

Changing water rights ... on the Jakeys Fork

THE SETTING

High on the Continental Divide, the Jakeys Fork River begins its journey to the Atlantic Ocean among the snow fields of the Wind River Range. The young stream passes through a sweeping landscape of endless mountain meadows filled with lupine and bluebells, gradually growing to a small, vibrant river that gives life to tall creekside cottonwoods, thick stands of willows and wild trout before spilling into the Wind River about three miles east of Dubois.

Among the several uses that humans have placed on the stream is raising trout in the Game and Fish Department's Dubois Fish Hatchery. Built in 1940, the hatchery incubates between 4 and 7 million trout eggs each year for use at hatcheries in Wyoming and throughout the United States. After they hatch, up to 300,000 of these trout stay at the facility and are grown to various sizes for stocking in Wyoming's streams and lakes.



However, several years ago fish pathogens that occur naturally in the stream entered the hatchery, infecting the trout. While the disease organisms in the creek weren't necessarily harmful to the wild fish that are naturally found there, the presence of those organisms in the hatchery was a serious matter both because of the mortality it caused in the hatchery as well as because it was unacceptable to stock diseased fish in waters of the state. As a consequence, hatchery managers decided to quit using stream water for producing trout until a cost-effective way to treat the stream water could be developed. With a reduced water supply we had to rebuild parts of the hatchery and implement a state-of-the-art water treatment system to use the remaining water supply that was drawn from wells more efficiently. This project would not have been possible without special funding from the legislature.

According to Wyoming water law, any water right that is not used for its intended purpose for at least 5 years can be subject to abandonment. The oft-heard principle of "use it or lose it" definitely came into play here.

To protect the department's interest in our water rights in the stream, we turned to the state's instream flow law for a solution. As provided by the law, we were able to formally change the use of the hatchery water right from "fish culture" to "instream flow." This seemingly minor change in terminology had the very significant effect of letting us legally leave the water in the stream without any risk that the water right would be considered abandoned and possibly lost.

Keeping ownership and control of this important water right was an important step in preserving its value for the benefit of Wyoming's citizens and trout in the Jakeys Fork. When the day comes that we can effectively treat water in the stream to remove all the unwanted pathogens, we should be able to change the legal use back to fish culture and again use that water to produce lots of high quality trout for Wyoming's anglers and other state agencies around the country that rely on Wyoming's high quality, disease-free trout to create fishing opportunities.

THE FISHERY

The Jakeys Fork harbors good numbers of rainbow and brown trout as well as a few brook trout through most of the year. In early spring, there's a pretty good run of rainbow trout that move into the stream from the Wind River to spawn. There's another good pulse of browns that enter the stream in late September and October to spawn. Throughout most of the year, the majority of resident fish range from 8 to 15 inches or so. But during the spring and fall spawning runs your chances of encountering significantly bigger fish increase markedly. Basic mayfly and caddis patterns in addition to various attractors and hopper patterns work well here, especially from late July until the first snows fall.

This entire stream is covered by Area 2 regulations but is subject to a few exceptions. There is a limit of three trout per day or in possession, only two may be cutthroat trout, and only one trout can exceed 16 inches. Statewide brook trout regulations also apply. There are no special restrictions on the kind of tackle or bait that can be used here other than as provided by general statewide regulations.

HOW TO GET THERE

From Dubois, drive about three miles east on Highway 26/287. Immediately after the highway crosses the Jakeys Fork a sign directs you to the public fishing area (PFA). This turnoff is about 200 yards west of the turnoff to the Dubois hatchery. Signs in the PFA parking lot show where you can fish without asking permission.

For more information about instream flow and other instream flow segments, visit the department's web page on the subject at: <http://gf.state.wy.us/fish/instreamflow/index.asp>.

The Instream Flow

Permit Number: Permit Number 20272

Priority Date: April 19, 1949

Quantity: 3.0 cubic feet per second (cfs) year round.

Location and length: 2.29 miles

Land ownership: The segment flows through a combination of state and private lands between the Geyser Spring and its confluence with the Wind River. The department has secured a permanent public fishing access easement on the lower half mile of the stream immediately upstream from its confluence with the Wind River.

Rationale: This instream flow right is based entirely on the limit allowed per the water right that was formerly dedicated to the hatchery. A biologically appropriate flow regime has not been identified but would probably be somewhat higher than 3.0 cfs throughout the year as a function of the habitat needs of the different species and life stages of trout. Regardless, this instream flow right provides a good base of habitat protection while serving the dual purpose of maintaining the commission's ownership of the water right as well as the right's

original priority date and standing. If and when it becomes possible and desirable to return this amount of water to its original purpose of rearing fish in the hatchery, the commission should be able to do so with minimal effort under established rules and policies of Wyoming water law.

Status of the filing: A public hearing was held in Dubois on March 12, 2007 as part of the change of use process. Public notice was placed in the local paper advising the public of the opportunity to attend and show how the proposed change of use might affect their existing water rights. No one other than representatives from the Game and Fish Department and the Board of Control attended the hearing or submitted written comments. In light of this fact and in compliance with all other legal and regulatory requirements, the state engineer granted the change of use on March 13, 2008. The original water right that was changed to instream flow had already been adjudicated so no additional action is required of the state engineer, Board of Control or Game and Fish Department.