

X-Stream Fishing ... on Pine Creek

A unique instream flow water right and what it means to fishermen

The Setting

Pine Creek and the New Fork River near Pinedale have seen their share of instream flow activity over the past decade or so. In 1989, the Game and Fish Commission filed an instream flow water right for the New Fork that generated considerable concern as well as support. Discussion was heated in 2001 when the first instream flow right was filed on Pine Creek at the request of the mayor and town council. In 2009 the commission was offered an irrigation storage right in Fremont Lake to



use for instream flow in the Pine Creek and New Fork instream flow segments. Following extensive negotiations, several Board of Control meetings, and a public hearing, the Game and Fish Commission closed the deal on this additional source of water for maintaining flow in the streams. More recently, Pinedale was the scene of perhaps the most significant instream flow development yet when an irrigation right was offered by long-time rancher and resident Paul Hagenstein for change to an instream flow.

Though the quantity of water was relatively small, the precedent set by the ensuing process was considerable. Since passage of instream flow legislation in 1986, private water right holders have had the legal mechanism to change an existing water right to instream flow. There have been numerous inquiries about making such a change, but not one person had followed through with their initial desires for one or more of several reasons. Some decisions have been affected by known facts that any such change would be permanent and require giving up ownership to the state. But unknowns such as how much of the right could be changed, where the water could be regulated, what time of year would water be allowed to stay in the creek, and whether a change could somehow be determined to injure another water right holder all factored in as well. With the final ruling at their November 2011 meeting, the Board of Control addressed and resolved all of these uncertainties, at least as they apply to Pine Creek and the New Fork River.

Although the state wound up as the owner of this water right, the

transaction still made sense to Mr. Hagenstein. In this situation, he was pursuing a complicated exchange of these relatively junior water rights for more senior ones that were no longer being used by a neighbor. When that exchange went through, Mr. Hagenstein could no longer use his junior rights and he couldn't find anyone else who needed them either. Current state law does not yet allow a private water right holder, like Mr. Hagenstein, to temporarily change an existing water right to instream flow and retain ownership and the option to use the original water right for some other purpose in the future, or leave water in the stream for fisheries purposes over an extended

time, so keeping the water right was not an option. Mr. Hagenstein didn't want his water right to just go away, so decided to turn this irrigation right into an instream flow right. Even though it's a 1949 priority right, it has always been available, so this gift ensures this water will flow in these streams to benefit his friends, neighbors, and fish in perpetuity.

The Fishery

Since filing for and securing instream flow water rights beginning in 2001, year-round flow and fish numbers have improved markedly in Pine Creek and the New Fork. More than 3,700 brown trout and even higher numbers of rainbow trout have been counted per mile of stream. The local Trout Unlimited chapter has helped to increase numbers even more by restoring fish passage past irrigation diversions on the stream.

This entire stream is covered by Area 4 fishing regulations. There is a limit of three trout per day or in possession, only one trout can exceed 16 inches, and no more than one cutthroat trout may exceed 12 inches. 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

Public access to Pine Creek is found right in the town of Pinedale. City parks located immediately upstream from State Highway 191 and a short distance downstream from the bridge offer good opportunities to reach the instream flow segment.

The Instream Flow

Permit Number: Permit Number 5484 Enl. diverting from Pine Creek through the Enlarged Lee Ditch

Priority Date: July 15, 1949

Quantity: The permit was granted for 0.64 cfs from May 1 through Sept. 15. It will be used in combination with two storage rights owned by the commission in Fremont Lake and a direct flow instream flow right to maintain flows up to 40 cfs throughout the year.

Location and length: A portion of the 8.2 mile-long instream flow segment in Pine Creek between the Lee Ditch and the confluence with the New Fork River and the entire 1.5 mile-long instream flow segment on the New Fork segment located shortly below the mouth of Pine Creek.

Land ownership: Much of the Pine Creek instream flow segment passes through private lands; however there is public access in two city parks in Pinedale. Boyd Skinner Park is located a short distance

downstream from the State Highway 191 bridge and American Legion Park is located immediately upstream from the bridge. The New Fork instream flow segment is entirely surrounded by state trust lands. Be sure to check a land ownership map to learn the status of the lands where you'd like to fish.

Rationale: State law presently restricts ownership of all instream flow rights to the state. As a consequence, the only option Mr. Hagenstein had for making sure his donated water right could remain a legitimate water right was to convey it to the state. As required by law, the Game and Fish Commission assumed the majority of expenses associated with the petition and served as the petitioner before the Board of Control.

The fishery in Pine Creek is very important to the citizens of Pinedale and the state. This additional flow protection will add to this ongoing benefit. This action may have even broader benefits

statewide considering that the Board of Control determination removes many of the uncertainties associated with changing an existing irrigation right to instream flow. As such, future efforts like this should be more straight-forward and easier.

Status of the water right: This proposed change of use was considered by the Board of Control at three public meetings between May 2010 and November 2011. The board also held a public hearing on Aug. 17, 2011 in Pinedale and sent formal notice to all water right holders along the stream. No opposition or findings of injury to other water right holders were received or documented.

The Board of Control subsequently approved the change of use up to the limit of documented historic use. The water right retained its original priority date and may be protected in the stream in full whenever it is available in priority between May 1 and September 15.