



MONTANA FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

THE **OUTSIDE** IS IN US ALL.

Meeting Date: April 1, 2021

Agenda Item: Teton River Water Right Lease Amendments (R4)

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 minutes

Background: In August and October 2017, the commission approved three instream flow water right leases on the lower Teton River. FWP staff submitted corresponding applications to DNRC to temporarily change the water rights to instream flow for a period of 10 years. Three parties objected to the change applications. FWP negotiated settlements with the objectors and DNRC issued an order authorizing the temporary changes on January 21, 2021.

Under the three leases, the maximum amount of water for which annual payments will be made is 945.9 acre-feet at a rate of \$6 per acre-foot as measured at the historic point of diversion. The cost of the water commissioner charges was to be subtracted from the annual payment to the lessors. At the time the leases were approved in 2017 water commissioners had been appointed for the first time to distribute water in the entire Teton River basin but the cost of the commissioners (billed to water users) had not yet been determined. Based on water commissioner charges in other basins, FWP anticipated the commissioner cost would be \$1 to \$2 per acre-foot. Pursuant to the leases, this was to be subtracted from the \$6 per acre-foot lease compensation. Water commissioner costs turned out to be substantially higher than anticipated in the lower Teton. Actual costs per acre-foot ranged from \$7 to \$8 in 2018 and 2019 and were \$4.45 in 2020. Under the current lease agreements these water commissioner charges would result in little or no payment to the lessors. That was not the intent when the leases were signed.

Water Right Lease Amendments have been signed by the lessors that would guarantee a minimum payment of \$4 per acre-foot as measured as the historic point of diversion. These amendments would bring the leases in line with the original intent. The leases are funded by NorthWestern Energy.

Public Involvement Process & Results: Notice of this commission meeting along with the opportunity to comment represents the extent of public involvement for the proposed Water Right Lease Amendments.

Alternatives and Analysis: The No Action alternative would result in the water right lease agreements remaining unchanged and the lessors receiving less compensation than was intended.

Proposed Motion: I move to approve the Water Right Lease Amendments with T&K Farms and Phillip and Peggy Johnson; Howard E. Misner and Virginia Jamruszka-Misner; and Andy Taylor Living Trust.