

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: December 10, 2018

Agenda Item: Big Creek Instream Flow Water Rights Lease Agreement (R3)

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 minutes

◆-----◆
Background. On Feb. 15, 2018, the commission directed FWP staff to negotiate water-right lease renewal agreements for currently leased water rights from Big Creek. The lease agreement with Mountain Sky Guest Ranch expires prior to the 2019 irrigation season. Staff negotiated an agreement with Mountain Sky to renew an existing lease for 7.2 cubic feet per second. The cost of the 7.2 cfs lease renewal is \$15,000 per year, with Mountain Sky donating \$12,300 of the \$27,300 total lease value.

Recently, Mountain Sky applied to DNRC to change their water rights to accommodate changes in their irrigation. As part of this proposed irrigation change, they will be required to leave water instream that is presently leased to FWP to mitigate a reduction in irrigation return flow as they move from flood irrigation to sprinkler irrigation. This change is not expected to be approved before the 2019 irrigation season, potentially leaving water in Big Creek unprotected from diversion by junior water rights. This short-term lease renewal would protect instream flow until such time the irrigation change application and associated streamflow mitigation is approved. The lease renewal protects 7.2 cfs of the first-priority right on Big Creek. The purpose of the leases is to maintain flow in the lower 1¼ mile of Big Creek. 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.

Public Involvement Process & Results. As part of the original change to instream flow in 1999, DNRC provided notice to potentially affected parties of the opportunity to object to the change to instream flow. Other water users were also given the opportunity to provide new evidence of adverse effects during the first renewal of the lease in 2009. As part of the current lease renewal process, DNRC would notify other water users and allow them to submit new 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 renew the current lease potentially resulting in significantly lower Yellowstone cutthroat fry production from Big Creek until Mountain Sky's pending water right change is approved. Another alternative would be for the water right owners to temporarily change the water right to instream flow without the involvement of FWP. However, approval by DNRC would take even more time than the pending change application and would serve no useful purpose.

Agency Recommendation & Rationale

FWP recommends that the commission approve the Water Rights Lease Renewal Agreement to continue the protection of instream flow in Big Creek benefiting Yellowstone cutthroat trout.

Proposed Motion

I move approve the Water Rights Lease Renewal Agreement with Mountain Sky Guest Ranch.