



Printable version: Thursday, February 8, 2007

5. WATER: Montana takes Yellowstone River allocation dispute to Supreme Court

Arthur O'Donnell, *Land Letter* editor

Fed up with having its requests ignored for a full allocation of water under a 1950 agreement, Montana officials this week petitioned the U.S. Supreme Court to intervene in its dispute with the state of Wyoming. At issue are water supplies from the Tongue and Powder rivers, which are shared by the two states as part of the Yellowstone River Compact, signed along with North Dakota 57 years ago.

Though named as a defendant because it was part of the original water deal, North Dakota is not directly involved and Montana seeks no relief from it.

The two rivers are tributaries of the Yellowstone River that have been severely depleted by continuing drought conditions in recent years. Montana alleges that Wyoming diverted more water than would be allowed under the agreement and refused to free up supplies so that Montana could access a minimum amount of water specified by the deal.



The Yellowstone River Basin, with key tributaries that provide disputed water supplies for Montana and Wyoming. Map courtesy of USGS.

"Montana is faced with an upstream neighbor that denies it has any obligations to supply water to Montana," charged state Attorney General Mike McGrath (D) when he announced the suit Feb. 1. "The dispute directly affects the amount of water Montana receives."

According to the complaint, Wyoming since 1950 has increased its amount of reservoir storage by 216,000 acre-feet in the Powder River Basin and by 9,400 acre-feet in the Tongue River Basin while allowing more water to be diverted for agricultural irrigation and for use by tens of thousands of coalbed methane wells in the area.

"Wyoming refuses to curtail consumption of the waters" of the Tongue and Powder rivers in excess of its allocations and "has depleted and is further threatening to deplete the waters," stated Montana in its complaint. The state also said it has no adequate remedy under the law to enforce its rights, except by asking the court to affirm its rights and command Wyoming to deliver water in accordance with the terms of the compact. Montana officials also requested damages, plus interest, stemming from the alleged violations.

While Wyoming has 60 days to file a formal response, its Gov. Dave Freudenthal (D) immediately responded by saying the state has "strictly honored" the compact.

"Since 2004, Montana has been agitating for a fight," Freudenthal said. "I guess they finally threw the first

punch. I am confident that Wyoming will prevail on this claim, but I am disappointed that Wyoming will be forced to expend millions of dollars to defend a claim that has no merit. These lawsuits drag out for years and consume vast resources and rarely result in any significant shift of water rights."

"The last time I checked we were more than competent to administer our own laws and problems without any help or guidance from Montana," the governor continued. "I am perplexed why Montana officials have spent so much time and energy since 2003 poking Wyoming in the eye. We will vigorously defend our water rights and our sovereign interests to control our own destiny."