

## ***FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** April 14, 2016

**Agenda Item:** Cedar Creek Permanent Change to Instream Flow

**Division:** Fisheries

**Action Needed:** Final

**Time Needed on Agenda for this Presentation:** 10 Min

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**Background:** In 2008 FWP purchased water rights from Cedar Creek, a tributary to the Yellowstone River near Corwin Springs, with the intent of permanently changing them to instream flow. The water rights purchased had been leased to FWP and temporarily changed to instream flow granted for a period of 30 years, set to expire in 2034. In addition to these rights owned by FWP, water rights owned by the U.S. Forest Service are leased for instream flow. Between the two groups of water rights, 3 cubic feet per second (cfs) of instream flow is protected and vital to maintaining Yellowstone cutthroat populations.

FWP presently has the authority to permanently change water rights to instream flow on 12 stream reaches. The high value of Cedar Creek in maintaining a viable Yellowstone cutthroat population warrants its inclusion of one the 12 stream reaches.

FWP staff has worked with DNRC to determine the appropriate method by which to convert the temporary change to instream flow to permanent status. This requires FWP to submit an application to DNRC, similar to the application that was originally submitted for the temporary change to instream flow.

**Public Involvement Process & Results:** At the time of the 2008 purchase of the water rights an Environmental Assessment was completed. That document stated that FWP intended to permanently change the water rights being purchased to instream flow. No comments opposing the action were received. The previous Commission action in 2008 also specifically contemplated the permanent change to instream flow. As part of the DNRC application process it will be noticed to the public, and potentially affected parties will have the opportunity to object to the permanent change to instream flow.

**Alternatives and Analysis:** An alternative would be to take no action and leave the rights temporarily changed to instream flow until 2034. At that time it is not clear if the temporary change to instream flow could be renewed as FWP's authority to make new or renew changes to instream flow sunsets in 2019. If at that time FWP lacks authority to renew the temporary change to instream flow, the rights would no longer provide legal protection of instream flow.

**Agency Recommendation & Rationale:** FWP recommends the Commission direct FWP staff to apply to DNRC to permanently change to instream flow the Cedar Creek water rights owned by FWP. This action, if approved by DNRC, permanently secures instream flows in Cedar Creek to maintain the existing Yellowstone cutthroat recruitment to the Yellowstone River and is consistent with previous action to purchase the water rights.

**Proposed Motion:**

I move that FWP staff make application to DNRC to permanently change to instream flow the Cedar Creek water rights owned by FWP.