MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
1420 East 6th Avenue
Helena, MT 59620

JULY 8, 2004

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Lane; Mike Murphy; John Brenden.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; FWP Department personnel.

Guests: John Hilleboe; Mike Hedrick; Dan Short; John Wilson; Jay Bodner; Curtis Spindler; Chuck Williams; Steve Olson; Jack Brown; Dan Regan.

Topics of Discussion:

1. **Opening - Pledge of Allegiance**
2. **Approval of June 10, 2004 Commission Minutes**
3. **Approval of Commission Expenses through June 30, 2004**
4. **Recognition Award to Bob Lane for 20 Years of Service to FWP**
5. **Painted Rocks Water Lease – Final**
6. **Reconsider Commission Ban on Introduction of Walleye west of the Continental Divide – Tentative**
7. **Hubbart Reservoir Fishing Bag Limit Removal – Final**
8. **2004 Deer and Elk Quotas – Final**
9. **Prairie Dog Translocation ARM Rules – Final**
10. **Approval of Webless Migratory Bird Regulations - Tentative**
11. **West Shore State Park Development Project Appeal**
12. **Public Opportunity to Address Issues Not Discussed at this Meeting**

1. Opening - Pledge of Allegiance. Chairman Dan Walker called the meeting to order at 9:01 a.m. and led the Pledge of Allegiance.

2. Approval of June 10, 2004 Commission Minutes.
*Action: **Brenden moved and Lane** seconded the motion to approve the minutes of the June 10, 2004 meeting. Motion carried.*

3. Approval of Commission Expenses through June 30, 2004.
***Action: Mulligan moved and Murphy seconded** the motion to approve the June 30, 2004 Commission expenses as presented. Motion carried.*

4. Recognition Award to Bob Lane for 20 Years of Service to FWP. FWP Director, Jeff Hagener, presented Bob Lane with a Big Sky Carvers duck plaque, and related many of Lane's outstanding achievements over his 20 years of dedication to FWP.

5. Painted Rocks Water Lease – Final. Chris Hunter, FWP Fisheries Division Administrator, said FWP has leased 10,000 acre feet/year of water from DNCR for the last 10 years from Painted Rocks Reservoir on the Bitterroot River, and now that lease is due to expire in September. Last fall, the Department began negotiations with DNRC to renew the lease, from which a satisfactory agreement has been reached. Funding is provided by a dedicated trust fund established by the Montana Power Company. The Bitterroot Water Users Association is pleased with this agreement as well.

Action: Murphy moved and Brenden seconded the motion to approve the Painted Rocks Reservoir water lease contract between DNRC and FWP. Motion carried.

6. Reconsider Commission Ban on Introduction of Walleye west of the Continental Divide – Tentative. In 1989, the Commission adopted a policy banning the introduction of walleye into waters west of the Continental Divide. **Chris Hunter, FWP Fisheries Division Administrator,** said the Department has been approached by anglers from the Kalispell area requesting FWP to reconsider the walleye ban. In exploring for the best process for handling this endeavor, Hunter said the Administrative Rule process provides a prescribed public involvement process, and Administrative Rule decisions provide more legal authority than Commission policies. The Department recommends pursuing the ARM process.

Hunter said there could be three possible alternatives included in the proposed rule.
1. Permit FWP to consider stocking of walleye on a case-by-case basis
2. Restrict stocking of walleye to closed basin lakes using sterile walleye
3. Ban stocking walleye west of the Divide entirely

Walker was not enthused about alternative number two as successful production of sterile walleye has not yet occurred. He does not feel it is a credible alternative.

Hunter said hearings must be held as part of the ARM rule process. As this issue may become contentious, public involvement is critical to its outcome. He suggested holding a public hearing in Missoula in conjunction with the September Commission meeting. Brenden suggested a hearing be held in Eastern Montana to assure it would be unbiased and fair.

Mulligan said it is not right to introduce a non-native species west of the Divide. He does not feel any positive results will come from this process. Introducing walleye west of the Divide is contrary to the mission of the Department and the Commission. The consequences are unknown, and he fears it will pit species fisherman against each other.

Action: Mulligan moved that reconsideration of the ban be dropped and the current commission ban be retained.

Murphy said he shares some of the same reservations, but for different reasons. He said providing an additional species of fish west of the Divide makes sense from the sportsmen opportunity standpoint, however, he has concerns about introducing a predator fish into a situation that could further jeopardize an Endangered Species Act issue. He is apprehensive that Department action allowing introduction could be a detriment down the road. Although sterile walleye are not yet developed, there are other species of fish that have been developed for sterile situations, which speaks to the possibility that experiments could be conducted on walleye in certain environments west of the Divide to determine the impacts.

Walker commented he is in favor of removing the ban for the same reasons Mulligan is against it. He feels it is time for this discussion, even if it is difficult. The number of sportsmen who are interested in walleye fishing west of the Divide is increasing. He wants to go forward with this because he thinks illegal fish introductions will occur over the next few years anyway, and he added that he is mindful of the argument that introductions will probably be increased if we make it easier. He doesn't feel most waters west of the Divide will support walleye.

Walker said the public needs to be informed, and he feels the hearing process will help with that. He is highly supportive of serious penalties for illegal introductions, such as imposing high fines and lifetime bans on fishing and hunting. He expects fishing organizations such as Trout Unlimited and Walleyes Unlimited to provide support as well.

Mulligan said history has shown that Walker's perception is inaccurate. People will continue to introduce fish illegally even if that species is allowed in an adjacent lake, and even when the fish does not work in the lake it has been allowed in. History shows that introduction of a non-native species into an area where they are not native causes significant biological impact. Mulligan feels lifting the ban will create a fiasco, and he is convinced that a full-blown environmental impact statement will be necessary. Mulligan does not feel the public should be given any expectations that it might happen.

Brenden asked if there are any non-native fish or birds on the western side of Montana. He was told that yes, there are. He said his point is that no native species exist, that hybridization takes place over time. People must be willing to adapt, the world changes whether we like it or not. He feels there are areas where the non-native species, walleyes in this case, will survive. Other people feel differently than FWP or TU or WU. Brenden emphasized that he is serving on the Commission to provide the best fishing opportunities possible, regardless of what fisheries they may be. He agreed that illegal introductions will happen no matter what the Commission decides.

Walker said even if the conclusion is reached that walleyes should not be introduced west of the Divide after the ARM process has been completed, an educational effort would still have gone into the process. He wants to alert the public as to what is proposed.

Mulligan said he could support the Administrative rule if the only option is a ban on introducing walleye west of the Divide, as it currently stands. He cannot support the rule if one of the options allows it to happen. He stated that to give the expectation that the Commission may in fact authorize or allow walleye to be planted west of the Divide is not what the Department or the Commission should do.

Walker said the options must be presented for consideration in order to be fair to all parties. He is willing to leave in the second alternative involving sterile walleye, but it must be made clear that that alternative is not available yet.

Murphy asked for a status report regarding developing sterile fish. Hunter said this has been pursued from two different angles. The Department first contracted with the University of Idaho where two people there are working on a similar project, however their work was not very promising. FWP then asked Idaho Fish & Game to come to Montana when the egg take was conducted at Fort Peck, as Idaho has experience in sterile trout. Three different pressure tests were conducted on the eggs by a special machine brought by the Idaho Fish & Game people. Mortality was fairly high on a couple of them. The eggs have now hatched and the fish are growing. FWP will be testing them in the near future to determine if they are sterile or not. Experimentation will continue.

Lane asked what happens when a species like walleye is introduced into a lake that isn't suitable habitat. Will they die out or just remain small. Hunter said they just go to very low level. They will do well in some lakes.

Dr. Hillebo, Lakeside, said he is a fisherman who fishes for trout and walleye, and there needs to be other species besides westslope cutthroat available. He said many fishermen want to catch other fish as well. The issue needs to be dealt with realistically and kept under control, however, some lakes could have walleye stocked in them.

Dan Short, Kalispell, Trout Unlimited, spoke in favor of retaining the ban. He said the biologists who have previously looked into this situation came to the conclusion that the risks were too great if the ban were removed. He said there is a diversity of fish in Flathead Lake where several species are located. He added that Montana is a large state with varied habitat and species, and nature puts species where they belong.

John Wilson, Trout Unlimited (TU), said TU and the Fishing Outfitters of Montana asks that FWP retain the ban. They support the biologists who have concluded the ban should be retained. The warm water fisheries in the eastern part of the state have worked well. World-class fisheries in western Montana could be at risk if the introduction of additional species is done. He said they are not so naive they don't realize that introductions will be done illegally, but this would deter some. Other states are clear about not mixing trout and walleye. Wilson said if this goes into the ARM rule process, it will pit the fisherman against each other.

Murphy asked Short and Wilson if Trout Unlimited would be willing to compromise if sterile walleye was developed for stocking. Wilson replied they would consider it, but fisheries biologists should study it first and make recommendations. He said it is a better alternative than public hearings.

Mulligan said this is not specifically directed to Walleye – it is the "native species" issue, particularly when there is an impact. He is philosophically opposed to putting non-native creatures into an area they do not exist where they will have an impact.

Brenden said his point is that he wants to develop a fishery, and his mind is open to options. He wants the sportsmen to have opportunities. Adaptive management is the key to success. He does not feel we need to go through the ARM process.

Murphy reiterated his concerns relative to native species fisheries and the possible impacts introductions of predator fish might have on them. Murphy anticipates hearings will be conducted to receive public comments.

Action: Murphy moved that the current policy be modified to consider the possibility of allowing the introduction of sterile walleye, based on the development and certification of sterile walleye, into a closed basin system west of the Divide prior to any introduction of fertile fish, dependent upon additional biological impact assessments, and upon Department recommendation. Hearings will be conducted for public comment.

Walker clarified that this motion is an exception to the current commission policy. Rule-making is not anticipated, however this might stimulate the need for a hearing process.

Bob Lane, FWP Legal Counsel, agreed this action could be an option for amendment of the current policy but he feels a hearing would still be needed for public input. The policy meets the definition of a rule. He said a policy guiding decisions meets the definition of a rule, therefore legally, this should be done through the rule making process. Even policy-making requires a public hearing.

Mulligan said we are playing with fire. He does not believe there will be support from the Department or the biologists to go forward with introducing walleye west of the Divide regardless of what the public hearings disclose. To advertise it as an option is to put forth an unrealistic expectation.

Walker said he knows the Department will do what the rule specifies they do. Lane asked for clarification of whether or not there would be public hearings, to which the response was that there would be. Murphy said he welcomes public comment, and hopes a compromise can be struck between the various interests.

Action on Murphy's Motion: Lane seconded Murphy's motion.

Action on Mulligan's Motion: Motion died due to lack of a second.

Action on Murphy's Motion: Motion carried. Three in favor (Lane, Brenden, Murphy) - two opposed (Mulligan and Walker).

7. Hubbart Reservoir Fishing Bag Limit Removal – Final. Chris Hunter, FWP Fisheries Division Administrator, said the Hubbart Reservoir, owned by the Confederated Salish and Kootenai Tribes in Region 1, will be drained for dam inspection later this summer or early fall. As the fish may die when the dam is drained, the Department would like to remove harvest limits to allow sportsmen the opportunity to take the fish. This would be the most cost-effective and efficient means to salvage them.

Murphy noted that it is important to remind the public that the majority of the reservoirs were originally developed as irrigation supplies, flood diversions, etc, with the added bonus of providing fisheries and recreation sources. Maintenance, repairs, and inspections must take place to assure the integrity and safety of the dam.

Action: Murphy moved and Mulligan seconded the motion to approve the removal of angler daily and possession bag limits on rainbow trout, brook trout, and kokanee salmon (gamefish) at Hubbart Reservoir and the Little Bitterroot River from Hubbart Dam downstream to the first bridge (approximately 3/8 mile) effective immediately through September 30, 2004. Motion carried.

8. 2004 Deer and Elk Quotas – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator, and Gary Hammond, FWP Wildlife Management Bureau Chief, presented the 2004 Deer and Elk quotas. Deer and elk drawings will be conducted July 29-30, 2004, and mailed out on Saturday, July 31. Immediately following approval of the 2004 Antelope quotas at the August Commission meeting, drawings will be conducted and deposited in the mail on August 7. Refunds will go out second week in August.

<u>DEER -- FINAL QUOTAS</u>
Region 1 - Deer
No changes to the tentatives.
Action: Murphy moved and Mulligan seconded the motion to approve the Region 1 Deer quotas as recommended by the Department. Motion carried.

Region 2 – Deer
Change HD200-01 to increase antlerless whitetail deer B licenses from 50 to 100.
Action: Murphy moved and Walker seconded the motion to approve the Region 2 Deer quotas as recommended by the Department. Motion carried.

Region 3 – Deer
No changes to the tentatives.
Action: Mulligan moved and Lane seconded the motion to approve the Region 3 Deer quotas as recommended by the Department with the amendment to increase deer B licenses in HD380-02 from 100 to 200 based on conversations with landowners and FWP staff. Motion carried.

Region 4 – Deer
No changes to the tentatives.
Action: Lane moved and Murphy seconded the motion to approve the Region 4 Deer quotas as recommended by the Department. Motion carried.

Region 5 - Deer
No changes to the tentatives.
Action: Walker moved and Mulligan seconded the motion to approve the Region 5 Deer quotas as recommended by the Department. Motion carried.

Region 6 – Deer
No changes to the tentatives.

Action: Brenden moved and Mulligan seconded the motion to approve the Region 6 Deer quotas as recommended by the Department. Motion carried.

Region 7 – Deer
No changes to the tentatives.
Action: Walker moved and Brenden seconded the motion to approve the Region 7 Deer quotas as recommended by the Department. Motion carried.

ELK -- FINAL QUOTAS
Region 1 - Elk
No changes to the tentatives.
Action: Murphy moved and Walker seconded the motion to approve the Region 1 Elk quotas as recommended by the Department. Motion carried.

Region 2 - Elk
8 changes to the tentatives.
200-00 – Increase antlerless quota from 75 to 100
200-01 – Increase antlerless quota from 50 to 75
201-00 – Increase antlerless quota from 175 to 225
215-00 – Decrease antlerless quota from 250 to 100
215-01 – Decrease antlerless quota from 250 to 100
215-02 – Increase antlerless quota from 25 to 50
283-00 – Increase antlerless quota from 250 to 300
293-00 – Decrease antlerless quota from 325 to 200
Elk quotas will include a 24-hour notice for closure of general antlerless elk hunting when a total of 150 cow elk have been checked through the Darby Check Station. The season will then remain open for brow-tined bull until the close of the general season. HDs 204, 240, 261 and 270 will be open to brow-tined bull only after a quota of 250 cow elk from HD270 have been checked through the Darby Check Station. A-7 license holders and youth seasons will continue as stated in the regulations.

Murphy commented that HD215-00 and HD215-01 were sizeable adjustments and was concerned that hunters who applied for those areas would be unhappy to see that their opportunity had been reduced.

*Action: Murphy moved and Mulligan seconded the motion to approve the Region 2 Elk quotas as recommended by the Department with amendments to HD 215-00 and 215-01 to decrease the quotas from 250 to125. Motion c*arried.

Region 3 – Elk
Gravelly Complex: In HDs 322, 323, 324, 325, 327, and 330, there will be a 24-hour closure notice for general antlerless elk hunting when antlerless harvest is two times the highest harvest levels recorded through the Blacktail, Ennis, and Ruby check stations.

Bighole-Fleecer-Highland Complex: In HDs 319, 321, 328, 329, 331, 332, and 341, there will be a 24-hour closure notice for general antlerless elk hunting when antlerless elk harvest is two times the highest harvest levels recorded through the Mill Creek and Feeley check stations.

Yellowstone-Madison-Bridger Complex: In HDs 311, 312, 314, 315, 317, 360, 362, 390, and 393, as a result of very limited hunter access available on private lands, we do not propose a closure notice.

Mulligan said he is concerned about these 24-hour closure notices. He understands them, but is afraid it might trigger something the Department will not want to trigger. He would like to see these become *guidelines* to initiate closure – to initiate discussion between the Department and the Commission regarding closure within 24 hours. Conversely, there may be conditions where quotas have not been reached, but the Department may want to discuss with the Commission any potential problems, and the need to close an area. When two times the harvest has been reached through those key check stations, then a discussion regarding closure must ensue. He also wished to maintain the quota of 150 in HD318-00.

Action: Mulligan moved and Murphy seconded the motion to approve the Region 3 Elk quotas as recommended by the Department with the amendments to maintain the quota in HD318-00 at 150, and to establish the guideline for initiation of discussion between the Department and Commission regarding notice of 24-hour closure. Motion carried.

Region 4 - Elk
No changes to the tentatives.
Action: Lane moved and Murphy seconded the motion to approve the Region 4 Elk quotas as recommended by the Department. Motion carried.

Region 5 - Elk
No changes to the tentatives.
Action: Walker moved and Brenden seconded the motion to approve the Region 5 Elk quotas as recommended by the Department. Motion carried.

Region 6 - Elk
One change to the tentatives.
HD690-00 – Increase antlerless quota from 75 to 100.
Action: Brenden moved and Lane seconded the motion to approve the Region 6 Elk quotas as recommended by the Department. Motion carried.

Region 7 - Elk
No changes to the tentatives.
Action: Walker moved and Brenden seconded the motion to approve the Region 7 Elk quotas as recommended by the Department. Motion carried.

9. Prairie Dog Translocation ARM Rules – Final. Heidi Youmans, FWP Non-Game Bureau Chief, said the Prairie Dog Programmatic Guidance document has been formatted into ARM rules, as directed by the Commission. She discussed the proposed Prairie Dog Translocation Administrative Rules and requested approval to continue with the rule-making process. She said the ARMs would delegate authority to the Regional Supervisors, which would relieve the Commission from making the individual decisions on a case-by-case basis.

Three objectives of the rules are to minimize potentials for diseases, minimize detrimental land impacts, and establish criteria addressing factors to be considered when rendering a translocation decision. Youmans said translocation is expensive, so realistically, it will be only be done on an occasional basis. Translocations must comply with the Montana Environmental Policy Act (MEPA) requirements. These Rules include requirements and criteria that provide protection for those who do not want prairie dogs located near them. Youmans said relatively few people commented during the public comment period, although it was advertised widely.

Brenden commented that he feels it is asinine to spend money on prairie dogs and black-footed ferrets when there are many other projects that need attention.

Jay Bodner, Montana Stockgrowers Association (MSGA), said his organization is still uncomfortable with the Rule. MSGA is apprehensive about the conflict resolution plan in the ARM rules. They want to know what happens when prairie dogs move to someone else's land. Who takes care of it, and are proposed solutions legally binding when it's a private entity moving them? Who will hold these people accountable? Will FWP take a role in this? What is entailed if a conflict resolution plan is not followed through on?

Becky Dockter, FWP Legal Counsel, said the Conflict Resolution Plan requires both the receiving and sending landowners to sign off on the implementation of the resolution plan. The impetus will be on the receiving site landowner to implement the Conflict Resolution Plan if something occurs. If there are conflicts between landowners, the Department may need to become involved, but the preference is for the landowners to work through it is part of their private property rights. The Rules have addressed as much as possible short of taking control from the landowners and making it the Department's project. Dockter said the Conflict Resolution Plan addresses emigration as well.

Youmans said the word "adjacent" was replaced with "6-mile radius" in the Rules to define the "sphere of influence" of a Prairie Dog translocation. The 6-mile radius encompasses a 113 square-mile area, which means everyone within this area will be notified and involved. The input by these landowners will figure into approval or denial of the proposal.

Murphy said the 6-mile radius is merely a notification measure, not a provision for acceptance. He asked if there is a course of action for dissatisfied landowners a half-mile away. For example, if a landowner is split by a ¼ mile between the receiving and non-receiving ground (not immediately adjacent), and he is not in favor of the translocation, is there anything that will protect his rights? Youmans replied that there are three things for his protection. First of all, he will be notified for comment. Secondly, the Department weighs the merits of the proposal based on acceptance prior to decision. Third, the Conflict Management Plan can include effective measures such as buffer strips.

Youmans said notification is provided by MEPA, and the proposal must be done in MEPA format with the MEPA analysis and alternatives, or the MEPA portion must be attached. Particular situations would dictate whether notification would be made by direct mail, and ideally the receiver would contact his neighbors individually. She said if the Commission feels the Department needs to take the extra step of certified mailings, it could be incorporated. Brenden said certified mailing is a "must".

Lane recommended including a statement in the Conflict Resolution Plan that alerts the party translocating the Prairie Dogs to the fact that they are assuming responsibility. This will provide accord between the landowners within the 6-mile radius, and will prevent claims from landowners that they were blindsided. He said there needs to be a standard acknowledgment slip stating that under the Conflict Resolution Plan the receiver acknowledges he is assuming responsibilities and indemnification culpability for damages.

Dockter said in Rule VI, Subsection (b), the Conflict Resolution Plan reads "solutions that will be implemented to resolve conflicts with agricultural production and other landowner conflicts, including identification of the person(s) / party(s) responsible for implementing proposed solutions". She suggested adding to this section a statement requiring a signed acknowledgement of those responsible parties to defend and indemnify any adjacent landowners. Lane said it is important to include, and to place it where appropriate. Mulligan said he felt it had already been committed to, but agreed it is best to get it recognized up front to prevent potential problems. Murphy said he feels direct notification should be given to everyone within the 6-mile radius.

Action: Brenden moved and Murphy seconded the motion to table the Prairie Dog Translocation topic until a new written document addressing the above concerns is provided. Motion carried.

Youmans drafted the revised version incorporating the above recommendations and presented it to the Commission. She said the Conflict Resolution Plan spells out what is truly there, and Regional Supervisors will be well aware of proposals. She added that translocations will not be approved if parties are not in agreement.

Action: Lane moved and Mulligan seconded the motion to approve the proposed Prairie Dog Translocation Administrative Rules and proceed with the final steps in the Administrative Rule making process. Motion carried. Four in favor – one opposed (Brenden opposed).

10. Approval of Webless Migratory Bird Regulations – Tentative. Gary Hammond, FWP Wildlife Management Bureau Chief, presented the recommended regulation changes.

Mourning Doves – Change season date to 2004.
Common Snipe – Change season date to 2004.
Sandhill Cranes –

Pacific Flyway --

√ Change season dates to September 4 – 12, 2004

√ Add Cardwell to the Dillon-Twin Bridges area with the inclusion of the legal description "…. Thence north along said river to the Jefferson River and north along the Jefferson River to the Ironrod Bridge, thence northeasterly along State Highway 41 to the junction with State Highway 55, thence northeasterly along said highway to the junction with Interstate Highway 90 (I-90), thence east along I-90 to Cardwell and Route 359, thence south along Route 359 to the Point of Rocks Road, thence southwesterly along the Point of Rocks Road to Bayers Lane, thence southwesterly along Bayers Lane to State Highway 41, thence east along State Highway 41 to the Beaverhead River,….

Central Flyway --

√ Change season dates to September 25 through November 21, 2004

√ Change limited permit season dates to September 4 – September 12, 2004

Mulligan asked that it be verified that the road referenced as "Pointed Rocks Road" is indeed known as Pointed Rocks Road.

Action: Mulligan moved and Walker seconded the motion to approve the tentative Webless Migratory Bird regulations as recommended by the Department. Motion carried.

As a point of information, Hammond said an EA for a crow season is under consideration.

11. West Shore State Park Development Project Appeal. West Shore State Park is a 129-acre park located on the west side of Flathead Lake, and provides one of only five boat launches on the west side of the lake. **Martha Williams, FWP Legal Counsel**, stated that in 2002, FWP proposed improvements to West Shore State Park on Flathead Lake. The Environmental Assessment was completed, comments were sought, and improvements were approved.

After the Decision Notice was issued, the project was appealed to the Region 1 Supervisor, and subsequently to the FWP Director. The appellants to the project are now appealing to the Commission. Williams explained that the structure of the appeal process allows for the appellants to present their side of the appeal, after which the Department will have an opportunity to present their side. The Commissioners may ask questions throughout the process.

Commission Chair Walker invited the appellants to present their argument.

Dan Regan, Butte resident and owner of a summer cabin at Goose Bay located across the bay from West Shore State Park, spoke on behalf of the appellants. He said Steve and Kari McKendry, also appellants, have a summer home adjacent to West Shore Park. Regan said the appellants want what is best for the Park, that they support improvements to the park itself, and they support the development of the launching facility and construction of the dock. They support the additional parking facilities, and safe and expanded swimming facilities when properly constructed.

Regan said the appellants were upset that they were not informed of the proposed changes, their only input was a questionnaire in 2001. He found out about the proposals in a round-about way. The people who live adjacent to West Short Park are only there seasonally, with the exception of two families who live there year-round. He said the original budget approved by the Legislative session in 2001 was for $190,000, but when the project Decision Notice was approved in November of 2003, the budget was significantly higher - $570,000.

The appellants are concerned that a designated RV parking area will be developed. He said the proposal includes a well and electrical provisions, and they are in fear that these facilities may be available to accommodate RV parking. They question whether down the road there may be the possibility of installing sewer provisions. Regan said commercial use is prohibited according to the covenants of the original deed to the State of Montana. If FWP is found in violation of the covenants, the property is to revert back to the Grant Kohrs heirs.

The three main concerns shared by the appellants are:
1. The small camping area will be replaced with 22 parking spaces, which is nearly the size of a football field. Trees are being removed, compromising the primitive nature of the park and the privacy of park users and residents. The appellants ask that this parking lot be developed into only 18 parking spaces, and that trees be selectively cut to retain the integrity of the park.
2. They recommend that the swimming area be relocated to the marine camp area on the north shore, as this area is rarely used and has a beautiful beach. They feel the present location is dangerous as it is close to the launching area, and raises a liability issue.
3. There is not sufficient room for RV parking – they are opposed to the 14 allotted spaces – and this type of use is not compatible with the park. It is more amenable to small campers. Regan said the taxpayers of Montana should not have to subsidize these campers with free camping. They feel it is important to maintain the park as a "camper" park, and not an "RV" park. They recommend eliminating the RV park.

Regan said they respectfully ask that the Commission order the staff to make these three changes within 60 days, providing documentation on how it will be done.

Commission Chair Walker invited the proponents to present their argument.

Steve Olson, Kalispell resident and West Shore Park user, speaking on behalf of fishermen, said he does not take issue with what the appellants just said, as it sounds like they are in support of the project. He said West Shore Park is a highly desired area for fishing, however the ramp is dangerous, and there is no parking. He said he had several items to mention in defense of the proposed improvements, but declined to mention them since the appellants have stated they agree the Park needs improvements. He encouraged the Commission to proceed as soon as possible.

Walker asked Olson for his opinion on the proposed parking area. Olson replied that since there is so little parking available now, anything would be an improvement. Olson said it is not uncommon to see 15 to 20 boats and trailers in need of parking and launching sites on suitable fishing days.

Brenden stated that it is necessary for everyone to work together to create access for everyone.

Becky Dockter, FWP Legal Counsel, appeared before the Commission to defend the Director's decision. She stated that since the original proposal in 2002, the plan has been modified as a result of that decision. The 129-acre park, located on the west shore of Flathead Lake and south of Lakeside, currently has 26 campsites. Dockter said the terrain is steep, rocky, and forested. The current facilities include vault toilets that are old and in disrepair, potable water, and a boat ramp. The boat dock was removed due to safety concerns. Dockter added that 10,472 visitors used the Park in 2002, and 38% of those visitors were between October and April.

FWP's Design & Construction Bureau looked at many options. A questionnaire was developed and distributed; current improvements are based upon results of that questionnaire. Plans include rehabilitation of the boat ramp, the replacement of a dock which had been removed due to safety concerns, and the development of a parking lot where camp loop B is presently located. This camping area will be relocated to Overlook Road, more forested and tucked into the park. Camp Loop "A" had no proposed improvements, but as a result of the appeal, some changes will be made.

Dockter stated that the Department conducted an EA after proposed changes were finalized. Widespread advertisement of the proposal by the Region afforded the public opportunity to make comments. The EA was sent to interested parties, survey responders, neighbors and adjacent landowners. There were media releases, the EA was posted on the FWP website, and an open house was held. Attempts were made to make as many people aware of the proposal as possible.

Dockter explained that relocating the swimming area would create issues. The public will go where they knew it existed and they will not look for a new location. At low water, it has the only beach area. The location the appellants suggested is rocky at low water, and is not a safe area. The Region offered to post signage directing people to another shore, however liability would be greater in directing people to a rocky area than in maintaining an area that is buoyed off to keep boaters away, as has been included in the Decision.

Dockter pointed out that the Department did not intend to make the parking changes specifically to accommodate RVs. When the parking area was moved from the lower campsite area to the upper area, it created improved parking facilities. The Park is not designed for RVs, however they will not be restricted. They will, however, be parked farther back into the park away from the landowners property. The campsites located closest to adjoining landowners will be limited to vehicles 22 feet in length or shorter.

Parking is already insufficient for the current use so removing three parking spots, as appellants have requested, won't provide enough parking. The Department requests that the proposed site plan include all of the following: limit Camp Loop B to 11 trucks/trailers and 10 single vehicles, plant vegetative barriers to shield the parking areas from the landowners, limit vehicle parking, erect boundary fences if desired by landowners, post no-trespassing signs, relocate 2-4 campsites, and place buoys to designate the swim area in it's present location.

Dockter agreed with Regan that deed restrictions prohibit FWP from engaging in commercial enterprises or competing with businesses. This is not a commercial enterprise. There are no day use fees for Montana residents due to the implementation of the license plate fees. Overnight fees pay for park expenses; they do not generate income. The electrical power is not intended for RVs, it is for lights in the park. There are no RV hookups.

Lane questioned why the costs had escalated from $190,000 to over $500,000. **Tom Reilly, FWP Parks Assistant Administrator,** explained that when the original estimates were calculated, they were prepared with the best information available at the time, but new improvements have been added as the project expanded.

Marty Watkins, FWP Region 1 Parks Manager, said adjacent landowners have asked for riprap to be added. This has been included in the costs as well. She said the bathroom facility is also being relocated.

Reilly reiterated that West Shore Park is not an RV park. There is no reservation system. It is first-come first-serve for all campers; people using tents can go into any area they wish to. No areas are designated for specific types of camping equipment. The designation "RV" is not specific to large motor home types of vehicles.

Brenden said the Department has bent over backwards trying to accommodate everyone involved with this issue, and it's time to get on with the project. People need access to recreational opportunities, and access to the lake. He said it may be too late this year, but it needs it to be ready by next spring.

Regan clarified that their acceptance is based only on the agreement of the three conditions they laid out, and they want agreement in written form. They want some accommodation; they feel they did not receive proper notification of this proposal.

Walker suggested a motion that would require staff to draw up a plan within 60 days, with 30 additional days for response. Hagener stated that this becomes a workload problem. It will take time and personnel, and there are many other projects that staff are involved in as well.

Dockter said a meeting was held July 2 with the appellant's in an attempt to settle this prior to today's Commission meeting, to no avail. Walker said significant concessions have been made, and although the Department may be facing litigation, this project must move forward.

Action: Mulligan moved and Murphy seconded the motion to deny the appellant's appeal, and adopt the decision made by the Fish, Wildlife & Park's Director in the matter of the appeal of the West Shore State Park Capital project. Motion carried.

Mulligan said the Department has made modifications and gone to great extents to make this work. He added that access issues are always difficult.

12. Public Opportunity to Address Issues Not Discussed at this Meeting. No comments.

Meeting adjourned at 3:06 p.m.

Dan Walker, Chairman	**M. Jeff Hagener, Director**