

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

**Meeting Date:** August 10, 2017

**Agenda Item:** Bear Creek / Pine Creek Water Rights Acquisition (R3)

**Division:** Fisheries

**Action Needed:** Endorsement

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

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**Background:** FWP has been asked to consider the permanent acquisition, through donation or third-party purchase, of two mining water rights, one from Bear Creek (22.5 CFS, 8,165 acre-feet annually) and one from Pine Creek (2.5 CFS, 907 acre-feet annually). The purpose of acquiring the water rights would be to permanently change them to instream flow for the benefit of the fishery. Pine Creek is a tributary to Bear Creek which is a tributary to the Yellowstone River near Gardiner. Like other tributaries of the upper Yellowstone River, Bear Creek provides important spawning and rearing habitat for Yellowstone cutthroat trout and rainbow trout migrating from the Yellowstone River. Further, Bear Creek is a source of cool water that helps moderate elevated water temperatures in the Yellowstone River.

The Bear Creek water right with an 1876 priority date is the most senior water right in the drainage. The Pine Creek right with a 1903 priority date is neither particularly senior nor junior with respect to other water rights in the Bear Creek basin, but it does represent 97% of the water rights in the Pine Creek drainage. FWP has legal authority to apply to DNRC to permanently change water rights owned by FWP to instream flow on 12 stream reaches across Montana. The acceptance of the donation of these water rights and their change to instream flow would serve to protect and restore flows in Bear Creek benefiting the fishery.

**Public Involvement Process & Results:** No public involvement has yet occurred. As part of developing the project, FWP staff will complete an Environmental Assessment. The public will have the opportunity to provide input during a comment period. Those comments will be considered in the final recommendation to the Commission.

**Alternatives and Analysis:** The No Action alternative would be for FWP to not accept the water rights and not permanently change them to instream flow. The permanent benefits would be forgone as FWP is the only entity in Montana authorized to permanently change water rights to instream flow. Alternatively, FWP could lease the water rights and temporarily change them to instream flow for a term of up to 10 years. However, this would not meet the water right owner's objective of a permanent changed to instream flow. It is also possible that if FWP does not accept the water right donation, they could be changed to a different consumptive use.

**Agency Recommendation & Rationale** FWP recommends that the Commission direct FWP staff to research develop and negotiate the terms of the donation of the Bear Creek and Pine Creek water rights for the purpose of permanently changing them to instream flow. This project would benefit the fishery in Bear Creek and the Yellowstone River by restoring and protecting streamflow for spawning and rearing as well as serving to help moderate elevated water temperatures in the Yellowstone River.

**Proposed Motion:** I move the Fish and Wildlife Commission direct FWP staff to develop and negotiate the terms of the donation of the Bear Creek and Pine Creek water rights for the purpose of changing them permanently to instream fishery use.