

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: June 14, 2018

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

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 minutes

◆-----◆

Background: On February 15, 2018, the Commission directed FWP staff to negotiate a water-right lease renewal agreement for irrigation water rights from Mulherin Creek. A lease renewal agreement has been negotiated with the Church Universal and Triumphant. The cost of the lease renewal is \$76,350 for 10 years and is based on the original lease price of \$100,000 for 20 years adjusted for inflation. The agreement provides for 4 additional 10-year renewals of the lease with the price increasing at the rate of inflation but also contingent on the renewal being allowed by law.

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. Mulherin Creek is critical Yellowstone Cutthroat spawning habitat for this section of the Yellowstone River. Yellowstone Cutthroat adults migrate into Mulherin Creek and its tributaries to spawn on the falling limb of the spring 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 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 instream-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 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 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 to continue the protection of instream flow in Mulherin Creek benefiting Yellowstone Cutthroat Trout.

Proposed Motion:

I move to approve the Mulherin Creek Water Rights Lease Renewal Agreement as proposed.