

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on April 16, 1993, at 10:02 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Brown

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 692
Executive Action: NONE

HEARING ON HB 692

Opening Statement by Sponsor:

Representative Wanzenried, District 7, said HB 692 is a proposed compact between the State of Montana and the National Park Service. The agreement was between the State of Montana, the United States Department of Interior, and the United States Department of Justice. The proposed compact quantifies reserved water rights in Glacier Park, Big Hole Battlefield, and Yellowstone National Park. Rep. Wanzenried said, with the exception of Yellowstone park, HB 692 deals with surface flows in Glacier Park and Big Hole Battlefield. Yellowstone National Park deals with surface flows and ground water. The intent of HB 692

was to quantify how much water the Park Service was entitled to.

Proponents' Testimony:

Barbara Cousins, Legal Council for the Compact Commission, told the Committee that HB 692 is a very complex agreement. Glacier National Park was established on May 11, 1910. The priority date of the water associated with the reservation is the date on which it was reserved. The stream flows within Glacier were divided into categories depending on the potential conflict on the streams. Anything that "head watered" in the park was considered category a 1 or a 1(a) stream, and the entire flow was dedicated to instream flows for reserved water rights. The reserve water right ends at the boundary of the park when the stream leaves the park. Ms. Cousins said there are private land holdings within Glacier National Park, therefore any water right associated with those private land holdings is protected. The other streams are the North and the Middle Fork of the Flathead River, which are boundary streams. Ms. Cousins told the Committee that one issue had been raised about why there were reserved water rights for boundary streams. Ms. Cousins said there was a landmark case recognizing reserved water rights, Winters v. The United States in 1908. That dealt with the reserved water on the Milk River, which is the Northern boundary to the Fort Belknap reservation. The question was not whether it was a boundary or within the reservation, but rather the date of the reservation and the purpose of reservation, because it was the purpose of the reservation that determined the quantity of water reserved. The purpose of a National Park is for the preservation of a stream in its natural condition. All the water would be needed to keep a stream in its natural condition. All ground water flow, not connected to surface flow, can be developed for non-consumptive use. If any consumptive use is made by the United States Forest Service, it is not subtracted from the state's share.

Ms. Cousins said another issue raised was control of the river. "If this agreement dedicates between 94% and 99% of the river to instream flow, depending on the month, what control of the river does that give to the United States." Ms. Cousins said without the compact, the Federal Reserve Water Right exists, but only for the purpose of the park. The compact would provide protection by stating specifically that instream flow rights must remain in the stream. HB 692 does not relinquish any state control over state water rights.

Ms. Cousins told the Committee the dates of reservation for the Big Hole Battlefield vary from 1910 to 1939, but the Park Service agreed to a priority date of June 29, 1939. Despite the priority date, they agreed to subordinate to any use in the basin, which is a water short basin. Ms. Cousins told the Committee Senator Swysgood introduced a bill which closed the basin. The bill passed, therefore the language in the compact would be consistent with the other bill.

Ms. Cousins told the Committee the bulk of land in Yellowstone National Park was reserved on March 1, 1872, which gave the park senior water right in those basins. The streams were divided depending on the potential of conflict. Anything that "head watered" in the park, or in wilderness where there are no private land holdings and no private water right claims, the entire stream flow was dedicated to instream flow. There are a number of streams located on the Northern boundary that headwater outside the park which have private land and private water right claims. They were divided into two categories. The category three stream is one in which there is a low level of use, or no use with little potential for future use. The United States agreed to was to subordinate their water rights to all existing use and allow an increment of future use, so total use would amount to 5% of the flow. That would give a significant additional amount of water going into those streams. The agreement was two tiered because the Park Service was concerned with small streams that have major seasonal fluctuations between low and high flow. It would be up to the Park Service to place gauges on those streams if they wanted to assert their water rights. However, it would not be in their control to contact the water user and turn them off. The Park Service would have to go through the state system, by either contacting the Department of Natural Resources and Conservation or go to court to shut the water user off. They would need proof that there was an adverse use on the stream which was in violation of the agreement. The Commission then looked at individual boundary streams, which were the Gallatin River, Yellowstone River, Madison River, and then Soda Butte Creek. On those rivers there is a low level of use. The agreement would allow 5% for consumptive use.

Soda Butte Creek has been the area of greatest concern. The stream is located in the northeast corner of the Park, close to the communities of Cooke City and Silver Gate. Like the Big Hole River, there is a high level of consumptive use claims. The Compact Commission does not have the jurisdiction to determine individual water rights. That would be up to the Water Court. The water rights would be protected, however they end up being decreed by the Water Court. Currently, claims in the Water Court for winter months, exceed 100% percent of the flow on Soda Butte Creek. They are much less than that in other months, because there is such a large fluctuation of instream flows between the winter and summer months. Nevertheless, the Park Service agreed to subordinate to all existing claims. "Would this limit future development on the stream because of a high level of current development." Ms. Cousins said it would. However, the alternative would be to litigate. The Compact Commission joined the United States in the adjudication. If negotiations break down, they would have six months to bring their claim to the Water Court.

Ms. Cousins said Yellowstone National Park was reserved to retain things in their natural condition. To retain something in its natural condition means "as it occurs in nature, 100% of the

DEFINITIONS - Hydrologic Terms

EXHIBIT 1
DATE 4-16-93
HB 692

- Acre-foot:** A unit of measure commonly used to express water volume. One acre foot of water will cover one acre of land to a depth of one foot. This equals 325,851 gallons.
- Actual Consumption:** Also termed "net depletion." The actual amount of water consumed by a water use. Water diverted is generally not totally consumed and some of the water returns to the stream.
- Appropriation:** Use of water recognized under state law.
- Average/Mean Monthly Flow:** The average rate that a stream flows during a given month, expressed in cubic feet per second (cfs). Averages are calculated from stream flow measurements (stream gage records). Rates generally differ for each month of the year due to the seasonal nature of temperature and precipitation.
- cfs:** A unit of measure used to express stream flow rates. The letters stand for cubic feet per second.
- Consumptive Use:** Refer to non-consumptive use.
- Estimated Average Monthly Flow:** An estimate of the true average monthly flow of a stream. Estimates are obtained through indirect methods when stream gage records are not available.
- Groundwater:** Water existing beneath the ground surface.
- Instream Flow:** Water remaining in the stream channel which is not available for consumptive use. Instream flow is needed to sustain stream channel values, fish and wildlife populations, streamside habitat and water quality and provide for recreation activities.
- Mean Monthly Flow:** See Average Monthly Flow
- Minimum Flow Requirement:** The minimum flow rate which is designated to remain in a stream channel for instream flow purposes.
- Non-Consumptive Use:** When applied to mining or hydropower use with a priority date of January 1, 1993 or later, refers to appropriations not causing a net loss in the source and where water is returned to the stream with little or no delay and without adverse effect of the quantity or quality of water. Relating to other uses, refers to a water right considered to be non-consumptive by the decree, permit or law authorizing the use.
- Quantification:** The process of measuring, quantifying, or allocating water to a particular use.
- Stream:** Relating to the general streamside (sometimes lakeside) environment.
- Watershed:** The area drained by a stream system. A watershed is defined by the topographic divide, and several watersheds fit together to form a river basin.

flow." Yellowstone Park has a priority date of 1872. It is not possible to consider that claims for 100% of the flow, in the winter, would be protected under a litigation scenario. "Is there anyway in which Soda Creek users can develop water in the future?" Ms. Cousins said yes. Any ground water use, not connected to surface water, can be developed. Because of high flows in summer months there is a significant amount of water, if the claims are adjusted down to a reasonable level within the adjudication. Ms. Cousins said there is a significant amount of water available for use in May and August. The community of Silver Gate has a claim of 5 CFS on the river, which is a large claim. The stream only produces up to 60 gallons per minute. If the claim is adjusted down to what it can actually produce, a large amount of water is freed up for development in the winter and summer months. The community of Silver Gate and Cooke City store water for use in the winter months. The amount of water left over for storage exceeds the amount available under the amendments that were introduced on the floor of the House.

Ms. Cousins said the compact would protect claims decreed by the Water Court. There would be no other way to determine actual use. No one uses water 100% of the time at a maximum flow rate. The community on the Soda Butte Creek drainage could form a conservation district and meter their use. The park service would help the communities to obtain a state grant in order to meter their use and put together a conservation district.

Ms. Cousins said the purpose of Yellowstone National Park was to preserve it as a natural curiosity, which includes the hydrothermal system. The reserved water right ends at the park boundary. However, the United States Supreme Court held that an adverse ground water use adjacent to a park, affects the reserved water right within the park. Congressman Pat Williams introduced a bill in Congress that would establish a ban on geothermal development within 15 miles of Yellowstone Park. The State's goal in the negotiations was to settle the water right and maintain state control of the natural resources adjacent to the park. The bill provides maximum protection to the Park and allows reasonable development adjacent to the Park. It also sets a system for collecting information on water use and the hydrothermal system within the Park. Every ground water user in the area has to obtain a permit prior to development of ground water. The Compact Commission set up an expedited system that would be less costly and burdensome, in terms of time and money for users of small wells. There would be no limit on production of ground water that is less than 60 degrees fahrenheit. For development of water in excess of 85 degrees fahrenheit there would be a strict level of scientific review that has to occur before the development could be allowed. If the water is between 60 and 85 degrees fahrenheit, certain criteria need to be looked at to determine if there is hydrothermal input in the water. If there is, it would be treated like a warm water well. If not, it would be treated like cold water and a permit would be issued. In order to allow this system to evolve, the compact set up a

Technical Oversight Committee, which consists of a group of five. The Committee is made up of five scientists, two are appointed by the United States, two are appointed by the State, and one is selected by those four members. The Committee would make recommendations on modifications within the area. The recommendations would go to Department of Natural Resources and Conservation for a hearing in which any water user, the United States, or the State could present contrary evidence. However, in order to keep it on a scientific level, the recommendation by the Technical Oversight Committee would have a rebuttable presumption in those hearings which would have to be overcome by other testimony. The hearings could be appealed.

Ms. Cousins said the compact set up a system of data collection. The Montana Bureau of Mines and Geology would inventory any system well within the area and have an ongoing program of collecting samples from certain select wells. The inventory of the data collection and the administrative establishment of the controlled ground water area would be funded by Congressional funding. The Compact Commission is seeking 3.2 million dollars for the system. That would provide enough money so the system could run off the interest so additional appropriations would not be needed every year. Ms. Cousins said it would take several years to receive the funding. Therefore, prior to receiving the funding, the Department of Natural Resources and Conservation would not issue permits to develop water in excess of 60 degrees Fahrenheit.

Ms. Cousins said the State, or any affected water user, could go to court to enforce the agreement against the United States. The United States could be an objector in any permit application that might adversely affect its water rights. The United States must provide notice to potentially affected water users of any change in the use of their consumptive water rights that are dealt with within the compact. Objections to that may be filed in court. Ms. Cousins urged support for the Compact on behalf of the Compact Commission.

Ms. Cousins provided an outline of her testimony. (Exhibit #1)

Chris Tweeten, Chairman of the Reserve Water Rights Compact Commission, Chief Deputy Attorney General for the State of Montana, told the Committee the Attorney General strongly supported the Compact and urged its approval by the Legislature. Water rights in Montana, including federal reserved water rights, are currently subject to adjudication in the Montana Water Courts under SB 76 which was adopted in 1979. Litigation of federal reserved water right claims is extremely time consuming and expensive. There is an advantage in negotiating settlements, rather than litigating purely from a cost perspective. A negotiated settlement provides an opportunity to put into place practical solutions to problems that go beyond quantifying and attaching a priority date to a federal reserved water right. The compact achieves that objective by taking a practical approach to

some of the water right shortage problems and providing agreements between the federal government and the state. In the mid 1980's, the Commission opened negotiations with the National Park Service. Negotiations proceeded for a period of time and then they were suspended. The parties recently got back together at the State's invitation to revisit the issue for providing a compact. Mr. Tweeten said negotiations were started again because of the interest expressed by Congress in regulating water development outside Yellowstone Park for protection of the hydrothermal features. The Compact Commission was aware Congress was considering placing restrictions on the development of ground water outside of Yellowstone Park. However, the restrictions did not fit well with Montana's water regulation process. Therefore, it was important for the State of Montana to try to maintain the states prerogative with respect to the regulation of ground water outside Yellowstone Park. The goal throughout the negotiations was to provide a level of protection for existing and future water users under state law. The Park Service recognized that the existing level of water use on most of the springs, with the exception of Soda Butte Creek, did not pose a significant threat at the time the Park was created. Because of their recognition, the Park Service was willing to agree to protect all existing uses on the streams and also to provide a significant cushion for additional future use. The bone of contention, with respect to surface flows, was Soda Butte Creek, in which there is a significant level of existing use. A level which the Park Service was not comfortable with, with respect to its ability to continue to achieve the purposes for which the park was created. Through negotiations the Commission came to an agreement by which the Park Service would be free to provide protection for all existing uses in that drainage. In addition, an agreement with the Park Service provided flexibility on the Soda Butte Creek, so once the adjudication process was over there would be a significant likelihood that some level of future use could be put in place on Soda Butte Creek. The federal government has a federal reserve water right. The federal government has the power, through that federal reserve right, to put a stop to uses outside of the park which conflict with their federal reserved water rights. There is protection for existing and future users to prevent the United States from being able to sue in Federal District Court to put a stop to existing uses and prevent any future uses.

Lil Erickson read from prepared testimony. (Exhibit #2)

Karen Fagg, representing Governor Racicot, told the Committee that Governor Racicot supported HB 692. Ms. Fagg told the Committee why HB 692 was important to Montana. The State's negotiating team was able to protect, through subordination, existing water users pre-1993. Ms. Fagg said there would be room for expansion for future use under HB 692. The state would continue to maintain administrative control of ground water around Yellowstone. The state will receive 3.2 million dollars in federal funding for the compact. It is also important for

Montana to demonstrate its concern and commitment to the National Parks that border or are within the State's boundaries. Ms. Fagg said the appropriate avenues to resolve these issues would not be through litigation because it would be time consuming and costly. HB 692 sets up a non-adversarial relationship for the State, its neighbors, the tribes, and federal government. Ms. Fagg asked the Committee to look at HB 692 carefully and take into consideration all the hours of negotiations, the technical and legal staff work, and the public meetings and hearings. Ms. Fagg urged support for HB 692.

Mark Simonich, Department of Natural Resources and Conservation, (DNRC), supported HB 692. Mr. Simonich told the Committee that the DNRC would be very involved in the administration of the compact once it becomes effective. The DNRC worked closely with the Compact Commission during negotiations to ensure that the system could be adequately administered by the State. Mr. Simonich said the DNRC was comfortable with all of the provisions in the compact. The DNRC would be responsible for the establishment, administration, and enforcement for the Yellowstone controlled ground water area. The Montana Bureau of Mines and Geology would be responsible for the inventorying and monitoring of water use within the controlled ground water area. The funding for that would come from federal government. Mr. Simonich said the funding would not be available for one or two years. Therefore, the DNRC has put in a budget request in HB 2 for \$10,000. When the State receives the trust of \$2,000,000, the money would be reimbursed. Mr. Simonich urged support for HB 692.

Owen Williams, National Park Service, read from prepared testimony. (Exhibit #3)

Jeanne-Marie Souvigny, Associate Program Director, read from prepared testimony. (Exhibit #4)

Jo Brunner, Executive Director of the Montana Water Resources Association, read from prepared testimony. (Exhibit #5)

Stan Bradshaw, Trout Unlimited, supported HB 692.

Janet Ellis, Audobon Society, supported HB 692.

Michael Scott, Wilderness Society, read from prepared testimony. (Exhibit #6)

Julia Page, Bear Creek Council, read from prepared testimony. (Exhibit #7) Ms. Page submitted petitions. (Exhibit #8)

Mark Shapley, Flathead Chapter of the Montana Wilderness Association, urged the Committee to pass HB 692.

Jim Richard, Montana Wildlife Federation, supported HB 692 because it would have beneficial and positive impacts on fish and

wildlife.

Representative Wagner, District 8, said his District encompasses Glacier National Park. I firmly believe that there is a need for this compact agreement. Rep. Wagner submitted amendments. (Exhibit #9) Rep. Wagner said he would support HB 692 only with the amendments. Rep. Wagner said there were a number of concerns with HB 692. Rep. Wagner explained the amendments.

Opponents' Testimony:

Richard Buley is a land and business owner in Cooke City. Mr. Buley told the Committee that Cooke City is a unique because it is the most remote area within the State of Montana. Cooke City is also unique in its treatment under HB 692. HB 692 provides that Cooke City has 5% use of the flow and the United States Government has 95% use of the flow of Soda Butte Creek. All the ground water is hydrologically connected to Soda Butte Creek. By giving the government 95% of the water flow, it stops any development in Cooke City. Cooke City is the only place in the entire state in which people cannot develop their property. 40% of the land privately held in Cooke City is presently undeveloped. Therefore, the land would be worthless upon passage of HB 692. Compacts have been passed in Idaho and Wyoming and neither have affected communities the way Cooke City and Silver Gate would be affected under HB 692. Cooke City and Silver Gate are the only communities in the three states surrounding Yellowstone Park, that cannot develop. Mr. Burley said the people who have registered water rights, as of this time, will be protected. However, by not allowing development the community would die. Mr. Burley said theoretically there would be room for development, however that would entail the establishment of a meter system. Mr. Burley told the Committee that Cooke City and Silver Gate does not store water during the winter months. They have running systems in the winter so they do not freeze. There is no storage tank in either community. There is no money provided in HB 692 to help the 70 full time residents to go through a massive regulation and storage capacity. The residents of Cooke City and Silver Gate are bearing the entire burden of HB 692. Mr. Burley told the Committee that amendments were offered in the House. Mr. Buley said he does not want to kill HB 692, but strongly urged the passage of the amendments. The amendments would allow a reasonable amount of water for the development of Cooke City. Mr. Burley said a water compact should not be passed if it is detrimental to the people in Montana.

Ted Doney told the Committee he is representing Hays Kirby, who is a landowner in Silver Gate, MT. Mr. Doney said his client was not opposed to the compact, but would like to achieve some consideration under this compact for his community. Mr. Doney told the Committee about their concerns dealing with the Soda Butte Creek. The compact puts a cap on the amount of water that can be developed in that drainage. Under this compact, existing water rights are protected, however, there is little or no room

for future development unless a conservation plan is instituted in the area. Silver Gate and Cooke City have already reached a cap under this compact, because the water right claims for that area already exceed the 5% limitation set up in the compact. Because of the compact, future water in this area will be minimal and the landowner would lose considerable property value. Mr. Doney said the communities are asking for an increase in the amount of water that can be developed under the compact, until a conservation plan is put in its place. Mr. Doney submitted amendments. (Exhibit #10) Mr. Doney explained the amendments.

Mr. Doney said they were also concerned about the conservation plan. A conservation plan is needed for the Silver Gate and Cooke City area. If a conservation plan was instituted in the area, the actual use of water in the drainage would be metered to calculate whether the cap was reached. The actual use in the drainage would probably be less than the claims because water right claims almost always exceed the actual use. Mr. Doney said the communities would need assistance in order to set up a conservation plan. Mr. Doney said one of the things that was being contemplated was a conservation district. Mr. Doney told the Committee there are no conservation districts in the State of Montana under title 85 chapter 20. The purpose of a conservation district was to conserve and meter water. In order to create a conservation district they need district court approval, an election of 50% of the landowners, studies, and money for the meters. Mr. Doney said the cost of the meters for their area would be approximately \$16,000. To set up a conservation district would cost around \$20,000 to \$30,000. Mr. Doney said Rep. Wanzenried has committed to help the community raise money for the conservation district. Mr. Doney said he talked to the budget director, Dave Lewis, and Mr. Lewis suggested an amendment to HB 2 to add \$20,000 to the general fund. Mr. Doney said if a conservation district is created, the people could meter their water and then there would be room for future development.

Questions From Committee Members and Responses:

Senator Grosfield asked Ms. Cousins about impoundments of the stream. Ms. Cousins said HB 692 prohibits impoundments on the stream bed of the mainstem of Soda Butte Creek, but would allow an impoundment adjacent to the mainstem of the stream upstream from the Park. (Exhibit #11)

Senator Halligan asked Rep. Wanzenried about the amendments proposed by Mr. Doney and Rep. Wagner. Rep. Wanzenried said the view of the Compact Commission was the compact protected future users, therefore, Mr. Kirby's amendment would not be needed. Rep. Wanzenried said if Rep. Wagners amendment was adopted, it would defeat the entire purpose of the compact.

Senator Towe asked Ms. Cousins about the water in Soda Butte Creek. Ms. Cousins submitted a table to the Committee. (Exhibit

#12) Ms. Cousins said the first column, mean monthly flow, is the estimated flow in Soda Butte Creek by month. The third column, surface water consumptive claims, are the claims as they currently exist in the adjudication.

Senator Towe asked Ms. Cousins about increasing the adjusted surface water consumption claims to 3.3 cfs. Ms. Cousins said the Park Service would probably not agree to the compact.

Senator Towe asked Ms. Cousins about not being able to develop the land in the Cooke City and Silver Gate communities. Ms. Cousins told the Committee they would be able to develop the land. Ms. Cousins said there would be water available for future use because water rights can be bought and sold.

Senator Towe asked Ms. Cousins about a conservation district. Ms. Cousins said without a conservation district, water would be available by storage or by use of ground water that is not connected to the flow. With the conservation district, water would be available year round.

Senator Towe asked Ms. Cousins if all the ground water was connected to the surface flow in the Soda Butte Creek. Ms. Cousins said she could not state with confidence that all the ground water was connected to surface flow in the drainage.

Senator Towe asked Ms. Cousins about the definition of "consumptive use" and "non-consumptive use." on page 5. Ms. Cousins said currently the water court decrees whether a water right is considered consumptive or non-consumptive. The water compact commission does not consider it in their jurisdiction to second guess the water court. Therefore, the rights prior to January 1, 1993, would state whether water use was considered consumptive or non-consumptive. After January 1, 1993, the definition in the compact would be applied to the effective basins.

Senator Towe asked Mr. Doney about transferring water rights. Mr. Doney said transferring water rights around would be possible under limited circumstances. People would have to give up part of their current water right and transfer it somewhere else. Mr. Doney said very few people would be willing to give up part of their right to someone else in order for them to use on a different piece of land. Mr. Doney said that would not be practical.

Chair Yellowtail asked Mr. Buley if Cooke City was eligible to utilize a local option sales tax. Mr. Buley said a sales tax in the Cooke City and Silver Gate area would not generate enough revenue to develop water storage system. Especially, because it would have to be heated throughout most of the year.

Chair Yellowtail asked Mr. Buley if the community considered the adoption of a local sales tax. Mr. Buley said no.

Chair Yellowtail asked Mr. Tweeten if the citizens of the affected areas had been notified of the compact. Mr. Tweeten said, "Yes". Mr. Tweeten said two meetings were held in the Gardiner area, one meeting in West Yellowstone, and one meeting in Bozeman. In addition, the Commission has an extensive mailing list. The list includes the Commissioners in Park County and Flathead County, any person who has indicated an interest in the compact, and all the water right holders. The Compact Commission made a good effort to keep the people in the affected areas informed about the issues of the compact throughout the negotiations.

Chair Yellowtail asked Mr. Williams if the National Park Service would support the compact with the amendments offered by Mr. Doney. Mr. Williams told the Committee the park management was uncomfortable with the existing level of use in Soda Butte Creek, but finally agreed to the compact. Mr. Williams said he did not think the National Park Service would support the compact with the proposed amendments.

Chair Yellowtail asked Mr. Williams if the National Park Service would support the compact with the amendments offered by Rep. Wagner. Mr. Williams said no.

Senator Towe asked Mr. Williams who signs off on the agreement. Mr. Williams said the compact would be signed off by the United States Department of Justice and the Department of Interior. Whether it is done by the Director of the Park Service or the Assistant Secretary or Secretary has yet to be determined.

Senator Doherty asked Mr. Tweeten about development in the Cooke City area. Mr. Tweeten said there is a margin for future development built into the compact.

Closing by Sponsor:

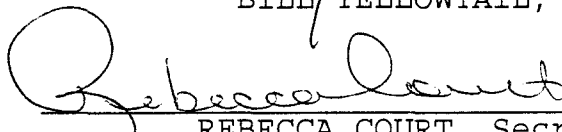
Rep. Wanzenried submitted letters of support for the compact. (Exhibit #13) Rep. Wanzenried said the Compact Commission did a good job of protecting existing and future users of all the basins effected. Rep. Wanzenried asked the Committee to pass HB 692 without amendments.

ADJOURNMENT

Adjournment: 12:44 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

INTRODUCTION

During the spring of 1992 the Montana Reserved Water Rights Compact Commission (RWRCC) and the National Park Service (NPS) resumed negotiations for federal reserved water rights for five NPS units in Montana: Yellowstone National Park, Glacier National Park, Big Hole National Battlefield, Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area.

BACKGROUND

The RWRCC was established by the Montana Legislature in 1979 as part of the state-wide general stream adjudication process. The RWRCC is composed of nine members, four appointed by the Governor; two appointed by the President of the Senate; two appointed by the Speaker of the House, and one appointed by the Attorney General.

The RWRCC is authorized to negotiate settlements with federal agencies and Indian tribes that claim federal reserved water rights within Montana. A federal reserved water right is a right to use water that is implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. It is a right that is recognized by federal law and need not be pursued through the standard state process for appropriation of water.

Members of the RWRCC Negotiating Team for NPS issues are:

- Representative Dave Wanzenried, Chairman of the Negotiating Team
- Senator Lorents Grosfield
- Representative Bob Thoft
- Mr. Chris Tweeten, Chairman of the RWRCC

Negotiators for the NPS are:

- Mr. Owen Williams, Chief of the NPS Water Rights Branch
- Mr. Rich Aldrich, Field Solicitor for the Department of the Interior in Montana
- Mr. Eric Gould, U.S. Department of Justice

After more than a year of intensive technical work by NPS and RWRCC staff and 13 negotiating sessions, the parties have reached agreement on issues relating to Glacier National Park, Yellowstone National Park, and Big Hole National Battlefield. Public comment has been received during Open Houses held in West Yellowstone and Gardiner and during public meetings in Kalispell, Wisdom, Bozeman and Gardiner. In addition, the agreements must receive approval from the full RWRCC and NPS management. The resulting Compact must be adopted by the legislature. Finally, the Compact will be integrated into Water Court decrees for each water basin. The goal of the RWRCC and NPS is to present a Compact to the 1993 session for the three units mentioned above. Negotiations will continue on Bighorn Canyon National Recreation Area and Little Bighorn Battlefield National Monument. The RWRCC asks that comments be directed to the RWRCC at 1520 E. Sixth Avenue, Helena, MT, 59620.

BIG HOLE NATIONAL BATTLEFIELD

Big Hole National Battlefield was created by an Executive Order on June 23, 1910 as a memorial to members of the Nez Perce Bands and the soldiers of the 7th U.S. Infantry who fought or died in the Battle of the Big Hole, August 9-10, 1877. Land was added by Presidential Proclamation on June 29, 1939, and by Congress in 1963. The 655 acre Battlefield marks the spot of the turning point in the Nez Perce War, which started June 15, 1877. Approximately 55,000 visitors tour the site each year.

The Battlefield carries a reserved water right for the purposes defined in the 1910 and 1939 reservations. The 1910 reservation was "for military purpose for use in protecting said monument...." (Executive Order 1216, June 23, 1910) The 1939 addition to the Battlefield, which contains the North Fork of the Big Hole River, was reserved "for the proper care, management, and protection of the historic landmarks included within the monument...." (Presidential Proclamation, June 29, 1939) The RWRCC and NPS agree that a purpose for reserving the Battlefield was historic interpretation. The RWRCC and the NPS agree that the priority date is June 9, 1939. (See the enclosed map for illustration of the watersheds surrounding the unit.)

Summary of Agreements between the National Park Service and the Reserved Water Rights Compact Commission for Big Hole National Battlefield.

Consumptive Use

The NPS and RWRCC have reached agreement on NPS consumptive uses, which include water for the visitor center, administrative offices, picnic area, maintenance area, residences, and irrigation within the Battlefield. The total amount agreed to is 7.14 acre feet per year. This amount is based on past water use, as well as a margin of use to allow for management flexibility and response to increased visitation.

Instream Flow Rights - North Fork of the Big Hole River

Because a purpose of the park is to preserve the historic condition of the Battlefield site, the NPS and RWRCC have agreed that a federal reserved water right exists for an amount of instream flow necessary to maintain the channel format and riparian habitat. The river channel bed and riparian vegetation played a role in the actual battle.

The RWRCC and the NPS agreed that an NPS water right for 10 cubic feet per second (cfs) of instream flow on the North Fork of the Big Hole River from November through March would be subordinated to water rights existing as of the effective date of the compact. From April through October the NPS will have a water right for instream flow in the amount left in the river after all existing consumptive uses are satisfied. If in any month the total consumptive use exceeds 5% of the estimated average monthly flow, the North Fork Big Hole River basin will be closed in that month to new appropriations for consumptive use upstream of the Battlefield.

Existing rights to divert water from points within the Battlefield and transport it for use off the Battlefield will not be affected by this agreement.

Groundwater

In addition to instream flow rights, there are clauses in the compact relating to groundwater appropriations. These agreements take into consideration the effect on

YELLOWSTONE CONTROLLED GROUNDWATER AREAIntroduction

This is a summary of proposed compact language for a Yellowstone Controlled Groundwater Area in Montana. The parties are presenting the proposal to the public at this stage in negotiations to allow response to public concerns prior to finalization of the agreement.

Statement of Intent for the Yellowstone Controlled Groundwater Area:

As explained in the attached Yellowstone surface water summary, Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoilation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The Montana Reserved Water Rights Compact Commission and the National Park Service recognize that Congress intended to reserve the water necessary to preserve the hydrothermal features within the reserved land of the park.

Although the proposed Compact does not recognize a reserved water right to groundwater outside the boundaries of the park, the RWRCC and the NPS agree that a controlled groundwater area be created to restrict development of hydrothermal water adjacent to the park to the extent necessary to prevent adverse effects on the NPS 1872 reserved water right to groundwater within the park. The goal of establishing and administering such an area is to allow no impact to the hydrothermal system within the park.

The NPS and the RWRCC tentatively agree that:

- unrestricted use of groundwater next to Yellowstone National Park may interfere with the NPS water rights for the preservation of hydrothermal features within the park;
- prevention of adverse effect on the NPS reserved water right within the park is a benefit to the State and to the United States;
- the public interest and welfare requires that a corrective control be adopted;
- the cooperative State-federal management established by the proposed Compact is the most effective means to protect the reserved water right to groundwater necessary to protect the hydrothermal features within the park.

Establishment of the Yellowstone Controlled Groundwater Area

Within 120 days of the date of the Compact, and within 60 days of any decision by DNRC to modify the area, DNRC will publish notice outlining the description of all lands included in the Controlled Groundwater Area, the purpose of the area or its modification, and the permit requirements, restrictions, inventory and monitoring applications within the discharge (Subarea 1), and recharge (Subarea 2) areas.

Funding of the Yellowstone Controlled Groundwater Area

Because the NPS agrees that it will receive a benefit from a controlled groundwater area because there are national and international benefits extending beyond the boundaries of Montana, the federal government agrees to reimburse the State for the

expense of establishing and administering the controlled groundwater area, and for the cost of inventory or monitoring of wells within the area, subject to appropriations by Congress.

Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the proposed controlled groundwater area, as well as Subareas 1 and 2, are illustrated on the enclosed map.

A five-member Technical Oversight Committee will be established to recommend modifications of boundaries and other restrictions, review scientific evidence relating to the area, advise the Department of Natural Resources and Conservation regarding administration and to consult with the Montana Bureau of Mines and Geology on inventory and sampling. The Committee members will include: one appointed by the National Park Service, one appointed from the Montana University system by the Montana State Geologist, one from USGS, one from DNRC, and one selected by the other four members. Each member will serve a five-year term, subject to renewal.

Modification of the Yellowstone Controlled Groundwater Area

The Technical Oversight Committee will: review the boundaries of the area, review initial restrictions on groundwater development and future modifications of those restrictions; assess the cumulative impact of all development in the area; review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau of Mines and Geology; review new scientific evidence pertinent to the area; present evidence and make recommendations to DNRC, and review applications for appropriation of hydrothermal groundwater on request by DNRC.

The initial review will take place within one year of the receipt of the inventory report done by the Bureau of Mines and Geology. The inventory will include all existing wells within the area and will take place during the 3 years following adoption of the Compact and appropriations of funds by Congress.

Subsequent reviews will take place every five years or following the issuance of 75 provisional permits to appropriate water within the area by DNRC, whichever comes first. Review may also be initiated on request by the State or the United States.

Within six months of the initiation of a review, the Committee will provide a report, including recommendations for modification, to DNRC and to the NPS. Recommendations shall be based on a determination by the Committee that modification is necessary to prevent adverse effect to the hydrothermal system within Yellowstone National Park. Prior to implementation of any recommendations, DNRC will hold a hearing in which the State, the U.S., and any potentially affected party may present evidence rebutting the recommendations of the Committee.

Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

When the initial boundaries or restrictions are modified, the following initial restrictions apply to groundwater appropriations with a priority date on or after January 1, 1993. The restrictions will not apply to appropriations prior to January 1, 1993. Those appropriations will be subject to inventory and sampling of current use to assess current levels of groundwater development, to record the cumulative

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effect of current and future development, and to provide baseline data on the characteristics of the groundwater and hydrothermal systems.

-The RWRCC and the NPS agree that further restrictions on water less than 60°F are not currently necessary to prevent adverse effect on the Yellowstone hydrothermal system. In the future, restrictions on the development of cold water may be imposed if cold water development might injure the hydrothermal system within the Park.

-Initial restrictions on appropriations of groundwater with a temperature of 60°F or greater include the following:

The parties have agreed that, unless boundaries or restrictions are modified, or unless the Technical Oversight Committee determines that a specific appropriation can be made without adverse effect on the hydrothermal system within the Park, no permits will be issued to develop hydrothermal water that is connected to the hydrothermal system within the Park.

To provide notice to potential appropriators and guidelines to DNRC, the agency charged with issuing permits, the parties are currently working on a means to define the waters to which the restriction applies. In general, it is agreed that:

*In Subareas I (discharge area) and II (recharge area), no restrictions shall currently apply to groundwater with a temperature of less than 60°F.

*In Subareas I and II, groundwater between 60° and 85°F that is simply at normal temperature for the depth of production will not be restricted from appropriation. The applicant will be required to meet specific criteria showing that the elevated temperature is not due to discharge from the Park.

*In Subarea I there is a strong presumption that any elevated water temperature is due to discharge from the park, thus, groundwater with a temperature greater than 85°F cannot be appropriated without approval by the Technical Oversight Committee.

*In Subarea II there is a chance that elevated water temperature is not related to the Park, thus, the applicant will have the opportunity to show by a high standard of proof that the elevated temperature is not due to discharge from the Park.

Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area

1. After January 1, 1993 and before the effective date of the Compact:

The initial restrictions outlined above will not apply to appropriations of groundwater during this time period unless the following conditions are met:

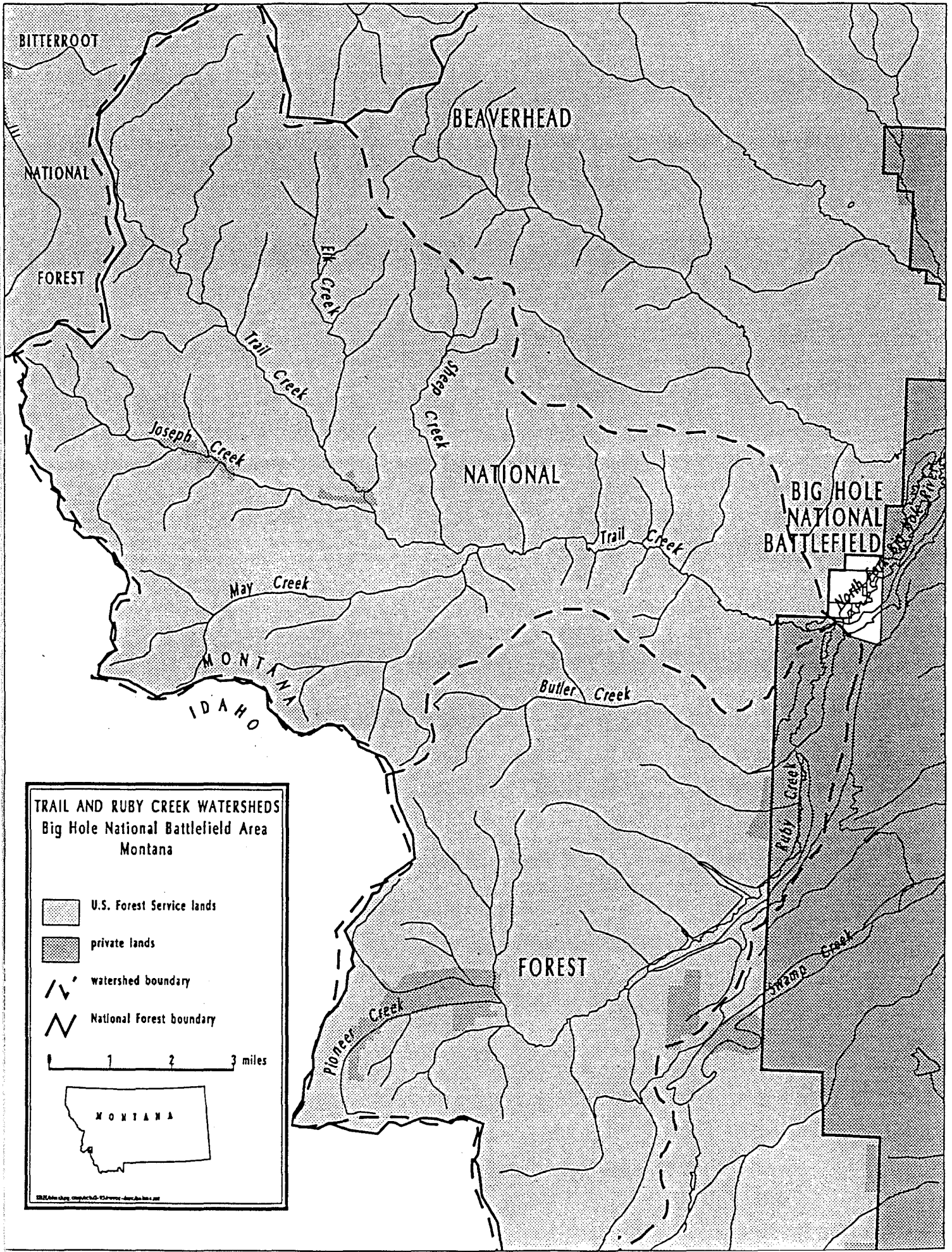
-Within 120 days of the date of the Compact, DNRC will provide the NPS with notice of all groundwater appropriations within the area which have priority dates on or after January 1, 1993 and before the date of the Compact.

existing users and on NPS instream flow rights.





The RWRCC and the NPS agree that new wells (appropriated after the date of the compact) will not be limited unless they are hydrologically connected to surface flows tributary to the North Fork of the Big Hole River above or at the Battlefield. An applicant for a well in excess of 35 gpm will be required to submit a report prepared by a qualified professional showing that the well is not hydrologically connected to surface flow. Groundwater appropriations by well or a developed spring of 35 gpm or less that do not exceed 10 acre-feet per year must obtain a permit but shall not be included in the calculation of total consumptive use unless the United States shows that the proposed appropriation is hydrologically connected to surface flow. There are no requirements for wells with a priority date before January 1, 1993.

In addition to the above clauses, the agreement recognizes that the use of water for emergency fire suppression benefits the public, and that the NPS may divert water for fire suppression at the Battlefield as needed.

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TRAIL AND RUBY CREEK WATERSHEDS
 Big Hole National Battlefield Area
 Montana

-  U.S. Forest Service lands
-  private lands
-  watershed boundary
-  National Forest boundary

0 1 2 3 miles

MONTANA

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HB.692

GLACIER NATIONAL PARK

Glacier National Park was created by an act of Congress on May 11, 1910. One million acres in size, the park is visited by over 2 million people each year. A federal reservation such as Glacier carries a reserved water right for the purposes for which the land was reserved. Glacier National Park was reserved "as a public park or pleasure ground for the benefit and enjoyment of the people of the United States." (36 Stat. 354) In reserving the park from the public domain, Congress specifically directed the Secretary of the Interior to "provide for the preservation of the park in a state of nature so far as is consistent with the purposes [of the reservation] and for the care and protection of the fish and game within the boundaries thereof." The RWRCC and the NPS agree that the priority date for Glacier is May 11, 1910.

Summary of Agreements between the National Park Service and the Reserved Water Rights Compact Commission for Glacier National Park

Consumptive Use

The NPS and RWRCC have reached agreement on NPS consumptive uses, including water for park administrative and domestic uses, park concessions, maintenance sites, ranger stations, campgrounds, lodges, and other places of use within Glacier. The total amount agreed to is 567.8 acre-feet per year. The amount is based on what water has been used in the past, and a margin of use to allow for management flexibility and response to increased visitation.

Instream Flow Rights

Due to the preservation purposes of Glacier that include "care and protection of fish and game within the boundaries...", a federal reserved water right exists for instream flow (to keep water flowing in the streams as necessary to protect the resources "in a state of nature...").

In order to more easily address the issues involving reserved water rights for Glacier, the negotiators agreed to break the various watersheds down into categories based on the types of streams involved, as illustrated on the enclosed map.

Category 1 includes all streams that headwater in the park and flow directly out. These streams will be dedicated to instream flow, minus any NPS consumptive use claims. No private claims exist on these streams.

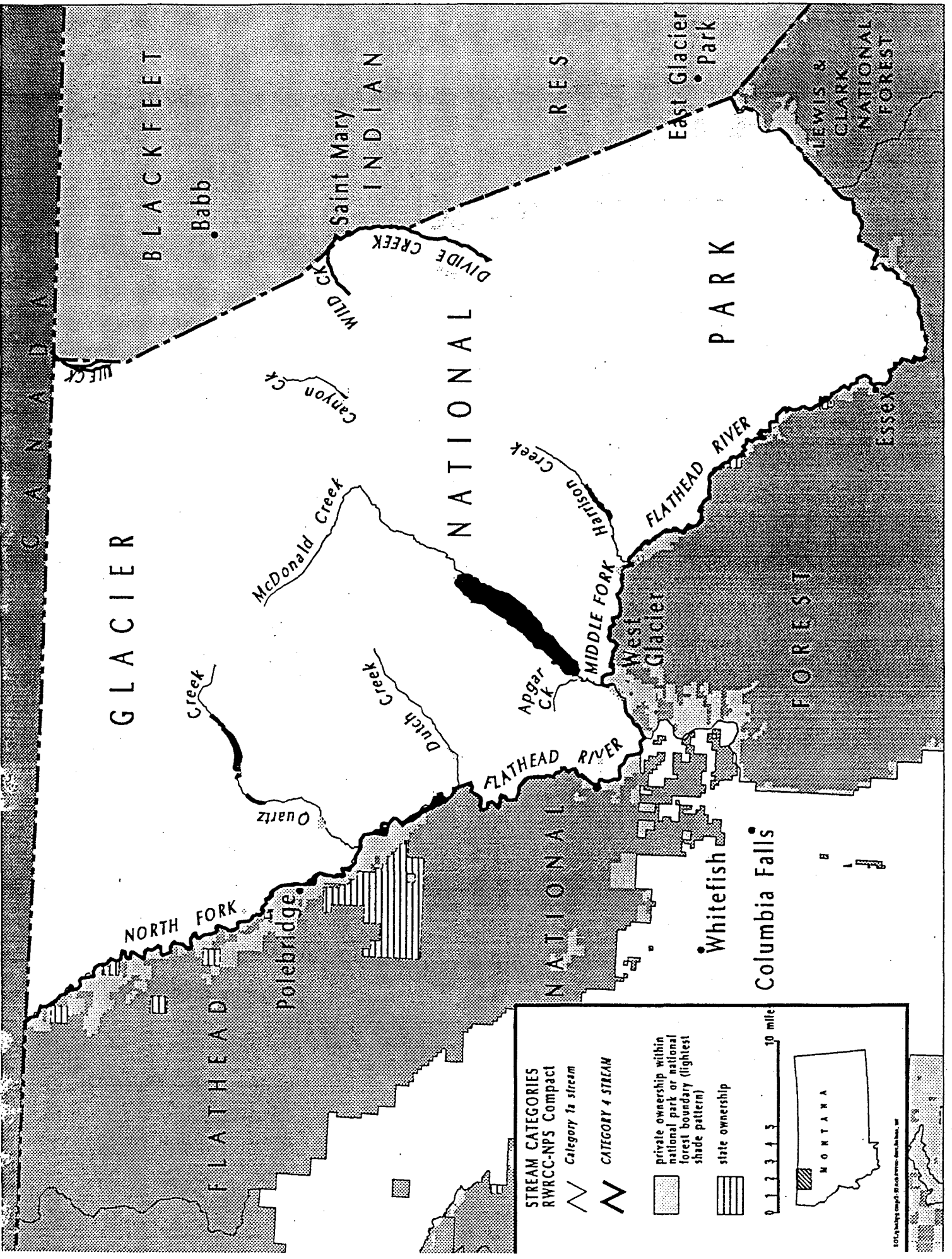
Category 1a includes all streams that headwater in the park and flow out through non-federal land within the Park. The water in these streams is dedicated to instream flow, except for that used by existing private water rights holders within the Park. The rights of such inholders are protected.

Categories 2 and 3 were established for Yellowstone National Park to include all streams that headwater in the State of Montana outside of the Park and flow into the Park. There are no Category 2 or 3 streams associated with Glacier.

Category 4 streams are special case streams requiring individual treatment for quantification. They include the North Fork and Middle Fork of the Flathead River, Divide Creek, Jule Creek and Wild Creek.

In addition to the above clauses, the agreement recognizes the right of the NPS to maintain natural lake levels in lakes within Glacier National Park, minus NPS consumptive uses and other valid State water rights. The NPS may divert water for fire suppression as necessary.

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GLACIER

BLACKFEET

Babb

Saint Mary
INDIAN RES

East Glacier
Park

LEWIS & CLARK
NATIONAL FOREST

WILD CREEK
DIVIDE CREEK

Canyon Ck

NATIONAL

PARK

McDonald Creek

Harrison Creek

FLATHEAD RIVER

Essex

Creek

Ditch Creek

Aggar Ck

MIDDLE FORK

West Glacier

FOREST

Quartz

FLATHEAD RIVER

NORTH FORK

Polebridge

Whitefish

Columbia Falls

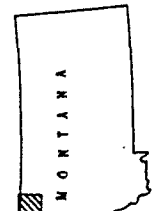
STREAM CATEGORIES
RWRC-NPS Compact
Category is stream

CATEGORY 1 STREAM

private ownership within
national park or national
forest boundary (lightest
shade pattern)

state ownership

0 1 2 3 4 5 10 miles



2013 July 2 10:23 AM

DATE 4-16-93
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North Fork Flathead River
 (cfs = cubic feet per second)

	Ave. Monthly Flow (cfs)	Estimated Existing Consumptive Claims (cfs)	Available For Future Use (cfs)	Estimated Total Use (Current+ Future) (cfs)	Estimated Percent Increase In Use	Percent Of Flow Remaining Instream
Oct	1183.9	45.6	11.8	57.4	26.0	95.1
Nov	1200.6	15.6	12.0	27.6	77.0	97.7
Dec	900.4	15.5	9.0	24.5	58.1	97.3
Jan	750.2	15.4	7.5	22.9	48.7	96.9
Feb	721.7	15.4	7.2	22.6	46.9	96.9
Mar	886.3	15.5	8.9	24.4	57.2	97.3
Apr	3386.5	6.1	6.1	12.2	100.0	99.6
May	10028.6	11.5	11.5	23.1	100.0	99.8
Jun	10011.2	46.8	46.8	93.7	100.0	99.1
Jul	4053.0	61.1	40.5	101.6	66.4	97.5
Aug	1618.3	61.1	16.2	77.2	26.5	95.2
Sep	1183.3	59.1	11.8	70.9	20.0	94.0

Middle Fork Flathead River

	Ave. Monthly Flow (cfs)	Estimated Existing Consumptive Claims (cfs)	Available For Future Use (cfs)	Estimated Total Use (Current+ Future) (cfs)	Estimated Percent Increase In Use	Percent Of Flow Remaining Instream
Oct	1062.2	31.5	10.6	42.1	33.8	97.1
Nov	1156.2	30.7	11.6	42.3	37.6	97.3
Dec	923.4	11.8	9.2	21.0	78.3	96.9
Jan	712.9	10.9	7.1	18.0	65.5	96.7
Feb	695.0	10.9	6.9	17.8	63.8	96.6
Mar	813.9	10.9	8.1	19.0	74.7	97.0
Apr	3178.1	27.8	27.8	55.6	100.0	98.7
May	9765.8	31.6	31.6	63.2	100.0	99.5
Jun	10300.6	35.1	35.1	70.2	100.0	99.5
Jul	4020.0	35.1	35.1	70.2	100.0	98.8
Aug	1365.4	35.0	13.7	48.7	39.0	97.2
Sep	972.9	34.8	9.7	44.5	28.0	96.6

Estimated Existing Consumptive Claims are basin totals which include claims on tributary streams.

¹ From USGS station 12355500: North Fork Flathead River near Columbia Falls.

² From USGS station 12358500: Middle Fork Flathead River near West Glacier.

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YELLOWSTONE NATIONAL PARK

Yellowstone National Park, the world's first national park, was created by an Act of Congress on March 1, 1872 (17 Stat. 32). The 2.2 million acre park contains approximately 10,000 hydrothermal features, 3,000 of which are geysers and hot springs. Approximately 2.9 million people visit Yellowstone National Park each year.

When reserving Yellowstone Park from the public domain, Congress specifically directed the Secretary of the Interior to provide "...for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." Yellowstone National Park carries a reserved water right for these purposes. The RWRCC and the NPS agree to a priority date of March 1, 1872.

Summary of Agreements Between the National Park Service (NPS) and the Reserved Water Rights Compact Commission (RWRCC) for Yellowstone National Park

Consumptive Use

The NPS and RWRCC have reached agreement on Park Service consumptive uses, including water for park administrative and domestic uses, concessions, maintenance sites, visitor centers, lodges, entrance stations, backcountry patrol cabins, day use areas, and other places of use within the Montana portion of Yellowstone National Park. The total amount agreed to is 174.9 acre feet per year. This amount is based on past water use, and a margin of future use to allow for management flexibility and increased visitation.

Instream Flow Rights

The preservation purposes of Yellowstone National Park, including "all timber, mineral deposits, natural curiosities, or wonders within said park," mean that a federal reserved water right exists for instream flow. This instream flow right keeps water in the streams as necessary to protect park resources as required by the founding Act.

In order to more easily address the issues involving reserved water rights for Yellowstone National Park, the federal and state negotiators agreed to separate the various watersheds into categories based on the types of streams involved, as shown on the enclosed map.

Category 1 includes all streams that headwater in the park and flow directly out. After subtracting the NPS consumptive use, the remainder of flow in these streams will be dedicated to instream flow. No private claims exist on these streams.

Category 2 includes all streams, with no private claims or private land, which headwater in and flow out of wilderness areas directly into Yellowstone National Park. After subtracting NPS consumptive use and U.S. Forest Service consumptive use, the remainder of the water in these streams is dedicated to instream flow. If Congress should remove the Wilderness status of the areas outside the park, it was agreed that these streams may be reclassified.

Category 3 includes streams that headwater in Montana and flow into Yellowstone Park. The water in these streams, minus the sum of NPS

consumptive uses, will be dedicated to instream flow. The instream flow right will be subordinate to existing and future non-federal uses in the amount of 5% of the average monthly flow.

Additional agreements include:

As part of the settlement, the State of Montana agrees to grant the United States a water right to the natural flow from springs in Bear Creek that contribute to the Yellowstone River.

Geothermal

The NPS and the RWRCC agree that when Congress set aside Yellowstone National Park it intended to reserve water necessary to preserve hydrothermal features within the park. The hydrothermal features are a unique and irreplaceable State, national, and international resource and represent one of the few undisturbed hydrothermal systems in the United States. However, little is known about the interrelationship of hydrothermal features within the park and groundwater in surrounding areas of Montana.

The compact does not recognize a reserved water right to groundwater outside the boundaries of Yellowstone National Park. Instead, the proposal places restrictions on the development of groundwater adjacent to the park to prevent adverse effect on the NPS 1872 reserved water right to groundwater within the reserved land of the park necessary to preserve hydrothermal features.

Due to the difficulty of quantifying the water necessary to preserve hydrothermal features within Yellowstone National Park, designation of a controlled groundwater area will protect the reserved right while allowing controlled groundwater development adjacent to the park. The enclosed summary explains the agreements-in-principle for a controlled groundwater area.

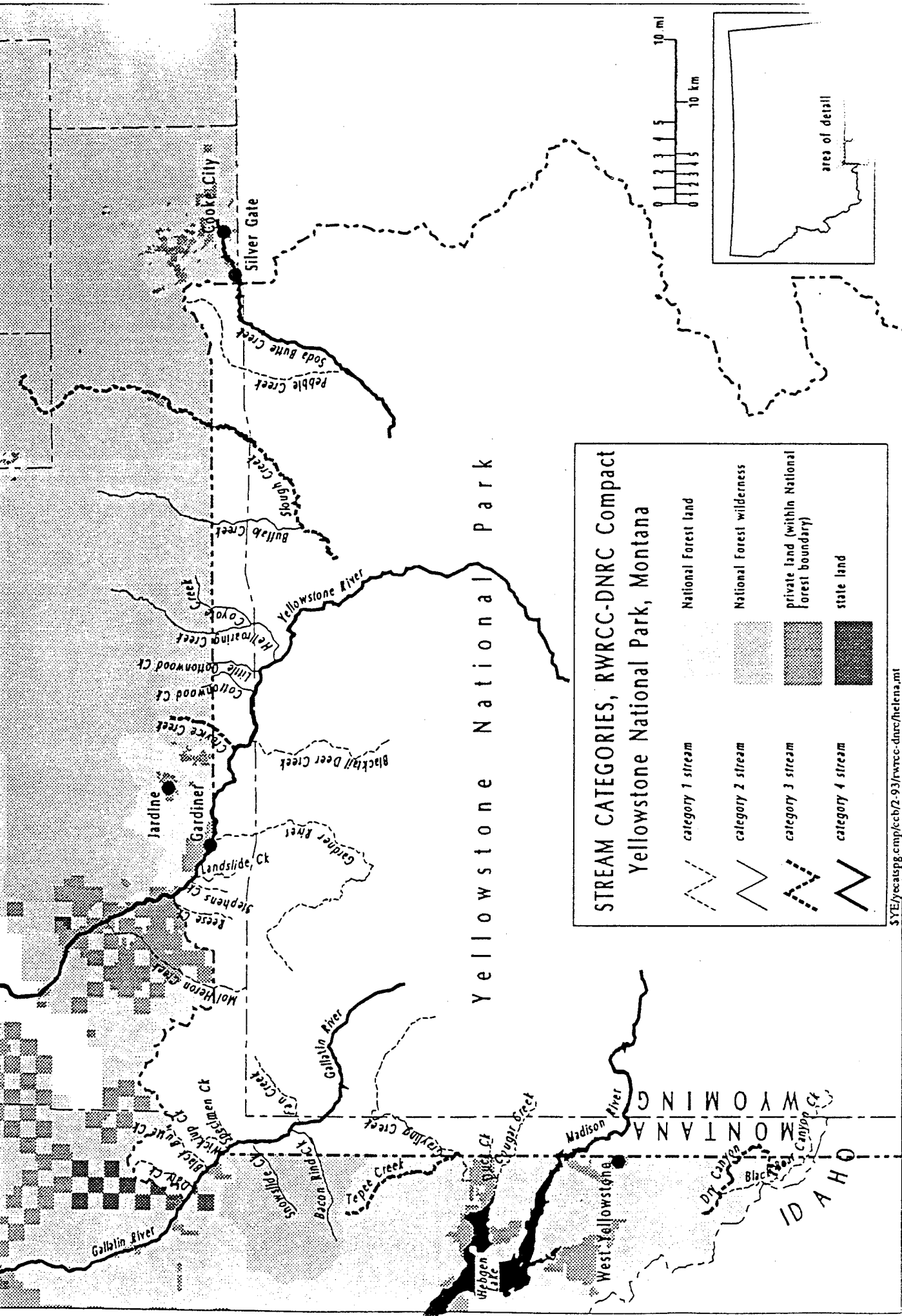
Groundwater, Impoundments, Non-consumptive Uses

In addition to instream flow rights, there are clauses in the Compact relating to groundwater appropriations, impoundments and non-consumptive uses. These agreements take into consideration the effect on existing users and on NPS instream flow rights.

New wells (appropriated after the date of the compact) will not be included in limitations on surface water appropriations unless they are hydrologically connected to surface flows tributary to the Category 3 and 4 streams. An applicant for a well in excess of 35 gpm will be required to submit a report prepared by a qualified professional showing that the well is not hydrologically connected to surface flow. Owners of new wells of 35 gpm or less will be required to have a permit, but will not be required to show hydrologic connection to surface water; rather, if the United States objects to the well, it will have the burden of showing hydrologic connection to surface water.

The RWRCC and NPS have agreed that no new impoundments shall be permitted after the date of the compact on the mainstems of Category 3 and 4 streams. Impoundments in place as of December 31, 1992 are protected but may be called on Soda Butte Creek in dry years by the United States' critical flow right. Existing impoundments may be repaired or rehabilitated providing the repairs do not cause the impoundment to exceed its original capacity.

The NPS will subordinate its water right to a future non-consumptive use of water



**STREAM CATEGORIES, RWRCC-DNRC Compact
Yellowstone National Park, Montana**

	category 1 stream		National Forest land
	category 2 stream		National Forest wilderness
	category 3 stream		private land (within National Forest boundary)
	category 4 stream		state land

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EXHIBIT 1
DATE 4-16-93
HP 692-

STATEMENT BY LILL ERICKSON FOR INCLUSION IN ~~STATE HEARING RECORD~~

ON HB 692

April 16, 1993

EXHIBIT NO. 2

DATE 4-16-93

BILL NO. HB692

My name is Lill Erickson and I am speaking on behalf of the Sargent Ranch, my husband, Phillip Herne, his family and myself. We would like to go on record supporting HB 692. We are from Gardiner and live within the boundaries of the Controlled Groundwater Area. We believe the negotiated agreement is an effective way to protect Yellowstone's spectacular geyser systems and blue ribbon fisheries while at the same time protecting valid water rights.

My husband's family has been in Park County for over one hundred years. He is the fourth generation. Over there sits the fifth. Yet for all that time, his family lineage does not pre-date Yellowstone Park. With very few exceptions, the Park and its water rights predate everyone in the area.

It is the basis of western water law that "first in time is first in right." If the Reserved Water Right held by Yellowstone Park were to be adjudicated in court the "first in time, first in right" rule would be applied. We commend the Park Service for not going the route of litigation, choosing instead to negotiate with Montana.

Because of that negotiation choice, water users in our area are guaranteed water rights they might well not have if a court were to rule on this issue, especially the folks in Cooke City. To those crying "foul", we ask if the senior water right holder were a mining corporation or rancher would you expect them to subordinate their water rights to you too? We doubt it.

Residents of Gardiner, Silver Gate and Cooke City profit everyday from Yellowstone. The Park benefits millions of people every year and has done so since its creation in 1872 and will do so in perpetuity if we are wise enough to sustain her.

We believe that those of us lucky enough to live in this remarkable place have a responsibility protect Yellowstone. In the Herne family tradition it's called ^{Caring for} protecting the goose that lays the golden egg. We believe this compact and the companion legislation do just that by developing requirements which accomplish protection while preserving the ability of land owners to use the water resources. That is wise stewardship.

We are not alone in our support for this compact. ^{In Behalf of Bear Creek Council} I have with me today petitions from 75 residents of our area supporting the compact and urging its adoption. They wanted to be here to show their support in person but had to work.

Thank you for the opportunity to comment. Please vote yes on this important piece of legislation. ^{without amendment.}



IN REPLY REFER TO:

United States Department of the Interior



NATIONAL PARK SERVICE

Water Resources Division

1201 Oak Ridge Drive, Suite 250

Fort Collins, Colorado 80525

TESTIMONY OF OWEN R. WILLIAMS

NATIONAL PARK SERVICE

RESERVED WATER RIGHTS COMPACT NEGOTIATION TEAM SPOKESPERSON

ON HOUSE BILL 692

BEFORE THE SENATE JUDICIARY COMMITTEE

April 16, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 4-16-93

BILL NO. HB629

Mr. Chairman and members of the committee, I am Owen Williams, Chief of the National Park Service's Water Rights Branch in its Water Resources Division. While located in Fort Collins Colorado, this unit is a component of the National Park Service's Washington Office. Thank you for the opportunity to testify on behalf of the NPS with regard to the Draft Compact between the State of Montana and the United States for reserved water rights in Big Hole National Battlefield, and Glacier and Yellowstone National Parks.

To begin with, let me provide some background on the Federal negotiating team. I served as the NPS lead in Compact negotiations and my staff, led by Chuck Pettee, provided the technical support required by the team. Richard Aldrich, who is the Field Solicitor from Billings, served as the lead from the Department of the Interior's Office of the Solicitor. The team also included three attorneys from the Department of Justice (Eric Gould, James DuBois, and Dave Gehlert.)

As you are aware, approximately fourteen months ago the State of Montana, through its Reserved Water Rights Compact Commission, and the United States, through the National Park Service, committed to a concerted effort to negotiate issues to produce a federal Reserved Water Rights Compact. Before you is the product of that effort; one in which both parties may take pride, in my opinion.

I am unable, today, to speak for anyone other than the negotiation team itself. However, the team, joined by line officers of the affected parks, has passed the draft Compact on to the responsible officers of the Department of the Interior and the Department of Justice with a strong recommendation for approval. Washington staff of these Departments have concurred and recommended approval to their principals. Approval has been recommended because, in our collective view, this agreement accomplishes several things which are of paramount importance for the protection of these three NPS units.

First, the Compact protects the water-related resource values of each park to accomplish each "reservation's purposes". It provides instream flows for fish, riparian vegetation, and recreation and it assures that the free-flowing character of the rivers and streams of Yellowstone and Glacier will continue into the future. Protected, also, will be the historical context of Big Hole National Battlefield. The generations which follow us will have the opportunity to reflect upon and be enlightened by this important memorial to the history of this great country and its people.

Second, water for the use of existing and future visitors and staff will be assured. The existing and reasonable future consumptive uses of water at these units will be quantified by the Compact and will be protected. This gives both the State and the NPS the certainty needed to respond to growth when it occurs. Also, private water rights holders will be more secure in the knowledge that their rights are no longer put at risk by an un-quantified senior Federal Reserved Right.

Third, the Compact will avoid the substantial expenditures of financial and staff resources that are associated with contentious and uncertain litigation. During times of heightened concern over governmental expenditures, this is not a trivial matter.

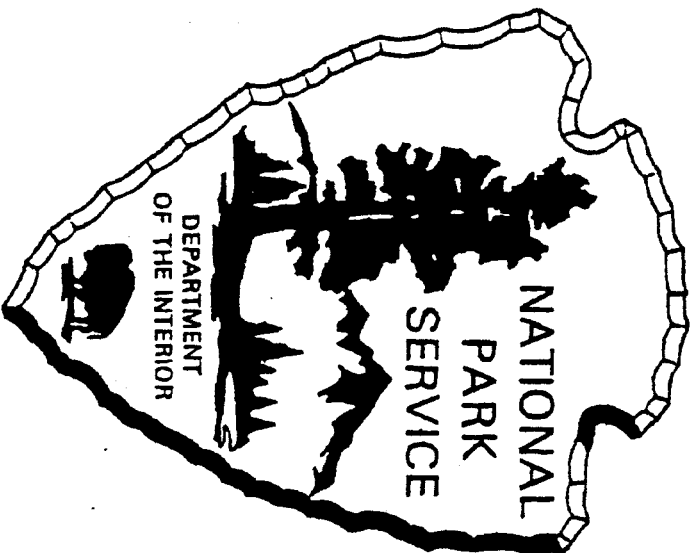
Fourth, while recognizing existing water uses, the Compact also makes provision for a reasonable level of future water development by the people of Montana in tributary streams. This development can occur in an unhurried and planned manner because the Compact settles the un-quantified Federal Reserved Right question and provides protection for present and future non-federal uses. Similarly, the NPS can plan with more certainty because the Compact will specify the level of future water use of the surface and ground water which is tributary to the parks.

Finally, the Controlled Groundwater Area provisions will provide critically important protection for the Yellowstone hydrothermal system. The State and the NPS will be able to work together to improve our scientific understanding of the hydrothermal system before taking actions which could imperil this internationally important resource. At the same time, the people of Montana will be able to make reasonable and careful use of the ground water that does not affect the hydrothermal system.

I want to emphasize that this agreement is sensible for all parties. It is the view of the NPS negotiators that a good litigation case with very substantial supporting data could be brought to court. It is also our view that little would be served by such a course of action. Instead, through the Compact existing private water rights will be protected. Also, future water development will be provided for in virtually all drainages while the protection required for these nationally important NPS units will be assured.

In conclusion, I would like to recommend that this body take favorable action on the NPS Compact. I would also like to reiterate the NPS's commitment to continue negotiations to settle Federal Reserved Water Rights claims at Bighorn Canyon National Recreation Area and Little Bighorn Battlefield National Monument.

EXHIBIT 3
DATE 7-16-93
HB 629



***... to conserve the scenery and
the natural and historic objects and
the wild life therein and to provide
for the enjoyment of the same in
such manner and by such means as
will leave them unimpaired for the
enjoyment of future generations***

August 25, 1916
(16 U.S.C. Section 1)

BIG HOLE NATIONAL BATTLEFIELD

"...public lands...are necessary for the proper care, management, and protection of the historic landmarks included within the monument."

Proclamation 2339

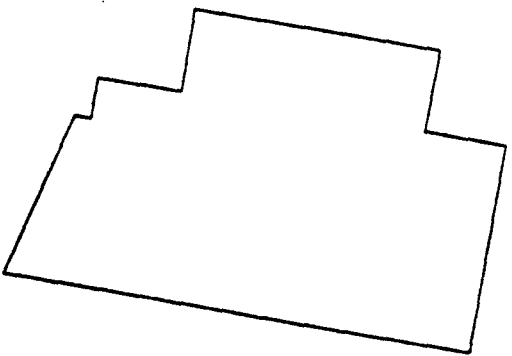
June 29, 1939

53 Stat. 2544

EXHIBIT 3

DATE 4-16-93

HB 6291



BIG HOLE NATIONAL BATTLEFIELD

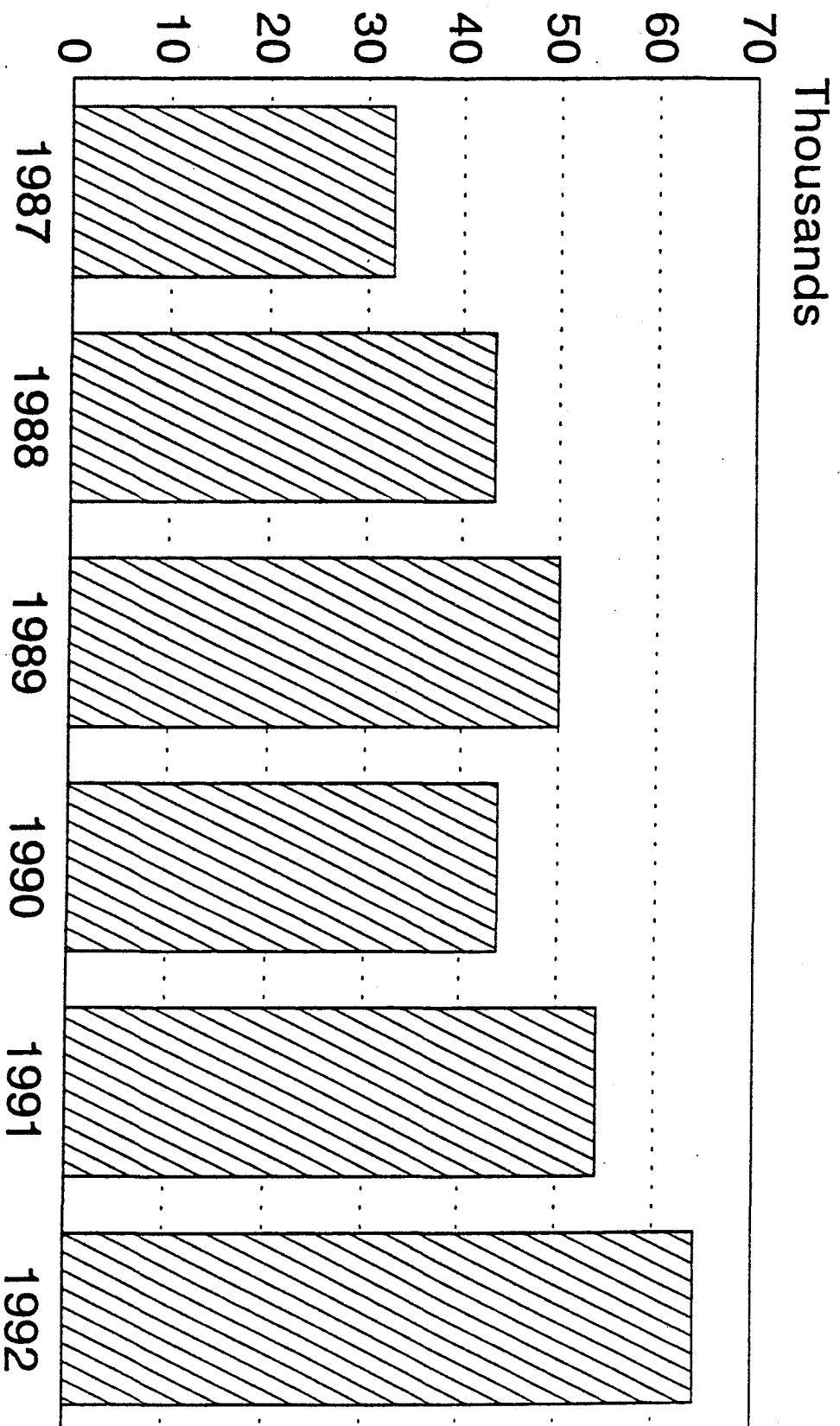
*In order to preserve historic features
and sites associated
with the Battle of the Big Hole
and to facilitate their
administration and
interpretation,...* "

77 Stat. 18

May 17, 1963

Big Hole National Battlefield

Parkwide Visitation (1987-1992)



Number of Visitors

GLACIER NATIONAL PARK

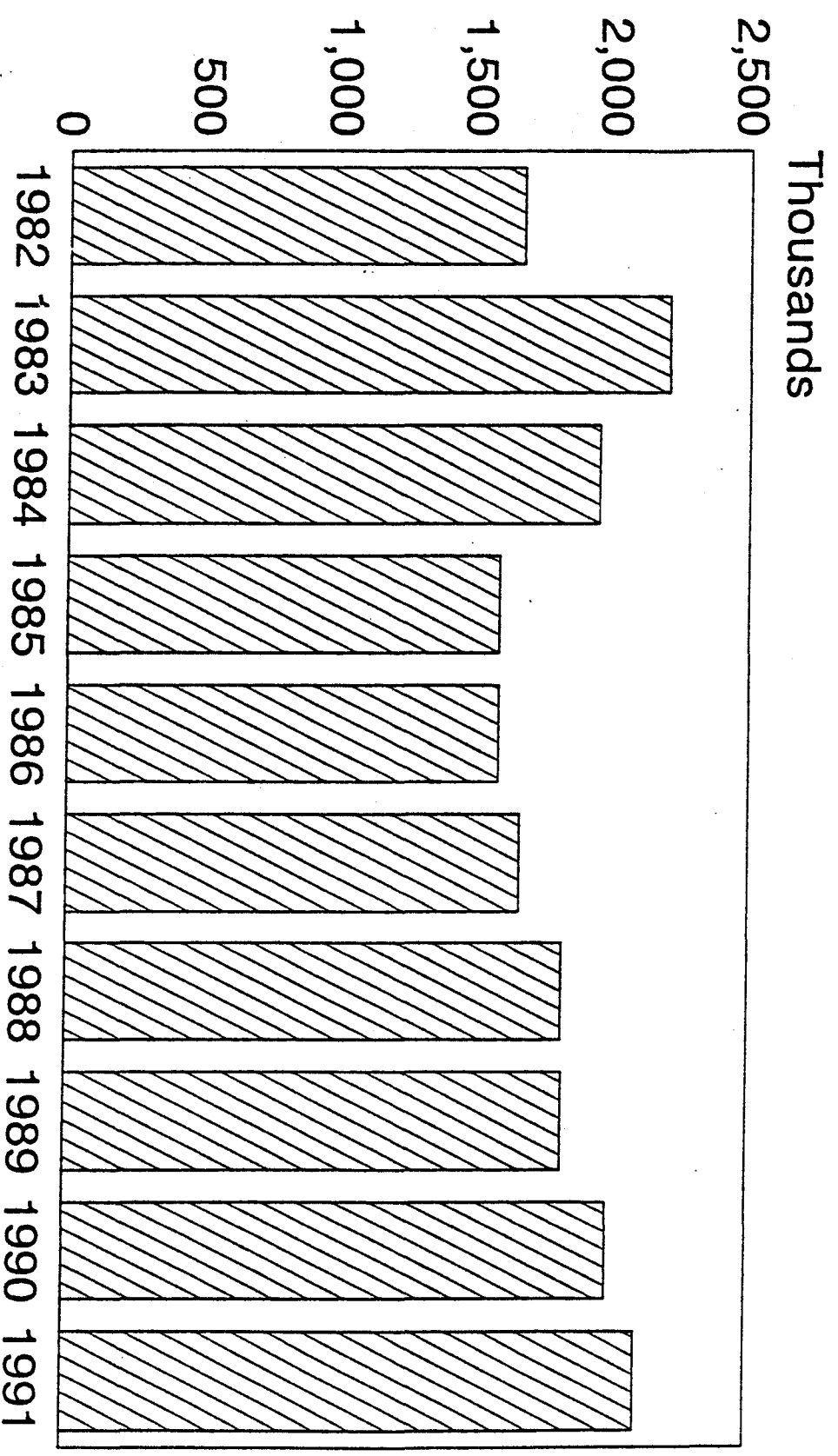
MAY 11, 1910

... " a public park or pleasure ground for the benefit and enjoyment of the people of the United States...in a state of nature..., and for the care and protection of the fish and game within the boundaries thereof.... "

(36 Stat. 354)

GLACIER NATIONAL PARK

Parkwide Visitation (1982-1991)



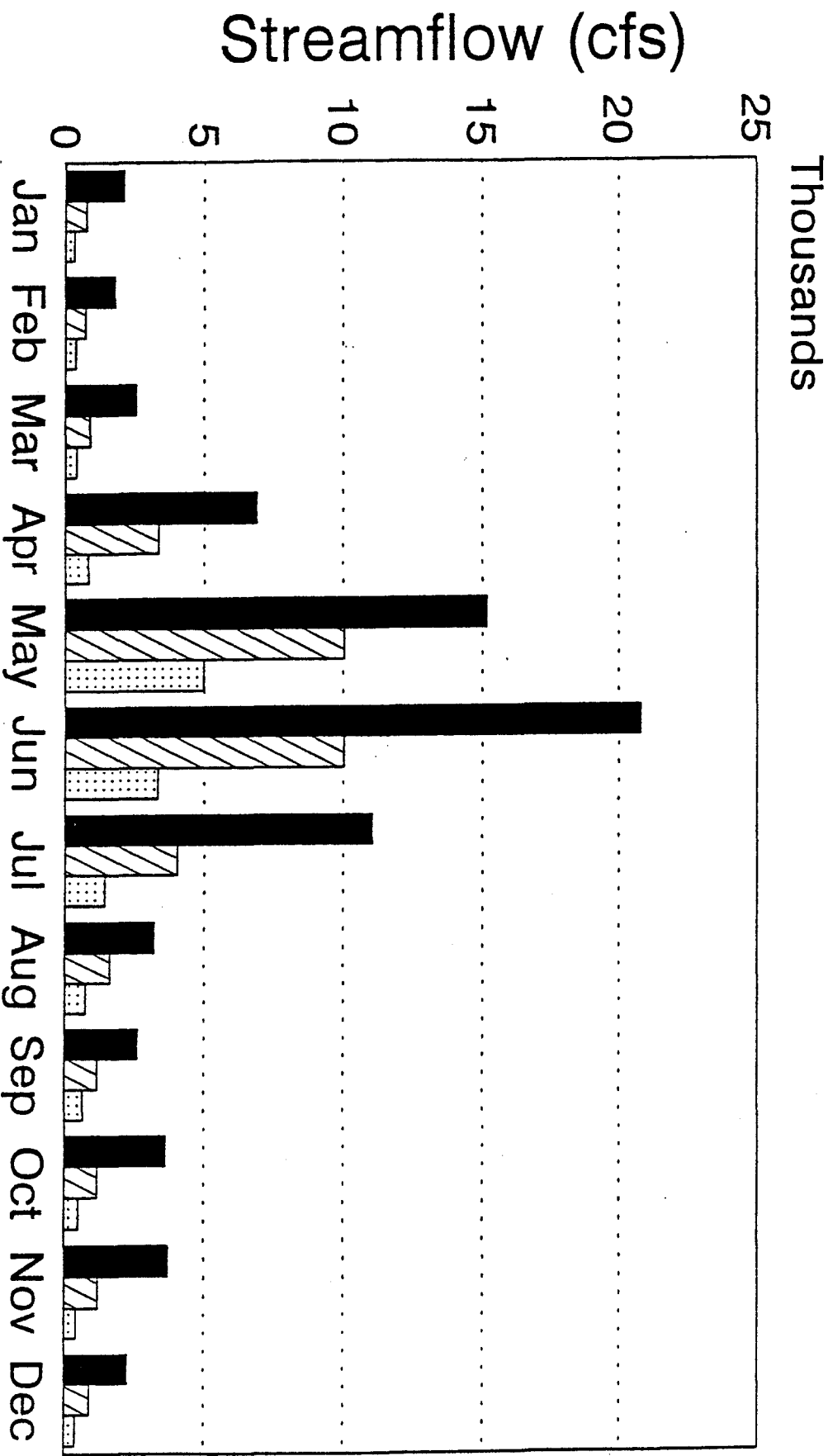
▨ Number of Visitors

NPS Consumptive Use Glacier National Park

	Acre-feet per Year	Gallons per Minute
<hr/>		
<u>NF Flathed River Basin (76LJ)</u>		
North Fork Areas	4.70	70
Backcountry Cabins/Use	4.14	55
<u>MF Flathead River Basin (76I)</u>		
Mc Donald Creek Areas	246.00	1720
Middle Fork Areas	0.70	10
Backcountry Cabins/Use	4.48	55
<u>Saint Mary River Basin (40T)</u>		
Northern Border Areas	2.20	20
Many Glacier Area	166.40	600
Saint Mary Area Areas	128.40	915
Backcountry Cabins/Use	3.52	40
<u>Two Medicine River Basin (41M)</u>		
Two Medicine Areas	6.40	70
Backcountry Cabins/Use	0.57	5
<u>Cut Bank River Basin (41L)</u>		
Backcountry Cabins/Use	0.37	5
<u>Milk River Basin (40F)</u>		
Backcountry Use	0.02	
	<hr/>	
TOTAL	567.80	

HISTORICAL MEAN MONTHLY FLOWS

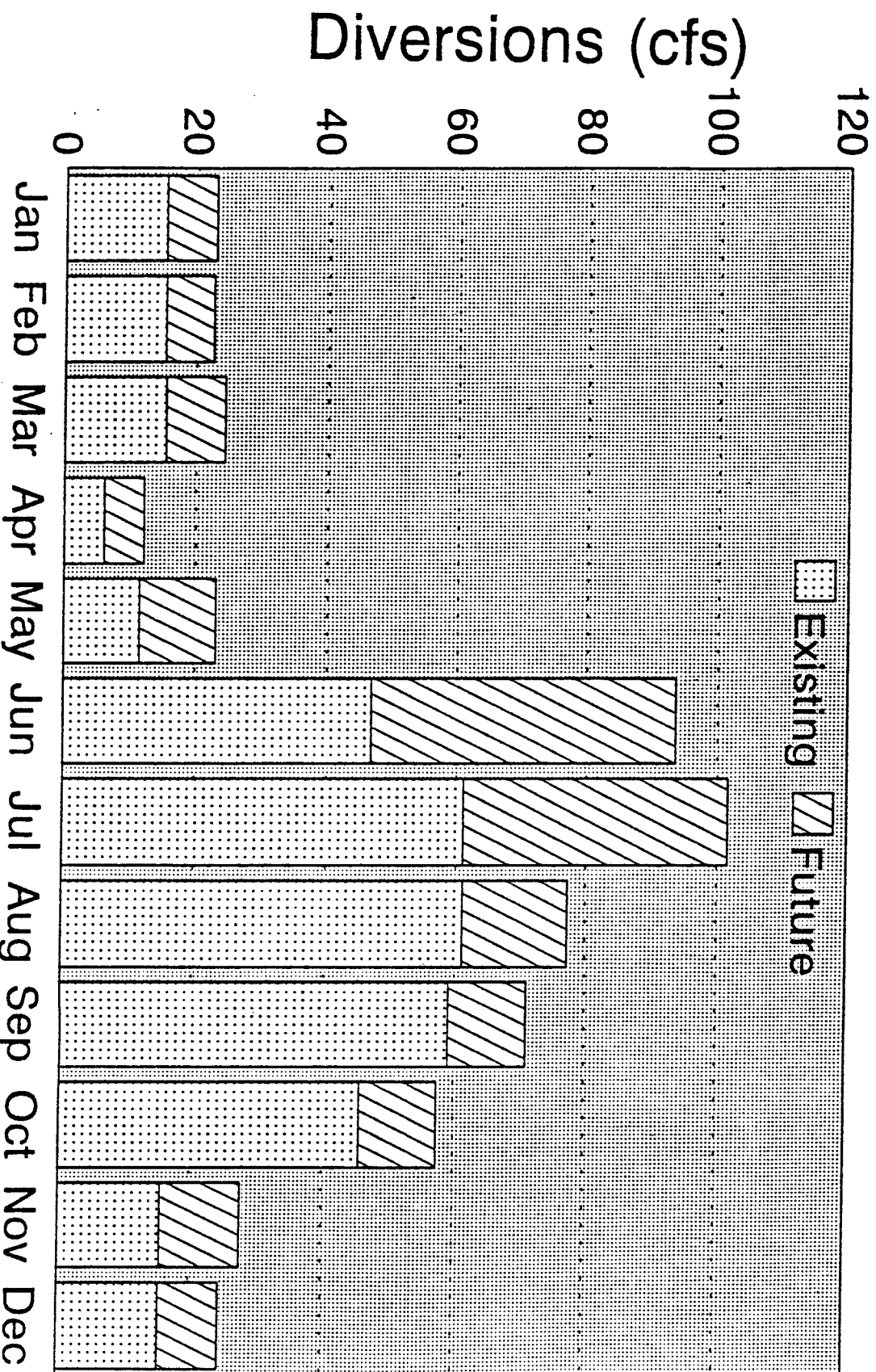
N. FORK FLATHEAD RIVER NR COLUMBIA FALLS (ID # 12355500)



3
4-16-93
HB 629

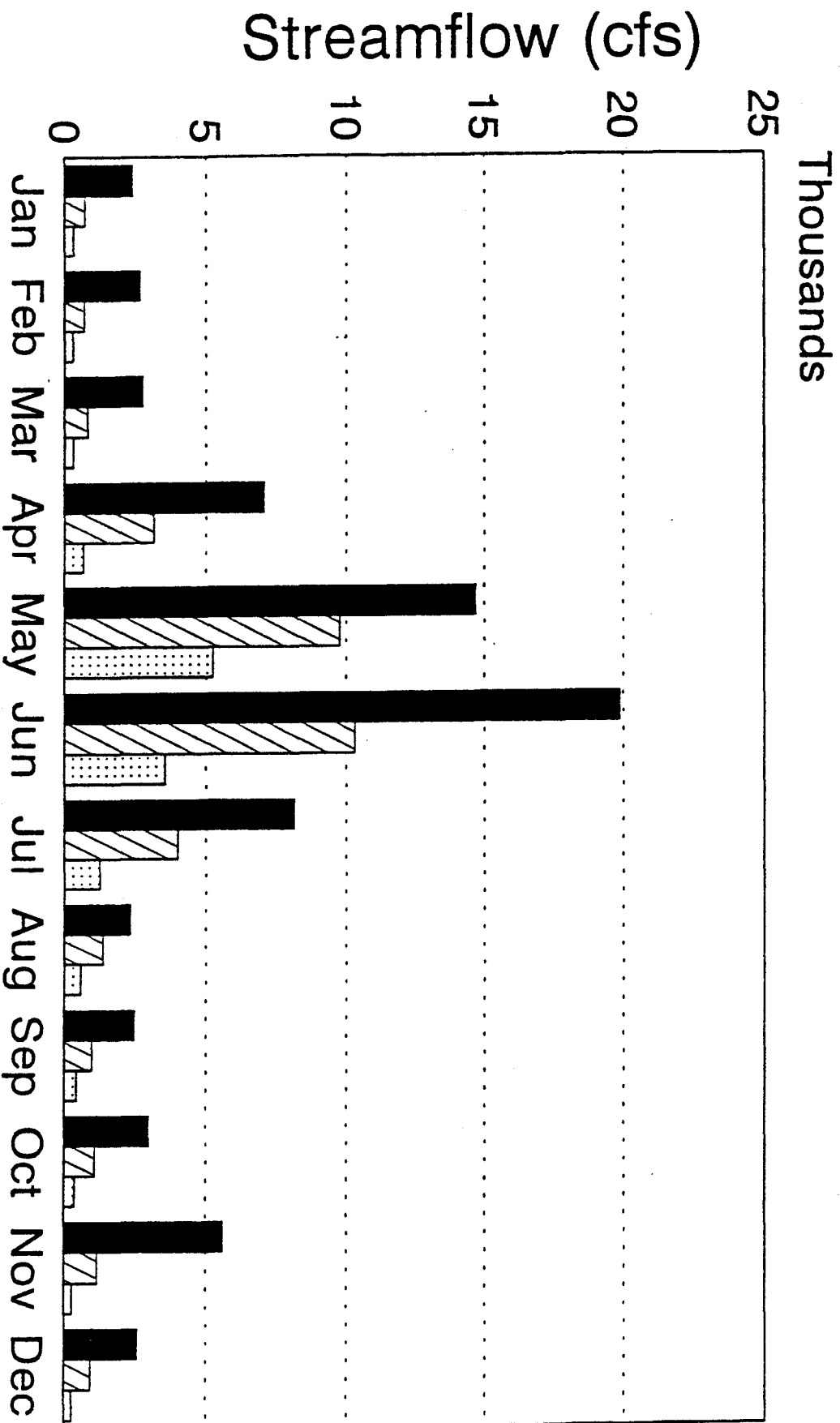
WATER AVAILABLE FOR DIVERSION

North Fork Flathead River



HISTORICAL MEAN MONTHLY FLOWS

MIDDLE FORK FLATHEAD RIVER NR W. GLACIER (ID #12358500)

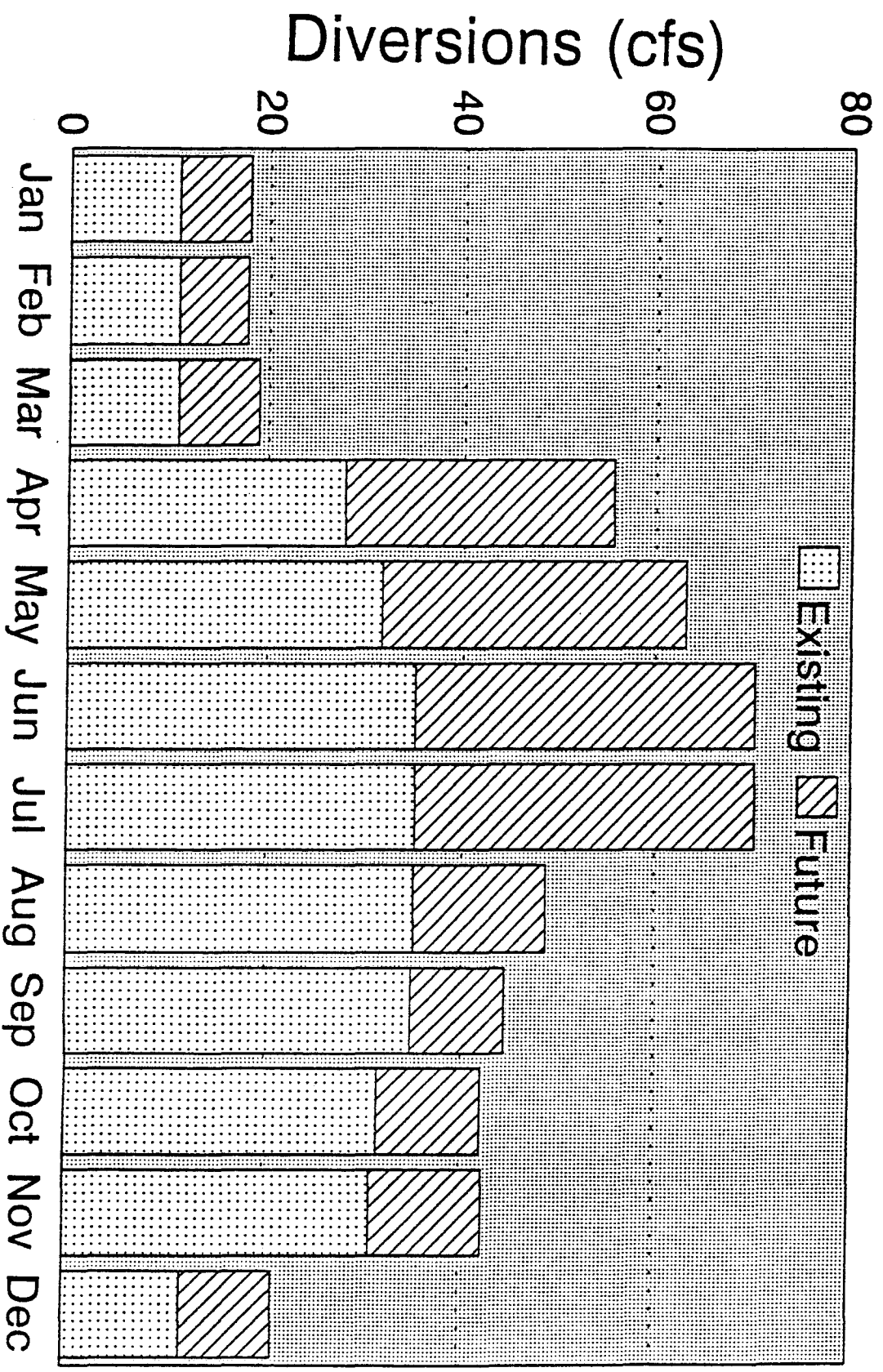


STATION 3
 DATE 4-16-93
 HB 629

MAXIMUM
 MEAN
 MINIMUM

WATER AVAILABLE FOR DIVERSION

Middle Fork Flathead River





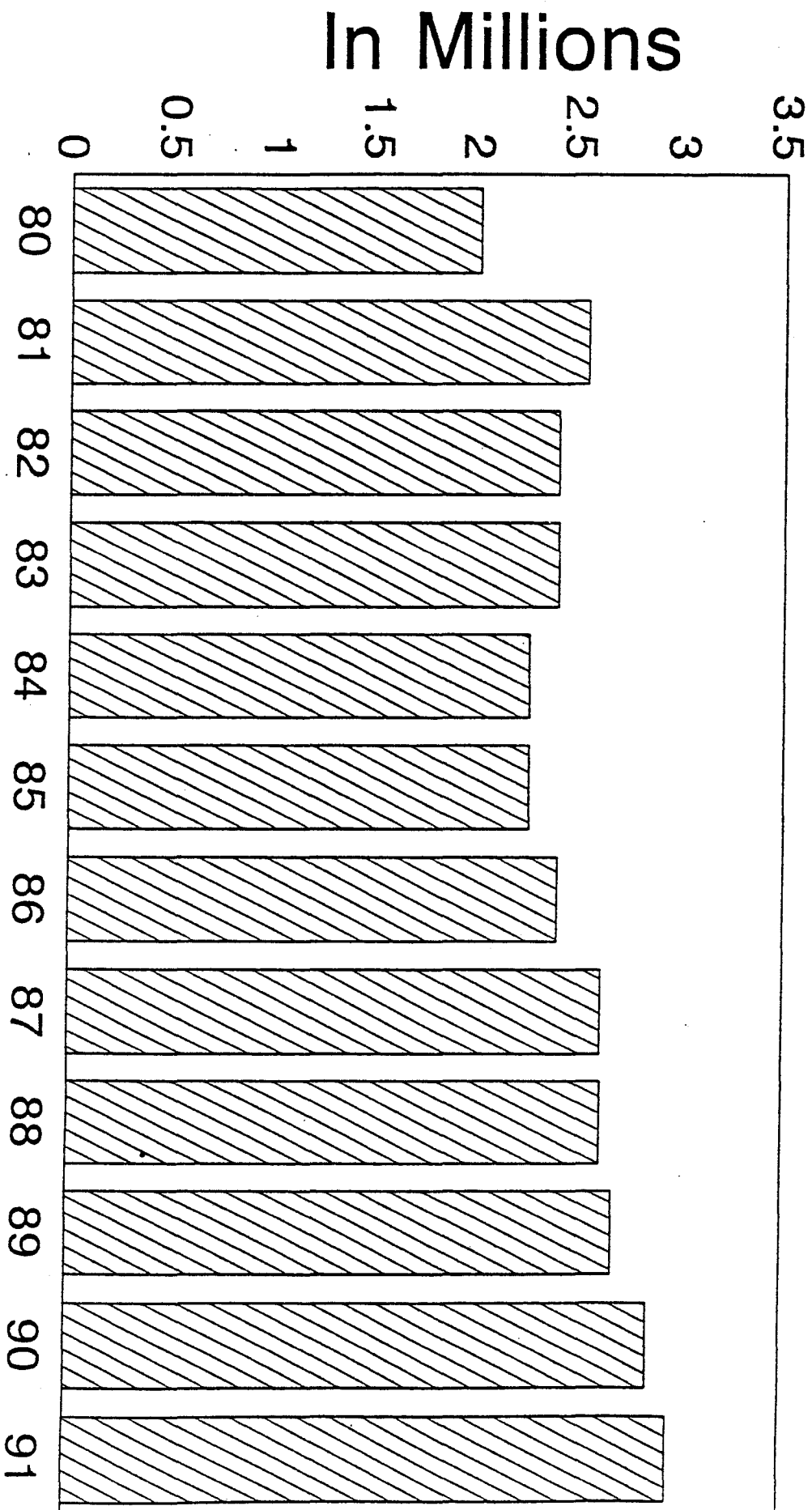
YELLOWSTONE NATIONAL PARK

"...a public park or pleasuring-ground for the benefit and enjoyment of the people...for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition."

(17 Stat. 32)

Yellowstone National Park

Parkwide Visitation (1980-1991)

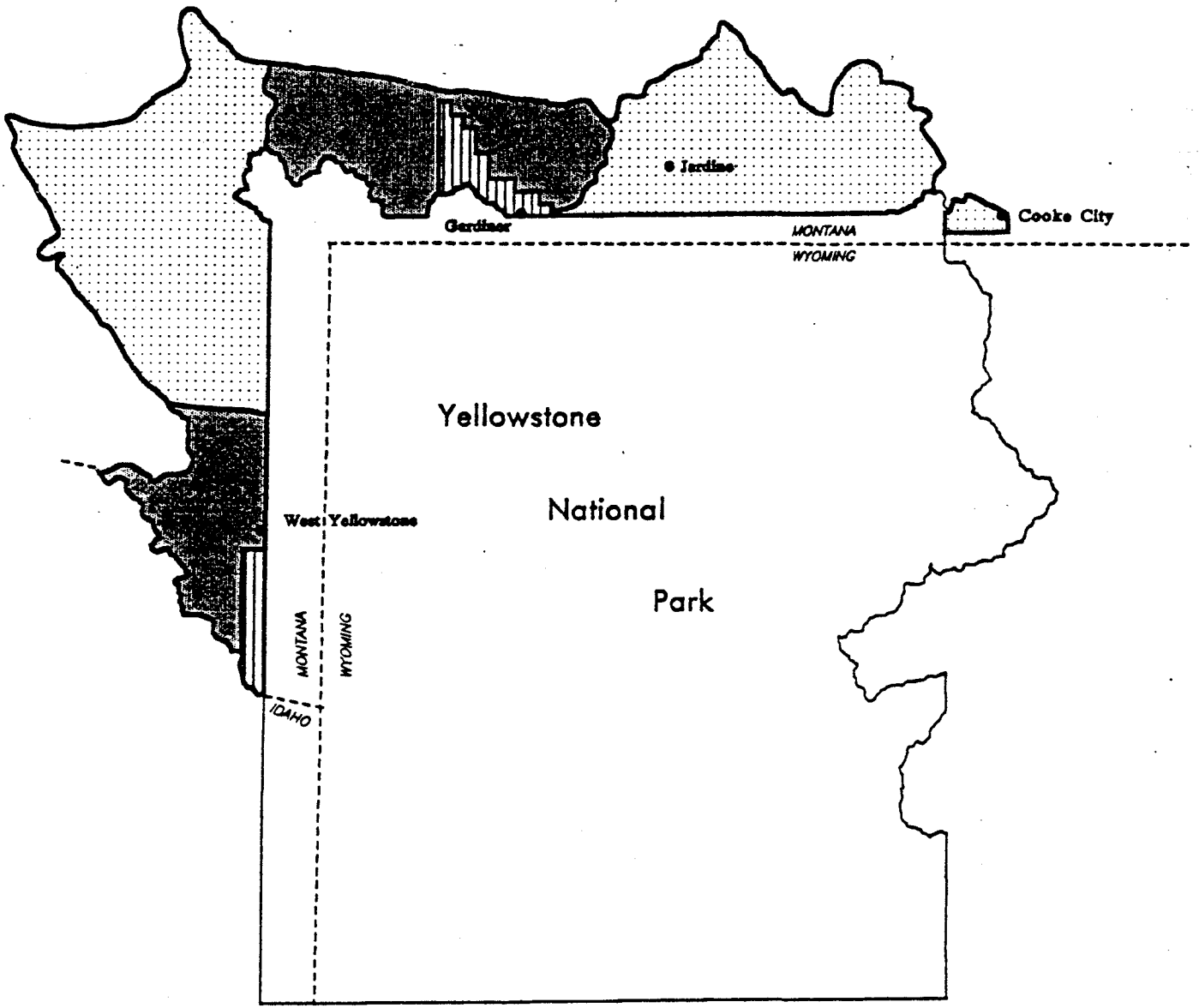


NPS Consumptive Use Yellowstone National Park






3
DATE 4-16-93
HB 629

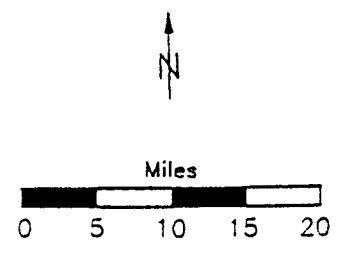
	Acre-feet per Year	Gallons per Minute
<u>Yellowstone River Basin (43B)</u>		
North Entrance Area	1.70	35
Stephens Creek Facilities	12.00	50
TW Facilities (Gardner)	58.70	300
Northeast Entrance	15.60	50
Backcountry Use	10.70	
Backcountry Patrol Cabins	2.00	15
Day Use Areas	2.40	6
<u>Gallatin River Basin (41H)</u>		
Northwest Entrance Area	15.00	50
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.60	6
<u>Madison River Basin (41F)</u>		
West Entrance Area	48.90	200
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.70	6
TOTAL	174.90	

PROPOSED CONTROLLED GROUNDWATER AREA YELLOWSTONE NATIONAL PARK AREA, MONTANA



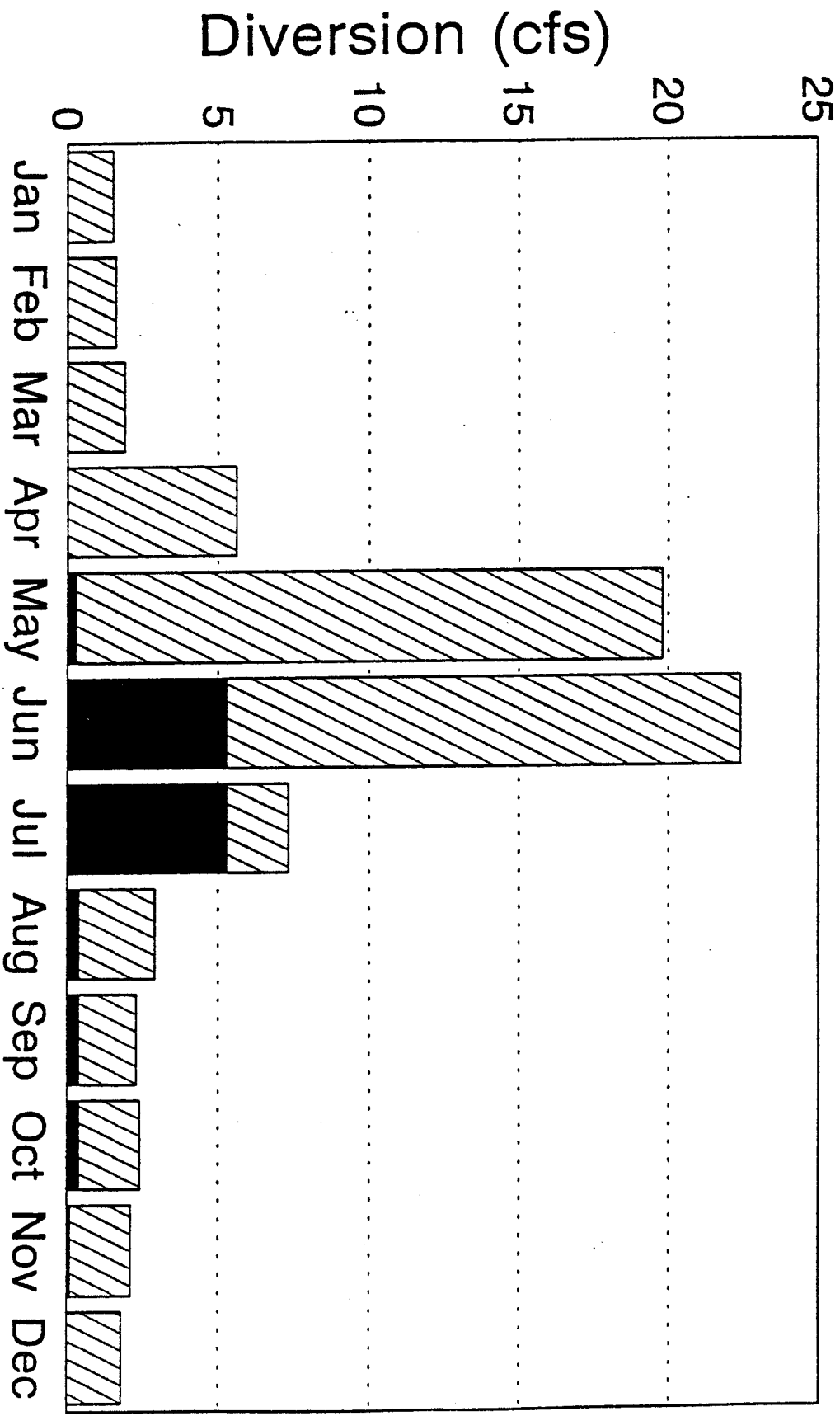
LEGEND

	Subarea I		State Boundary
	Subarea II		Controlled Groundwater Subarea Boundary
	Known Geothermal Resource Area (KGRA) (within Subarea I)		



EXISTING AND FUTURE WATER USE

Non-Federal Water Development, Slough Creek

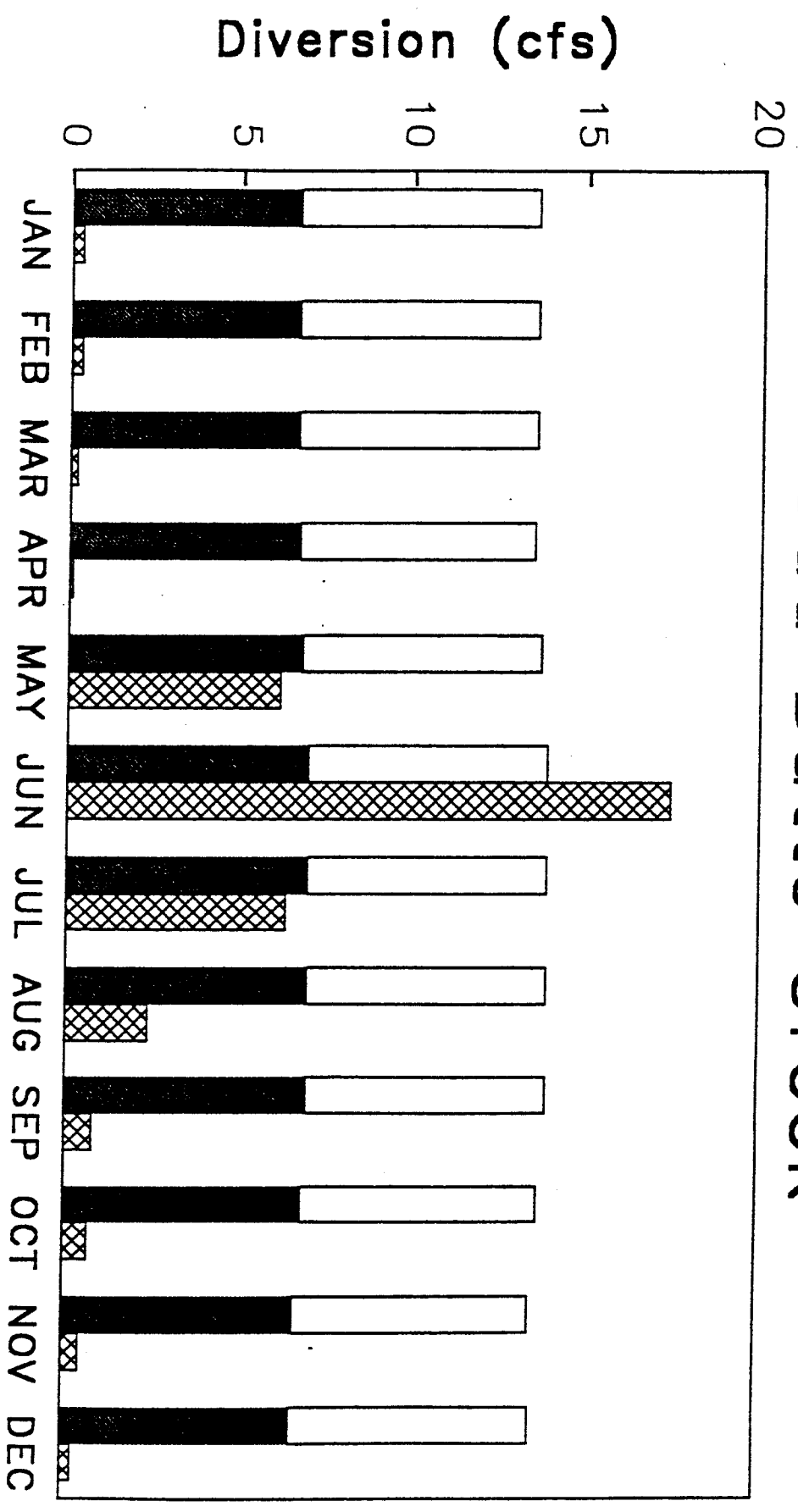


Existing Future

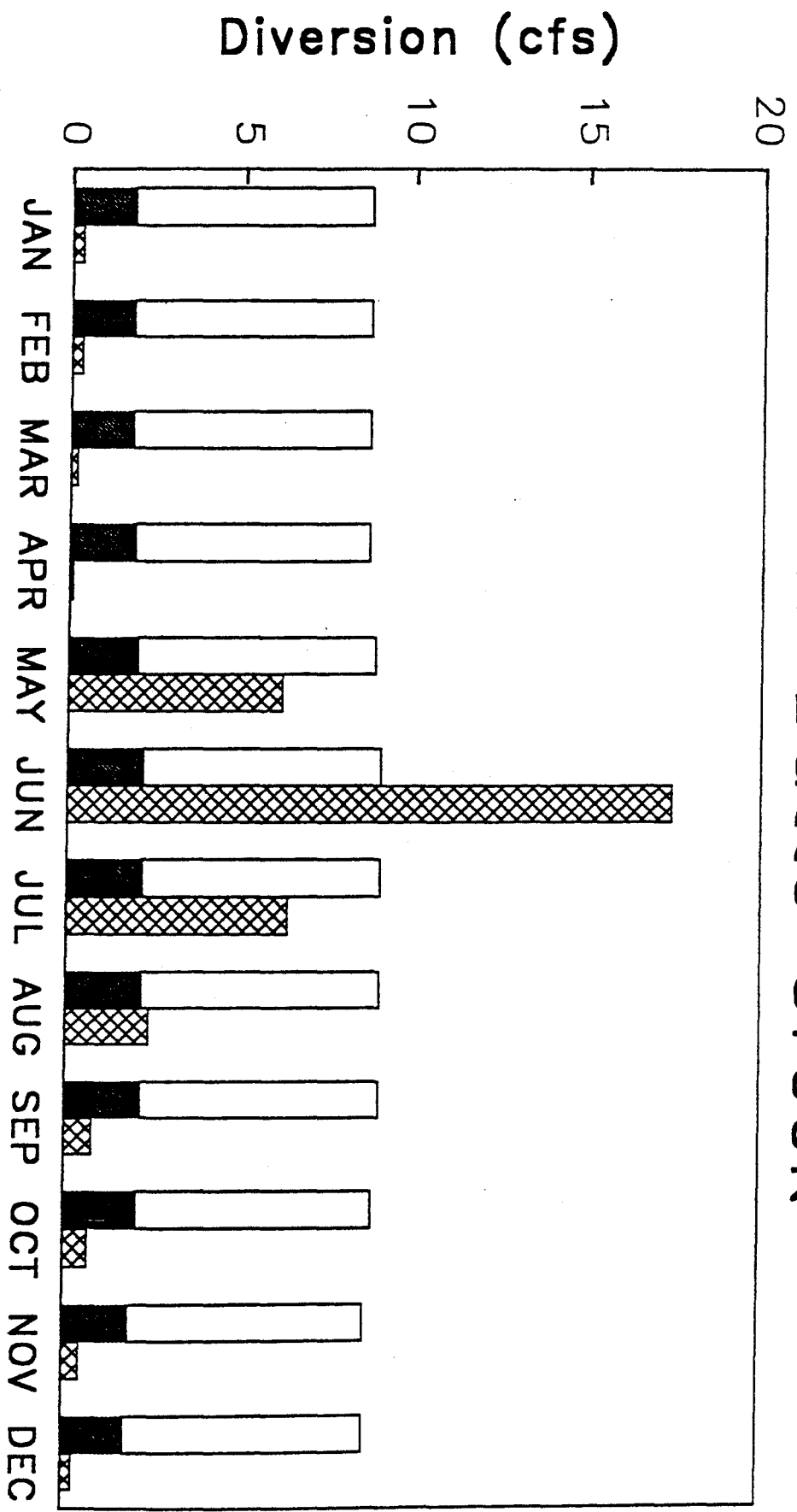
3
4-16-93
HR 629

NON-FEDERAL WATER USES Soda Butte Creek

- Existing Municipal & Small Domestic Claims
- Additional Existing Non-Federal Claims
- ▤ Five Percent of Estimated Average Monthly Flow



AMENDED SILVERGATE CLAIM Soda Butte Creek



Existing Municipal & Small Domestic Claims
 (Silvergate Claim Is Shown at 60 Gallons per Minute)

Additional Existing
 Non-Federal Claims

Five Percent of Estimated
 Average Monthly Flow

3
 4-16-93
 H/B 629



Greater Yellowstone Coalition

April 16, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 4-16-93
BILL NO. HB692

Sen. Bill Yellowtail
Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Sen. Yellowtail and Members of the Committee:

The Greater Yellowstone Coalition would like to express its support for HB 692, the Water Rights agreement negotiated between the state and National Park Service. Our focus has been on the Yellowstone Park settlement, and more particularly, the geothermal protections within that Compact.

Ideally, these water rights issues would have been settled a long time before now, but that's not the time frame we're working in. The National Park Service seems to also recognize the difficulty of settling these issues now, based on its 1872 water right, and we believe it has gone to great lengths to accommodate existing users by subordinating its senior water right to virtually all existing junior water uses.

We believe this Compact is certainly preferable to having these rights litigated, and think Montana water users have received a better deal than we might otherwise receive if the National Park Service were to try to have its 1872 water right decided in court.

For the last two years, we have expressed strong support for the Old Faithful Protection Act proposed by Congressman Pat Williams. That bill failed during the last session, renewing concerns that the hydrothermal systems within Yellowstone National Park remained at risk from geothermal development outside the park.

This Compact establishes a very important controlled groundwater area outside the park, under state administration, to address the geothermal development concerns. By doing so, it protects the National Park Service's - and indeed, the national and even international - interests in maintaining the integrity of the hydrothermal systems and features for which the park was established 120 years ago, while also allowing continued well development outside the park.


Rep. Williams has reintroduced his Old Faithful Protection Act. We have consistently urged both the Compact negotiators and Rep. Williams' office to coordinate language in the respective proposals. We believe that coordination is occurring.

While we would like to see stronger language regarding the state's commitment to implementing the controlled groundwater area, and the related issue of federal funding, we support the Compact nonetheless. We will continue to work to ensure the federal funding that's necessary, and towards that end, we testified before an Appropriations Subcommittee in Washington D.C. three weeks ago in support of this funding. We have also contacted members of Congress asking for their support, and will continue our efforts in this regard.

The Coalition, which includes many members and member organizations within the affected area, recognizes the very long and arduous process that has occurred to reach this point. We commend the negotiators and Compact Commission staff for the significant efforts they have made to inform, educate and respond to all interests.

We urge the committee's support for this bill. Thank you.

Sincerely,


Jeanne-Marie Souvigney
Associate Program Director

HB 692

- Over the years the Montana Water Resources Association has supported the concept of the Reserved Water Rights Compact Commission, while not always agreeing with its progress/a lack of progress. And while not physically able to attend all meetings & hearings, we watch the business of the Commission closely.
- Recognizing ~~the~~ the need to come to agreements with the tribes, M WRA has at least as great an interest for the less visible reservations, the Park & Forest Service.
- Some of our basins will not be able to complete the adjudication process without qualification of federal reservations.
- Along that line, our association has encouraged appointment of members who have an interest in those two areas.
- We strongly supported Mr Wauson and Mr Hoyt as both had shown ~~the~~ interest as have the other commissioners, toward negotiating Park & Forest Service Compacts.
- The short term frame, less than 2 years, has been commented on in earlier hearings. I could not have began to find the time to just attend the meetings I was notified. I appreciate the intense effort Rep Wauson and Senator Thaler is

- put forth to accomplish this.
- I did attend quite a few of the meetings on this Compact and heard discussions, agreements & disagreements between the parties; and the concerns of the citizens who had interest in the proceedings.
 - Because MWRB realizes the necessity of quantifying these waters we would not support a Compact that we think harmful to our members and water right holders. We do not view the Compact in that manner.
- Is it perfect? probably not.
- We ask you do support HB 692

Jo Brunner - Executive Director
Montana Water Resources Association



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 4-16-93

BILL NO. HB 692

THE WILDERNESS SOCIETY

STATEMENT OF MICHAEL D. SCOTT REPRESENTING
THE WILDERNESS SOCIETY ON HB 692,
THE STATE/NATIONAL PARK SERVICE WATER RIGHTS COMPACT
APRIL 16, 1993

The Wilderness Society is a national conservation organization dedicated to the protection of our nation's public land. We have over 300,000 members nationwide, with some 2,000 in Montana.

The Society strongly supports HB 692. This important piece of legislation takes a great step forward in the protection of Glacier, Big Hole Battlefield and Yellowstone National Parks.

YELLOWSTONE'S CONTROLLED GROUNDWATER AREA

By far the most controversial part of the compact before the committee this morning is the proposal to regulate cold, warm and hot water around Yellowstone National Park. The Society believes the regulations proposed in HB 692 are fair and equitable, both to Montana and Yellowstone.

Yellowstone's portion of the compact operates under a simple premiss - take no chances with Yellowstone's world-renowned geysers, hot pots and fumaroles. The compact creates a Controlled Groundwater Area which regulates to use of all surface and subsurface waters in order to protect Yellowstone's reserved water right.

In order to assure that the Park's features are protected, the compact assumes all subsurface hot water to be interconnected to Yellowstone National Park and thus, in virtually all cases, unavailable for development.

Warm water is treated with a slightly lower level of concern, however, it must be clearly demonstrated that such water is in no way connected to Yellowstone's underground hydrothermal systems.

Cold water is presumed to be unconnected to the Park's thermal systems and is thus generally available for development. The compact contains an expedited review process for cold water, allowing wells of 35 gpm, or 10 acre feet per year, to be permitted without indepth review.

NORTHERN ROCKIES REGIONAL OFFICE
105 W. MAIN STREET, SUITE E, BOZEMAN, MT 59715

(406) 586-1600



To review permits, make recommendations on boundary changes and to change standards a Technical Oversight Committee is created. This committee is composed of scientific appointees of the state and federal governments and is required to make decisions on a 4-1 supermajority. The purpose of the supermajority requirements is to allow change to the CGA and its regulations to occur only by virtual consensus of the scientists of the TOC.

In sum, the compact does an excellent job of protecting Yellowstone's reserved water rights. Both the state and the National Park Service are to be commended on their willingness to hammer out an accord that represents to best interests of both entities.

SODA BUTTE CREEK

We realize that there are still areas of controversy and confusion locally. People in Cooke City are concerned about the allocation of 95% of the flows in Soda Butte Creek to Yellowstone.

This allocation was based on a 1987 study of the flows in Soda Butte Creek and will accommodate existing uses and a small increment of growth.

It is important to note that Yellowstone's water right to Soda Butte Creek is senior to any of those around Cooke City. Had the Park Service gone to court to quantify its right, it is entirely possible that a court would rule that the Park is entitled to 100% of Soda Butte's flows.

The Park Service's willingness to subordinate its senior right to existing junior rights is a clear indication of compromise in the compact process.

TECHNICAL OVERSIGHT COMMITTEE SUPERMAJORITY

Similarly, Montana's willingness to agree to a 4-1 supermajority for decisions of the TOC was an important element of compromise to the final decision.

Some have argued that the TOC will never agree if it has to comply with a 4-1 vote. However, given the authority vested in the TOC by the compact, it is important that there be virtual consensus on decisions which may effect Yellowstone's thermal wonders. Anything less is playing Russian Roulette with our nation's first national park.

CONTINUING NEED FOR FEDERAL LEGISLATION

This compact is a key element in our efforts to protect Yellowstone's hydrothermal systems. But, for several reasons, there is a continuing need for federal legislation.

First, the compact does not deal with existing wells, such as that owned by the Church Universal and Triumphant, which draw hot water within the CGA. Congress needs to decide whether to permit the operation of such wells.

Since the compact only deals with Montana's portion of the area around Yellowstone, Congress needs to decide how it will protect Idaho and Wyoming's part of the Park.

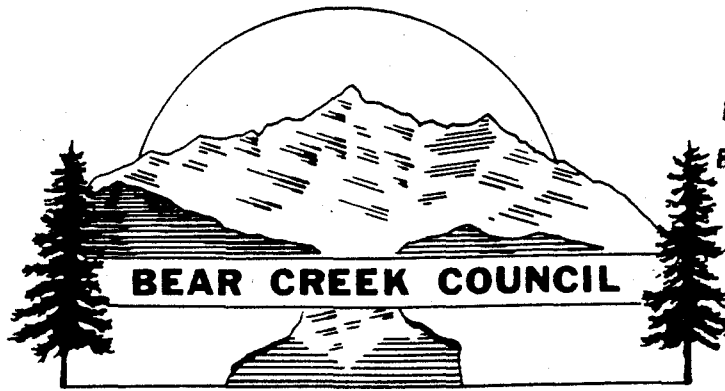
Montana has made an important step forward with this compact. We believe it could well serve as a basis for developing a uniform set of criteria for the protection of Yellowstone's hydrothermal systems. The Society will work with the Reserved Water Rights Compact Commission, the Governor and Representative Williams to develop amendments to his bill, "The Old Faithful Protection Act of 1993". We envision that those amendments will use the criteria developed in the compact as standards which the Secretary of Interior will apply to the entire perimeter of Yellowstone. The amendments should also allow a state to operate a program if it meets the criteria set forth in federal legislation.

We also need federal legislation to mandate and fund the studies described in the compact to better understand the nature of the hydrothermal interconnections between Yellowstone and surrounding lands.

Finally, federal legislation is needed to authorize payment to Montana to implement the provisions of the compact. The state estimates it will need a one-time payment of \$2.3 million to cover its share of expenses under the compact.

CONCLUSION

We urge the Committee to act favorably on HB 692. This important legislation will approve an historic agreement between Montana and the National Park Service designed to protect the water resources and hydrothermal systems of Montana's national parks in perpetuity.



P. O. Box 448 — Gardiner, Montana 59030

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 4-16-93

BILL NO. HB692

Support HB692 Wauzenreid

April 6, 1993

Testimony before the House Natural Resources Committee on the Compact negotiated between the United States and the State of Montana concerning federal reserve water rights in the area around Yellowstone National Park.

Mr. Chairman and Members of the Committee:

My name is Julia Page. I live in Gardiner and own and run a river outfitting business there. Our business as well as every other business in town is largely dependent on tourists visiting Yellowstone Park. I feel strongly that those of us who live next to the park have a special responsibility to see that our activities (both private and commercial) don't damage the park's natural resources. It is a privilege to live where we do.

I am speaking today for the Bear Creek Council, a local affiliate of the Northern Plains Resource Council. Bear Creek Council believes that the protection of Yellowstone National Park's geothermal features is of the utmost importance, yet we also are concerned that Montanan's valid water rights be protected. We believe that the Montana Reserved Water Rights Compact Commission has negotiated an agreement that does both. We urge the Legislature to ratify this compact. We are including a petition signed by many citizens living in the Gardiner area who support the compact.

Thank you.

Julia Page

Julia Page
for Bear Creek Council

We have a good record in our area now (in terms of water) but probably will not be in the long run. Tourism will sustain HB 692.

Soda Bottle - not enough by compact - that's change

HB 692
w/o amendments

MT be a leader



To: Montana Legislature & the Reserve Water Rights Compact Commission
From: Undersigned Montana Residents & Other Citizens
RE: Yellowstone Reserve Water Right Compact
DATE: Mar. 18, 1993

SENATE JUDICIARY COMMITTEE
HOUSE NO. 8
DATE 4-16-93
BILL NO. HB 692

We the undersigned urge the Montana Legislature to adopt the general provisions of the Yellowstone Compact as currently written on March 18, 1993. We believe that the negotiated agreement between Montana and the federal government provides the necessary protection to Yellowstone Park's spectacular geothermal systems while at the same time protecting valid water rights.

We agree that the unrestricted use of groundwater adjacent to Yellowstone Park may harm geothermal features within the Park. Therefore, we endorse the creation of a Controlled Groundwater Area and support the proposed restrictions on groundwater wells. We support the requirement for a permit for cold water wells and believe it should be an expedited process. We support the ban on wells with water temperatures above 85° unless applicants can prove beyond a doubt that pumping from such wells would not adversely impact geothermal features.

Since the purpose of the Controlled Groundwater Area is to protect Yellowstone's geothermals, we believe it is appropriate to use federal funding to conduct the inventory and monitoring.

NAME: (Print) ADDRESS SIGNATURE

- 1. Bill Scott ~~Montgomery~~ P.R. P.O. Box 112 Gardiner MT 59030 ~~Bill Scott~~
- 2. Chris Lunniss 251 Gardiner MT 59030 Chris Lunniss
- 3. Muriel Skeeter Jardine Rt Box 100 Muriel Skeeter

The original is stored at the Historical Society, 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 4-16-93

CALL NO. HB 692

Amendments to House Bill No. 692
Second Reading Copy

Requested by Rep. Wagner
For the Committee of the Whole

Prepared by Todd Everts
April 14, 1993

1. Page 40, line 19.
Strike: "the entire"
Insert: "50% of the"

2. Page 40, line 21 through page 41, line 3.
Strike: "provided" on page 40, line 21 through "II" on page 41,
line 3

3. Page 41, line 6 through page 42, line 12.
Strike: "TABLE 4" on page 41, line 6 through "Compact." on page
42, line 12
Renumber: subsequent tables and all internal references to all
tables throughout the Compact

Proposed Amendments to House Bill No. 692
Third Reading Copy

For the Senate Judiciary Committee

by Hays Kirby and other Landowners
in the Soda Butte Creek Drainage

April 16, 1993

1. Page 51, line 2.
Strike: "0.3"
Insert: "2.0"
2. Page 51, line 3.
Strike: "0.3"
Insert: "2.0"
3. Page 51, line 4.
Strike: "0.2"
Insert: "2.0"
4. Page 51, line 5.
Strike: "0.1"
Insert: "2.0"
5. Page 51, line 10
Strike: "0.8"
Insert: "2.0"
6. Page 51, line 11
Strike: "0.7"
Insert: "2.0"
7. Page 51, line 12
Strike: "0.5"
Insert: "2.0"
8. Page 51, line 13
Strike: "0.3"
Insert: "2.0"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 4-16-93
BILL NO. HB692

RESERVED WATER RIGHTS
COMPACT COMMISSION



Stan Stephens
Governor

Dennis Iverson, Vice-Chairman
Susan Brooke
Gene J. Etchart
Lorents Grosfield

Chris D. Tweeten, Chairman

Joseph P. Mazurek
Jack Salmond
Bob Thoft
David E. Wanzenried

STATE OF MONTANA

TO: Senator Bill Yellowtail
Chair, Senate Judiciary

Fm: Representative Dave Wanzenried ^{DW (ds)}
Chair, Compact Commission Negotiating Team

RE: HB692, National Park Service -- Montana Compact

DATE: April 15, 1993

Water users in the Soda Butte Creek drainage upstream from Yellowstone National Park Service have expressed concern that language in HB692 stating that

"no new impoundments may be permitted on the mainstem of [streams that include Soda Butte Creek] upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact . . ."

could be interpreted to mean that an impoundment could not be placed adjacent to the mainstem of Soda Butte Creek upstream from the Park. The Commission believes that the language prohibiting impoundments on the mainstem is clear. The portion of Soda Butte Creek for which a water right for instream flow is described is the portion within the Park. However, we have agreed to establish a record stating the intent of the language. To that end, HB692 prohibits impoundments on the stream bed of the mainstem of Soda Butte Creek, but would allow an impoundment adjacent to the mainstem of the stream upstream from the Park.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 4-16-93
BILL NO. HB692

Soda Butte Creek at NE Entrance to Yellowstone National Park

	Mean Monthly Flow (cfs)	5% Of Mean (cfs)	Adjusted		RWRCC proposal (acre feet)	1.4 x adjusted claims (cfs)	(acre feet)
			Surface Water Consumpt. Claims (cfs)	Surface Water Consumpt. Claims (cfs)			
Jan	5.7	0.3	6.16	1.31	80.33	1.83	112.46
Feb	5.4	0.3	6.16	1.31	72.56	1.83	101.58
Mar	4.2	0.2	6.16	1.31	80.33	1.83	112.46
Apr	1.8	0.1	6.22	1.37	81.72	1.92	114.40
May	123	6.2	6.34	1.49	378.15	2.09	128.55
June	350	17.5	6.56	1.71	1041.32	2.39	142.19
July	127	6.4	6.56	1.71	390.45	2.39	146.93
Aug	48.8	2.4	6.56	1.71	150.03	2.39	146.93
Sept	16.1	0.8	6.56	1.71	101.57	2.39	142.19
Oct	14.9	0.7	6.42	1.57	96.47	2.20	135.05
Nov	9.8	0.5	6.22	1.37	81.72	1.92	114.40
Dec	6.6	0.3	6.16	1.31	80.33	1.83	112.46
				total =	2634.96	total =	1509.61

* Column 5: "Adjusted" means Silver Gate municipal claim reduced from 5 cfs to 0.15 cfs (about 60 gpm)

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 12
 DATE 4-16-93
 BILL NO. HB692

LEGISLATIVE COMMITTEE
EXHIBIT NO. 13
DATE 4-16-93
FILE NO. HB692

LAW OFFICES
J. BLAINE ANDERSON, JR.
112 S. WASHINGTON
DILLON, MONTANA 59725
(406) 683-2303

J. BLAINE ANDERSON, JR.
CATHERINE S. SANDS

FAX: (406) 683 2304

April 7, 1993

Representative Dick Knox
Chairman
House Natural Resources Committee

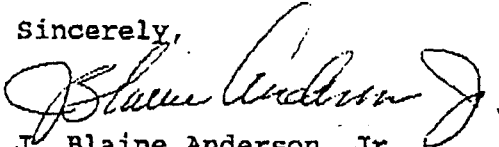
RE: Reserved Water Right Compact Commission--Big Hole
Battlefield Reserved Water Right

Dear Mr. Chairman:

I am an attorney practicing law in Dillon, Montana, and represent the Ruby Water Company which consists of three entities, Jack Hirschy Livestock, Dick Hirschy Cattle Company, and Mark Clemow Ranches, Inc. On their behalf, I extend their support and ask you to pass the reserved water right provided for in the water rights compact arrived at between the National Park Service and the State of Montana as it relates to the Big Hole Battlefield.

The Compact Commission held a Public Hearing in Wisdom, Montana, and explained the process they had gone through to arrive at their compact. The compact in all respect seems to be balanced, insures continued viability of prior existing appropriations, and exempts storage, to allow for the completion of the Ruby Dam project--a project which has been implemented on Ruby Creek in the Big Hole Valley, up stream of the Big Hole Battlefield.

I commend the Commission on their thoughtful analysis and balanced approach in preserving prior existing appropriations of water. Unfortunately, I could not attend the hearing on this bill, but I urge you to pass this legislation.

Sincerely,

J. Blaine Anderson, Jr.
Attorney at Law

The original is stored at the Historical Society, 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

DATE 4-16-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 692

Name	Representing	Bill No.	Check One	
			Support	Oppose
Richard Aldrich	DOI	HR 692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jusam Cottingham	RWRCC	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARK Simick	D NRC	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Will Erickson		HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sidney Hoe		HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Richy	MT. Wildlife Fed	HB 692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARK SHAGLEY	FLATTED CHAFTER MONTANA WILDERNESS ASSOC.	HB 692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dave Amman	RWRCC staff	HB 692	<input type="checkbox"/>	<input type="checkbox"/>
Andy Hams	Att Gen Staff	HB 692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Tweeten	RWRCC	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rich Bulley	Cook County		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jefferson	MADA Alliance	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael Scott	Wilderness Society	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janet Ellis	MT Audubon Leg. Fund	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Opelia Pope	BCC	HB692	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ted S. Dorey	Hays Kirby.	HB 692	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 4-16-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 692

		Bill No.	Check One Support Oppose
Name	Representing		

Stan Bradshaw	MT. T.U.	692	✓	
Rep. Doug Wagner House Dist-8	State of Montana's People	692	Support only with amendment	Flathead

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY