

FISH and WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: June 7, 2017

Agenda Item: Teton River Instream Flow Water Right Lease

Division: Fisheries

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 10 Min

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Background:

The lower Teton River historically supported a diverse fish community of 28 warmwater species, including sauger, blue sucker and shovelnose sturgeon. Since the mid-1980s dewatering of the lower Teton River has increased with a corresponding loss of species diversity in the river. USGS streamflow data for Teton River at its mouth shows that the river was dry for the entire month of August in 10 of the last 19 years and the entire month of September in 9 of the last 19 years. Recently and for the first time, the District Court appointed water Commissioners to distribute water from the entire Teton River and its tributaries. Water rights in the lower Teton River that have not received their water historically should now receive the water due them resulting in improved flow in the lower Teton River.

On April 14, 2017, the Commission endorsed the negotiation of water lease with a water user near the mouth of the Teton River. A second water user farther upstream has expressed interest in leasing waters to FWP to benefit the fishery. This second water lease coupled with the first water lease as well as the distribution of water by Commissioners would further help to lessen and possibly prevent the complete dewatering of the Teton River. FWP has statutory authority to temporarily change leased water rights to instream flow.

Public Involvement Process & Results:

The water right lease agreement would be subject to Commission approval at which time the public would have an opportunity to comment. To change the water rights to instream flow, FWP must make application to DNRC. This application would be noticed to the public, and potentially affected parties would have the opportunity to object to the changes to instream flow. In addition, DNRC would conduct an environmental review of the proposed change to instream flow.

Alternatives and Analysis:

The No Action alternative would be for FWP to not lease the water rights and change them to instream flow, and this opportunity for improvement to instream flow in the Teton River would be forgone. Another alternative would be for the water user to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require the water user to incur the legal and technical cost of pursuing the change to instream flow, for which they have limited incentive. It is unlikely the water user would pursue changes to instream flow for the benefit of the public fishery without FWP.

Agency Recommendation & Rationale:

FWP recommends that the Commission direct FWP Staff to negotiate a water-right lease agreement to restore and protect instream flow levels.

Proposed Motion:

I move the Fish and Wildlife Commission authorize FWP staff to start negotiating a water-right lease agreement for irrigation water rights from the Teton River to restore and protect instream flow water levels, subject to final approval by the Commission.