



Wyoming Water Association

# Wyoming Water Flow

*Water Is Wyoming's Gold!*

Volume LXIX, Issue I

May 2006

## **2006 Summer Water Resources Tour To Be Held July 14th Lander Area Water Features, Projects and Issues to be Explored**

The Wyoming Water Association's 2006 Annual Summer Water Resources Tour is fast approaching; the tour will be held on Friday, July 14th and will depart at 9:00 a.m. at the Inn in Lander.

Southwest of Lander rise the gentle, forested foothills of the Wind River Range. Wyoming 131 climbs into them, following the crystalline Popo Agie (po-po-zhuh) River into Sinks Canyon, a deep glacial trough. At Sinks Canyon State Park, the river careers into the maw of a large limestone cavern and disappears for a quarter mile. It reappears at The Rise, a deep pool often crowded with large trout. We will be stopping at the Visitor Center for a rundown on canyon geology. Other tour highlights will include visiting instream flow segments on the River, a visit to Ray Lake, viewing water conservation improvements at Midvale Irrigation District, and more.

More tour information and a registration form for securing your spot on this informative tour is found on page 7 of this newsletter. WWA hopes you will join us!



*What are the Sinks and the Rise? Sinks Canyon is so named because the Middle Fork of the Popo Agie, a rushing mountain river, flows out of the Wind River Mountains and through the Canyon. Halfway down the canyon the river abruptly turns into a large limestone cavern, and the crashing water "sinks" into fissures and cracks at the back of the cave. The river is underground for 1/4 mile until it emerges down canyon in a large calm pool called "The Rise," and then continues its course into the valley below.*

## **20 Years of Instream Flow**

### **A Look Back at What's Actually Happened**

*by Tom Annear, WWA Board Member and Water Management Coordinator, WY Game and Fish Department*

About the time you were taking another fat rainbow off your line on the Tongue River this summer or easing into a long stretch of the New Fork dimpled with the rises of a dozen hungry trout, the State reached an historic milestone. The Game and Fish Department submitted the 100th instream flow application. It only took 20 years to reach this point – an average of five filings a year.

Along the way we've filed for streams in every corner of the state. The Clarks Fork of the Yellowstone that flows from Yellowstone National Park was the first filing. This wild river boasts vibrant populations of native cutthroat trout as well as other native fishes like mountain whitefish that can test your line with the toughest trout. We've filed on portions of most of the Blue Ribbon waters in the state too – streams like the Middle Fork Powder near Kaycee

and the Salt River near Afton.

We've also filed on lots of streams you've probably never heard of. Streams like the Roaring Fork of the Little Snake in the Sierra Madres, Little Gilbert Creek in the Uinta foothills, and Marquette Creek near Cody where we've filed for instream flow rights to protect base flows to maintain existing populations of native cutthroat trout.

The 100th filing will be on Rock Creek near Arlington – a sort of poster child for most filings we've made. The instream flow segment is entirely on public lands (Forest Service and State) and ends just above an existing irrigation diversion. There are no other diversions or uses of water within the instream flow segment. This is a popular stream that supports lots of rainbow trout and a

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### **2006 Officers of the Wyoming Water Association**

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## **Wyoming Water Flow**

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## **20 Years of Instream Flow** *(continued from page 1)*

few brown trout in the lower end of the segment. Brook trout are part of the mix further upstream. The stream runs strong during snowmelt, but still boasts a good flow and great fishing in late summer – it's an important public resource that's definitely worth protecting in its existing condition.

Looking back 20 years, we've now got a good understanding of the claims and criticisms that were leveled by supporters and opponents of instream flow in the years leading up to passage of the instream flow law in 1986. For the most part, instream flow rights haven't put water back in any streams. The legal authority established by the law simply lets the state protect stream flow in stream segments when it's naturally available. It does this by recognizing that maintaining fish habitat is a valid, legal use of water – on par with most other uses of water. Restoring water in streams, for example by changing another existing use to instream flow, is different than maintaining natural flow and has proven difficult. In fact, it's only been attempted three times in 20 years – all unsuccessful. To make restoring flows easier, while avoiding harm to other existing water rights, you'll need to change the law a little bit.

We know too, that instream flow has not brought the demise of our state economy as some claimed. To the contrary, personal income in Wyoming increased 234% between 1986 and 2003 – the latest year for which statistics are available (<http://eadiv.state.wy.us/i&e/Profile.htm>). Instream flow probably can't take much credit for the increase, but it definitely can't get blamed for holding anything back.

We also now know that instream flows don't have to come from storage (dams) as most opponents claim. In fact of the 100 instream flow filings, only one is dependent on a dam to provide some of the needed water. All the other flows are provided by natural runoff. We don't need a dam to provide instream flow in the Greys River any more than we do on Tensleep Creek or any of the other 99 instream flow segments that get their water from natural runoff.

What's more, although some of the legislatively mandated public hearings have seen some heated exchanges, there hasn't been one instance where issuance of an instream flow right has harmed any other water right holder. Likewise there hasn't been one filing that's been challenged in court. Once these rights are issued, there have been no complaints or controversy and they're administered exactly like any other kind of water right. In brief, instream flow rights haven't caused any of the problems that opponents said they would.

The filings haven't accomplished everything that proponents had hoped for 20 years ago but they have done some good. Of most importance, the state is now able to legally protect base flows for valuable sport and native fisheries in over 433 miles of streams in the state, including portions of most of the blue ribbon streams and many miles of streams containing native cutthroat trout. Still, in spite of all our hard work we've secured instream flow rights on less than 2% of all the stream miles in the state.

The bottom line is that instream flows work for everybody. They don't cause problems for existing water users and they help protect some of the most important stream fisheries in the state that benefit all of us in one way or another. We can do more to maintain and improve instream flows. The challenge of the next 20 years is for instream flow opponents and advocates to put the arguments of the past behind them and work together to find ways to protect more stream fisheries without taking anything away from traditional uses of water. One thing we've learned in the last two decades – we can do this.

# 2006 Wyoming Legislative Session Summary

## *Wyoming Legislators Act on Water-Related Measures*

The 2006 Budget Session of the Wyoming Legislature adjourned on March 11, 2006. During this session, Keith Burron, an attorney who resides and practices in Cheyenne served as the Association's Education Specialist. Keith worked with the WWA Board of Directors in monitoring and speaking out on behalf of the Association on water-related bills that came before the Legislature. The bills that the WWA took an active interest in included the following:

HB #145, Omnibus water bill-planning: The Association recommended "do pass" this bill in its Feb. 15th memo to the Legislature; and further emphasized in its March 1st memo the Association supports funding for Wyoming's participation in the Platte River Recovery Implementation Program (PRRIP). This bill did pass with the PRRIP provisions intact.

SF #74, Changes to water use study: The Association recommended "do pass" on this bill by a majority vote - as opposed to a consensus position. This somewhat controversial bill provided for a study of issues associated with allowing a private water right holder to temporarily (and as amended, permanently) change the use of the water from a consumptive to a non-consumptive use. This bill passed the Senate but failed in the House. The Senate subsequently attempted to amend HB#145 to include the provisions of SF #74, but the House refused to concur and the amendment was withdrawn so that HB #145 could pass.

SF #93, Coalbed natural gas water use: The WWA recommended "do pass" on this bill. After passing the Senate, the bill was never brought up by the Committee of the Whole in the House. The bill's language was inserted in its entirety into SF #94, the Omnibus water bill-construction, and hence was enacted as a Session Law. The bill created a 15-person task force directed to study alternative methods of managing water produced as a result of coal bed natural gas extraction. An interim report is required to be produced by December 2006 and a final report is due by October 2007.

SF #94, Omnibus water bill-construction: The

Association recommended "do pass" in its February 15th memorandum, and further recommended do pass in its March 1st memorandum. The WWA made particular note of our support for funding for the Pathfinder Modification Program (PMP). The bill passed, including the PMP provisions.

Other: two other bills of note related to water issues that failed introduction were: (1) SF #53, which sought to give the Department of Environmental Quality some authority over water quantity in setting effluent standards and limitations. (2) SF #65, which sought to provide for acquisition of temporary instream flows.

The WWA gratefully acknowledges the participation of most of our agency advisors during the once-weekly legislative review sessions.

In his written report to the WWA summarizing his impressions from the 2006 Session, Mr. Burron noted the following: "there are two water related issues that received "Legislative attention this session that I believe the Association will want to watch in the coming year. The first issue is, not surprisingly, instream flow. Instream flow initiatives continue to be controversial at the legislative level ... I would recommend that in the coming year the Association make a concerted effort to determine what its position will be (if any) on instream flow issues. If the Association decides to take a position I would recommend that it adopt a resolution specifically articulating the position. In the absence of such a resolution or position statement, I believe the Association runs the risk of sending conflicting messages to the legislature, given the divergent positions within the Association on the issue. The second issue that seems to be gaining legislative attention is the disposition of water produced in coal bed methane development. The work of the legislative task force will be interesting and could well lead to future legislative initiatives on the issue. The Association may want to keep advised of the work of the task force as it moves forward and be prepared to evaluate any legislative initiatives that develop after the task force submits its initial progress report at the end of this year."

# Governor Appoints CBM Task Force Members

*First Meeting Held in Casper on May 5th*

Governor Dave Freudenthal's recent appointment of seven members to a new task force charged with evaluating possible uses of water produced by coal bed methane operations has been followed by the Task Force's first meeting on May 5th in Casper. Created by this year's SF-94 enacted during the recent Legislative Session, the 15-member Coalbed Natural Gas Water Use Task Force includes representatives of the mineral industry, agriculture and government. Under the statute, Freudenthal has appointed seven members with the other members being those set forth in the statute from executive branch agencies and the Legislature.

The Governor's appointments include

- Thomas Clayson of Casper, John Pope of Laramie

and Joseph Olson of Upton, representing the CBM industry;

- Helen Jones of Buffalo, Bob Ruby of Buffalo, and Neal Schuman of Buffalo, representing agriculture;
- Kurt Kelley of Rawlins, representing the public at large;

Non-appointed members of the Task Force include State Engineer Pat Tyrrell, DEQ Director John Corra, WY Oil and Gas Conservation Commission Supervisor Don Likwartz, WY Pipeline Authority Chairman Mark Doegler, Rep. Kermit Brown, Rep. Pat Childers, Sen. Chuck Townsend and Sen. Kit Jennings.

The *Wyoming Water Flow* will provide future updates concerning the Task Force's deliberations in future issues.

# WWA Announces 2006 Scholarship Recipients

*Karinthia Harrison and James Bravo Selected to Receive \$1000 Scholarships*

The Wyoming Water Association is greatly pleased and proud to announce that the two children of Association members will each receive a \$1000 scholarship award to assist them as they pursue college education during the 2006-2007 academic year. Karinthia Harrison and James Bravo were recently notified of their receipt of these awards.

The scholarship competition includes the preparation of a 500-word essay on a topic concerning the importance of water to Wyoming's way of life. This year's essay topic was "How does the Wyoming Water Planning Process website benefit the citizens of the State of Wyoming?" Harrison and Bravo will be honored by the Association's members during the Annual Meeting's evening banquet in November at the Ramkota Hotel in Casper.

James is the son of Jeannie Christman of Frannie and is a 2006 graduate of the Rocky Mountain High School in Byron, Wyoming. He will be attending Northwest Community College in Powell, Wyoming during the coming school year and majoring in Physical Education. James participated as a member of the Grizzly high school basketball team for four years and coached Little League for four years as well. James, like Karinthia, was honored to be

named a member of the National Honor Society.

Karinthia is the daughter of Rick and Karlene Harrison of Powell, Wyoming. A Chelsa is attending the University of Wyoming and will earn a Bachelor of Science degree in Nursing. Karinthia earned her high school diploma at Powell High School in 2005. She received a County Commissioner's Scholarship, a Garland Light and Power Company Scholarship and a Western Heritage Scholarship in recognition of her achievements during the 2005-2006 academic year and is a member of the University of Wyoming Cowgirl Soccer team.



The WWA encourages members' sons, daughters or grandchildren to apply for the scholarship awards. Info. on next year's scholarship competition may be found on WWA's website ([www.wyomingwater.org](http://www.wyomingwater.org)) or by calling the WWA at 307-631-0898.

# Joint Ag Committee Revisits Instream Flow and Well Driller Licensing Debates During Interim Meeting

*April 20th Meeting Held in Torrington*

*NOTE: The following is taken from articles published in the May 1, 2006 edition (Vol. 17, No. 46) of the Wyoming Livestock Roundup and acknowledgement and credit is hereby extended to the publisher and staff of the Wyoming Livestock Roundup.*

## **Instream Flow Bill Passes out of Committee**

Instream flow once again received the attention of the Joint Ag Committee of the Wyoming Legislature when it met on April 20th in Torrington. The issue of instream flow continues to cause concern among many Wyomingites. Committee members heard the history of instream flow in Wyoming and its future potential. The fear surrounding instream flow is streamed by our Colorado neighbors to the south. The Front Range, historically agt land, has been consumed by urban sprawl, converted water rights and little to no agriculture remains. Ken Hamilton with the Wyoming Farm Bureau says, "We need to go about this with caution. There may be unintended consequences we may not see until 20-30 years from now." He questions with instream flow, how you determine misuse or abandonment of stream flow. "Instream flow was a water right unlike any other water right," he says.

The role of permitting instream flow is given to State Engineer Pat Tyrrell, but some question if he has the tools to protect instream flow rights. Tyrrell says, "I won't protect rights to the state line. There are too many uses for it before it gets there. It's not simple." However, Tyrrell says there are numerous ways to create instream flows, but the goal is to avoid injury to those downstream. Specific injuries would be, "Is there a water right otherwise fulfilled that will not be fulfilled if the action is taken?" he says.

Instream flow challenges on paper date back to legislation passed in 1986. This legislation defined instream flow as a beneficial use mainly to maintain or establish fisheries and declared that only the state could hold that water right. Furthermore it defined the State Engineer's role in permitting.

Pinedale, at the center of instream flow

discussions in recent years, has sent stored water from Fremont Lake downstream in Pine Creek. Pine Creek has two instream flow permits for fisheries, but the state holds the water rights and not the town. Downstream, the Highland Irrigation District filed for abandonment when the city released its stored water in 1998. The city was granted five years to prove the water had beneficial use and in 2003 received another five-year extension.

Representative Kermit Brown of Laramie, a member of the ag committee, proposed a bill that would call for a pilot project in Pinedale. It's at least the second time such legislation has come before the committee. Constreaming the area of stream to one mile below the town, the motion was passed 8-4 by the committee. "We are taking the smallest step possible," said Brown.

## **Well Drillers Should be Licensed**

Wyoming is the only state without some sort of mandatory license, certification or regulation for well drillers says Wyoming State Engineer Pat Tyrrell. While some drillers in Wyoming don't see it as a necessity, others can't understand why something hasn't been done yet. Associated Legal Group, LLC of Cheyenne Attorney Bruce Asay says, "There are very easy standards, it's high time we do them."

Well drillers in Wyoming can currently obtain voluntary certification through the State Engineer's Office by meeting certain requirements. These include proof of liability insurance, age requirements, fees and three examinations - a general exam, a Wyoming exam and a categorical exam. The drillers obtaining this certification are encouraged to have national testing under their belt before taking the state exam. However, many drillers don't have this voluntary certification, but are required to meet state rules and regulations.

The state rules and regulations address professional conduct, certification as a business organization, practices and procedures and investigations for misconduct. The rules are thorough, but Asay is concerned they are not good

*(continued on page 6)*





# Wyoming Water Association 2006 Summer Water Resources Tour

The Wyoming Water Association invites you to join us as we tour water resource facilities and learn about Popo Agie watershed issues in the Lander area on **Friday, July 14, 2006**. Wyoming Water Association Vice President Ron Cunningham, Trout Unlimited Wyoming Water Project Executive Director Scott Yates and others will be your tour guides as we explore the unique hydrogeology of the Sinks Canyon State Park, the Ray Lake rehabilitation project, Midvale Irrigation District water conservation and management improvements and instream flow and other watershed issues in the Popo Agie River Basin.

Our tour will begin with a brief orientation at the Pronghorn Lodge, 150 East Main, (at the intersection of Main Street and U.S. Highway 789) in Lander beginning at 9:00 a.m. The tour will conclude by mid-afternoon. Lunch and snack break/beverages will of course be provided for tour participants.

A block of rooms has been reserved at the **Pronghorn Lodge** in Lander for the evening of July 13th for folks attending our upcoming tour. **Please reserve your room by calling 1-800-283-4678 or 307-332-3940.** Be sure when making your reservation to mention you are reserving your room under the Wyoming Water Association Summer Meeting and Tour block to obtain our negotiated lodging rate of **\$58.00** single or double occupancy, plus tax. **The cut-off date for the block reservation is July 5, 2006.**

**WWA's summer tours are fun and informative. Mark your calendar now and plan on participating in our upcoming event. Should you have any special accommodation needs or desire additional information, please contact John Shields, WWA Executive Secretary, by calling 307-631-0898 or send an e-mail to [wwa@wyoming.com](mailto:wwa@wyoming.com).**

*Please fill out the short form below and return it with your tour registration payment, to the WWA today.*

Yes, please register me for the **July 15, 2006** Wyoming Water Association Summer Water Resources Tour. I have enclosed \$ 15.00 as my tour registration payment. For additional participants, please attach an additional sheet listing information for each person participating.

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_

*Please mail this form and your tour registration payment of \$15.00 per participant to:*

**Wyoming Water Association, P.O. Box 21701, Cheyenne, WY 82003-7032**

Should you have questions, please call the WWA at 307-631-0898 or send an e-mail to [wwa@wyoming.com](mailto:wwa@wyoming.com).



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**Don't Miss This One!**

### **REMINDER:**

Don't forget to mark your calendar for the  
**Wyoming Water Association's  
Summer Water Resources Tour**

departing from the Pronghorn Lodge, Lander, Wyoming  
at 9:00 a.m.

**July 14, 2006**