

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 15, 2018

Agenda Item: Mulherin Creek Instream Flow Water Right Lease Renewal (R3)

Division: Fisheries

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 5 Min

Background. For 19 years FWP has leased water for instream flow in Mulherin Creek, a tributary to the Yellowstone River near Corwin Springs, from the Church Universal and Triumphant. With one remaining year for the water lease and it is now time to begin negotiations to renew the water lease.

The lease is for a range of flows from 5 to 27 cfs with a 5 cfs minimum that is superior to any irrigation diversions by the Church. The focus of the lease is to maintain flow in the lower ½ mile of Mulherin Creek below the Church's lowest diversion. The water leased for instream flow was created when the Church switched from flood to sprinkler irrigation at the time the original lease was put into effect.

The Corwin Springs Section of the Yellowstone River remains a stronghold for Yellowstone cutthroat trout (YCT). Mulherin Creek is critical YCT spawning for this section of the Yellowstone River. YCT adults migrate into Mulherin Creek and its tributaries to spawn on the falling limb of the hydrograph with fry emerging in late August and emigrating to the Yellowstone River. The water lease ensures adequate flow in Mulherin Creek for the fry to successfully emigrate to the Yellowstone River.

Public Involvement Process & Results. As part of the original change to instream flow, DNRC provided notice to the public and the potentially affected parties had the opportunity to object to the change to instream flow. As part of the lease renewal process, DNRC would notify other water users and allow them to submit evidence that the in-stream-flow lease has adversely affected their water rights. In addition, the water-right lease renewal agreement will be subject to final Commission approval.

Alternatives and Analysis. The No Action alternative would be for FWP to not continue to lease the water rights resulting in lower Yellowstone cutthroat fry production from Mulherin Creek. Another alternative would be for the Church 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 a new change to instream flow, for which they have limited incentive. The Church may well choose not to pursue a new change to instream flow for the benefit of the public fishery without FWP assistance.

Agency Recommendation & Rationale

FWP recommends that the Commission direct FWP Staff to negotiate a water-right lease renewal agreement to continue the protection of instream flow in Mulherin Creek.

Proposed Motion

I move that the Fish and Wildlife Commission authorize FWP staff negotiate a water-right lease renewal agreement for irrigation water rights from Mulherin Creek to continue the protection of instream flow, subject to final approval by the Commission.