



Still flowing after all these years

2003 marks anniversaries of landmark Montana stream protection events by Tom Dickson

Montana boasts some of the wildest and most widely admired rivers in the United States. Those who fought to protect them say it's important that people know why the state's streams remain in such pristine condition.

"It's no accident," says Jim Posewitz, a leader in Montana's stream protection movement in the 1970s. "An enormous amount of energy went into preserving the Yellowstone and other rivers. People promote Montana's splendor, but they also need to recognize that this splendor exists mainly because a generation ago people were committed to a cause and effectively

executed an effort to protect it."

This year, Posewitz and others who fought for stream protection in the 1960s and '70s are celebrating anniversaries of a law and a state ruling instrumental in preserving Montana's flowing waters.

Forty years ago, in 1963, the Montana legislature passed the Stream Protection Act. The monumental bill—perhaps the first such legislation ever passed in the United States—marked a shift in Montana's public attitudes about highway and other public construction projects. Previously, roads had been engineered as efficiently as possible, with little regard for the rivers they paral-

leled. Natural river bends and undulations were often converted into ruler-straight channels. The new law changed that by establishing Montana FWP as the permitting agency for state and county construction projects along streams and rivers.

"It was huge, just huge," says Posewitz, who was a state fisheries biologist in Glasgow at the time. "Before this act, state departments and counties could pretty much just do what they wanted to rivers. Afterwards, they had to submit their plans to us, and we had authority to deny the projects if they damaged rivers."

The legislation came during the heyday



YELLOWSTONE RIVER BY CAROL POLICH

The 1963 legislation was written to last only two years, but it was made permanent during the next legislative session.

“As far as I know, this was the first bill of its kind passed in the nation,” says Posewitz.

Another major river protection event occurred 25 years ago. In 1978, the Board of Natural Resources and Conservation (seven citizens appointed by the governor) ruled that 5.5 million acre-feet of instream flows of the Yellowstone River should be perpetually reserved in the river for the good of fish and wildlife.

Crucial to the Yellowstone ruling was a law passed five years earlier, the Montana Water Use Act, that specified fish and wildlife as a beneficial use of water. The law authorized the appropriation of water for what are called *reservations*—guaranteed amounts of water for cities and irrigation and the perpetual maintenance of specified river flows for fish and wildlife.

That law gave conservationists a strong weapon to help defend the Yellowstone River, which had been under attack on several fronts. The Middle East oil embargo had created a huge demand for increased domestic energy sources, particularly coal. Southeastern Montana was rich in the fuel source, and soon speculators, railroads, politicians, state and federal officials, and coal mining companies descended on the region to decide its future. One Bureau of Reclamation study examined how water from the Yellowstone could be used to cool 21 proposed coal-fired plants. Another idea was to mix water from the Yellowstone with crushed coal and then pipe the slurry to eastern markets, where it could be dried and used to fuel power plants.

The other main proposal threatening the Yellowstone, one that had been pushed for years, was to dam the river south of Livingston to produce hydropower.

The dam, along with proposed water withdrawals for the coal mining boom, threatened to lower the river to levels where fish and wildlife habitat would dry up. Even for citizens worried about energy self-sufficiency, the proposals seemed outrageous.

“The public outcry was enormous,” says Posewitz.

Responding to that sentiment, the 1973 Montana legislature passed the Montana Water Use Act. The law authorized state

agencies to apply to the Board of Natural Resources and Conservation, which sets DNRC policy, for reserving waters for either instream or future uses. The following year, lawmakers placed a three-year moratorium on major water allocations from the Yellowstone.

“That was critical,” says Posewitz. “The moratorium gave us some breathing room to gather data and mount a campaign to save the river.”

Over the next three years, FWP biologists began studies on the river and its aquatic life, from paddlefish and mayflies to muskrats and waterfowl. Armed with the facts from these studies, department officials approached the board to request a reservation of flow for the Yellowstone and dozens of tributaries in its watershed.


The proposal was hotly contested, Posewitz recalls. Some lawmakers introduced bills that would deny FWP river water reservations or give other users higher preference for the Yellowstone’s water. The main arguments against the department’s proposal was the harm it would cause industry and irrigators.

Yet many legislators strongly supported protecting the river flows for fish and wildlife. So did representatives of the Montana Wildlife Federation, Environmental Information Center, Federation of Fly Fishermen, and Trout Unlimited, who were called upon to testify.

“We also had the support of irrigators downstream from the proposed diversions,” Posewitz says.

Though heavily pressured by industry lobbyists and attorneys to do otherwise, says Posewitz, the board decided to grant water reservations of 5.5 million acre-feet on the Yellowstone and 61 tributaries for the benefit of fish, wildlife, and recreation. It was an instream water right that new water users would have to honor.

Chris Hunter, head of FWP’s Fisheries Division, says the ruling was monumental because it put the 1973 law into practice.

“The Montana Water Use Act was the mechanism, but the Yellowstone reservations decision was really the first time the law was put to use,” he says. “After that, it became more acceptable for the department to get water retained in streams and rivers for the good of fish and wildlife.” 

of interstate highway construction, says Posewitz, who today runs Orion: The Hunters Institute and the Cinnabar Foundation. In the name of cost-effectiveness, engineers would straighten rivers rather than build bridges over the curves. The ditchlike “improvements” lacked riffles, pools, and snags needed by fish and other river creatures for rearing, feeding, and hiding from predators.

Lawmakers learned about this damage from state fisheries biologists. The scientists had conducted studies documenting how highway construction and channelization harmed river fish populations. Just as important, says Posewitz, was strong support for the legislation from the Billings Jaycees. The civic group, which had many influential business leaders as members, came out strongly in favor of protecting the state’s rivers.