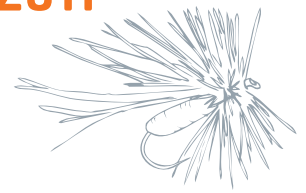


TROUT LINE

Fall
2011



Newsletter from the Montana Council of Trout Unlimited

High Court Tackles Riverbed Ownership Debate

by Bruce Farling

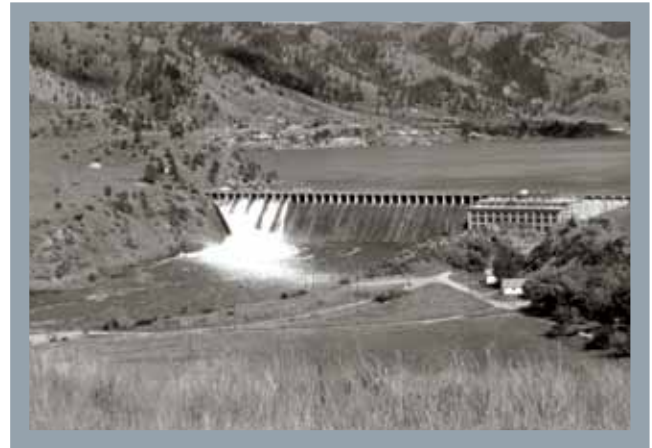
Montana TU weighs in on PPL v. Montana

Many people are asking us: What's the deal with PPL's lawsuit challenging Montana's long-claimed ownership to the beds of the state's major rivers? The answer isn't simple.

Certainly the outcome of PPL v. Montana, which the U.S. Supreme Court is now reviewing, could radically alter long-standing legal determinations of who owns riverbeds. And that could be bad for the public. Thankfully, it shouldn't affect recreational stream access in Montana. Our stream access law, unlike in other states, is not predicated on ownership of riverbeds. Recreationists in Montana can travel up and down any natural stream, irrespective of who owns the bed, as long as the waterbody is capable of

supporting recreation and the public stays within the normal high-water mark. Nonetheless, a decision that results in riverbeds being transferred from the state to other interests, such as private corporations, could reduce protection of rivers, create a confusing mish-mash of segment-by-segment river management, trigger waves of future litigation over ownership, and reduce much needed income to the State.

For these reasons, and because an adverse high court ruling could also reduce recreational access in many other states, Montana TU and the Oregon Council of TU, along with



Holter Dam on the Missouri River

other conservation and sporting groups, recently signed on to an amicus brief that has been submitted to the high court in defense of the State of Montana's legal position. The crack

See *PPL v. MONTANA*, page 7

FWP Adopts Sensible Regs for Missoula-area Rivers

by Staff

In October the Montana Fish, Wildlife and Parks Commission approved regulations that reduce or eliminate motorized use on the Bitterroot and Clark Fork Rivers, as well as at the confluence of the Blackfoot and Clark Fork. The regulations are the culmination of an organizing effort Montana TU started around a year ago seeking pro-active solutions for stemming the growth of inappropriate motorized use on these reaches.

In recent years, especially since the Parks Division of Montana FWP constructed a hardened access site with trailer parking at Kona Bridge, about four miles below the confluence of the Clark Fork and Bitterroot Rivers, powerboat and

jet ski use has increased dramatically, creating recreational conflicts and posing hazards to floaters, swimmers and wade-anglers. Jet boats were



Jet Boat on Bitterroot River

observed racing up side-channels where site lines are limited, jet skis were zooming by anglers and on several occasions both craft were spotted on the river in downtown Missoula, and in one case jet boat enthusiasts (with beers but no PFDs) were observed "surfing" the artificial whitewater wave constructed for kayakers next to Caras Park.

When FWP proposed another much larger development six miles below Kona Bridge at Harper's Bridge (across from an existing access site), we became concerned it would accommodate even more motorized use, exacerbating a growing problem.

See *MOTORS*, page 6

THIS ISSUE:

PPL v. Montana
Page 1

Yellowstone Cutts
Page 3

CFR Boating Rules
Page 1

Chapter Updates
Page 4

Montana TU's mission is to conserve, protect and restore Montana's world-class coldwater fisheries and their watersheds.

www.montanatu.org

TROUT LINE is published for the enjoyment and education of everyone concerned about Montana's coldwater resources.

EDITING AND DESIGN.....BRUCE FARLING
MICHAEL GIBSON
& KATE GRANT



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Montana Trout Unlimited was at its best in 2011. We successfully defeated a legislative attack on our stream access law, defended the state's wild trout tradition by beating back attempts to legitimize invasive walleyes in the Missouri River, affirmed the public's legal standing in water rights adjudication and led an effort that preserves opportunities for quiet enjoyment of key western Montana waterways. Among many other things. Montana TU staff and volunteers, however, are not dwelling on past accomplishments.

We are looking forward, planning new restoration and outreach projects, while also bolstering our ability to promote progressive fishery and water policy. We spend a lot of time and resources doing this work.

Many things motivate TU activists. Let me introduce the two people who motivate me, Andrew and Isabelle Short, my grandchildren. At the advanced age of 3 years, Andrew has exactly one day of fishing with his grampa under his belt. His rod sits in my rod rack. It's the one with the red and yellow opaque handle and crazy light that blinks when you push the button to let out the line. Isabelle is not yet two. She has to wait a year to

Keeping Faith



Dan Short, Montana TU Chairman

get her first rod, but she did join her brother on his fishing trip last summer. We didn't catch fish, but we chased grasshoppers and saw a turtle and some ducks. And that was just fine.

I believe TU has a responsibility to ensure that kids like Andrew and Isabelle have the same opportunities to enjoy the outdoor traditions many of us have long enjoyed. Our mission to protect, reconnect, restore and sustain the resources that we hold dear is crucial to keeping faith with future generations. When you support Montana TU – as I urge you to in 2012 -- you provide gifts of clean water, free flowing streams and beautiful trout for tomorrow's kids. Thank you for your involvement and support. Best wishes for a safe and healthy holiday season and 2012.

Dan

The Center for Aquatic Nuisance Species is now the Invasive Species Action Network!

ISAN is a non-profit group that started the Clean Angling Coalition and offers outreach programs on aquatic nuisance species (ANS) for groups throughout Montana. ISAN works to reduce and eliminate the spread of ANS through research, education and policy development. Montana TU encourages our members to stay informed on ANS issues through Clean Angling News, a handy electronic information source. To subscribe, visit www.cleanangling.org or call ISAN's headquarters in Livingston, MT at 406-222-7270.



Project Tracks Macks in Yellowstone Lake



Yellowstone Lake

In August, researchers at Yellowstone Lake kicked off an important project aimed at tracking the movement of invasive lake trout. Data gathered will aid in identifying spawning locations as well as other areas lake trout concentrate. This information will be used to increase the efficiency of gillnetting efforts that are aimed at reducing the highly predacious macks. The Park Service and TU hope the population can be reduced enough to significantly decrease predation on native cutthroats, which have been reduced to a tiny fraction of their historical numbers. The other benefit of identifying spawning sites is that it will help the park and researchers pinpoint where best to apply additional technologies that might be developed for reducing spawning activity or destroying eggs.

Designed and supervised by Bozeman U.S.G.S biologist Bob Gresswell, the project will implant sonic tags in at least 140 – and perhaps up to 300 – lake trout. The fish are then tracked by downloading data from remote recorders distributed around the

lake on buoys. Radio telemetry projects have also been employed in other lakes in the region where biologists are removing lake trout to benefit native fish, such as at Quartz Lake in Glacier National Park and Swan Lake.

Project funding has come from a number of sources, including the Wyoming and Montana Councils of TU. Especially significant have been the contributions of the East Yellowstone Chapter of TU, which results from the dogged efforts of Dave Sweet, the former Wyoming Council chairman from Cody. Also contributing are the Greater Yellowstone Coalition and National Parks and Conservation Association. The effort is just one of a number of potential native fish conservation efforts Montana TU anticipates could spin from an unprecedented formal cooperative agreement GYC, NPCA and three TU state councils as well as TU national are finalizing with the Park Service.

Contact Bruce Farling at bruce@montanatu.org.

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Big Blackfoot Chapter

The chapter is pushing for responsible cleanup and restoration of the upper Blackfoot River, and helped Montana TU provide detailed comments to the State and Forest Service for siting a repository to accommodate wastes from the Mike Horse mining area. See “Mike Horse Dam Repository” on the Recent Correspondence page under Issues & Projects at montanatu.org. Project Coordinator Ryen Aasheim Neudecker is monitoring and assessing many of BBCTU’s restoration projects completed over the last 30 years, including recent culvert replacements and road decommissioning work. Contact ryen@montanatu.org.

Bitterroot Chapter

For the second consecutive year, BRTU helped fund a summer fisheries biology intern at the USFS West Fork Ranger Station. At its annual banquet, the chapter recognized Don Mabry with a “Golden Trout” award for conservation



Fencing Project on the Burnt Fork of the Bitterroot

work, while the Bitterroot Buggers youth group recognized Bob DeYoung for his outstanding volunteer contributions. BRTU is helping fund a riparian restoration project on the Bitterroot’s Burnt Fork. Contact Cassie Buhl at cassie.buhl@gmail.com.

Flathead Valley Chapter

The chapter purchased the Flathead Valley’s fifth Trout in the Classroom aquarium this year, and sponsored a premiere showing of the Jewel in The Crown, an historical film that explores challenges facing bull trout as well as the critical actions needed to ensure its survival in the Flathead region. FVTU supports Montana FWP’s Swan Lake Embryo Electrofishing Project, a 3-year study testing an alternative technique for suppressing lake trout populations. General meetings are the 3rd Tuesday of each month, 7 p.m. in the FWP Region 1 conference room, 460 N. Meridian in Kalispell. Contact Chris Schustrom at chris@gardenwallinn.com.

George Grant Chapter

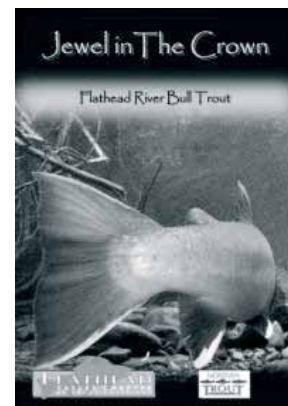
GGTU hosts Montana TU’s 12/3/11 State Council meeting at Fairmont Hot Springs. The Chapter works on upper Clark Fork restoration projects, Big Hole and Beaverhead recreation

management issues and drought management for the Jefferson and Big Hole Rivers. Contact Bob Olson at robolson@bresnan.net.

Joe Brooks Chapter

Undeterred by freezing temps and 5” of snow, over 50 volunteers removed 3,500 pounds of

debris from the Yellowstone River during the Chapter’s Annual Clean Up this fall. The chapter is working with the Future Farmers of America on weed control in the Livingston area and is staying active with ongoing projects that improve Fleshman Creek. The



chapter co-hosted a fishing camp for kids with the Invasive Species Action Network this summer. Volunteers helped TU’s Montana Water Project negotiate with Mill Creek irrigators to leave water in-stream for fish. Chapter leaders are discussing with the City of Livingston how to respond to flows that were modified in a downtown park when the Yellowstone River shifted. Contact Sharon Sweeny Fee at ssfee123@yahoo.com.

Lewis & Clark Chapter

The chapter finished a project with irrigators to keep water in Indian Creek, near Sheridan, where a stretch has been chronically dry. The chapter is seeking more member participation to expand into additional projects in area waters, including the Beaverhead, Big Hole, Madison, Jefferson and Ruby Rivers. Contact Bill Fraser at bfraser@3rivers.net.

Madison-Gallatin Chapter

TU’s Bozeman-area chapter helped organize a fish rescue in late summer and sponsored a clean up of the lower Madison River in September. Mark Peterson is MGTU’s new president, replacing Travis Morris, who served dutifully for two terms. General meetings are the second Wednesday of each month, 7 p.m., at the Holiday Inn in Bozeman. Plans are underway for MGTU’s 40th Annual Banquet on 12/25/12 at Bozeman’s GranTree Inn. Contact Travis at mgtroutunlimited@gmail.com.

Magic City Fly Fishers

MCFF hosted a kids fishing camp at the Rocky Mountain College in Billings last summer. All 20 campers caught trout on flies they made themselves. The chapter remains watchful of agency management affecting Bighorn River flows. With fall beginner fly tying classes and after-school programs underway, MCFF is focusing on its annual Fly Fishing Expo, 2/25/12 at the Holiday Inn in Billings. The free event, from 8:30 a.m. to 4 p.m., features keynote speaker Charlie Craven, fly fishing seminars and programs. Activities include casting instruction, fly tying demos and workshops, kid's events, contests and raffle prizes. The banquet and auction starts 5 p.m. at the same location. Banquet tickets are \$40. Live and silent auction items include guided fishing trips, art, rods, reels, flies and gear. There also will be a boat raffle. General meetings are held on the first Tuesday of each month, September through June, 6:30 p.m. at the Billings Rod & Gun Club, 2931 Rod & Gun Club Rd. in Billings. Contact Kit Seaton at 248-4238 or Lyle Courtnage at 896-1824.

Missouri River Flyfishers

MRF held a Carp Rodeo and BBQ on the Missouri River in August, and hosted the Great Falls premier of the fly-fishing film, Connect, in November. The group currently funds restoration work on the Sterling Ranch and provides financial support for Montana TU, Project Healing Waters and the Sun River Watershed Group. MRF volunteers are raising funds to bring a 6-hole fly casting course to Great Falls' West Bank Park. They are also planning their 30th Annual Fishing Banquet 2/25/12 at the Heritage Inn in Great Falls. Contact Sam Wike at samw@csww.net.



Westslope Cutthroat

Joe Tomelleri

Pat Barnes Missouri River Chapter

Thanks to volunteer coordinator Chris Hunter, TU's Helena-based chapter has set up 10 schools with Trout in the Classroom projects. Chapter members are strong supporters of the Montana Healing Waters Project, and took veterans on a Smith River float this summer. The chapter's annual banquet will be 2/25/12. Details will be forthcoming. Contact Garrett Fawaz at noclearline@hotmail.com.

Snowy Mountain Chapter

Much of the chapter's work involves protecting and restoring Big Spring Creek in Lewistown. Members are fundraising for the Machler Project, an endeavor to restore a channelized section of the creek. They are also responding to issues involving PCB contaminants in the creek bed, proposed riprap projects and preventing the City of Lewistown from draining an upstream reservoir. The chapter is using grant funds to help reintroduce westslope cutthroats to Chicago Gulch, at the eastern edge of the species' historical range. Contact Mike Chapman at bmchap@midrivers.com.

West Slope Chapter

Chapter members were very helpful in aiding Montana TU's efforts prodding changes for motorized use on Missoula-area waters this year. Several volunteers helped the Rattlesnake Creek Watershed Group during its planting and clean up days; other volunteers helped national TU staff last summer on projects benefitting Clark Fork River tributaries. The chapter continues to support the Watershed Education Network, an organization that connects kids to aquatic ecosystems. The chapter's annual banquet fundraiser will take place 2/25/12 at Missoula's Hilton Garden Inn. Contact Carey Schmidt at careyschmidt@msn.com.

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MOTORS (from page 1)

So last winter Montana TU, consulting with other groups, developed proposed regulations for the lower Bitterroot, Clark Fork above Alberton Gorge and the confluence-area once occupied by Milltown Reservoir. We recommended ratcheting down on motorized use, but also tried to accommodate traditional motorized use that supports fall waterfowl hunting on the lower Bitterroot and Clark Fork Rivers.



Opponents of restricting motorized use on Missoula area rivers included this organization.

We circulated our recommendations among landowners, recreationists and other conservation groups. The reception was very positive. In response, FWP staff in Missoula developed its own proposal, which was weaker than ours but an improvement from the status quo.

After FWP developed an environmental analysis, held a public meeting and instituted a lengthy public comment period, the commission adopted new regulations in October. They are stronger than what FWP staff proposed and more in line with Montana TU's ideas. Here's the result:

- Personal watercraft (jet skis and waverunners) are now illegal upstream of Fish Creek on the Clark Fork and its tributaries.
- The Clark Fork above Kelly Island (the confluence with the Bitterroot) to its headwaters, as well as the Blackfoot River, is now closed to ALL motorized use (except, of course, emergency use by first responders).

- The Bitterroot River will no longer have a spring opening for unrestricted motorized use, but will maintain a fall season (from October 1-January 15) for watercraft powered by 20 horsepower or smaller engines.

- The urban reach of the Clark Fork, which is popular with floaters, swimmers and canoeists, from Kelly Island to Harper's Bridge is closed to all motorized use, except from May 1 to June 15, when it will be open to unrestricted motorized use (minus personal watercraft).

- The Clark Fork from Harper's Bridge to above the Alberton Gorge (which is currently closed to motors down to Fish Creek) will have a 20 horsepower or smaller restriction from June 15 to

October 1.

The regulations strike a good balance, allowing responsible motorized use on appropriate reaches and during periods when conflicts can be minimized. One slight drawback is that a handful of river users, who used powerboats thoughtfully for fishing and with regard for other users, will now be somewhat restricted. Their traditional use has essentially been hijacked by the thoughtless behavior of a growing group of irresponsible thrillcraft enthusiasts.

The Clark Fork Coalition, Hellgate Hunters and Anglers, Backcountry Hunters and Anglers association, local fishing guides, riverside landowners and a many unaffiliated recreationists, deserve thanks for supporting responsible river use. The Montana Fish, Wildlife and Parks Commission deserves a big thank you for its forward-thinking approach to minimizing conflicts on rivers.

For more information, contact Michael Gibson at michael@montanatu.org.

Montana Loses River Champion

Don Williams was lifetime advocate for Yellowstone River by Kerry Fee



Don Williams

Yellowstone-area TU members lost a great friend this last summer when Don Williams passed away. Don was a guide and outfitter for over 50 years, mainly in Park County. Don was born, raised and lived in Park County for his entire 75 years. Although many knew him as a great fishing and hunting guide, I knew him as a conservationist and a good friend.

Don was a member of the Joe Brooks chapter of TU (JBTU) for over 25 years, many of those years as a board member. Don was always available to help the chapter. His love for the Yellowstone ran as deep as the river. He worked hard all his life to uphold the mission of JBTU: Conserve, protect and restore the Yellowstone River and its tributaries.

JBTU will be renaming its annual award for member of the year in honor of Don. We will miss Don Williams, but he will always be with us, especially when we are on the Yellowstone.

Kerry Fee is past president of TU's Joe Brooks Chapter.

PPL v. MONTANA (from page 1)

legal team from TU's Montana Water Project contributed to this effort on our behalf.

Here are the arguments in a nutshell. Montana claims the State owns about 3,000 miles of riverbed because they meet the long-standing federal test for title, which is that these rivers were actually or potentially navigable for commercial purposes at the time of statehood. This includes

most major rivers in the state, such as the Missouri, Clark Fork and Yellowstone Rivers. In 2003, several citizens sued in Montana district court claiming that PPL, Avista and PacifiCorp, the three private utilities with dams on navigable rivers in Montana, owed the state millions of dollars in back rent because the companies' dams had been occupying state trust lands (the river bed). In 2004, the State of Montana intervened. Eventually a Montana district court and the Supreme Court ruled in favor of the plaintiffs. Avista and PacifiCorp decided not pursue the case and settled with the State. PPL, however, asked the U.S. Supreme Court to review the findings of Montana's high court, which, among other things, said PPL owes the State \$41 million in past rent as well as future rent for dams on the Missouri, Madison and Clark Fork

Rivers.

The U.S. Supreme Court surprisingly agreed to review the case. PPL claims that the segments of the rivers their dams occupy have never been navigable for commercial purposes, and therefore the beds are not owned by the state. The company claims that rapids and falls in these reaches made the rivers not navigable. The state, rightfully, counters that just because a natural impediment occurs

"If PPL prevails, Montana DNRC says it could jeopardize state ownership of several thousand miles of public river in Montana."

for commercial purposes, and therefore the beds are not owned by the state. The company claims



Recreation on the Lower Clark Fork River

Amy Jimmerson photo

in a short segment of river, it never rendered the river non-navigable for commerce. Historical commercial users of these rivers, such as trappers using canoes and loggers who ran log drives, would simply portage around the impediment, or build a flume along it, enabling further travel on the

river or the ability to move a product downstream. The natural impediments didn't stop commerce on a river. They simply interrupted it briefly

If PPL prevails, Montana DNRC says it could jeopardize state ownership of several thousand miles of public river in Montana. This would reduce the ability of the state to protect streams, such as in cases where pipelines cross channels. It could also mean the State doesn't recover the \$41 million, which it plans to use to purchase former Plum Creek lands – tracts that badly need watershed restoration – that have been

part of the Montana Legacy lands project. Importantly, if the court agrees with PPL's arguments, it would result in years of litigation challenging titles to other river segments. We'd end up with complex checkerboard ownership and management of river channels. For TU members in many other states, PPL prevailing would mean the public could have significantly reduced opportunities for recreational access. For this and other reasons, more than 20 state attorneys general have become friends of the court on behalf of

Montana.

The Supreme Court is expected to rule on the case in 2012.

For more information, contact Bruce Farling at bruce@montanatu.org or Laura Ziemer at lziemer@tu.org.



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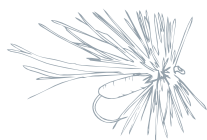
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TROUT LINE Fall 2011

UPCOMING EVENTS

12/3 **Montana TU State Council Meeting**
9:30 a.m. to 4 p.m. at Fairmont Hot Springs Resort, between Butte & Anaconda, exit 211 off I-90. Hosted by George Grant TU. Lunch provided. RSVP to kate@montanatu.org.

12/14 **Madison-Gallatin TU Christmas Party**
& movie night, 7 p.m. at the Holiday Inn, 5 E. Baxter in Bozeman. Contact Travis at mgtroutunlimited@gmail.com.

12/20 **Flathead Valley TU Christmas Social**
and 4th Annual Fly Swap, 7 p.m. at FWP, 490 N. Meridian Rd., Kalispell. Contact flatheadtu@gmail.com for fly swap details.

2/18/12 **Madison-Gallatin TU 40th Annual Banquet**
at the Best Western GranTree Inn, 1325 N. 7th Ave. in Bozeman. Cocktails & hors d'oeuvres at 5 p.m. with raffles, silent auction, dinner & live auction to follow. Contact Travis at mgtroutunlimited@gmail.com.

2/25/12 **MCFF Fly Fishing Expo**
Free workshops, programs, demos & more with the Magic City Fly Fishers, 8:30 a.m. to 4 p.m. at the Grand Montana Holiday Inn, 5500 Midland Rd. in Billings. Details on p. 4.

2/25/12 **Magic City Fly Fishers Banquet**
5-9 p.m. at the Grand Montana Holiday Inn, 5500 Midland Rd. in Billings. Auction items include fishing trips, art, rods, reels & gear. Grand prize: Boat raffle! Contact Lyle at lyle.courtneage@gmail.com.

2/25/12 **Pat Barnes-Missouri River TU Banquet**
6 p.m. at the Gateway Center, 1710 National Ave. in Helena. Dinner, raffles, live & silent auction & a lot of fun! Contact Garrett at noclearline@hotmail.com.

2/25/12 **Westslope TU Annual Banquet**
Sat. eve. at the Hilton Garden Inn, 3720 N. Reserve St. in Missoula. Live & silent auctions, raffles, drinks, dinner & more. Tickets on sale in Missoula fly shops starting January 2012. Contact Layne at llvfish@bresnan.net.

2/25/12 **Missouri River Flyfishers 30th Annual Banquet**
at the Best Western Heritage Inn, 1700 Fox Farm Rd. in Great Falls. Dinner, raffles, the "infamous duck pond," silent auction & live art auction. Contact Sam at samw@csww.net.

WANT OVER 3,400 MONTANA TU MEMBERS TO HEAR ABOUT YOUR EVENT?

Contact Montana TU at 888-504-0054 or kate@montanatu.org to get the word out in Trout Line

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