed they held legal water rights.*

Agency and Program Monitoring-Ground water investigation program- *MRA agrees that ground water resources must be further studied and researched with designating responsibility for research and task to the Montana Bureau of Mines and Geology to research the 39 sub basins. Further drilling of wells must be controlled and minimized with the objective of moving new non agricultural property to hook up to municipal water delivery systems within municipalities. We also would like to see included in the database being compiled an easy to find reference of historical flows of surface waters within each basin. MRA would like to see the investigation program provided with full funding needed to achieve completion.*

Overview of Water Management-Future administration of water rights and Enforcement- *MRA believes that the role of DNRC and DEQ should be one of research and advising and not one of enforcement. MRA also believes that a right to use water cannot be considered real property. Enforcement of water rights should be conducted by district judges, water courts, water commissioners, water masters, ditch riders, ditch corporations, and ditch companies. also, legally elected or appointed water management systems shall have authority to manage, investigate and enforce irrigation law. A water right for irrigation should be limited to the period of actual plant need. This would reduce wasting of water which occurs when permit holders try to use 100% of the amount of water allowed by the water right to avoid a negative effect upon their future water rights.*

Ground water permitting-Mixing Zones- *Mixing zones are permitted on the idea that dilution is the solution to pollution. This is faulty planning. In effect mixing zones are a license to pollute and a bad idea in general. Waste water effluent flowing back to the land and streams should be free of pollution. Treatment standards should require that the quality of the effluent is at least equal to that of the receiving water. Developers of new subdivisions should pay impact fees that are used to support and build municipal waste treatment plants. Homes built on land that was previously used for agriculture should pay fees that will discourage sprawl and encourage home buying in towns (hopefully with municipal treatment centers). These fees should be used by the county and towns to address future quality standards of their drinking water and waste treatment water. Water use permits should be revokable in instances where there is a threat to the groundwater and surface water by the permit holder.*

Water Marketing- *MRA advocates a system of water sharing as opposed to marketing. There should be no detachment of water rights from the land. Users should share in stream flow of up to 75% of average annual flow. The remaining 25% of flow would remain in the waterway to protect important fisheries listed as chronically dewatered by Montana Fish, Wildlife, and Parks dewatered streams list.*[1]

In addition, irrigation water rights should not be sold if a change of use is part of the sale. A request for any other change of use should be approved only if the change does not impact the natural flow of the base stream and does not reduce the flow below 25% of the average annual flow. A water permit or certificate is characterized by the permittees opportunity to use the water, beneficially rather than by ownership. Water marketing is the same as water speculation. The permitting of water use is a privilege through permitting of the state for beneficial use and the change of that use is subject to state review. Beneficial use is the use of water when it does not deplete the productivity of a stream beyond where the depletion impacts aquatic life productivity and important fisheries. Flowing water can be thought of like wildlife where one acquires land and one accepts the wildlife as public owned whether it stays or moves off your land like wind or precipitation.

MRA agrees with WPIC's draft report citation that "Many states, including Montana, have determined that leaving water in a stream under certain conditions- meaning there is no diversion- is also a beneficial use".[2]

Because our state law considers that beneficial use of Montana's water should include "a us
of fish & wildlife Montana Rivers recommends the State of M
to retain stream flows for important fisheries.

WPIC
June 19, 2012
Exhibit 7