

FISH and WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: August 10, 2017

Agenda Item: Deep Creek Water Right Lease (R3)

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 10 Min

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Background: Deep Creek is an important spawning tributary for the Missouri River in addition to providing a quality resident fishery. During the summer and into the early fall dewatering due to irrigation withdrawals negatively impacts streamflow in Deep Creek, which in turn negatively impacts the fishery. In 2013 and 2015 projects were completed which substantially improved streamflow in Deep Creek. However, it may not be possible to sustain these flow improvements without legally changing existing irrigation rights to instream flow. FWP has already entered into a water right lease agreement with the City of Townsend, but this lease alone is insufficient to meet the instream flow objectives for Deep Creek.

On February 11, 2016, the Commission directed FWP staff to negotiate additional water-right leases for Deep Creek. FWP staff negotiated a lease agreement with Nancy and Cory Davis. The lease is for 10 years with the compensation being that FWP will provide replacement water from the Broadwater-Missouri Canal. FWP has an agreement in principal with the Broadwater-Missouri Water Users' Association to transport the replacement water. The amount of water protected at the historic point of diversion is estimated to be about 3.5 cfs with 1.8 cfs protected at the mouth of Deep Creek, but the actual values will ultimately be determined by DNRC.

Public Involvement Process & Results: FWP staff has met with the Broadwater-Missouri Water Users' Association Board and discussed the potential for FWP to lease additional water rights they have agreed to transport replacement water in their canal. FWP staff has also kept the Broadwater Conservation District informed of the potential for additional water right leases. To change Davis's 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 change to instream flow. DNRC will also conduct an environmental review.

Alternatives and Analysis: The No Action alternative would be for FWP to not lease the water rights and not change them to instream flow, whereby this opportunity to protect streamflow improvements in Deep Creek may be forgone. Another alternative would be for the Davis's to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require them to incur the legal and technical cost of pursuing the change to instream flow, for which they have limited incentive. It is unlikely they would pursue changes to instream flow for the benefit of the public fishery without FWP involvement.

Agency Recommendation & Rationale: FWP recommends that the Commission approve the water-right lease agreement with the Davis's and direct FWP staff to file an application with DNRC to temporarily change the rights to instream flow.

Proposed Motion

I move the Fish and Wildlife Commission approve the water-right lease with the Nancy and Cory Davis and direct FWP staff to submit to DNRC an application to temporarily change the water rights to instream flow, as described in the lease agreement.