

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

**Meeting Date:** June 14, 2018

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

**Division:** Fisheries

**Action Needed:** Final

**Time Needed on Agenda for this Presentation:** 5 minutes

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**Background:** On February 15, 2018, the Commission directed FWP staff to negotiate water-right lease renewal agreements for irrigation water rights from Big Creek. A lease renewal agreement has been negotiated with Montana Land Reliance. The cost of the lease renewal is \$100 per year for 10 years. FWP has leased water for instream flow in Big Creek, a tributary to the Yellowstone River near Emigrant from several water-right owners since 1999. The lease proposed for renewal had an original term of 20 years.

The lease provides a range of flows from 1 to 16 cfs with a 1 cfs minimum that is enforced against junior water rights. The purpose of the leases is to maintain flow in the lower 1¼ mile of Big Creek. The water leased for instream flow was created when the water-right owners converted from flood to sprinkler irrigation supplied by a pipeline instead of ditch. The water-right owners transferred the ownership of the leased portion of the water rights to the Montana Land Reliance, from which FWP has leased the water. Like other upper Yellowstone River tributaries, the focus of this water lease is to protect flow in Big Creek to provide for the successful spawning, incubation, emergence and outmigration to the Yellowstone River of Yellowstone Cutthroat Trout.

Renegotiation of the other lease is in progress.

**Public Involvement Process & Results:** As part of the original change to instream flow in 1999, DNRC provided notice to the public, and potentially affected parties would have 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.

**Alternatives and Analysis:** The No Action Alternative would be for FWP to not continue to lease the water rights resulting in significantly lower Yellowstone Cutthroat fry production from Big Creek. Another alternative would be for the water right 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. The owners may 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 approve the Water Rights Lease Renewal Agreement with the Montana Land Reliance to continue the protection of instream flow in Big Creek benefiting Yellowstone cutthroat trout.

**Proposed Motion:**

I move to approve the Big Creek Water Rights Lease Renewal Agreement with the Montana Land Reliance as proposed.