



MONTANA FISH AND WILDLIFE COMMISSION

AGENDA ITEM COVER SHEET

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Meeting Date: December 20, 2022

Agenda Item: Rock Creek (Paradise Valley) Water Right Lease Agreement

Action Needed: Final

Time Needed on Agenda for this Presentation: 10 minutes

Background: Rock Creek, a tributary to the Yellowstone River, is located about one mile downstream from Tom Miner Creek in the Paradise Valley. The creek provides habitat for resident native Yellowstone cutthroat trout and spawning habitat for trout that live in the Yellowstone River. Stoughten Creek is a major tributary of Rock Creek. It also provides habitat for resident and spawning fish. Point of Rocks Ranch, the owner of the most senior water rights from these streams, desires to lease these rights to FWP for instream flow for 30 years. The project would replace irrigation water diverted from Rock and Stoughten Creeks with water diverted directly from the Yellowstone River. Irrigated production would not be reduced. The cost of the 30-year lease would be a one-time \$10,000 payment to cover a portion of the water conservation infrastructure.

In 2011, the department replaced a failing fish ladder and concrete culvert under an abandoned railroad at the mouth of Rock Creek with a series of step pools designed to restore fish passage from the Yellowstone River. Fish are now able to migrate upstream for spawning, and fry can migrate back to Yellowstone River. However, streamflow data collected at the mouth of Rock Creek in 2013 and 2014 indicate streamflow dropped below levels necessary to keep the bed of Rock Creek fully covered in water from mid-July into the fall. With the exposure of parts of the stream bed, redds become dewatered which harms incubating fish eggs. Low flows also hamper the out-migration of fish to the Yellowstone River once fry emerge from the redds.

Public Involvement Process & Results: Department staff and representatives of Point of Rocks Ranch met with the Park Conservation District to discuss the lease and associated change to instream flow. Also, to change the water rights to instream flow, FWP must apply to the Department of Natural Resources and Conservation (DNRC). Along with an environmental assessment (EA) being completed by DNRC, the application would be noticed to the public and potentially affected parties would have the opportunity to object. This proposal was posted on the FWP website for public comment Oct. 21 through Nov. 18.

Analysis & Alternatives: The water lease provides an opportunity to restore and protect instream flow in both Rock and Stoughten Creeks to benefit both the resident and migratory fishery.

Alternative A: Approve the water right lease. Along with the subsequent change to instream flow, approval of this lease is expected to improve the fishery of Rock and Stoughten Creeks and result in increased recruitment to the Yellowstone River.

Alternative B: The commission could choose not to approve which would maintain the status quo, forgoing an opportunity to improve the fishery.

Agency Recommendation & Rationale: The department recommends the commission approve the Water Right Lease Agreement as it provides a cost-effective project to benefit Yellowstone cutthroat trout.

Proposed Motion: I move the Fish and Wildlife Commission approve the Water Right Lease Agreement with Point of Rocks Ranch LLC and direct FWP staff to make application to DNRC to temporarily change the irrigation water rights to instream flow for a period of 30-years in accordance with the Water Right Lease Agreement.