

LANDER CREEK - INSTREAM FLOW SEGMENT NO. 1
RECORD OF DECISION

THE RECORD

1. The State Engineer's Office received this application on August 25, 1997, and assigned it T.F. No. 29 6/237. A complete and properly prepared map along with supporting documentation have been filed and included in the record.
2. Pursuant to W.S. 41-3-1006(d), notices of a public hearing before the State Engineer, required prior to final consideration of the application, were published for two consecutive weeks in the Kemmerer Gazette on April 8 and 15, 1999. The Affidavits of Publication are filed with the hearing transcript in the State Engineer's Instream Flow File under Permit No. 14 IF.
3. The State Engineer held a public hearing as required by W.S. 41-3-1006(e). The hearing transcript (Before The State Engineer Of The State Of Wyoming, In The Matter Of The Application Under Temporary Filing Number 29 6/237, Lander Creek Instream Flow Segment No. 1) was prepared from the hearing held at the Council Room in the Town Hall in Cokeville, Wyoming at 9:00 a.m. April 27, 1999. Comments offered at the hearing were generally inquisitive about the nature and impact of an instream flow water right for this segment. Some comments were in support of this instream flow proposal, and others evidenced concern about how this right could preclude future upstream development or use. The attendance list and transcript are filed in the State Engineer's Instream Flow File for Permit No. 14 IF. The Record of Decision is filed in the Instream Flow File under this permit. All fees and costs associated with the application and hearing have been properly paid.
4. The State Engineer accepted written comment letters for a period extended 60 days beyond the public hearing. The following comment letters were received and included in the record of the hearing:
 - (1) Game and Fish Department, Mike Stone, Chief of Fisheries, May 25, 1999; supporting.
 - (2) Wyoming Outdoor Council, Dan Heilig, Executive Director, June 10, 1999; supporting
5. Reports and other documents were also submitted to the State Engineer as required or suggested in W.S. 41-3-1003, 41-3-1004, and 41-3-1006(e), and made a part of the record, including the following:
 - (1) "Wyoming Game And Fish Department, Fish Division, Administrative Report, Instream Flow Studies on Lander Creek, a Bonneville Cutthroat Trout (*Oncorhynchus clarki utah*) Stream, March 1997."
 - (2) "Report on the Feasibility of Providing Instream Flows in the Smith's Fork Drainage", Wyoming Water Development Commission, June 1998.
 - (3) Letter of further input on Smith's Fork Drainage Instream Flow Study from The Wyoming Water Development Commission; April 6, 1998.
 - (3) Letter detailing comments on draft instream flow feasibility reports for streams in the Smith's Fork Drainage, Mike Stone, Chief of Fisheries, May 21, 1998.

DISCUSSION

The following discussion is presented as a result of full consideration of the above documents together with taking notice of all data, records, and information on file and of record in the State Engineer's Office:

Fishery Information

The Wyoming Game and Fish Department has distinguished the Lander Creek Instream Flow Segment No. 1 as having statewide importance because it is one of the critical Bear River tributaries which provides habitat to genetically pure Bonneville cutthroat trout. A Habitat Retention Model was used to establish a maintenance flow of 1.1 cfs for all trout life stages during the entire year.

Hydrology Information

1. A synthesized hydrologic study was conducted for the entire Smith's Fork drainage to determine if the Instream Flow requests could be met from unappropriated flows. Flows measured at the bottom end of the Lander Creek segment were related to gage readings from USGS Gage No. 10032000 to produce average monthly flows and daily exceedance values.

| <u>MONTH</u> | <u>AVERAGE YEAR, CFS</u> | <u>DRIEST YEAR, CFS</u> |
|--------------|--------------------------|-------------------------|
| Oct | 1.19 | 0.66 |
| Nov | 1.02 | 0.66 |
| Dec | 0.90 | 0.67 |
| Jan | 0.75 | 0.62 |
| Feb | 0.66 | 0.53 |
| Mar | 0.68 | 0.56 |
| Apr | 1.91 | 0.95 |
| May | 17.65 | 3.30 |
| Jun | 12.49 | 1.94 |
| Jul | 3.83 | 0.81 |
| Aug | 2.01 | 0.73 |
| Sep | 1.41 | 0.68 |

2. The Water Development Commission report required by W.S. 40-3-1004(a) indicates that no water rights lie within the Lander Creek Instream Flow Segment No. 1. The segment does not impinge on the storage area or high water line of any reservoir application on file in the State Engineer's Office.

3. The WWDC study concluded that adequate flows are available in Lander Creek to meet flow requests from April through December. All other flow requests had to be reduced to reflect reasonable unappropriated flows as determined by the State Engineer.

4. Unappropriated water is available for beneficial use for non-consumptive instream flow purposes. The existing fishery can be maintained thus meeting the criteria of W.S. 41-3-1001(b) and (d), and 41-3-1006(e).

5. There are no intervening record points of diversion within this segment as shown on the map accompanying this application. There are no intervening points of storage within this segment. There are no intervening tributaries that enter Lander Creek between the point of beginning and end of the segment.

Compact Information and Development Potential

Lander Creek lies within the Central Division of the Bear River Compact. Lander Creek is not considered part of the divertible flow when water emergency regulation is in place. Because the instream flow has no consumptive use of the water, the permitted amounts will not count against

Wyoming's apportionment of consumptive use as described in the Amended Bear River Compact of 1978. The following points apply specifically to this instream flow request:

1. There are currently no active plans (nor applications or permits on file with the Wyoming State Engineer) to develop or construct any new water supply facilities within the Lander Creek drainage. WWDC reports this segment does not conflict with any existing or proposed water development plans.

2. While further development of water in Lander Creek is hydrologically possible within the context of the Bear River Compact, this drainage flows exclusively within federal land. It is concluded that this filing will not affect existing downstream water rights or diminish the ability to consumptively use water under the Bear River Compact.

Storage Feasibility

During the average year, 1902.67 acre-feet are available for storage to help supplement winter flow requests. The Wyoming Game and Fish Department did not request stored water to supplement the natural flow, and the Wyoming Water Development Commission's report did not indicate storage was feasible.

CONCLUSIONS, ORDER, AND LIMITATIONS

1. This permit is granted for the natural flows:

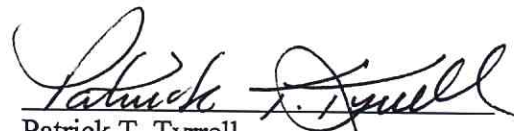
October through December – up to 1.1 cfs
January – up to 0.90 cfs
February through March – up to 0.80 cfs
April through September – up to 1.1 cfs

for instream flow purposes throughout the 0.4 mile stream segment of Lander Creek beginning at the confluence with North Fork Lander Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, T29N, R117W, and ending at the confluence with Smith's Fork in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 19, T29N, R117 W.

2. The Wyoming Game and Fish Department shall construct any measuring devices which will be necessary for the administration of this instream flow appropriation as may be ordered by the State Engineer, (W.S. 41-3-1003(a)).

3. This permit is subordinate to junior priority permits for Stock Watering uses (20 acre-feet or less, each or 0.056 cubic feet of water per second of time or less) and Domestic uses (25 gallons per minute or less, each) of water from Lander Creek and streams upstream of the Instream Flow Segment, as such uses may be permitted by the State Engineer in the future.

4. Notices of commencement and completion are waived in accordance with W.S. 41-3-1006(f). Beneficial use shall be deemed to be completed 30 days after permit approval as provided by W.S. 41-3-1006(f). Final proof of appropriation shall not be submitted until three years after completion of beneficial use.


Patrick T. Tyrrell
STATE ENGINEER

December 1, 2003

