

## Providing habitat on Fish Creek

*An up-close look at Wyoming's Instream Flow Water Rights and what they mean to fishermen*

### The Setting

"The purpose of this letter is to request that the Wyoming Game & Fish Department initiate the necessary investigation for the purpose of obtaining an instream flow right for Fish Creek. . . Very few spawning opportunities exist in the Snake River proper for Snake River cutthroat trout. Consequently the Snake River's tributaries are vital spawning habitat. . . I feel it is very important that efforts be made to secure a minimum instream flow allocation for this segment of Fish Creek."

These are words contained in a letter from Ed Ingold, manager of the Crescent H Ranch near Wilson in a letter dated October 15, 1992. One month later Thomas B. Rossetter, an upstream neighbor, submitted a similar letter in which he stated "We are totally supportive of the concept of maintaining minimum instream flow . . . whether on private or publicly held land . . . We request that our land be considered as part of the instream flow section."

Based on these requests and our agreement with the landowners' observations, the department prepared and submitted instream flow applications for two segments of Fish Creek near Wilson through private lands.

To date, virtually all other instream flow segments have been filed on stream segments that pass through lands with public lands on at least one side – the vast majority of those have public land on both sides of the stream.

Fish Creek was the first place where the department submitted an instream flow filing on a segment located entirely within privately owned land.

The state's instream flow law provides clear guidance on these filings – mandating that the state own all instream flow rights (not the landowner), directing the Game and Fish Department (not private interests or other agencies) to determine important segments and amounts of water needed, and clearly stating that the existence of an instream flow right within private land does not require or allow public access to the



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stream. Only two other stream segments that have private land along both sides of the stream have been established since the ones on Fish Creek. It has been department practice to conduct instream flow studies on private land only upon the formal request of landowners and a determination by department personnel that the requested segments are critically important habitats.

### The Fishery

Mr. Ingold's letter was correct that while the Snake River has some great habitat and fishing for native Snake River cutthroat trout, it doesn't have much spawning habitat. That makes the relatively small number of tributaries like Fish Creek critically important for maintaining that good fishing. In addition to some high quality spawning habitat, Fish Creek also has some great habitat for adult trout. That's another reason why the limited number of homeowners in the Crescent H housing development and the Rossetter's value the stream so highly.

Area 1 flowing water fishery regulations apply here. That means there is a limit of six trout per day or

in possession, only 3 of which may be cutthroat, only one cutthroat may be over 12 inches long, and only one trout may exceed 20 inches. Like all Snake River tributaries upstream from the Sheep Gulch boat ramp (excluding the Hoback River), fishing is closed from November 1 through March 31. There are no special restrictions on terminal tackle or bait.

### How to Get There

Fish Creek flows through the town of Wilson, which can be reached by taking Highway 22 west from Jackson Hole. Although there is no public access to either of the two instream flow segments, the public can benefit from the trout that are spawned and reared there by angling for fish that return to the main stem of the Snake at numerous access points along the Snake or by boat.

For more information about instream flow or to read other X-Stream fishing articles, visit the department's web site at: <http://gf.state.wy.us/fish/instreamflow/index.asp>.

## The Instream Flow

**Permit Number:** Temporary Filing numbers 28-4/158 and 28-5/158.

**Priority Date:** October 8, 1993.

**Quantity:** 150 cubic feet per second (cfs) year round.

**Location and length:** Segments 1 (Rossetter's) and 2 (Crescent H Ranch) are 0.6 and 1.5 miles long respectively with a short break between them. Segment 1 begins about 800 feet downstream from the Highway 22 Bridge in Wilson and segment 2 ends downstream at the southern property line of the Crescent H Ranch.

**Land ownership:** All of the lands through which the instream flow segments pass are privately owned on both sides of the stream.

**Rationale:** Detailed field studies by department personnel served as the basis for recommendations to maintain spawning and adult habitat for Snake River cutthroat trout. Achieving that goal requires a continuous

and adequate flow regime to provide spawning habitat in the spring, protect the eggs while they incubate and hatch during the summer, and maintain survival of all life stages of fish throughout the year.

**Status of the filing:** A public hearing was held in Jackson on April 30, 1997 at which department personnel provided information about fishery flow needs and Wyoming Water Development Office staff presented information about water availability. All of those in attendance spoke in favor of the filing and had no issue with the fact that the filing passed entirely through private land.

As of this writing, the State Engineer has not formally approved a permit for these water rights. Upon permitting, the final step in the process of securing this, or any other water right, involves adjudication by the Board of Control.