

## **Testimony on H.R. 2202**

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**Committee on Resources**  
**Subcommittee on Water and Power**

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Good afternoon Mr. Chairman and Members of the Subcommittee, my name is Liz Birnbaum. I am the Director of Government Affairs for American Rivers. I want to thank you for the opportunity to testify here today. American Rivers, a national river conservation organization with over 30,000 members, strongly opposes H.R. 2202, the Lower Yellowstone Reclamation Projects Conveyance Act, as currently drafted.

Our organization has concerns about several aspects of this and other Reclamation title transfer initiatives – a concern dating from at least 1996, when we endorsed the statement of principles for Reclamation project transfers developed by several environmental organizations, which is attached to my testimony. Today I will confine my comments to language found under the heading *Yellowstone River Fisheries Protection*, Section 5 of H.R. 2202.

Unfortunately, Section 5 is wholly inadequate for the stated purpose of protecting the native fishes of the Yellowstone River. As currently written, this section virtually assures that no meaningful progress will be made on fish passage and entrainment issues at Intake Diversion Dam. Specifically, the failure to identify a time horizon for completing the much needed fish protection and passage devices, and the lack of clearly delineated responsibilities with regard to funding and construction of the devices render the provision toothless and futile.

Addressing the effects of the operation of the Lower Yellowstone Reclamation Projects on endangered species other native species in the basin is the linchpin in recovering and maintaining these species. Failure to deal with the projects' impacts at this time will only result in further species listings and more onerous burdens for irrigators in these districts and throughout the Yellowstone Basin. Allowing this legislation to move forward with these omissions would be an egregious disservice to the people of Montana, the irrigation districts involved, State and Federal agencies and all those who care about native fishes and the Yellowstone River.

### **Geographic and Ecologic Background**

Intake Diversion Dam, constructed by the Reclamation Service around 1908, supplies the water for the four irrigation districts involved in this transfer. The dam is the lowermost of six low-head irrigation diversion dams on the Yellowstone River between Billings, Montana and its confluence with the Missouri River near the North Dakota border.

Fish passage and protection is a concern at all of the dams, but it is especially important at Intake. The lower reaches of the Yellowstone contain the best remaining habitat for species such as the federally endangered pallid sturgeon, sicklefin chub and sturgeon chub, both candidates for listing, and several species of concern for the State of Montana such as the paddlefish and sauger. The impediment this dam presents to spawning migrations for these and other native species is inexorably pushing the pallid sturgeon toward extirpation and will likely lead to the listing of other species.

Fish passage at Intake would reopen nearly 140 miles of historic spawning areas for the pallid sturgeon. That improvement, combined with efforts underway at upstream dams on the Yellowstone and important tributaries, could allow this ancient species to access nearly all of its historic range in the Yellowstone.

In addition to fish passage facilities, installation of fish screens to prevent entrainment of adult and juvenile fish is equally important to the recovery of pallids and stopping the decline of other native fishes. Studies by the Bureau of Reclamation estimate that 70,000 sturgeon chub per year are killed by entrainment in the main canal, and 100,000 sauger were destroyed in the canal in 1998. In total, their studies show that between 500,000 and 1,000,000 fish per year are pulled into the irrigation canal under current conditions, affecting recruitment of many native species in addition to those already listed.

Improvements at Intake Diversion Dam, in concert with other fish passage and protection initiatives in the basin, are by far the best chance we have to recover listed species and preclude the listing of more species.

### **Problems with H.R. 2202**

Section 5 requires that the Secretary of the Interior “shall provide” fish protection devices, with the proviso that “The Secretary and irrigation districts shall work cooperatively in planning, engineering, and constructing the fish protection devices.” The provision does not state when the devices should be constructed, or whether fish passage must precede project transfer. In addition, this language does not specify a funding source for the necessary devices, authorize appropriations, or address the question of reimbursability. One might infer from this language that funding for the projects will be the responsibility of the federal government, yet the question of reimbursability has been a key issue in the failed negotiations over this project transfer. If the issue is not resolved in this legislation, this problem, combined with the bill’s failure to state a deadline or divide responsibilities between the Secretary and the districts, may well lead to an indefinite delay in construction of the necessary facilities.

This issue is too important to be left to the vagaries of future appropriations processes after the facilities have been transferred into private hands. After transfer, Reclamation would have little incentive to fund this \$5-10 million obligation out of its declining budgets. Other federally owned projects would likely receive priority and the problems at Lower Yellowstone would go unaddressed.

The importance of these matters to the economic and ecologic well being of the Yellowstone Basin cannot be overemphasized. It is imperative that fish passage and protection devices be installed and proven to work, and an accepted plan for operation, maintenance and necessary future modifications of the devices be in place before transferring these facilities. To do anything less is to set up the citizens of the basin for increased future conflict and diminished natural values. The problem will only get worse if it is not resolved now.

**Conclusion**

We urge that the Subcommittee amend H.R. 2202 to ensure that fish passage devices be constructed and tested before the projects are transferred to the local beneficiaries. Without such assurances, we will continue to oppose this legislation.

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