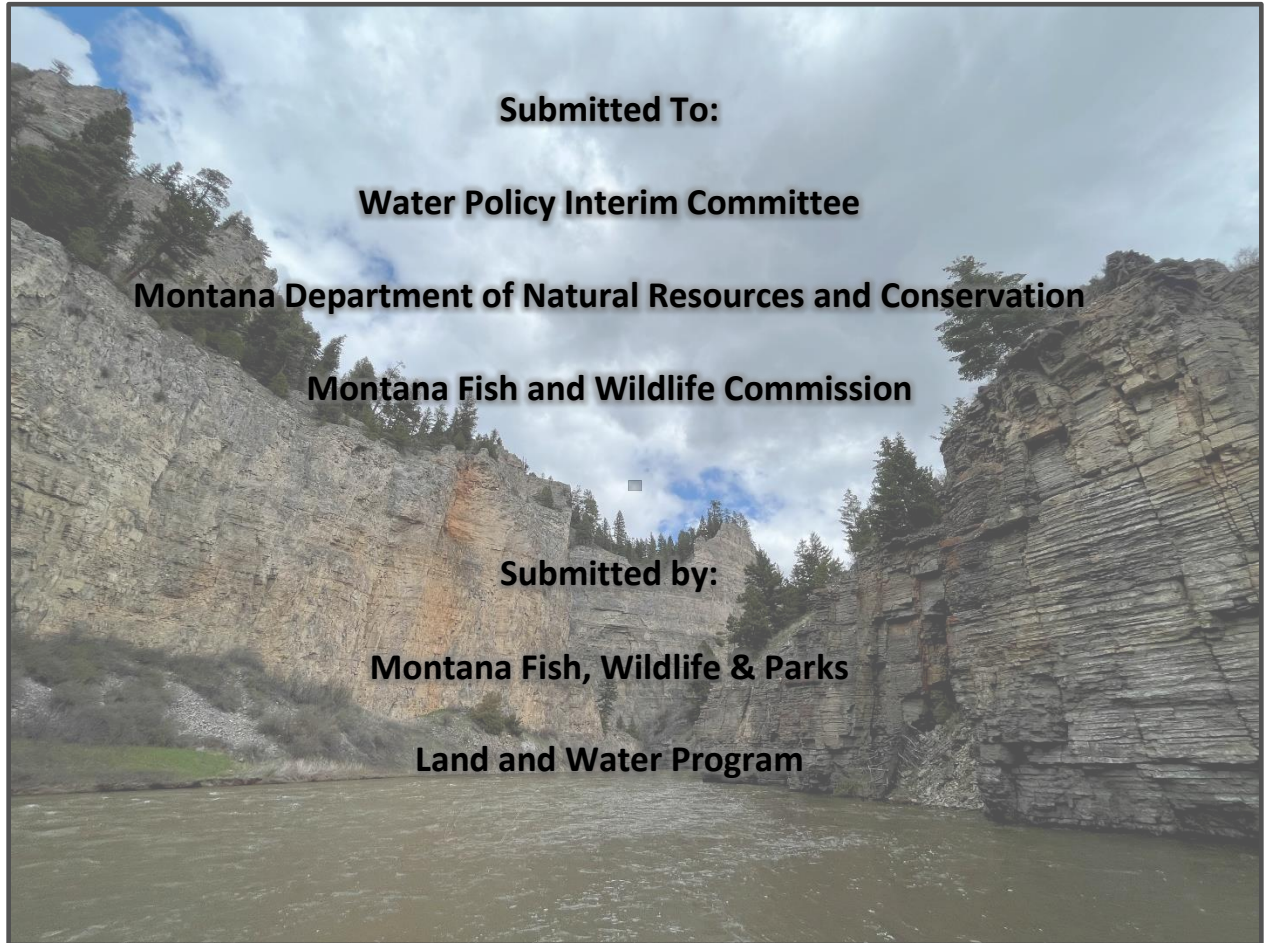


**BIENNIAL PROGRESS REPORT
INSTREAM FLOW WATER RIGHT CHANGES
2024 & 2025**



EXECUTIVE SUMMARY

Montana Fish, Wildlife & Parks (FWP) is authorized by statute to temporarily, and in some cases permanently change, existing water rights to instream flow to benefit the fishery in Montana streams and rivers across Montana. See §85-2-436 MCA.

Temporary changes to instream flow typically involve FWP leasing water rights from willing partners, while in some cases water rights owned by FWP are temporarily changed. Permanent changes to instream use only involve water rights owned by FWP that are acquired by gift, purchase or in conjunction with a land purchase.

FWP's instream flow change activities include seeking approval of new water right leases and associated authorizations to change, renewals of leases and temporary changes to instream flow, monitoring existing changes and exploration of new instream flow projects. Program highlights for 2024 and 2025 include:

- DNRC authorized a new temporary change to instream flow for Rock and Stoughton Creeks and an additional temporary change to instream flow on Big Creek, all in the Yellowstone River basin south of Emigrant.
- Two temporary change renewals in the Upper Yellowstone Basin, one for Big Creek near and one for Cedar Creek, are pending before DNRC.
- An instream flow lease for Parsons Slough and Willow Spring Creek has been signed. Corresponding temporary change applications will be submitted in 2026.
- One application for a permanent change for Nevada Spring Creek in the Blackfoot Valley, will be submitted in 2026.
- Applications for permanent changes to instream flow are being explored for Poindexter Slough (Beaverhead); Porcupine Creek (Gallatin); and English George, Nickerson, and Ruby creeks (upper Madison); and the Madison River East Channel (near Three Forks) for irrigation rights held by FWP.
- Adjudication of water rights on Mill and Willow Creeks near Opportunity is currently active; decreed rights will continue to be evaluated for potential change to instream flow.

AUTHORITY TO LEASE AND CHANGE WATER TO INSTREAM FLOW

The conversion of existing water rights to instream flow by FWP is governed by §85-2-436 MCA. The law authorizes FWP to change a water right to an instream flow purpose to protect, maintain or enhance stream flows to benefit the fishery resource by:

- o leasing and temporarily changing someone else's water right.
- o temporarily changing FWP-owned water rights.
- o permanently changing FWP-owned water rights on up to 12 stream reaches.

The term “instream flow leasing” is often used to collectively refer to two distinct processes; the agreement to use another party’s water right (“lease”) and the water right change process (“change”). The leasing of the water right is the first step. There, FWP and a willing water right owner agree to the terms of the water use, such as limiting use when flow falls below a certain level or providing infrastructure to reduce water demand. The authority to approve the lease agreement lies with the Montana Fish and Wildlife Commission.

After approval of the lease agreement, FWP staff prepares and submits the application to temporarily change the water right(s) to instream flow to DNRC. DNRC processes the application using the same procedures used for all other changes in appropriation rights in Montana, which includes the opportunity for others to object. The change authorizations issued by DNRC include requirements for FWP to measure the flow and other conditions necessary to prevent adverse effects to other water users. Temporary changes may be for periods of up to 10 years, unless the lease involves the construction of water conservation or storage projects when the term may be up to 30 years, depending on the expected life of the project.

Renewals generally follow a similar two-part process where FWP negotiates the terms of the renewal with the water right owner and submits a Notice of Renewal to DNRC. The renewal process includes an opportunity for third parties to submit new evidence of adverse effects to their water rights. If this occurs, FWP must file a completely new change. Renewals of temporary changes are limited to a period of 10 years, but they can be renewed an indefinite number of times.

Permanent changes to instream flow of rights owned by FWP follow the same DNRC change process, including the opportunity for other parties to object.

The statute was originally approved in 1989 with a 10-year sunset. It was reauthorized in 1999, 2007 and most recently in 2019 with the enactment of SB 247. §85-2-436 MCA now sunsets on June 30, 2029.

CURRENT AND PENDING CHANGES TO INSTREAM FLOW

The following table lists the number of stream reaches where FWP has active and pending changes to instream flow as well as changes that are still in the development phase. The map in Figure 1 shows the locations of the streams. Some streams have multiple water right changes and multiple water leases. The table appended to this report provides greater detail on the active and pending changes as well as those changes that were terminated or were not pursued to completion.

Active Instream Flow Changes	Stream Reaches
Temporary Changes of Water Rights Leased by FWP	19
Temporary Change of Water Rights Owned by FWP	1
Permanent Change of Water Rights Owned by FWP	2 ^a
^a Cedar Creek includes both a temporary and permanent change to instream.	
Pending Instream Flow Changes (application submitted)	
Temporary Change of Water Rights Leased by FWP	0
Permanent Change of Water Rights Owned by FWP	0
Instream Flow Changes in Development	
Temporary Change of Water Rights to be Leased by FWP	6 ^b
Permanent Changes of Water Rights Owned by FWP	9
^b Changes in development may include multiple water leases.	

Table 1. Current and Pending Instream Flow Changes

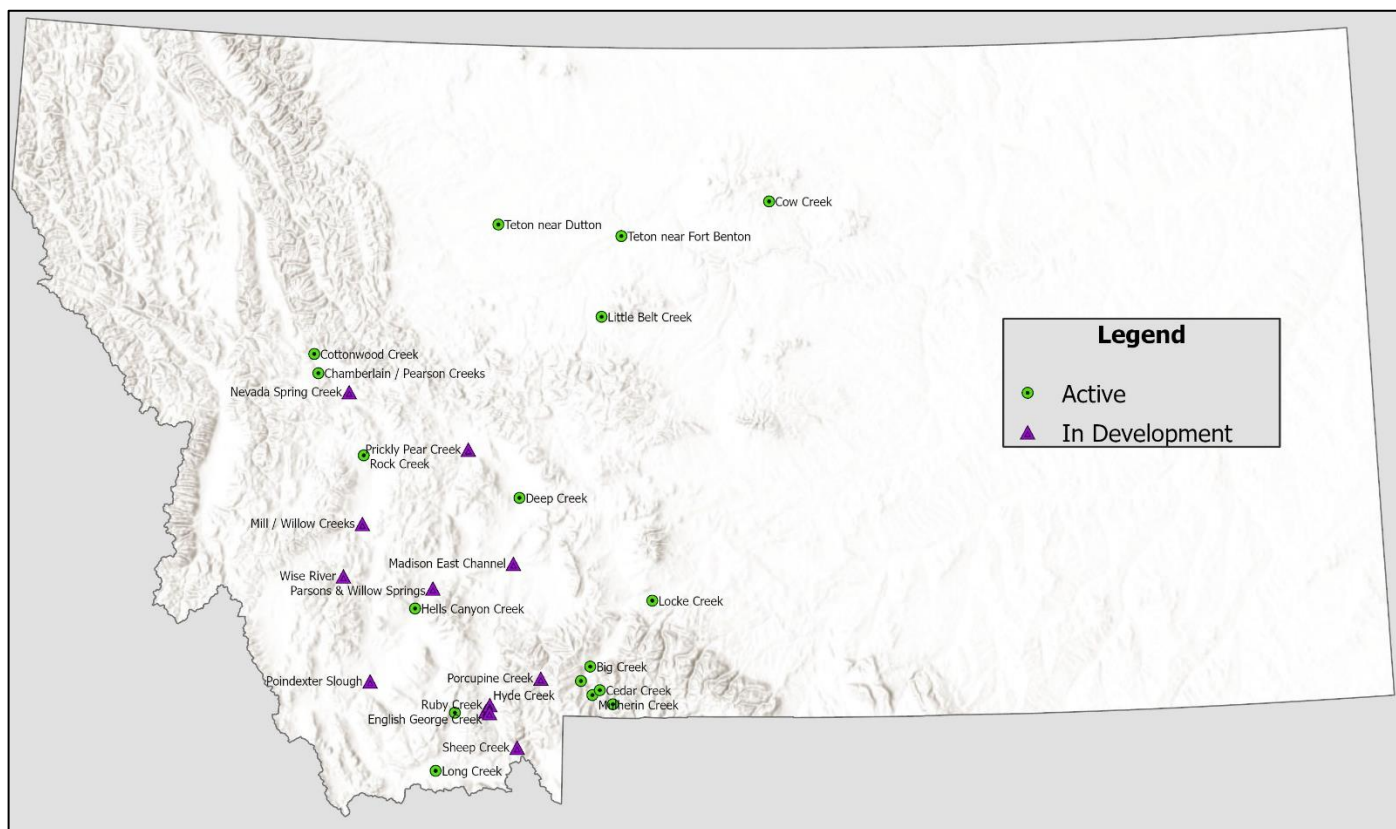


Figure 1. Locations of FWP instream flow projects.

GENERAL APPROACH

After more than three decades of leasing water rights and changing them to instream flow, FWP has learned that successful water leases and changes to instream flow not only require the commitment of the party leasing water, but an understanding and general agreement amongst all water users on the source as to how the change to instream flow is to be administered. This necessitates making clear how much water is protected and where it is measured along with providing up-to-date measurements to the water users so that the stream can be managed to meet the instream flow requirements. FWP's most successful instream changes involve strong buy-in from all the water users on the stream.

Many of FWP's instream flow change activities focus on tributaries to larger rivers that provide important spawning habitat. Typically, these tributaries flow from the mountains onto the valley floor where they are tapped for irrigation. Some irrigation diversions cause seasonal or periodic dewatering between the diversion and the main stem river. These instream changes emphasize maintaining connectivity between the main stem and tributary to prevent dewatering and protect redds (fish spawning beds), maintain flow and habitat for emerging fry, and facilitate out-migration into the main stem river. Other changes to instream flow focus on habitat for the resident fishery.

Water conservation projects providing for instream flow are also a priority. These projects focus on improving irrigation efficiency, keeping the amount of irrigation unchanged while reducing the amount of water diverted for irrigation. The saved water is no longer diverted, thereby restoring stream flow. All changes identify specific stream reaches where the saved water is protected from being diverted by downstream users.

REPORTING REQUIREMENTS

§85-2-436 MCA requires FWP to submit a biannual progress report to the Legislative Water Policy Interim Committee (WPIC), DNRC and the Montana Fish and Wildlife Commission. In accordance with §§ 5-11-210 and 5-11-222 MCA, the report must be submitted on or before September 1 of each year preceding a regular legislative session. The biennial report must include a summary of all appropriation rights changed to an instream-flow purpose *in the last two years*. For each change, the report must include:

- o The length of the stream reach and how it is determined.
- o Streamflow or volume needed to enhance or preserve fisheries.
- o The amount of water available for instream flows as a result of the change in appropriation rights.
- o Contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering.
- o Methods and technical means used to monitor use of water under each change authorization.

2024-2025 ACTIVITY

Rock Creek south of Emigrant – New Temporary Change to Instream Flow

In June 2023 FWP entered a water lease for Rock and Stoughten Creeks. The term of the lease is 30 years, which is the projected life of the water conservation infrastructure that will provide the water from the Yellowstone River. DNRC approved the Authorization to Change in November 2024.

Rock Creek is a tributary to the Yellowstone River south of Emigrant in the Paradise Valley and Stoughten Creek is a tributary to Rock Creek. The rights being leased are the most senior rights on the streams which outside of these rights experience very limited diversion of water. Both streams provide habitat for resident native Yellowstone cutthroat trout and spawning habitat for trout that live in the Yellowstone River. The project will replace irrigation water diverted from Rock and Stoughten creeks with water diverted directly from the Yellowstone River. Irrigated production will not be reduced. The design of the irrigation system from the Yellowstone River is currently in its final stages. Once complete, an application will be filed with the Park Conservation District to use a portion of their irrigation water reservation from the Yellowstone River. After application approval and completion of the new irrigation system, protection of water under the temporary change to instream flow will commence.

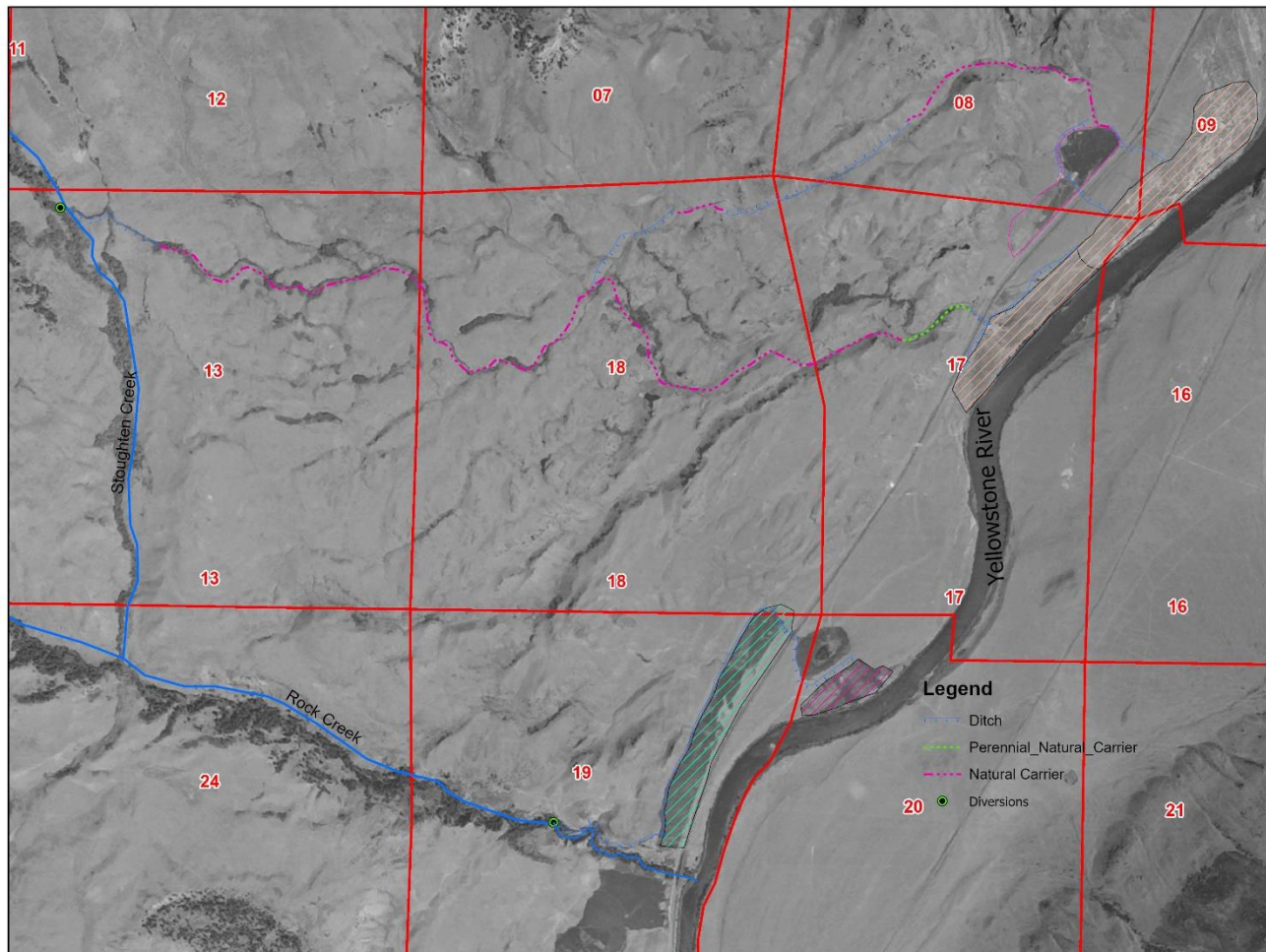


Figure 2. Historic irrigation from Rock and Stoughten Creeks.

Change in Appropriation Information:

The length of the stream reach and how it is determined:

The temporary instream flow change restores and legally protects streamflow in Rock Creek for approximately 0.44 stream miles downstream from the historic irrigation point of diversion on Rock Creek to the stream's confluence with the Yellowstone River (see Figure 3). Because there are no intervening diversions by other water users between the Stoughten Creek and Rock Creek diversions, there is no need to have a separate protected reach for the Stoughten Creek water rights.

In 2011, FWP replaced a failing fish ladder and concrete culvert under an abandoned railroad at the mouth of Rock Creek with a series of step pools designed to restore fish passage from the Yellowstone River. Fish are now able to migrate upstream for spawning and fry can migrate back to the Yellowstone River. However, streamflow data collected at the mouth of Rock Creek in 2013 and 2014 indicates streamflow dropped below levels necessary to keep the bed of Rock Creek fully covered in water from mid-July into the fall. With the exposure of parts of the stream bed, redds become dewatered which harms incubating fish eggs. Low flows also hamper the out-migration of fish to the Yellowstone River once fry emerge from the redds.

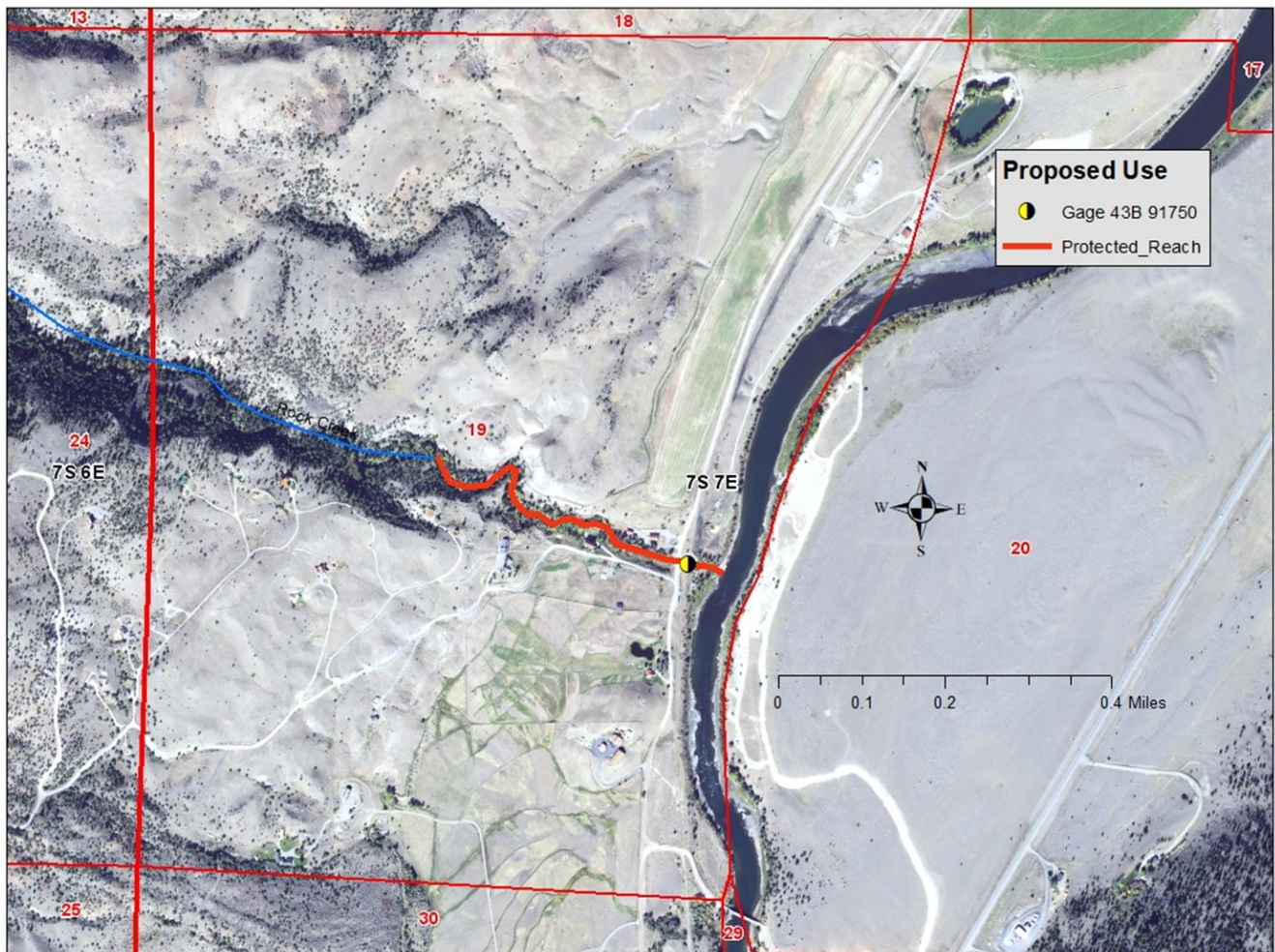


Figure 3. Measurement point and protected reach for Rock Creek south of Emigrant.

The critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource:

FWP holds an instream flow water right for Rock Creek which ranges from 4.09 cubic feet per second (cfs) in February to 109 cfs in June. FWP’s instream flow equals the estimated 50th percentile (median) monthly streamflow values for May through September and 20th percentile¹ streamflow values for October through April. These values are hydrologic statistical calculations that may or may not accurately represent the streamflow needed to best support the fishery and other riverine dependent species. For the key months of August and September, the instream flow right is for 12.9 and 11.8 cfs, respectively.

A more scientifically rigorous approach is to consider the instream flow right (43B 30065395) held by the U.S. Forest Service for Rock Creek which is 12.0 cfs based on the wetted perimeter methodology. This methodology is widely used across Montana to make instream flow recommendations for the summer low-flow period. The Forest Service wetted perimeter data was collected on Rock Creek about ½ mile upstream of Stoughten Creek at a location about 2 miles from the confluence with the Yellowstone River. Given that the data was collected above Stoughten Creek, a major contributor of streamflow, the 12.0 cfs value may be somewhat less than desirable for lower Rock Creek but is generally representative of desired flow levels for August and early September. It compares well with FWP’s instream flow right levels of 12.9 and 11.8 cfs for those months.

FWP collected seasonal streamflow data at the mouth of Rock Creek in 2013 and 2014 following the railroad culvert removal project and concurrent with the fish migration study. The following hydrographs compare the daily average streamflow for those years against the 12.0 cfs instream flow. The second hydrograph focusses on the period beginning July 1 to provide better resolution. Streamflow clearly drops below desired levels later in the summer, indicating that improved streamflow would benefit the Rock Creek fishery. This period coincides with the highest demand period for irrigation water.

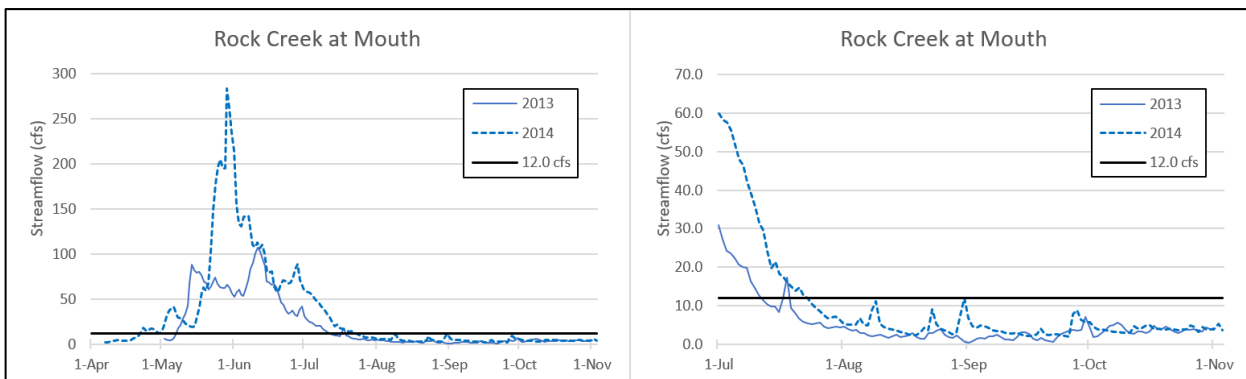


Figure 4. Rock Creek Hydrographs from 2013 and 2014.

At times when flow is above FWP’s instream reservation early in the irrigation season, the change to instream flow would bring the flow in Rock Creek closer to natural conditions. The natural flow regime plays a critical role in sustaining native biodiversity and ecosystem integrity in rivers (Poff et al. 1997). Even during higher flows, more natural conditions would benefit the fishery of Rock Creek.

The amount of water available for instream flows as a result of the change in appropriation rights:

¹ The 20th percentile streamflow value represents the monthly average streamflow expected to be met or exceeded in 2 out of 10 years. This discharge higher than that normally expected.

The leased water rights have a historic flow rate of 10.59 cfs and a historic diverted volume of 856.4 acre-feet (AF). While 10.59 cfs is the maximum flow rate that can be protected to the Rock Creek point of diversion, the authorized maximum volume limits the average flow that can be protected to 2.64 cfs over the 163-day (May 1 to Oct. 10) period of diversion. The amount protected for instream flow from the Rock Creek Diversion to the Yellowstone River (0.44-mile) is 2.525 cfs up to 816.8 AF. This amount is less than the diverted volume as it accounts for irrigation return flow that would have been legally available to junior rights in the protected reach. Table 2 below reflects the amount protected instream.

Water Right	Period of Use Start	Period of Use End	Protected Flow Rate at POD (CFS)	Protected Volume at POD (AF)	Protected Flow Rate in Protected Reach Below POD (CFS)	Protected Volume in Protected Reach Below POD (AF)
43B 194822-00	1-May	10-Oct	1.5	76.20	0.21	69.02
43B 194823-00	1-May	10-Oct	1.5	76.20	0.21	69.02
43B 194824-00	1-May	10-Oct	1.5	76.20	0.21	69.02
43B 194343-00	1-May	10-Oct	1.5	76.20	0.21	69.02
43B 194222-00	1-May	10-Oct	0.33	5.30	0.015	4.75
43B 194344-00	1-May	10-Oct	2.26	289.675	0.82	256.42
43B 194825-00	1-May	10-Oct	2	256.6	0.85	279.55

Table 2. Protected amounts (Rock Creek rights highlighted in green with Stoughten Creek in blue).

The contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering:

In addition to water measurement requirements, the amount of water protected instream is limited to that amount that was historically consumed from Rock Creek and not available to other water users. Because of the location of the irrigated areas next to the Yellowstone River and mostly distant from either Rock or Stoughten Creeks, nearly all the water diverted did not return to these creeks. Other water users would not experience less water availability due to the temporary change to instream flow.

The methods used to monitor use of water under each change in appropriation right:

Streamflow is measured in the protected reach downstream of the historic irrigation diversion from Rock Creek, at the location approved by DNRC. The stream gage in this reach was restarted in 2022 in anticipation of a temporary change to instream flow being completed. FWP coordinates with DNRC to provide the streamflow information on DNRC’s StAGE website at: [Rock Creek near Carbella](#). FWP personnel measure streamflow approximately monthly. These measurements along with corresponding staff gages readings are used to maintain and update the rating table for the gage. The ratings are used in conjunction with water level data collected every ½ hour to develop continuous streamflow data. During times of low flow, the water level may be checked more frequently and if at or below the authorized instream flow level, junior appropriators may be contacted to reduce diversions. Regular water measurement is not required at the Stoughten Creek diversion. This diversion is relatively difficult to access and is in regularly used grizzly bear habitat presenting a safety hazard. There are no other diversionary water rights from Stoughten Creek.

Big Creek near Emigrant – Additional Temporary Change to Instream Flow

For nearly a quarter century, FWP has leased portions of water rights from several water users on Big Creek, an important spawning tributary of the Yellowstone River. The existing water leases protect 11 to 26 cfs, with 11 cfs being protected in the later summer low-flow season. These leases have been very successful.

One current water right lessor has agreed to no longer irrigate at all from Big Creek and has leased the remainder of their water rights (1.58 cfs) to FWP. The lessor holds a new water right permit from the Yellowstone River to irrigate the land formerly irrigated from Big Creek. FWP submitted the change application to DNRC, which DNRC has proposed to grant. An objection was filed by another Big Creek water user, but that objection was recently resolved and the Authorization to Change is being issued. The plan of operation for the water lease would not increase the 11 cfs flow rate protected instream during the summer low-flow period to preserve the status quo which has worked well. Additional flow would be protected during spawning but is not expected to impact the ability of other water users to divert water.

Change in Appropriation Information:

The length of the stream reach and how it is determined:

The temporary change to instream flow protects and restores flow in approximately the lower one mile of Big Creek as depicted by the purple lines in Figure 5, which represents the protected reach below the historic diversion. This is the reach that would be impacted by continued use of the leased water rights. Prior to water leases and associated water conservation projects being implemented on Big Creek, this lower reach of Big Creek often went dry in later summer, resulting in greatly reduced Yellowstone cutthroat trout recruitment.

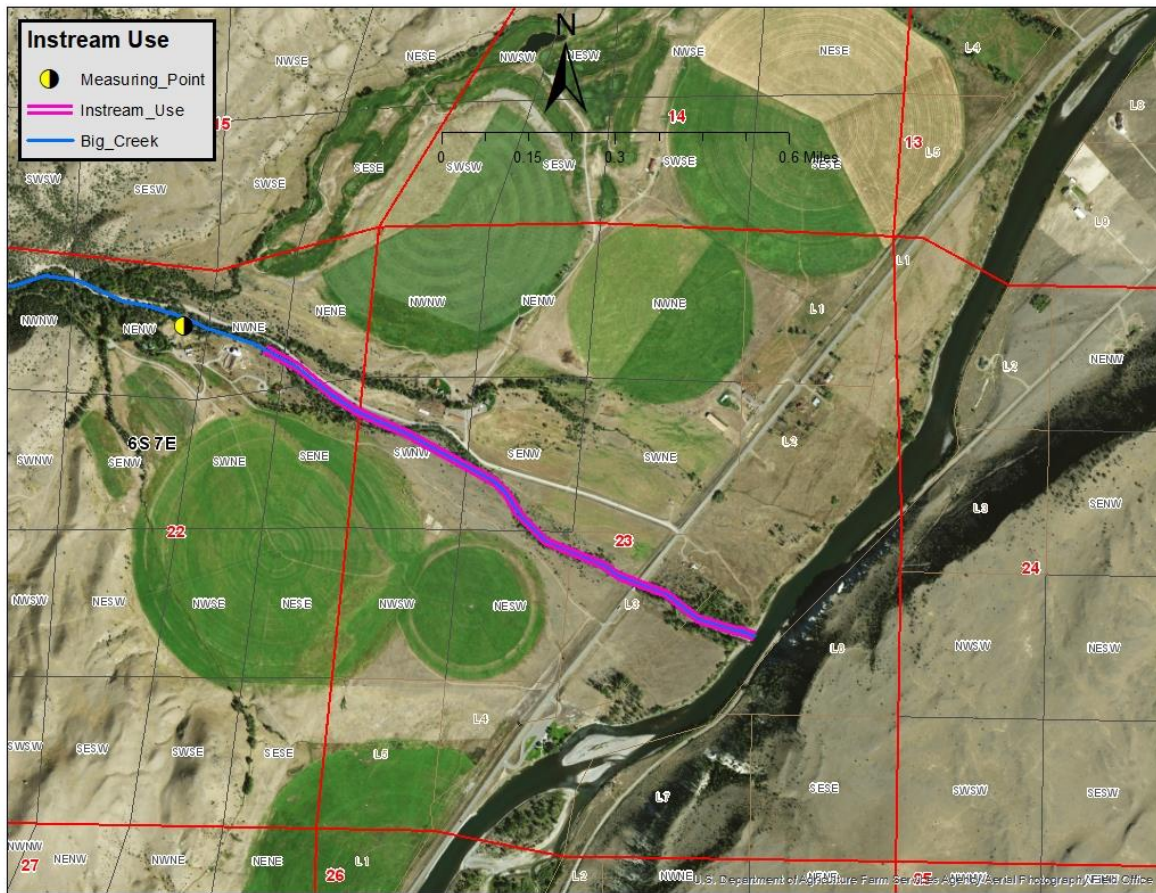


Figure 5. Measurement points and protected reach for Big Creek near Emigrant.

The critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource:

The focus of this additional lease is to protect streamflow during the falling limb of hydrograph which benefits Yellowstone Cutthroat Trout in accessing Big Creek to spawn by providing adequate depth to reach spawning gravels, often located on the margins of the stream. This benefit would typically occur in late June through mid- to late-July, depending on flow conditions and water temperatures, which cue the spawning activity. Figure 6 compares the median monthly flow (2005-2020) with the FWP Big Creek Water Reservation granted by the Board of Natural Resources. During both June and July, the median flow falls below the water reservation level and additional flow is beneficial in meeting the reservation and ultimately benefiting the fishery.

During August and September, the 11 cfs protected by the combined leases despite not meeting the instream flow water reservation, is sufficient to protect most of the redds from being dewatered in lower Big Creek. When water leasing was first being explored on Big Creek, FWP staff documented redd locations in lower Big Creek and determined that at 11 cfs, nearly all redds remained covered in water. Further, this flow allowed emergent fry to move downstream to the Yellowstone River.

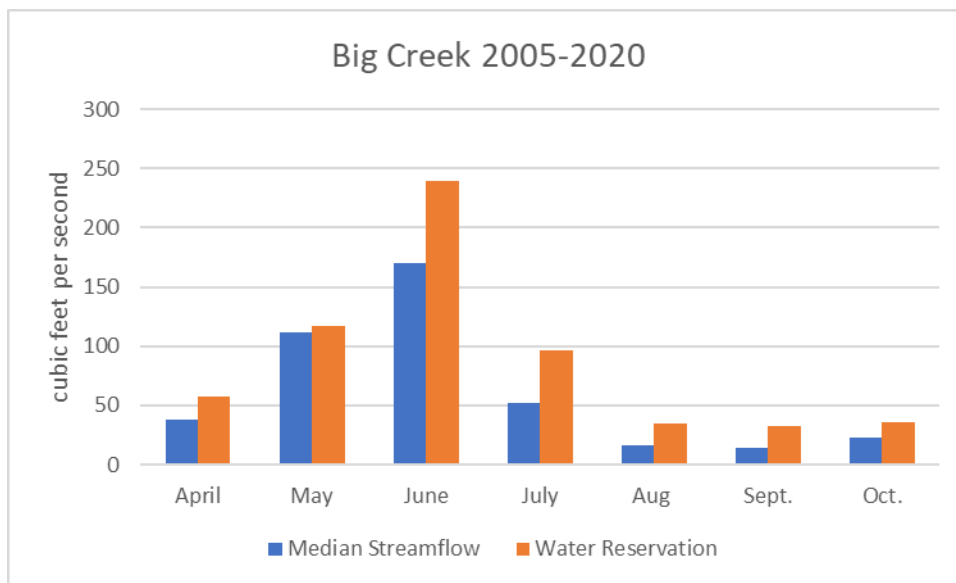


Figure 6. Big Creek Monthly Flow in Comparison to Instream Water Reservation.

The amount of water available for instream flows as a result of the change in appropriation rights:

The full volume historically diverted (886.5 AF) is protected in Big Creek as none of the water diverted returned to Big Creek. Table 3 shows how this volume will be protected over the 163-day (May 1 to Oct. 10) period of use. The flow rates and volumes reflect the cumulative total between the previously existing change authorization and the newly approved authorization.

	Month	May	June	July	August	September	October	Total			
	Dates	1 - 31	1 - 21	22 - 30	1 - 15	16 - 31	1 - 31	1 - 30	1 - 10		
	# DAYS	31	21	9	15	16	31	30	10		
	CFS TO AF	1.9835	1.9835	1.9835	1.9835	1.9835	1.9835	1.9835	1.9835		
Amended Operation Plan	Total	CFS	2.80	1.22	2.80	4.38	2.80	2.80	2.80		
	Total	AF	172.2	50.8	50.0	130.3	88.9	172.2	166.6	55.5	886.5
	43B 30110714	CFS	0.25	0.08	0.25	0.88	0.26	0.25	0.25	0.25	
	43B 30110715	CFS	2.55	1.14	2.55	3.50	2.54	2.55	2.55	2.55	
	43B 30110714	AF	15.6	3.3	4.5	26.2	8.1	15.6	15.1	5.0	93.6
43B 30110715	AF	156.5	47.5	45.4	104.1	80.7	156.5	151.5	50.5	792.9	

Table 3. Protected amounts.

The contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering:

In addition to water measurement requirements, the amount of water protected instream is limited to that amount that was historically consumed from Big Creek and not available to other water users. Because of the location of the irrigated fields generally some distance from Big Creek, and the nature of Big Creek itself which naturally loses water below the measurement point, none of the water diverted did not return to these creeks. The amount of water protected during the low-flow period is limited to 11 cfs, the current protect amount. This provision is designed to preserve the current the water availability for other water users.

The methods used to monitor use of water under each change in appropriation right:

Streamflow measurement occurs just above the protected reach in lower Big Creek. No diversions are present between the gage site and the protected reach. FWP has operated a continuously recording stream gage at this site since 2005 and prior to that a staff gage was maintained to facilitate the management of the water leases. FWP coordinates with DNRC to provide the streamflow information on DNRC's StAGE website at: [Big Creek at Kendall Bridge near Emigrant](#). FWP personnel measure streamflow approximately monthly. These measurements along with corresponding staff gages readings are used to maintain and update the rating table for the gage. The ratings are used in conjunction with water level data collected every ½ hour to develop continuous streamflow data. During times of low flow, the water level may be checked more frequently. Communication with the major water users on Big Creek occurs frequently during these periods to advise them of streamflow conditions and provide them with the relevant staff gage readings corresponding to the flow rates protected.

RENEWALS COMPLETED

No renewals were completed during 2024 and 2025.

RENEWALS PENDING

Cedar Creek. The 10-year lease with the U.S. Forest Service on Cedar Creek, a tributary to the Yellowstone River near Corwin Springs, expired on September 20, 2025. The lease allows for some irrigation on the historic OTO Dude Ranch now owned by the Forest Service but prioritizes streamflow in lower Cedar Creek over irrigation. Cedar Creek, a relatively small stream, is a prolific producer of Yellowstone cutthroat trout. This lease was previously renewed in 2005 and 2015. The renewal application is currently pending before DNRC.

Big Creek. One of the existing water leases on Big Creek, a tributary to the Yellowstone River near Emigrant, expired after the 2025 irrigation season. Renewal of the water lease previously occurred in 2009 and 2019. Like other upper Yellowstone River tributaries, change to instream flow protects flow in Big Creek to provide for the successful spawning, incubation, emergence and outmigration to the Yellowstone River of Yellowstone cutthroat trout. The renewal application is currently pending before DNRC. This lease will expire in 2029 or after the current lessor's water right change application pending before DNRC is approved, whichever is later. Once this pending application by the lessor is approved, FWP has agreed to negotiate a new lease agreement that is consistent with lessors newly authorized water right change. The intent is to preserve the successful water conservation efforts on Big Creek.

CHANGE APPLICATIONS PENDING

No change applications are currently pending before DNRC.

INSTREAM CHANGES IN DEVELOPMENT

Parsons Slough and Willow Spring Creek. Parsons Slough and Willow Spring Creek are spring-fed tributaries of the Jefferson River near Waterloo that cool the Jefferson River and provide cold-water refugia along with important spawning habitat for brown and rainbow trout. FWP entered into a water management and lease agreement with the owner of the most senior and downstream irrigation water rights on Parsons Slough (and the only irrigator on Willow Spring Creek) for a 30-year instream flow water lease. The project involves a change in point of diversion to pump from the Jefferson River instead of diverting the cold water from Parsons Slough and Willow Spring Creek. In December 2025, DNRC authorized the additional point of diversion from the Jefferson River to supply the irrigation system. With that authorization complete, subsequent applications by FWP to temporarily change the water conserved and no longer diverted by the project to instream flow are in preparation and are expected to be filed during early 2026.

West Fork Rock Creek at Red Lodge. FWP classifies Rock Creek, a tributary to the Clarks Fork Yellowstone River, as chronically dewatered from Red Lodge to its mouth meaning that dewatering is a significant problem in virtually all years. Rock Creek supports a high-quality wild trout fishery (brown and rainbow trout) generally upstream of the Roberts area where stream dewatering becomes severe. While dewatering is not severe moving upstream toward Red Lodge and the West Fork confluence, diversion of water still reduces streamflow below natural conditions, particularly in drought years. Downstream of Roberts, fish population data in a sampling section near Joliet shows highly variable populations that likely fluctuates based on the available streamflow.

FWP has entered into a purchase agreement to acquire two very senior priority irrigation water rights from the West Fork Rock Creek near Red Lodge, to restore and protect streamflow in the West Fork Rock Creek and Rock Creek to benefit the wild trout fishery in both streams. The acquisition of the water rights is contingent on the current owner successfully temporarily changing the two water rights to instream flow. This 10-year temporary change to instream flow is subject to approval by the DNRC.

Sheep Creek. Sheep Creek is a tributary to the Madison River just downstream of Quake Lake. Sheep Creek dries up in most years due in large part to the diversion of water into ditches for both irrigation and stock water. The stock water is conveyed several miles to the pastures served. FWP is in the early stages of exploring the potential to supply stock water with wells instead of surface water. Also, FWP is investigating the potential to lease the irrigation water rights.

Wise River. FWP along with conservation measure water on the Wise River. The Wise River, the largest tributary of the Big Hole River, contributes cold water to the Big Hole River and provides cold-water refugia for fish when water temperature in the Big Hole River is very warm. During July and August, when fishing restrictions are often implemented because of high water temperatures in the Big Hole River, water flowing in from the Wise River is 7-9°F cooler. In addition to collecting additional streamflow information, FWP is working with landowners to investigate the possibility of diverting warmer water from the Big Hole River instead of from the cooler Wise River during times when water temperatures in the Big Hole River are too warm and threaten the fishery. Water conserved by the projects would be leased by FWP.

Mill Creek and Willow Creek. Under a 2008 settlement agreement, the State of Montana Department of Justice accepted full or partial ownership of twenty-seven Mill and Willow Creek, and tributary, water rights held by ARCO Environmental Remediation LLC. Historically, these rights diverted irrigation water from Mill and Willow creeks, both tributaries to the Clark Fork River near Anaconda, MT.

Montana Department of Justice's Natural Resources Damage Program (NRDP) transferred management of these water rights to FWP. The intended fate of these rights is conversion from an irrigation purpose to an instream flow purpose.

FWP began an evaluation of those rights in February 2013. The evaluation revealed issues of overlapping and conflicting claims of ownership. FWP submitted requests for two Ownership Updates (Form 608) and twenty-five Ownership Updates/Severances (Form 642) to DNRC on November 4, 2022. Seven of the severance requests received objections from co-owners of the water rights. Distribution of the ownership of those rights is currently being addressed through objections as Basin 76G is in preliminary decree. Following resolution of ownership issues and any changes made to the water rights during final decree, FWP will seek instream flow protections on water not required for maintenance of the constructed wetland complex and possible continued irrigation.

Nevada Spring Creek. FWP accepted the donation of several water rights from Nevada Springs and Nevada Spring Creek. These water rights, for both irrigation and stock use, are located on a spring creek tributary to Nevada Creek in the Blackfoot Basin.

Public comment was collected in November and December 2012 as part of the "Nevada Spring Creek Water Right Acquisition Environmental Assessment". The Fish and Wildlife Commission authorized acceptance of the irrigation water rights in December 2012. In July 2013, the Fish and Wildlife Commission authorized acceptance of the associated stock water rights. In August 2013, the quit claim deed was recorded, and the Water Right Ownership Update was filed with DNRC.

The subject water rights were part of the Montana Water Court's ongoing Blackfoot River Basin Preliminary Decree (Basin 76F). Review of the claims revealed inaccuracies in the Nevada Spring Creek water rights. Therefore, FWP objected to those water rights in the adjudication proceedings. Through amendments and withdrawals, FWP has corrected the inaccuracies of those claims. The Water Master's report was finalized in July 2015. The Water Judge adopted the Master's Report in August 2015.

From 2016 through 2023 FWP collected operational, hydrologic, and historical use data. FWP intended to file the application with DNRC in December 2021 to permanently change these rights to instream flow. However, it was discovered that two of the water right claims had several discrepancies pertaining to the locations of the points of diversion. To address these discrepancies, FWP submitted a verified motion to amend these claims with the Water Court in the first quarter of 2024. The Water Court published notice of the amendments and approved them in late 2024. A change application is currently under development.

Irrigation Rights on FWP Lands in Upper Missouri River Basin. FWP holds irrigation rights acquired with the purchase of several properties in the upper Missouri River basin, including Poindexter Slough Fishing Access Site, Wall Creek Wildlife Management Area, Gallatin Wildlife Management Area and Missouri Headwaters State Park. These rights are being considered for permanent changes to instream flow to benefit the fishery. The water rights associated with Poindexter Slough have been evaluated while the rights associated with the other properties are in the evaluation stage.

Prickly Pear Creek. The Montana Natural Resource Damage Program (NRD) has proposed that FWP accept ownership of eight irrigation, five industrial, and five stock water right claims on Prickly Pear Creek in Lewis and Clark County. The water rights are historically associated with the old ASARCO Smelter Site located in East Helena and are held by the Montana Environmental Custodial Trust (MECT).

Prickly Pear Creek is a perennial stream that flows from its headwaters in the Elkhorn Mountains of southwest Montana to Lake Helena, north of the city of Helena. Upon entering the Helena Valley near East Helena, the waters of Prickly Pear Creek have historically been used for irrigating lands in the Helena Valley. Prickly Pear Creek suffered from chronic dewatering, and segments of Prickly Pear Creek in the Helena Valley were typically dry for much of the summer months limiting agricultural use, adequate resident and migratory fish habitat, and recreational opportunities. In 2008, a rewatering project was initiated involving the Lewis and Clark Water Quality Protection District, the Helena Valley Irrigation District (HVID), the Prickly Pear Creek Water Users Association, and the US Bureau of Reclamation which resulted in water from the HVID canal being introduced directly to Prickly Pear Creek during periods of low flow. The proposed project would further secure flows in Prickly Pear Creek as FWP would acquire senior water rights, which when permanently converted to instream flow, have the potential to legally protect up to 10.5 cfs.

FWP published a draft environmental assessment (EA) on the proposed acquisition of water rights in October of 2023. Public comment was accepted, and a decision notice was published in January 2024 recommending that the proposed acquisition advance to the Fish and Wildlife Commission. During the public comment period and after publication of the decision notice, the City of East Helena (the City) expressed interest in acquiring a portion of the water rights.

On November 4, 2024, METG submitted an offer to the City that proposed to split the ASARCO industrial water rights between it and FWP. The offer was initially rejected. After further discussions, the City once again rejected the offer.

FWP is in the process of preparing a Supplemental Environmental Assessment for this project and expects to present this transfer to the Fish and Wildlife Commission for approval in 2026. If successful, change applications will be prepared and submitted to DNRC.

CONCLUSION

FWP continues to see strong interest from water right owners in leasing water for temporary changes to instream flow. FWP will continue to administer its existing changes to instream flow and pursue new changes where opportunities arise. In 2026 and 2027, current projects involving both temporary and permanent changes to instream flow will continue to move forward, and new projects will likely be developed.

REFERENCES

Poff, N.L., J.D. Allan, M.B. Bain, J.R. Karr, K.L. Pretegaard, B.D. Richter, R.E. Sparks and J.C. Stromberg. 1997. The natural flow regime: a paradigm for river conservation and restoration. *Bioscience* 47(11):769-784.

FWP Instream Flow Change History as of December 2025

Active Leases																			
SOURCE	RIVER BASIN	STATUS	LESSOR	LEASE TERM/EXP.	PRIORITY OF RIGHT	QUANTITY LEASED	PERIOD OF USE												
Big Creek	Upper Yellowstone	Active Renewed	Land Trust	10 years April 15, 2030	March 12, 1883; June 30, 1901; May 31, 1909; May 15, 1910; May 15, 1910	1.0 – 16.0 cfs 2.0 (rights dedicated to a land trust in perpetuity)	April 15 - October 15												
Big Creek	Upper Yellowstone	Active Renewed	Private Party	10 years May 1, 2029	June 30, 1873 (1 st right on stream) right split between 2 parties	2.8 cfs	May 1 - November 1												
Big Creek	Upper Yellowstone	Active Renewal Pending	Private Party	5 years May 1, 2029	June 30, 1873 (1 st right on stream) right split between 2 parties	7.5 cfs	May 1 - November 1												
Big Creek	Upper Yellowstone	Active	Private Party	10 years April 30, 2029	June 30, 1873 (1 st right on stream) June 30, 1882 (2 nd right on stream)	0.7 cfs 0.88 cfs	May 1 - October 10												
Cedar Creek	Upper Yellowstone	Active Renewal Pending	US Forest Service	10 years September 20, 2035	April 1, 1890; April 1, 1893; April 1898; April 1, 1904; April 7, 1972 (high-water rights only)	6.77 cfs May 1-July 15 6.39 cfs July 16-July 31 9.64 cfs August 1-August 31 6.39 cfs Sept 1 - October 15	May 1-October 15												
Locke Creek	Upper Yellowstone	Active	Private Party	30 years December 14, 2031	March 6, 1915	7.5 cfs	April 20 – October 24												
Rock & Stoughten Creeks	Upper Yellowstone	Pending	Private Party	30 years November 25, 2054	July 10, 1895; May 29, 1902; October 26, 1904; April 24, 1906; May 5, 1909; June 1, 1909 (These are all the oldest rights on the streams)	2.56 cfs	May - October 10												
Mulherin Creek	Upper Yellowstone	Active Renewed	Private Party	10 years December 31, 2028	July 15, 1884; May 7, 1885; June 15, 1893; January 1, 1900; March 2, 1903; June 5, 1905; August 5, 1920; April 15, 1967	5.0 cfs to 27.0 cfs	April 15 - October 19												
Long Creek	Red Rock	Active	Private Party	December 31, 2026	October 7, 1915 – UT Long Creek - 41A 110697-00 October 15, 1888- Long Creek -41A 110699-00 October 15, 1888 – UT Long Creed - 41A110700-00 August 25, 1893 –Divide Creek- 41C110701-00	<table border="1" style="display: inline-table; border-collapse: collapse;"> <thead> <tr> <th>Month</th> <th>To POD</th> <th>Blw POD</th> </tr> </thead> <tbody> <tr> <td>July</td> <td>7 cfs</td> <td>5.49 cfs</td> </tr> <tr> <td>Aug.</td> <td>cfs</td> <td>2.77 cfs</td> </tr> <tr> <td>Sept.</td> <td>3 cfs</td> <td>1.8</td> </tr> </tbody> </table>	Month	To POD	Blw POD	July	7 cfs	5.49 cfs	Aug.	cfs	2.77 cfs	Sept.	3 cfs	1.8	July 1 - September 15
Month	To POD	Blw POD																	
July	7 cfs	5.49 cfs																	
Aug.	cfs	2.77 cfs																	
Sept.	3 cfs	1.8																	
Lazyman Creek	Ruby	Active	Private Party	10 years November, 2031*	April 30, 1888 (only diversionary right on source)	Up to 1.0 cfs	May 15 – October 15												
Hells Canyon Creek	Jefferson	Active Renewed	Private Parties	10 years Apr. 1, 2029	December 31, 1884 (1 st right on stream), August 23, 1889; August 29, 1912	1.12 cfs (salvaged water)	April 1- November 4												
Little Belt Creek	Belt Creek	Active	Private Party	10 years: April 17, 2029	October 3, 1891; May 27, 1895 (senior rights on source)	1.0 cfs (trigger flow)	May 15 – October 15												
Cow Creek	Missouri	Active	Private Party	10 years December 31, 2031	March 28, 1889, May 1, 1889 (most senior rights on source)	0.21 cfs	April 1 to October 31												

FWP Instream Flow Change History as of December 2025

Teton River (near Fort Benton)	Missouri	Active	Private Party	10 years January 31, 2031*	August 2, 1897; August 3, 1901	4.47 cfs / 4.23 cfs	May 20 – September 23
Teton River (near Dutton)	Missouri	Pending	Private Party	10 years January 31, 2031*	October 20, 1890; February 13, 1901	5.9 cfs	May 4 – September 30
Chamberlain Creek	Blackfoot	Active Renewed	Private Party	10 years April 1, 2027	October 10, 1911	½ the flow up to 25 cfs	April 1 - October 31
Pearson Creek	Blackfoot	Active Renewed	Private Party	10 years April 1, 2027	October 10, 1911	Up to 8 cfs	April 1 - October 31
Cottonwood Creek	Blackfoot	Active Renewed	FWP – rights acquired with Wildlife Management Area	10 years October 18, 2026	May 1, 1884	14 cfs April, 37 cfs May 1-June 30, 32 cfs July, 9 cfs August, 6 cfs September, 9 cfs October 8 cfs November (Salvaged water)	April 1 - November 4
Rock Creek	Clark Fork	Active	Private Party	10 years October 31, 2031	March 23, 1881; May 15, 1881; June 1, 1892; May 1, 1898; September 29, 1904; May 10, 1907	5.0 - 27.22 cfs	April 15 - October 31
Deep Creek	Missouri	Active	Private Party	10 years May 17, 2023	May 1, 1868; March 1, 1870 (6 th and 8 th priority rights)	4.25 cfs	May 5 – September 23

*DNRC did not include an expiration date on Change Authorization. This date is 10 years from the date of issuance.

Permanent Changes to Instream Flow Completed

Cedar Creek	Upper Yellowstone	Active	FWP purchased right from private party – rights previously leased	Perpetuity	May 29, 1894 (4 th right on stream; other high-priority rights already leased by FWP);	3.25 cfs	April 1 – November 1
Bear & Pine Creeks	Upper Yellowstone	Active	Rights donated to FWP	Perpetuity	December 31, 1876; July 24, 1903 (includes most senior right)	10.83 – 10.98 cfs	January 1 – December 31

FWP Instream Flow Change History as of December 2025

Applications Pending Before DNRC

None

In-active leases/changes (terminated, not perfected or rescinded)

Mill Creek	Upper Yellowstone	Inactive	Mill Creek Water and Sewer District	Expired	95 rights with various priorities	41.4 cfs	48-60 hours in August Diversion shut off after 10-day notice from FWP
Mill Creek	Upper Yellowstone	Inactive	Private Party	Expired	June 30, 1880; June 1, 1903	2.0 cfs (1880) and 4.13 cfs (1903) (salvaged water)	May 1 -October 4
Mill Creek	Upper Yellowstone	Inactive	Private Party	Expired	June 1, 1891	2.64 cfs	May 1 – October 19
Blanchard Creek	Blackfoot	Inactive	Private Party	Lease rescinded	May 11, 1913 (first right on stream)	3.0 cfs	April 15 -October 15
Trail Creek	Clearwater	Inactive	Resort (and) Homeowners Association	Not perfected Lease rescinded	April 10, 1905 January 10, 1911	1.06 cfs 2.37 cfs plus, an additional 0.5 cfs during periods of low flow	April 1 - October 31.
Tin Cup Creek	Bitterroot	Inactive	Private Parties	Met statutory limit on renewals in place at that time.	August 1, 1883 (first right on stream)	2.28 cfs April 1-April 14 4.32 cfs April 15-April 30 4.72 cfs May 1-October 19	April 1- November 4
Hell Roaring Creek	Red Rock	Inactive	Private Party	Not perfected Lease rescinded – rights later withdrawn by owner.	May 26, 1900 October 25, 1901 September 24, 1915	8.0 cfs 4.0 cfs 6.0 cfs	May 1 – October 15 May 1 – October 15 May 1 – October 25
LaMarche Creek	Big Hole	Inactive	Private Party	Lease terminated at owner request due to conditions imposed by DNRC.	July 28, 1906; December 31, 1955	1.85 cfs / 2.0 cfs	May 15 – September 22
Deep Creek	Missouri	Inactive	City of Townsend	Lease terminated at request of owner.	April 1, 1866 April 2, 1866	1.88 cfs 0.16 cfs	April 1 – October 1