

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

**Meeting Date:** June 14, 2018

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

**Division:** Fisheries

**Action Needed:** Final

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

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**Background:** On August 10, 2017 the Fish and Wildlife Commission directed FWP staff to research, develop and negotiate the terms of the donation of two mining water rights from Bear and Pine Creeks for the purpose of changing them permanently to instream fishery use. FWP negotiated an agreement to accept the donation from Trout Unlimited (TU) and to permanently change the water rights to instream flow and to provide mitigation for other flow restoration projects in the Yellowstone River basin.

Bear Creek is a tributary to the Yellowstone River near Gardiner. Pine Creek is in turn a tributary to Bear Creek. Like other tributaries of the upper Yellowstone River, Bear Creek provides important spawning habitat for Yellowstone cutthroat trout as well as rainbow trout migrating from the Yellowstone River. It also provides rearing habitat for both species. Further, Bear Creek is a source of cool water that helps moderate elevated water temperatures in the Yellowstone River.

As part of the negotiated agreement, FWP would change a portion of the water rights to mitigation to protect and enhance fisheries. TU has reserved the right to request up to 7 ac-ft be used for mitigation of wintertime flow depletion in the Yellowstone River related to a groundwater well that was used to replace Fridley Creek as a water source, providing for instream flow restoration and protection in Fridley Creek. This mitigation water would remain instream in Pine and Bear Creeks, just as it would if changed to instream flow.

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.

## **Public Involvement Process & Results:**

FWP prepared and released an environmental assessment for public comment from October 4, 2017 through November 3, 2017. One public comment was received, which was in support of the proposed action.

**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 TU's objective of a permanent changed to instream flow.

**Agency Recommendation & Rationale:** FWP recommends that the Commission approve the Agreement to accept the water rights and permanently change them to instream flow and mitigation. 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 to approve the Water Right Transfer Agreement with Trout Unlimited and direct FWP staff to file water right change applications consistent with the terms of the Agreement.