



# Big Hole Watershed Committee

## Monthly Meeting Minutes

Wednesday, February 20, 2019 – 6:00 pm

Divide Grange – Divide, Montana

### In Attendance

Pedro Marques, BHWC; Tana Nulph, BHWC; Ben LaPorte, BHWC; Dean Peterson, BHWC/Rancher; John Jackson, BHWC/Beaverhead County Commission; Betty Bowler; Tom Bowler; Jim Hagenbarth, BHWC/Rancher; Paul Cleary, BHWC/Resident; Sandy Cleary, Resident; Randy Smith, Rancher; Jacob Smith, Rancher; Sierra Harris, TNC; Julia Nave, BSWC/TNC; Peter Frick, BHWC; Steve Luebeck, BHWC/Sportsman; Ann Schwend, DNRC; Kim Johnston, People and Carnivores; Rollie Miller, Vigilante Electric; Kara Maplethorpe, Centennial Valley Association; Stephen Frazee, Water and Environmental Technologies; Eric Thorson, BHWC/Sunrise Fly Shop; Todd Garrison, Big Hole River Ranch; Craig Fellin, Big Hole Lodge; Bill Kempf, BHWC/Outfitter; Andy Suenram, BHWC/Resident; Arne Wick, DNRC; Jim Olsen, FWP; Jarrett Payne, FWP; Zach Owen, Beaverhead Watershed Committee; and Liz Jones, BHWC/Rancher.

**Introductions**      *Attendees introduced themselves.*

**Meeting Minutes**      *November 2018 meeting minutes were reviewed, no additions or corrections.*

### Reports

*Streamflow/Snowpack Report – Jacqueline Knutson, Montana Fish, Wildlife and Parks*

- *Streamflows:* Gages are seasonal and are not currently reporting flows.
- *Snowpack:* Snowpack conditions improved across Montana last month but many basins are teetering around average and the

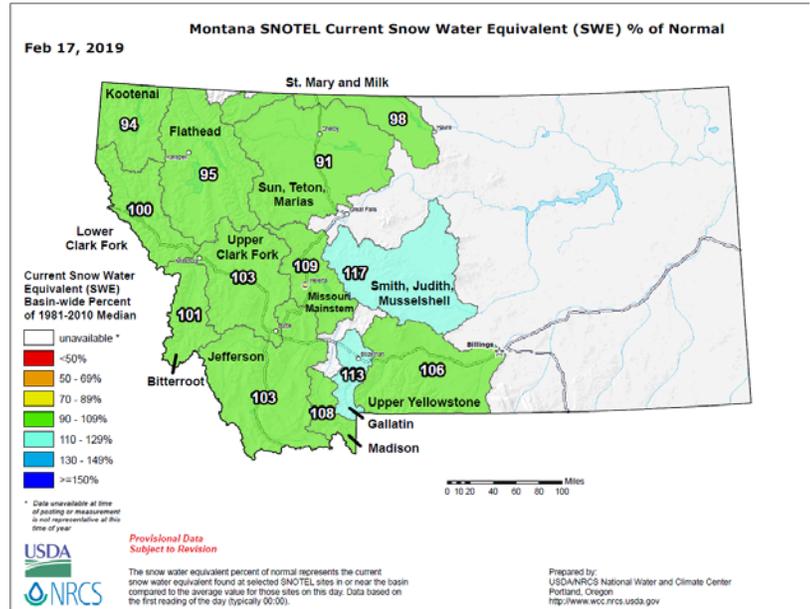
Beaverhead Basin received the least amount of precipitation in January. Currently the snowpack in the Big Hole Basin is below average, sitting just below 90% of normal. The Jefferson Basin is 103% of normal. March through May often yield a significant portion of the yearly snowpack and peak snowpack typically occurs in late April or May so we still have time to accumulate a solid snowpack and, as always, timing and availability of runoff will be the most important factor to our streamflows in the spring and early summer.

		19-Feb	19-Feb	1981-2010	
		2018	2019	median	2019
Station	elevation	inches	inches	inches	% avg
Barker Lakes	8250	15.9	9.5	9.6	99
Basin Creek	7180	8.3	5.1	5.3	96
Bloody Dick	7600	12	6.7	8.9	75
Calvert Creek	6430	9.5	6.2	6.8	91
Darkhorse Lake	8600	27.8	19.2	22	87
Moose Creek	6200	16	10.5	13.2	80
Mule Creek	8300	17	9.8	11	89
Saddle Mtn.	7940	25.9	15.8	18.6	85
<b>TOTAL</b>		<b>132.4</b>	<b>82.8</b>	<b>95.4</b>	
<b>BASIN AVERAGE %</b>		<b>139</b>	<b>87</b>		

- *Precipitation:* January precipitation was especially low in the Beaverhead Basin but the Big Hole Basin and areas along the Divide managed to stay near, although still below, normal for the month. The last two weeks of January helped to boost the Jefferson Basin back towards average and February has been

off to a good start. With a weak El Nino persisting through the spring it is possible we will see the same low to average precipitation for the next few months.

- **Temperatures:** Valley air temperatures for January were above normal averaging 2-4 degrees above for the month. Early February temperatures, however, have dipped below normal but are expected to increase again as spring progresses.
- **Forecast:** El Nino conditions formed in January and are expected to continue through the spring. Although this is a weak El Nino event we have seen the effects on precipitation in January especially. The three-month outlook currently favors average precipitation through the rest of the spring and above average temperatures through the early spring. The most up-to-date 3-month outlook will be published on NOAA's website on Thursday and will include the most recent El Nino diagnostics. Most recent NOAA 3-month outlook is for above average temperatures and average precipitation through the early spring.



#### Director's Report – Pedro Marques

- Three people have absorbed the jobs of 4, so we have all moved up and out in our duties.
- Last month, we met with the board and steering committee and officially restructured our staff.
  - Jen Downing is still with us as a contractor, finalizing administrative tasks and helping us figure out our new roles.
  - Pedro Marques is the new Executive Director. His role will be focused on stewarding the organization's vision and mission, working with our governing board, and raising funds and securing grants to sustain the organization and its projects. Pedro will also play a key oversight role with our agency and private partners in the delivery of high-quality restoration projects and will guide strategic partnerships into the future.
  - Tana Nulph is now Associate Director. She will be responsible for the day-to-day operations of the organization, including continuing to head up our communications and events and representing BHWC in key state-wide and regional partnerships. In 2019, she will take on management of the Big Hole River Drought Management Plan. Tana is based out of Divide and her connection to the community is vital.
  - Ben LaPorte is BHWC's Program Manager. HE will expand his role to become the on-the-ground lead for all of our programs. Ben will lead our wildlife conflict programs as well s be the engine for our large restoration portfolio. With his expertise in Forestry, Ben will also be charting new directions for us to deliver comprehensive restoration one drainage at a time.
- Increasing our capacity to fund more projects and get more projects on the ground.
- Just completed and submitted a BOR WaterSmart grant proposal for Lower French Creek. Was really encouraging to see how well that went and how well we are all working together.
- Board elections: all board members were reelected to their current positions. We have 4 openings on our board: 1 for a Conservation District seat, 1 for an environmental group, and 2 for landowners.

#### Steering Committee – Jim Hagenbarth, Randy Smith, and Steve Luebeck

- Steering Committee is happy with the progress BHWC is making.

#### Drought Management Plan – Tana Nulph

- No updates to the Drought Management Plan this year, Drought Review Committee met and decided to leave the plan as it is for now. If you have any comments on the DMP, please let Tana know.

#### *Wildlife Report – Jim Hagenbarth, Tana Nulph*

- Carcass Removal/Compost Site:
- No brucellosis (Craig Fager's report)
- Having wolf problems in the Upper Big Hole – South end of the valley. It has gotten worse, up to about 18 head of dead calves. Wildlife Services has been able to remove just one wolf in this area. They think there are 5-6 more in the area; trying to take out the rest of them.
  - *Is there any recourse?*
    - *They can apply for reimbursement through the state, but not all have been confirmed and there is a limited amount of money for reimbursement.*
  - *Is this one ranch that has taken the hit or is it spread out throughout the valley?*
    - *One ranch. Within 100 yards of the houses.*
- Kyle Tackett has a MOU that he will bring before BHWC and other groups regarding conifer encroachment in the Medicine Lodge area, where conifer encroachment is affecting sage grouse habitat. This is something we should think about – most of that land private with some state land. Conifer encroachment and conifer removal to generate additional water yield and forbs to benefit sage grouse is an important issue.
  - Ben working with Sean Claffey and other groups to potentially get some funding from DNRC to do private land work on conifer encroachment.
  - In Idaho, NRCS/EQIP is very active and provide a lot of funding for these projects.

#### *Restoration Report – Pedro Marques, Ben LaPorte*

- Lower French Creek/Oregon Creek projects: Final design nearly complete. Will be bid out as one package in terms of construction.
- Had a great meeting with NRDP/EPA folks regarding superfund work on Mount Haggin. Largescale erosion control, WET did aerial drone analysis of sediment catchment.
- Applying for planning grant funding for French Gulch for fish habitat improvement, sediment reduction, etc.

#### *People and Land Use Planning Report – Pedro Marques*

- 3 streambank projects permitted and ready for spring 2019 construction

#### **New Business**

- Todd Garrison: On the Burma Road, there are 2 channels where the river splits. This has festered for several years, and all of the water is basically flowing down the east channel. It is about to cause some major problems. FWP has put in a brand new FAS on the west channel, but there is no water there so guides/anglers can't get their boats out. Going to remove gravel and put it on the Burma Road, which is also in very poor condition. Looking for funding to get this paid for – looking to conservation organizations, counties, etc. The water is also flowing into the abutment of the bridges and may cause damage to the bridges. This is a project that **MUST** be done this year, as soon as possible. Cost estimate: \$70,000. **BHWC will help play a coordinating role in this project and will assist with seeking funding. Additional information included in attachment.**
  - *Discussion:*
    - *Will you do it before high water?*
      - *Yes, most definitely.*
    - *How much material needs to be moved?*
      - *13,000 yards*
    - *Has any of the funding been secured yet?*
      - *No, not yet.*
    - *Are the permits in place?*
      - *Yes, everything is in place for this to go this spring.*

- *So all of the material has to be hauled out via dump truck or else we have to get a 404 permit?*
  - *That is correct.*
- *This is in both counties? Madison and Beaverhead?*
  - *Yes.*
- *Did you say that this could potentially take on the abutments of the bridges?*
  - *It could, potentially. Madison County has said that the bridge is set to handle 1/3 of the river and it is currently getting nearly all of the river flowing against it.*
    - *Maybe FEMA – DES funding is a possibility.*
- *If landowners want to contribute to this project, could they donate to BHWC and have the committee use the money for this project and then get the 501(c)(3) tax break?*
  - ***I think so – we will certainly look into it and find out, because that is a great idea.***

## Meeting Topic: Confederated Salish-Kootenai Tribe Water Compact

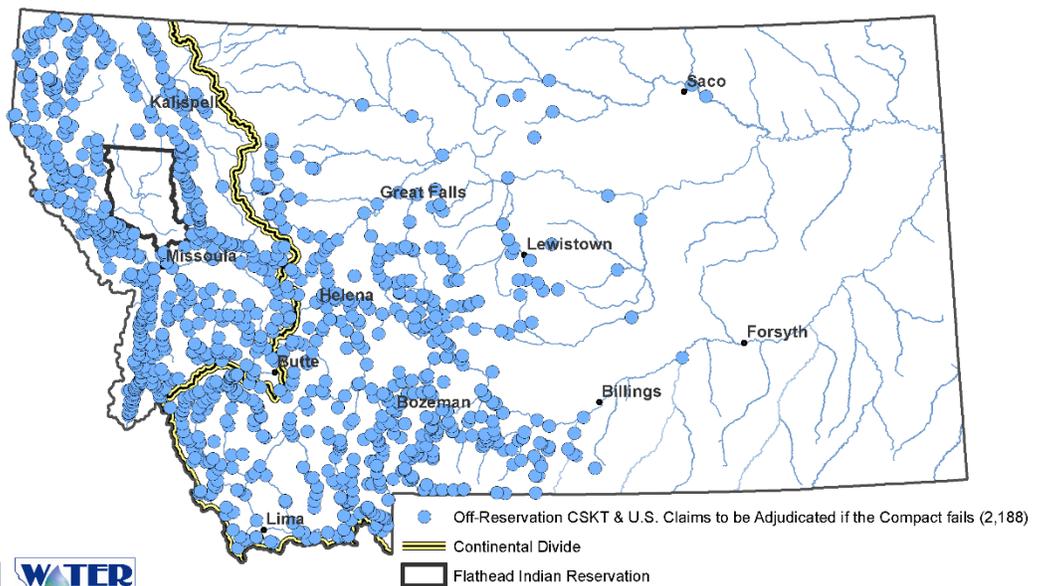
Presentation by: Arne Wick and Ann Schwend, DNRC

**Background:** As of July 2018, the Confederated Salish and Kootenai Tribes (CSKT or Tribes) and United States Department of Justice (USDOJ) have filed 10,109 claims in place of the Compact. These claims, filed as placeholders to the Compact, are currently stayed before the Montana Water Court. If the Compact is approved by the U.S. Congress, the Tribes, and the Water Court, both sets of claims will be dismissed. If the Compact is not approved, both sets of claims will be adjudicated through the Montana Water Court. The Compact is the result of more than a decade of negotiations to resolve the Tribes' claims to reserved water rights within the State. Montana's Legislature approved the Compact in 2015. The Compact is now awaiting congressional approval.

### Without Compact

- Total Claims to be Adjudicated Absent the Compact - 10,109
- The CSKT filed 1,720 on-Reservation water claims.
- They also filed 1,094 off-Reservation instream water claims, all with time immemorial priority dates.
- The off-Reservation claims are located in 51 of Montana's 85 adjudication basins.

**Without Compact:** Off-Reservation instream flow claims  
Filed by CSKT & United States to be Adjudicated if the Compact fails (2,188 claims)



- The USDOJ also filed 7,295 total claims in trust for the CSKT including 1,094 off-Reservation instream claims that are identical to those filed by CSKT.
- All 10,109 claims would need to be adjudicated in the absence of the Compact.

### With Compact

- CSKT-MT Compact Rights - 308
- The Compact grants the Tribes' 211 on-Reservation water rights, 10 off-reservation rights, and co-ownership in 87 existing instream flow, in-lake, and storage rights held by the Montana Dept. of Fish Wildlife & Parks (DFWP) which comes to 308 total rights.

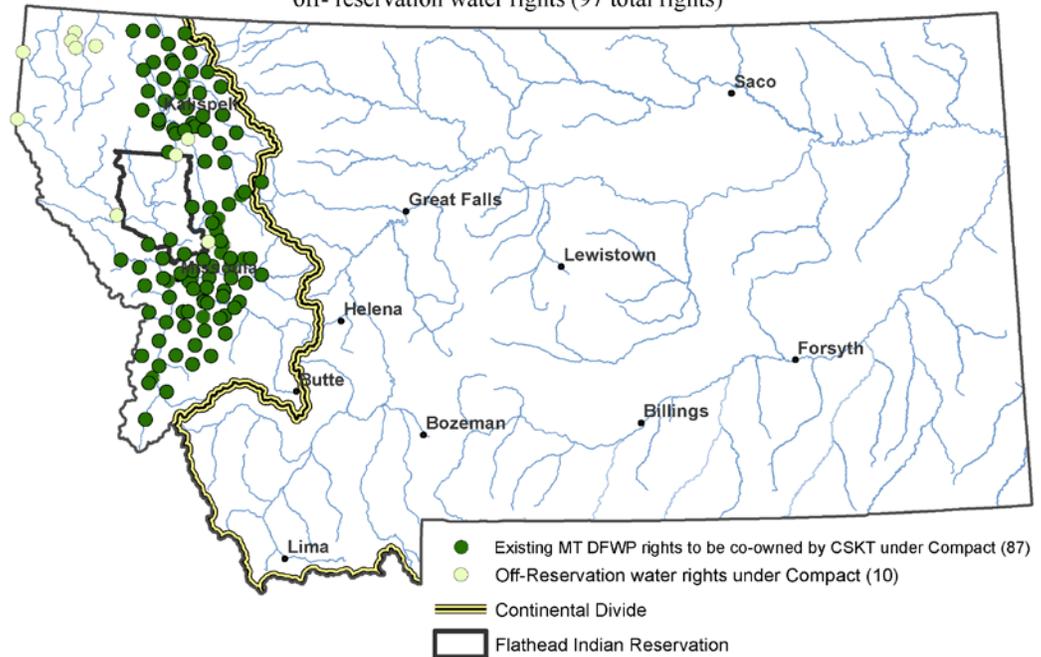
- The 211 on-Reservation water rights quantify the Tribes' rights including: instream flows, Hungry Horse Reservoir Water, high mountain lakes, wetlands, and Flathead Indian Irrigation Project (FIIP) water.

- The Compact also includes an administrative process to grant over 1,000 non-tribal on-Reservation

groundwater certificates left in limbo by the absence of a regulatory framework on the Reservation.

- Off-Reservation water rights granted to the Tribes include:
  - Eight time-immemorial instream rights on the Swan River, Kootenai River, Lower Clark Fork River, and five headwater streams, all with protections for existing water users;
  - One time-immemorial Flathead Lake water right that protects the natural lake level; and
  - One 1855, any purpose, on- and off-reservation right that includes 11,000 acre-feet (AF) of Hungry Horse Reservoir storage that can be allocated by Montana; and
- Co-ownership of DFWP rights includes:
  - Two instream flow rights formally associated with Milltown Dam;
  - 83 instream/in-lake rights, and
  - Fisheries storage shares in Lake Como and Painted Rocks Lake.

With Compact:CSKT-Montana Compact  
off- reservation water rights (97 total rights)



**For more information:** <http://dnrc.mt.gov/divisions/reserved-water-rights-compact-commission/confederated-salish-and-kootenai-tribes>

### What's Next?

- Approval of the CSKT Water Compact is not a foregone conclusion.
- It will take our Congressional representatives standing up for it and supporting it.
- Water rights holders are encouraged to reach out as individuals to Congressional delegates and encourage them to support the CSKT compact. Montana TU has provided a template letter of

support for the Compact; please contact BHWC if you would like a copy. Legislator contact information is listed below:

- Office of Senator Jon Tester
  - 311 Hart Senate Office Building, Washington, DC 20510-2604
- Office of Senator Steve Daines
  - 320 Hart Senate Office Building, Washington, DC 20510
- Office of Representative Greg Gianforte
  - 1222 Longworth HOB, Washington, DC 20515

### **Implications in the Big Hole Watershed**

- On the lower Big Hole, near Twin Bridges, there wouldn't be enough water to satisfy the CSKT claim in very dry years.
- Being East of the Continental Divide does not insulate us, in the Big Hole, if the compact doesn't pass.
- If the compact passes, all of these rights would be ceded – that is the agreement – if the compact DOESN'T pass, all water rights holders would have to go back through the adjudication process.
  - *Question: What is the date on these claims?*  
*1855 or time immemorial – they would be the senior water rights.* The priority dates for all non-compact off-reservation instream flow claims such as those in the Big Hole are time immemorial, making them the most senior rights in the basin should they be decreed.

### **Other Considerations**

- You may have seen the Farmers and Ranchers for Montana litigation notices supporting the compact. You can learn more about that group here: <https://montanawatercompact.com/>
- People's Compact: Came out last fall. Tough to substantiate any of the facts or reasoning that went behind that. They are trying to go against the CSKT compact – this is merely a tactic by compact opponents, but the CSKT compact has already been approved by the State.

### **Discussion:**

- *What is the date on the dark green (existing) water rights?*
  - *It would be the date on the FWP rights – Murphy Rights – generally 1970s.*
- *How familiar are you with the People's Compact and what exactly is it proposing?*
  - *Not all that familiar, but they've put out some information that is flat wrong – like the idea that the court would dismiss all claims east of the Continental Divide. To have a compact, you have to actually have multiple negotiating parties, and this group has not done any negotiations or involved anyone else in their discussions.*
    - *Is there anything to it at all?*
      - *We don't really know. A lot of the concerns against the CSKT compact have already been heard and denied by the Legislature. They were non-starter issues.*
- *I've heard a lot of opposition to the compact in our area, too. Why would people be opposed to the compact?*
  - *They're uninformed, potentially. The CSKT compact seems like a no-brainer. This option insulates most of the state's water right holders, whereas the alternative is a huge liability. It makes no sense to me.*
- *This compact is beneficial to everyone east of the Divide. There are a few West of the Divide that have some weaker water rights that the compact is going to affect. There are a lot of winners and a few losers, but it's a compromise, and we need to get it ratified.*
- *One of the water rights that would potentially be filed by the tribe is an 800 cfs year-round water right just above the Pumphouse Road. Something to think about. If the compact is ratified, this wouldn't be an issue.*
- *It appears that there's a little bit of overreach by the CSKT. Is that a fair statement?*
  - *I'm not sure – I get what you're saying, but it would ultimately take a court to decide the extent and validity of each stayed claim.*

- *The Flathead irrigation project is about 10 times bigger than Fort Peck. The unique nature of the Steven's Treaty – only Montana tribal community that has an Izaak Walton treaty similar to those in the Northwest. Courts have decided that it gives them the rights to maintain their fisheries. That's why their rights expand beyond the tribal boundaries and others in the State do not. Whether you like what the compact does for you or you hate it, it's in the Congressional delegation's hands now.*
- *If you need help figuring out who to call about this, Arne can get that information for you.*
- *Jim Hagenbarth supports the compact on behalf of those on the east side of the Continental Divide. From Jim: If I have to defend my water right against the tribe, I have to prove 2 things: that the CSKT weren't actually here and how much water is required for in-stream flow for fisheries. The State and Federal governments and possibly power companies will try to get as much in-stream flow as possible, and there is no way I'm going to win against them.*
- *There is a lot of money involved in this compact and there are a lot of issues that a lot of people don't understand.*
- *If you go to that interactive map (<http://arcg.is/lurvza>) and you go to your water right, it will likely have an amount there that will cause you to turn off mid-season.*
- *We have spent millions of dollars defending our water rights in the State of Montana already; if this compact isn't approved, that's going to set those water right adjudications in the state back roughly 30 years, waste those millions of dollars that have been spent already, and deprive a lot of people of their water.*
- *Not everyone on the west side of the Divide is against the compact.*
- *In the Klamath Basin, several water rights holders opposed the Federal government and the tribes and they got chewed up and spit out – it did not go well for them.*
- *If you are around a reservation and have some reservation ground, your deed is tainted, because they have a hell of a lot more rights than you do.*
- *Where are we sitting right now in terms of this getting passed?*
  - *It would take unified support from our delegation for one thing, and we don't have that yet. We need to get Daines to support the compact.*
  - *Daines is considering it. If he is worried about the political ramifications of supporting the compact, there are 10,019 families that will be upset if it's not passed compared to only a few if it is.*
  - *The compact has already gone to the Montana Legislature and been passed. Next our Congressional delegation needs to take it to Congress and have it passed there, which is a large step. Then it would go to the Tribe to be passed, and finally it would go to the Montana Water Court for Consent Decree.*
    - *How long do these things usually take?*
      - *It can take a long time. The most important thing right now is to let your Congressional delegation know how you feel about it. They're hearing a lot of opposition but currently not a lot of support for it. This something that individuals (water users) need to follow up on and contact their legislators.*
    - *Is there any national press on this?*
      - *Not really, there's too much other stuff going on.*
    - *Typically, if you can get your state's delegation on the same page, they can move an issue through Congress because the other legislators assume they know what's best for their state. Do you expect this to be different? Would another state oppose it?*
      - *That's a good question and we're not sure. Regardless, getting your state's delegation on the same page is the next step.*
      - *What may stall it out is the money.*
    - *What is the timeline before the tribe starts filing on all these claims?*
      - *The timeline has passed already, it was June 30, 2015. Since that time, they've been on hold at the water court. The court doesn't like to keep extending that extension (stay), so there is tension at that level as well.*

- *In July 2018, the Water Policy Interim Committee (WPIC) sent a letter to the Department of Interior and Montana's Congressional delegation in support of the compact.*
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### **Upcoming Meetings**

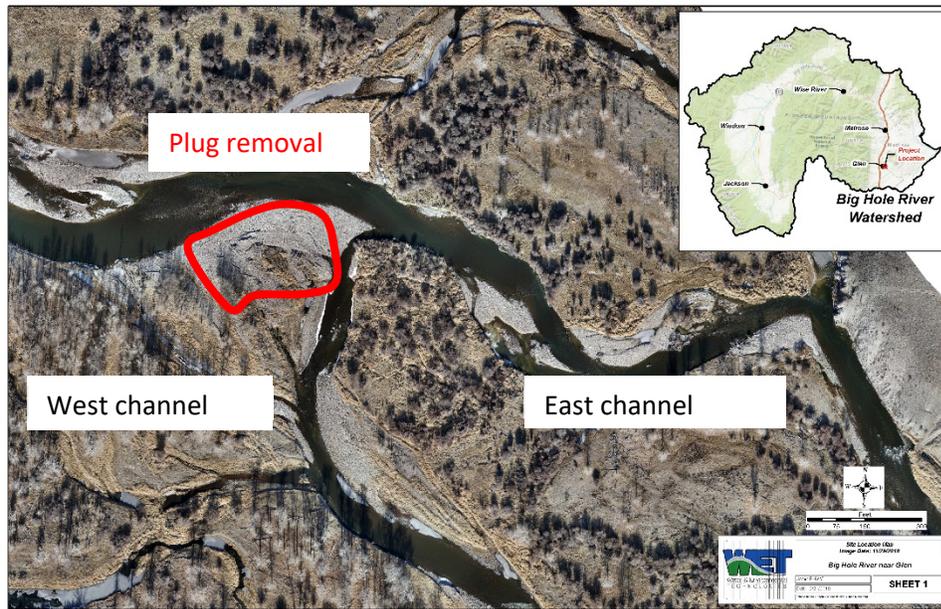
- *March 20, 2019, 7-9pm @ the Divide Grange – BHWC Monthly Meeting. Topic: Wildlife Conflict Reduction in the Big Hole Watershed.*
- *April 17, 2018, 7-9pm @ the Divide Grange – BHWC Monthly Meeting. Topic: Invasive Weeds in the Big Hole Watershed.*

### **Adjourn**

## Lower Big Hole River- Burma Road Side Channel Project

### Summary

The easternmost side channel of the Big Hole River below Glen has been taking on more water in recent years. A natural channel plug has been increasing in size and by winter 2019, most of the flow of the river is in this side channel, leaving the main western stem nearly dry. The immediate solution this project proposes is to excavate cobbles and logs from the plug and return a majority of the river flow back to the main western stem. Proposal is to excavate materials in April as soon as conditions allow and before high water.



### Concerns

- The two Burma road bridges were not designed for the amount of flow projected for this spring. Last spring's high water event tested the infrastructure and downstream banks and an electric pole had to be moved back from a failing bank.
- Excessive high water will overwhelm an irrigation diversion and increases the risk of a channel avulsion that could threaten ag land
- MFWP Fishing access site was nearly dry last fall. Big problems for anglers

### Needs

- We are looking to piece together contributions to pay for contractor costs to remove this plug within the next two months, before high water begins
- Tax-deductible donations can be made to the BHWC
- Total estimated costs of construction are \$75,000.00

### Support

- Project has support from all downstream landowners; two counties; and MFWP
- 310 permits have been secured
- High resolution drone imagery has been contracted to provide construction estimate



**Water Right and Pesticide Applicator Training**  
**March 4<sup>th</sup>**  
**Community Building**  
**Wisdom, MT**  
**1:00-5:00 p.m.**

**1:00 – 3:00**

HB 110 Exempt Water Right Training

Presenter: Myles VanHemelryck – Montana DNRC

If you received a notice about the filing period for HB 110 and you have not filed (deadline June 30, 2019), Montana DNRC will be putting on an informational presentation on preserving your water rights pre-1973 stock and domestic uses that were not previously filed with DNRC. Myles VanHemelryck, a long time family farmer/ rancher and current DNRC employee, will explain what HB 110 is about, who is eligible to file, and how to file on exempt water right claims. Following the presentation, there is opportunity for attendees to ask how and when to file on their exempt water right claims.

**3:00 – 4:00**

How Water Quality Affects Herbicide Performance

Presenter: Clint Saunders – Nutrien Sales Specialist

This presentation will cover how water quality such as pH, hardness, dissolved solids affect herbicide performance. Clint will also cover measures that can be taken to mitigate problems associated with water quality including additives that are available and how they can be used in a tank mix.

**4:00 – 5:00**

All About Annual Grasses

Presenter: Noelle Orloff – Associate Extension Specialist

Exotic annual grasses are an increasing concern for land managers in Montana. In this session, we will emphasize how to identify invasive annual grasses that are relatively new to Montana including ventenata and medusahead. We will also discuss impacts of these types of grasses to agricultural operations. Finally, we will cover some options for prevention and management of these plants.

**Please RSVP to the Extension Office at 406-683-3785**

**1-2 Private Applicator Credits Available!**