



THE STATE OF WYOMING

Water Development Office

6920 YELLOWTAIL ROAD TELEPHONE: (307) 777-7626 CHEYENNE, WY 82002
FAX: (307) 777-6819



TECHNICAL MEMORANDUM

TO: Water Development Commission

DATE: May 4, 2012

FROM: Dave K. Myer, P.E.

REFERENCE: Snake/Salt River Basin Plan Update, 2012

SUBJECT: Instream Flows – *Tab XIII (2012)*

Contents

1.0 Introduction.....	1
2.0 Instream Flow Law	2
3.0 Instream Flows in Wyoming and the Snake/Salt Basin.....	3
References.....	6

1.0 Introduction

Instream flows within the Snake/Salt Basin were addressed in the previous Snake/Salt River Basin Plan (previous Basin Plan) and documented in *Technical Memorandum, Basin Water Use Profile – Instream Flows* (Sunrise, 2003). Portions of this document are repeated herein. The purpose of this technical memorandum is to provide an update on the status of instream flow filings within the basin performed as part of the 2012 Snake/Salt River Basin Plan Update (2012 Update).

Wyoming water law originated during territorial days and is based on the doctrine of prior appropriation. Under this scenario the first person to put water to beneficial use has the first right, which is also referred to as “first in time is first in right.” As a result, water rights in Wyoming are regulated by priority, as they are in most of the western states. This means that the earliest rights are entitled to water during periods of limited supply, while those with later rights are denied water during these times (Jacobs, et al, 2003).

The Wyoming Constitution states that water of all natural streams, springs, lakes, or other collections of still water is the property of the State, and is administered through the State Engineer. Water division superintendents administer the water within each of the four water divisions in the State, with assistance from local water commissioners and hydrographer-commissioners. Prior to 1986, Wyoming water law stated that water must be diverted and conveyed in order to be beneficially used. However, the passing of the Instream Flow Law in 1986 changed this to allow water to be left in the stream for a beneficial use, such as for fisheries. This instream right can only be held by the State of Wyoming, and the priority system still applies to these rights.

2.0 Instream Flow Law

After much debate, the instream flow law was passed by the Legislature in 1986. The law had been rejected by the State Engineer prior to this, as it was generally accepted that water must be diverted to be beneficially used. Also, there were questions regarding the abandonability of the right since it was not diverted. According to Jacobs, et al., the Wyoming Legislature declared in 1986 that instream flow for maintenance or improvement of existing stream fisheries is a beneficial use of water that can be provided from natural streamflows or from storage water. The instream flow process includes three State agencies, which are: the Game and Fish Department, the Water Development Commission, and the State Engineer's Office. The Game and Fish Department first selects the stream segment on which to file for a right. This is done using biological reports, knowledge of the fisheries, and stream flow models, along with determination of how much flow will be required. The Wyoming Water Development Commission (WWDC) then applies for the appropriation. The WWDC must also conduct a hydrologic study to determine whether the instream flow can be provided from the natural flow of the stream or whether storage water from an existing or new reservoir will be needed for part or all of the instream use. The WWDC study is then supplied to the State Engineer for his consideration.

After receiving reports from the Game and Fish Department and WWDC, the State Engineer may conduct his own evaluation of the proposed appropriations for instream use. Before granting or denying a permit for instream flow in the specified stream segment, the State Engineer must conduct a public hearing and consider all available reports and information. In the past, public involvement has ranged from very little to quite significant. Following the public input period, the State Engineer decides whether or not to approve, approve with modifications, or reject the application. If approved, an instream flow permit can contain a condition for review of continuation of the permit at a future time. Also, the Wyoming Water Development Commission is named as holder of the permit.

The instream flow appropriation goes into effect the date the State Engineer approves the permit. The water right cannot be adjudicated by the Board of Control for three years thereafter. An instream water right has a date of priority as of the date that the application was received and recorded by the State Engineer, and all senior priority water rights must be recognized in administration of the stream.

Only municipalities can condemn an instream flow right. However, within one mile of the State border, the water for an instream flow right is still open to appropriation. This allows for additional utilization of water prior to the flow leaving the State. Existing water rights cannot be condemned for instream flow, however, they can be gifted to the State for instream use. As for regulation of water rights on a stream, this must be called for by the Game and Fish Department with the request proceeding through the WWDC. Instream flow rights do not ensure ingress and egress rights to the stream for public use, however, the Game and Fish Department has tried to ensure that the segments with instream rights have public access as well. Also, these rights cannot be issued if they will limit Wyoming's use of water with respect to interstate compacts. This will be reviewed with all of the pending applications in the Snake/Salt River Basin.

3.0 Instream Flows in Wyoming and the Snake/Salt Basin

As of the date of this memorandum, there are a total of 124 instream flow filings within the State of Wyoming. Out of these, 89 of have been permitted (or approved) with the remaining 35 filings in application stage. Out of the 89 filings that have been permitted, 12 have been adjudicated. With the exception of a single filing that utilizes storage water below Fremont Lake, the source of water for all of the instream filings is direct flow from a river or stream.

As of the date of this memorandum, there are a total of 14 instream flow filings within the Snake/Salt River Basin. Out of these, one has been adjudicated (Greys River) with the remaining filings in application stage. The State Engineer's Office has conducted public hearings for the Salt River and the two Fish Creek filings but has not yet permitted them. Ten of the filings have been recently submitted to the State Engineer's Office for instream flows within the Greys-Hoback Basin. The Wyoming Water Development Commission (WWDC) is currently conducting the hydrologic study for these filings with an expected completion date of December, 2013.

Table 1 summarizes the instream flow filings for rivers and streams in the Snake/Salt River Basin. Table 2 presents the applied-for flow rates associated with each instream flow filing. A map showing the locations of these segments presented in Figure 1.

Additional information and maps pertaining to instream flow filings in Wyoming can be found on the WWDC's website: http://wwdc.state.wy.us/instream_flows/instream_flows.html.

Table 1: Instream Flows in the Snake/Salt River Basin

Stream Name	Length (mi)	Priority Date	Temp Filing No.	SEO Hearing Held?	Approval Date	Permit No.	Adjudication Date
Salt River	2.60	1/2/1993	28 3/80	Yes	--	--	--
Fish Creek, Segment No. 1	0.60	10/8/1993	28 4/158	Yes	--	--	--
Fish Creek, Segment No. 2	1.50	10/8/1993	28 5/158	Yes	--	--	--
Greys River	10.10	10/8/1993	28 2/159	Yes	11/1/1998	11 IF	8/18/2004
Shoal Creek	6.40	3/8/2012	35 4/217	No	--	--	--
North Fork Fisherman Creek	4.70	3/8/2012	35 5/217	No	--	--	--
Cliff Creek Upper	6.20	3/8/2012	35 6/217	No	--	--	--
Cliff Creek Lower	2.30	3/8/2012	35 1/218	No	--	--	--
Upper Hoback River	1.80	3/8/2012	35 2/218	No	--	--	--
Little Greys River	4.46	3/12/2012	35 1/222	No	--	--	--
Granite Creek	7.60	3/12/2012	35 6/221	No	--	--	--
Dell Creek	0.65	3/12/2012	35 5/221	No	--	--	--
Willow Creek	8.16	3/12/2012	35 4/221	No	--	--	--
Lower Hoback River	6.44	3/12/2012	35 3/221	No	--	--	--

Table 2: Flow Rates Requested on Instream Flow Applications

Stream Name	Flow Rates (Applied-For) (cfs)											
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Salt River	221.0	221.0	221.0	221.0	221.0	221.0	221.0	221.0	221.0	221.0	221.0	221.0
Fish Creek, Segment No. 1	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0
Fish Creek, Segment No. 2	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0	150.0
Greys River ₁	204.0	204.0	204.0	204.0	204.0	204.0	350.0	350.0	350.0	204.0	204.0	204.0
Shoal Creek	6.0	6.0	6.0	6.0	6.0	6.0	30.0	45.0	45.0	15.0	15.0	15.0
North Fork Fisherman Creek	1.3	1.3	1.3	1.3	1.3	1.3	9.0	13.0	13.0	3.0	3.0	3.0
Cliff Creek Upper	11.0	11.0	11.0	11.0	11.0	11.0	30.0	30.0	30.0	17.0	17.0	17.0
Cliff Creek Lower	15.0	15.0	15.0	15.0	15.0	15.0	45.0	140.0	140.0	35.0	35.0	35.0
Upper Hoback River	23.0	23.0	23.0	23.0	23.0	23.0	25.0	35.0	35.0	46.0	46.0	46.0
Little Greys River	28.0	28.0	28.0	28.0	28.0	28.0	45.0	45.0	45.0	60.0	60.0	60.0
Granite Creek	29.0	29.0	29.0	29.0	29.0	29.0	70.0	65.0	65.0	65.0	65.0	65.0
Dell Creek	8.8	8.8	8.8	8.8	8.8	8.8	55.0	45.0	45.0	19.0	19.0	19.0
Willow Creek	20.0	20.0	20.0	20.0	20.0	20.0	30.0	45.0	45.0	40.0	40.0	40.0
Lower Hoback River	99.0	99.0	99.0	99.0	99.0	99.0	130.0	130.0	130.0	220.0	220.0	220.0

1. Flow rates shown for Greys River represented adjudicated flow rates.

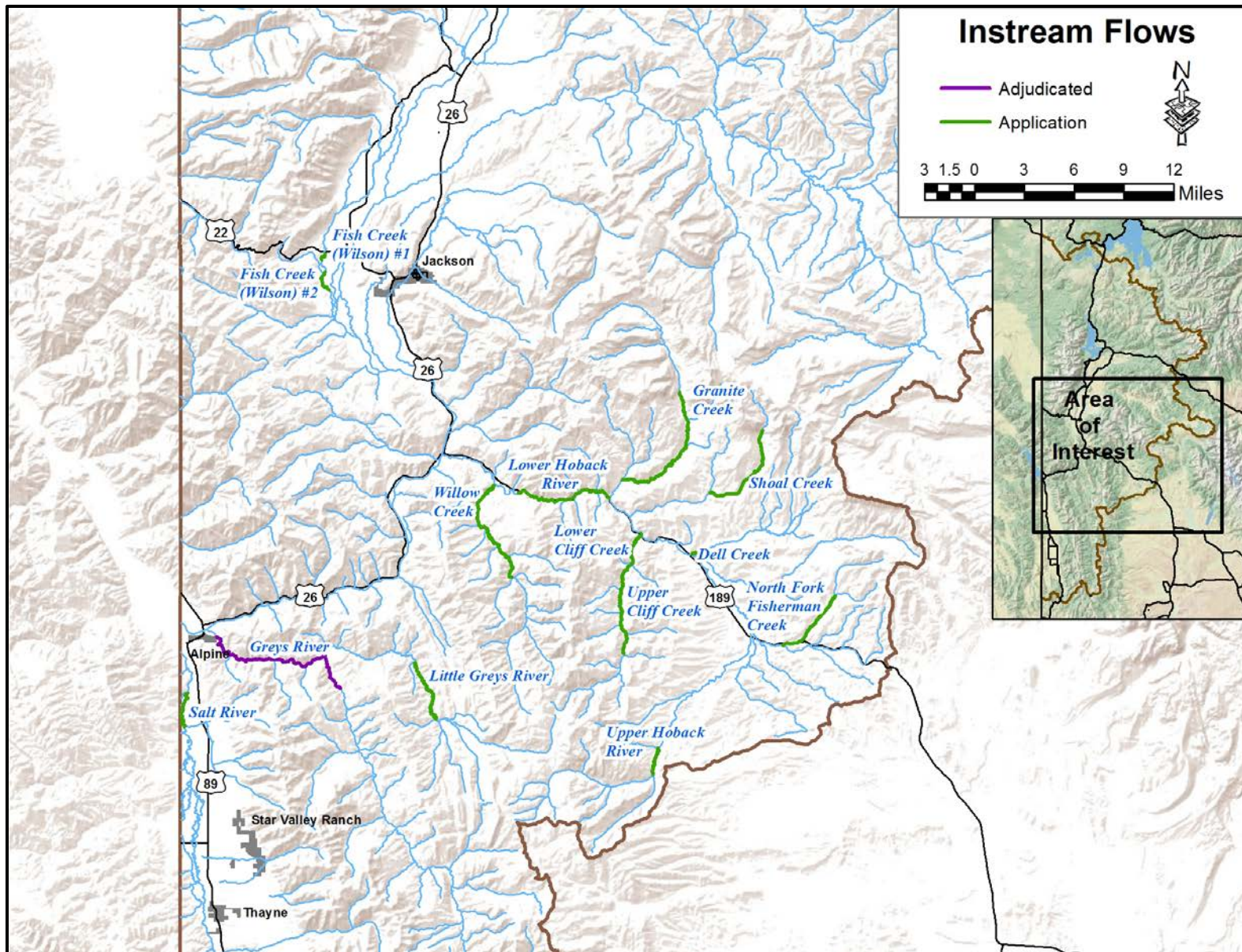


Figure 1: Instream Flows in the Snake/Salt River Basin

References

Jacobs, James J., et.al. Wyoming Water Law: A Summary. University of Wyoming Agricultural Experiment Station. May, 2003.

Sunrise Engineering, Inc. Snake/Salt River Basin Plan. Technical Memorandum: Basin Water Use Profile – Instream Flows. September 10, 2002.
(<http://waterplan.state.wy.us/plan/snake/techmemos/instream.html>).