



MONTANA FISH AND WILDLIFE COMMISSION

AGENDA ITEM COVER SHEET

Meeting Date: August 15, 2019

Agenda Item: Consent to Water Right/Change Issuance Policy

Action Needed: Informational

Time Needed on Agenda: 10 minutes

Background: FWP holds 1,231 water rights (as of June 21, 2019) of which 649 are for instream, natural lakes or reservoirs for the protection of water for fish, wildlife or recreation. These water rights protect a significant portion, if not all, the water not diverted from streams and rivers for other water uses and impede the acquisition of new water rights by other parties. While not the only circumstance, often FWP's water rights would be adversely affected by larger groundwater wells for municipal water systems, including unincorporated subdivisions and districts. Simply shutting down the municipal well does not immediately alleviate the impact to surface water, as effects may linger months or years even after water is no longer being pumped. Additionally, shutting down the well may not be feasible due to public health issues.

Recognizing the conflict between the water demand of continued population growth and protecting existing water rights, in 2007 the Legislature began enacting provisions that explicitly provided for mitigation of surface water depletion due to groundwater development. DNRC interprets those provisions to require that the full monthly depletion be offset by the mitigation. This can be difficult to accomplish during the winter months when few consumptive water rights are available to use for mitigation. Because of this situation, a new law in 2017 provided that with written consent of the owner, DNRC may not consider the adverse effects on the owner's water right. This puts FWP in the position of receiving requests to consent to the issuance of new rights or changes in rights that would adversely affect FWP's water rights. These requests typically involve situations where the full annual volume depleted from surface water can be mitigated, but not in the monthly volume depleted (i.e. excess mitigation in summer and inadequate in winter). This out-of-time mitigation is not necessarily detrimental to fish and wildlife and their habitat, and therefore, in some cases it may serve FWP to consent to the issuance of water rights that legally may adversely affect FWP right but does not impact and may benefit fish and wildlife resources. Developing a policy to consistently deal with requests of this nature while protecting the resources entrusted to FWP to manage would provide a defensible and fair means to deal with this issue.

Public Involvement Process & Results: FWP has contacted groups interested in protecting instream flow and used their input to develop an initial policy. Public engagement will continue, and the input collected considered prior to presenting a final policy recommendation to the commission.

Alternatives and Analysis: FWP will continue to engage public input in development of this policy.

Agency Recommendation & Rationale: The department does not have a recommendation at this time.

Proposed Motion: Informational only, with no proposal at this time.