

## ***FWP COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** April 12, 2012

**Agenda Item:** Nevada Spring Creek Water Right Transfer and Conversion

**Division:** Fish and Wildlife

**Action Needed:**

**Approval of Proposed (Tentative) Rule**       **Approval of Final Rule/Action**  
 **Endorse Course of Action**                       **None - information only**

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

**Background:** FWP is asking for an endorsement from the Commission to conduct additional research on a proposed water rights transfer to FWP involving six water right claims on Nevada Spring Creek. The Nevada Spring Creek Partners, who own the only current diversionary water rights from Nevada Spring Creek (six water right claims), wish to permanently transfer these water rights to FWP through donation or third party purchase. FWP would then convert the consumptive water rights to instream flow. Nevada Spring Creek, located in Powell County near the town of Helmville, is a Blackfoot River Basin stream that originates from an artesian spring and flows for approximately 3.2 miles to Nevada Creek prior to its confluence with the main stem of the Blackfoot River. The 2005 Blackfoot Basin Restoration Action Plan identified Nevada Spring Creek as a moderate priority stream within the context of the entire Blackfoot watershed. It provides spawning and reproduction habitat for westslope cutthroat trout and other species. Because there are no other consumptive-use rights that divert water from Nevada Spring Creek, the conveyance of these water rights would effectively place all of the consumptive-use rights into FWP ownership and allow for the permanent retirement of the irrigated grounds. FWP would research the merits of the water rights transfer and negotiate the terms of the gift.

**Public Involvement Process & Results:** The public involvement process would include the preparation of an Environmental Assessment and a comment period. FWP would consider the results of the environmental analysis and the public comments when preparing a final recommendation to the Commission.

**Alternatives and Analysis:** Instead of permanently acquiring the water rights, FWP could lease the rights from the current owner. The lease term could be for up to 10 years and could be renewed an unlimited number of times under present law. While this alternative would save some FWP staff time, it wouldn't meet the objective of the water right owner, which is to give the water right to FWP. If FWP does not accept the water right, the owner may give it to another party, which could in turn use the water for a different consumptive purpose.

**Agency Recommendation & Rationale:** FWP recommends that the Commission endorse its proposal to research the transfer of the Nevada Spring Creek water rights to FWP, negotiate the terms of the gift, and report back to the Commission with a recommendation for final action. This water right transfer would permanently protect flows in the Spring Creek and aid in improving stream flows in lower Nevada Creek and the Blackfoot River.

**Proposed Motion:** "I move that FWP research the transfer of the Nevada Spring Creek water rights to FWP for instream flows, negotiate the terms of the gift, and report back to the Commission with a recommendation for final action."