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Montana Fish, Wildlife & Parks

MINUTES

Montana Fish and Wildlife Commission Meeting

Region 3 Headquarters
1400 South 19th; Bozeman, MT 59718

October 16, 2014

Commission Members Present: Dan Vermillion, Chairman, Richard Stuker Vice-Chairman, Matthew Tourtlotte, Larry Wetsit and Gary Wolfe

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director and FWP Staff.

Guests: October 16, 2014 - See Commission file folder for sign-in sheet.

Topics of Discussion:

1. **Call to Order and Pledge of Allegiance**
2. **Approval of Minutes of August 7 and August 26, 2014 Commission Meeting**
3. **Approval of Commission Expenses**
4. **Commission Reports**
5. **Director's Report**
6. **2015 Commission Meeting Calendar**
7. **Out of State Sheep Transplant – Endorsement**
8. **QFS Bison Placement – Final**
9. **Garrity WMA Addition Region 2 – Final**
10. **Marias River WMA – Brekke exchange Region 4 - Final**
11. **Nevada Lake WMA – Clear Creek Addition – Region 2 - Informational**
12. **Marias River WMA Access Settlement – Final**
13. **Whitefish River Petition Administrative Rule – Final**
14. **Commercial Use Administrative Rules – Proposed**
15. **2015 Fishing Regulations – Final**
16. **Cow Creek Instream Flow Lease – Final**
17. **Eight Mile Ford FAS Temporary Construction Closure - Final**
18. **Sheep Mountain FAS Temporary Construction Closure – Final**
19. **Shed's Bridge FAS Closure - Proposed**
20. **Yellowstone River (near Sidney) Channel Migration Easement – Endorsement**
21. **Public Comment – For Issues Not On This Agenda**

1. Call to Order - Pledge of Allegiance
Chairman Vermillion called the meeting to order at 10:15a.m. (Pledge of Allegiance was done before the work session.)

2. Approval of Minutes of August 7 and August 26, 2014 Commission Meeting
Action: Vice-Chairman Stuker moved and Commissioner Wetsit seconded the motioned to approve the August 7 and August 26, 2014 minutes with two minor corrections. Motion carried.

3. Approval of Commission Expenses
Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion to approve the Commission expenses. Motion Carried.

4. Commission Reports

Commissioner Wolfe stated three vacant biologist positions in Region 2 have been filled; number of game damage hunts, primarily for antlerless elk; met with a local block management rancher; attended Region 2 Citizen Advisory Council (CAC) meeting, several new members; received correspondence regarding items on Whitefish River Petition, Commercial Use Rules and Marias access settlement.

Commissioner Wetsit stated a lot of bird hunters are out; received correspondence regarding items on the agenda; quiet around the Region.

Commissioner Tourtlotte received several calls on Durfee Hills/Wilks Brothers fencing issue; correspondence on the Marias River access settlement, no positive feedback.

Vice-Chairman Stuker stated he attended the Region 6 CAC meeting in Fort Peck; good discussions on bison, access and Beaver Creek Park south of Havre; council would like to see more game wardens on the ground especially during hunting season. Attended Region 4 CAC meeting in Great Falls; discussions on access, Durfee Hills, and Marias River access agreement, two members spoke in favor of needing access on the east side and no one spoke against the agreement. Met with Trevor Wolery to discuss his Lost River Ranch inholdings and appraisals. Public Land Public Wildlife (PL/PW) met via telephone to finalize recommendations. Attended the bison discussion group meeting in Great Falls; good comments and discussions; Department is working on a Environmental Impact Statement (EIS) and will be put out for public comment. Several game damages hunts; bird and antelope season has opened. Thanked Region 3 staff for the tour; beneficial and informative.

Chairman Vermillion stated Region 3 Supervisor Pat Flowers has retired; great public servant for the State of Montana; Department is in the hiring stage; important position that requires understanding of the resources and communities. Received several calls on the wolf stamp; understands why the Department pulled the proposal; never simple as it may seem; the Director is committed in continuing the discussion and creating a working group to strengthen the relationship with non-consumptive users to allow them the opportunity to contribute financially; would like the Department to keep the Commission apprised what is happening with the working group. Several calls on bison and Durfee Hills. Commends the Commissioners for attending other activities other then Commission meetings; very important and appreciated by all parties involved.

5. Director's Report

Director Hagener reported in early September the Environment Quality Council (EQC) approved, by one vote, the fee increase proposal; draft is being prepared for the Legislative Session along with six other proposals that were approved. Attended Association of Fish and Wildlife Agencies (AFWA) meeting in September; starting a Blue Ribbon Panel on Sustaining America's Fish and Wildlife Resources to discuss non-consumptive users, much broader context than in the past, co-Chairmen are former Wyoming Governor Dave Freudenthal and Bass Pro Shops founder Johnny Morris; discussed moving forward with Grizzly delisting in the Yellowstone Ecosystem and Northern Continental Divide Ecosystem; nationwide wolf delisting; and proposed sage grouse delisting. Governor Bullock issued an executive order in early September on how Montana is going to manage sage grouse. Received two positive rulings from Fish and Wildlife Service (FWS); wolverine was declared not warranted for delisting and Artic grayling is not warranted for delisting based on efforts by landowners and various agencies involved in the Big Hole Valley, received a national award from AFWA; a notice of intent to sue has been filed on both rulings. Attended Parks Board meeting in Billings; Board is looking diligently at funding issues.

Chairman Vermillion asked about a committee being created to discuss non-consumptive users.

Director Hagener stated a discussion session is scheduled on October 28, 2014 at MT. Wild.

6. 2015 Commission Meeting Calendar

Director Hagener explained the proposed calendar is scheduled a year in advance and is similar to subsequent years; suggests having meetings in Great Falls, Billings and Kalispell.

Vice-Chairman Stuker asked if the March meeting could be moved earlier in the month.

Commissioners and Director Hagener briefly discussed the 2015 calendar; meetings to be held: April – Billings, July – Great Falls and October – Kalispell were proposed.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion to approve the tentative 2015 Commission Meeting Calendar. Motion Passed.

7. Out of State Sheep Transplant – Endorsement

John Vore, Big Game Management Bureau Chief explained transplanting bighorn sheep is an effective tool for augmenting existing populations or reintroducing sheep to new areas, and reducing sheep numbers where there are too many; efforts are consistent with the Montana Bighorn Sheep Conservation Strategy which provides direction to FWP. Projects require Commission endorsement, and monies are available from auction licenses and all animals get a health assessment at capture. FWP continues to look for new areas to plant sheep but is concerned over inadequate habitat, particularly winter range, the lack of adequate public access necessary for a huntable population, the proximity of domestic sheep and/or goats that pose a disease threat. Considerations are:

- FWP does not consider Livingston Peak a good candidate for bighorn sheep introduction; inadequate winter range, the lack of public access on likely winter ranges, the proximity of domestic sheep, and the likely connection with the existing Mill Creek herd that would provide a conduit for disease between the two herds.

- Bighorn sheep in HD 482 are over the population level appropriate to safeguard this population against a disease outbreak (Population Objective = 325, July 2014 count = 436); the Department would like to have the option of potentially capturing <10 sheep across the river in HD 680 (functionally the same population) if necessary to complete a capture goal.

- It is current Commission policy not to send sheep out-of-state. Because there is a need to reduce some Montana populations and it is getting more and more difficult to find places in-state to put them, FWP would like to be able to move sheep out-of-state. There is a current request from South Dakota for 2014-2015 winter and requests from Nebraska and Washington for the winter of 2015-16.

Director Hagener stated by 2015-16 Utah will also be interested.

Chairman Vermillion asked why the Department is struggling to find places to transfer sheep within Montana.

Vore stated in Montana sheep have many places where similar habitat already exist and the other states do not.

Vore and Chairman Vermillion had a lengthy discussion on the sheep plan.

Chairman Vermillion stated he is still opposed to moving sheep out of state.

Commission Stuker stated he agrees with Chairman Vermillion; keep sheep in state, if disease is an issue and the only option is to move them out of state, he would approve.

Vice-Chairman Stuker, Vore and Gary Bertellotti, Region 4 Supervisor discussed hunting district (HD) 482.

Chairman Vermillion, Vore and Quentin Kujala, Wildlife Management Section Chief discussed transplanting sheep to Ramshorn Peak.

Chairman Vermillion and Kujala discussed future options for sheep transplants.
Commission Stuker asked who pays for the transfer.

Vore stated the receiving state pays for all costs.

Chairman Vermillion asked if there has been any updates on the Bridger EA; been very quiet in the last year.

Howard Burt, Region 3 Wildlife Manager stated the Department has not received much input or cooperation from the landowners.

Commissioner Wolfe asked if the Commission does not approve transporting sheep out of state; how FWP will deal with the situation in HD 482.

Vore stated he does not know at this time.

Commissioners, Director Hagener and Vore had a lengthy discussion on past/future bighorn sheep transfer issues and problems.

Commissioner Tourtlotte stated the Department is recommending the Commission not endorse a bighorn reintroduction to Livingston Peak, endorse reducing sheep in HD 482, and endorse FWP being able to move bighorns out-of-state, but he is going to amend the recommended motion and remove the transfer sheep out-of-state portion.

Action: Commissioner Tourtlotte moved and Commissioner Wetsit seconded the motion that the F&W Commission not endorse a bighorn reintroduction to Livingston Peak and endorse reducing sheep in HD 482.

Chairman Vermillion asked for public comment.

Kathryn QannaYahu for Dr. Bill Mueller, Safari Club International (SCI), opposes out of state transfers.

Kathryn QannaYahu, Enhancing Montana's Wildlife and Habitat (EMWH), no centralized data; how can opportunities be assessed without data; opposes out of state transfers.

Ward Olson, Belgrade, opposes and is concerned of trading and taking sheep out of state, there are places to transfer in Montana; need more research.

Glenn Hockett, Gallatin Wildlife Federation (GWF), very concerned; needs to be reevaluated and looked at in more detail.

Nick Gevok, Montana Wildlife Federation (MWF), need to find somewhere in Montana to transfer; some good opportunities in southwestern Montana; need to reevaluate the conservation plan.

Dr. Jim Bailey, long term outlook for bighorn sheep is bleak; opposes transfers out of state.

Dennis Jorgensen, World Wildlife Fund (WWF), need to use Geographic Information Systems (GIS); there are areas in Montana where sheep can be transferred.

Jim Weatherly, Montana Wild Sheep Foundation (MWSF), agrees with motion; moving sheep out of state should be last resort; have not found a viable place to augment sheep.

Representative Bridget Smith, HD 31, opposes any transfers out of state; need to find other solutions.

Vice-Chairman Stuker and Director Hagener discussed HD 600.

Chairman Vermillion asked to have a work session to discuss the Bighorn Sheep Plan in the near future with the public.

Action on Motion: Motion passed.

8. QFS Bison Placement – Final

Ken McDonald, Wildlife Administrator explained FWP seeks to relocate 145 brucellosis-free bison to four locales that will help create or augment existing wild bison herds. The wild bison were part of the Bison Quarantine Feasibility Study (QFS) research project that began in 2004, directed by FWP and the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service. The research was conducted at a facility near Corwin Springs north of Yellowstone National Park to determine if quarantine was a feasible method to repeatedly test and ultimately produce wild bison free of brucellosis. Results of the QFS were published recently in the *Journal of American Veterinary Medical Association.* In March, FWP officials requested proposals from agencies or organizations capable of permanently caring for QFS bison for conservation purposes. The bison have been held at the Green Ranch, west of Bozeman, during a five-year monitoring period. The Interagency Advisory Council (IAC) made up of state and federal scientists with technical expertise in bison health, genetics and management evaluated 10 proposals and determined 5 would fit the overarching goal of the bison study to use verified disease-free bison for conservation purposes. After further examination, FWP chose four proposals to undergo an environmental assessment (EA). The QFS has gone through extensive public process, with an EA and a 2005 decision notice that indicated resulting brucellosis-free bison would be available for conservation purposes. An EA analyzing 4 different proposals was issued on October 1, and will be open for public comment for 30 days; if the EA illustrates significant impacts that cannot be mitigated below the level of significant impacts, the Department will return to the Commission when the impacts are addressed. The Commission may choose to allow bison to be relocated to any or all of the following locations, up to the number requested, recognizing that 145 are available for relocation:

	Requested	Recommended
Ft. Peck Tribes	All (145)	70
Utah Div. of Wildlife	30	30
Cherokee Nation of OK	50	35
WCS/Bronx Zoo	30	10

The fifth proposal from the American Prairie Reserve (APR), request was not included because a Statewide Bison Conservation Strategy Environmental Impact Statement (EIS) for bison in Montana has not been completed; could be considered for future bison relocations pending the results of a statewide bison EIS.

Commissioner Wetsit asked how much has the state invested in this project.

McDonald stated most of the monies came through Animal and Plant Health Inspection Services (APHIS); primary investment has been staff time.

Commission Wetsit asked what criteria was used to decided the recommendation.

McDonald stated the IAC recommend the four locations.

Chairman Vermillion asked how the animals are classified under Montana Law once they are moved.

McDonald stated the animals are considered wildlife.

Chairman Vermillion, Director Hagener and McDonald had a lengthy discussion on the reasoning and qualifications of bison transfers.

Commissioners, Director Hagener and McDonald discussed the four proposed destinations and what type of landscape the bison be transferred onto.

Action: Commissioner Wetsit moved and Commissioner Stuker seconded the motion that the Commission approve relocation of up to 145 bison to the four approved groups, up to the number requested, conditioned upon a finding of no significant impact in the environmental assessment and in concurrence with the final decision notice on the draft Environmental Assessment of Disposition of Quarantine Facility Study Bison.

Chairman Vermillion asked for public comment.

Glen Hockett, GWF, need a vision for bison to be managed as wildlife; against proposal.

Dennis Jorgensen, WWF, would like all bison go to Fort Peck.

Ward Olson, Belgrade, does not see any movement towards resolving this issue; need to keep bison in Montana.

Dr. Jim Bailey, need a bison management plan; will there be a requirement in the contract to get the bison back as sometime if needed.

Chairman Vermillion stated there is a retention clause in the agreement.

Steve Forrst Defenders of Wildlife (DOW) recommends bison going to Fort Peck.

Kathryn QannaYahu, EMWH, keep bison in Montana.

Dick Dolan, APR, keep bison in Montana; APR had the strongest proposal; explained what APR would do if/when they receive the bison.

Representative Bridget Smith, HD 31, wants all 145 bison go to Fort Peck tribe.

Tim Crawford, Bozeman, will the bison remain public trust or will they becomes property of someone else.

Chairman Vermillion asked how the decision was made to disperse the bison.

McDonald explained the reasoning of how IAC decided to disperse the bison.

Chairman Vermillion asked if the bison transferred to the Fort Peck Tribe in 2012 caused any problems.

McDonald stated no major issues have been reported with the Fort Peck Tribe.

Commissioners, Director Hagener, Becky Dockter, Chief Legal Counsel, and McDonald had a lengthy discussion on the EA, Decision Notice, legal issues, current Memorandum of Understanding (MOU) and the future of the bison.

Commissioner Wolfe asked who makes the final decision.

Director Hagener stated the Department will make the final decision after the EA is completed.

Commissioner Wetsit stated the tribe would welcome and have made the investment to receive all the bison; it is the intent of the tribe to reestablish bison within other entities.

Commissioners Stuker, Tourtlotte and Wolfe would like the bison go to the Fort Peck tribe.

Commissioner Wetsit withdrew his original motion.

Action: Commissioner Wetsit moved and Commissioner Stuker seconded the motion that the Commission approve the relocation of to 145 bison to the Fort Peck Tribe conditioned upon a finding of no significant impact in the environmental assessment and in concurrence with the final decision notice on the draft Environmental Assessment of Disposition of Quarantine Facility Study Bison.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

9. Garrity WMA Addition Region 2 – Final

Ken McDonald, Wildlife Administrator explained FWP proposes a fee-title purchase of 640 acres adjoining the Garrity Mountain Wildlife Management Area (WMA) that includes elk winter range and calving habitat and an extensive aspen stand, in combination with grasslands and riparian areas, provide for a diversity of wildlife including up to 24 Montana Species of Concern and Potential Species of Concern. The property is owned by The Conservation Fund, would be bought for $1.38 million (funded by the Natural Resource Damage Program (NRDP) $1.28 million, the Montana Fish & Wildlife Conservation Trust $50,000, and FWP's Habitat Montana Program $50,000). NRDP would provide $80,000 for operations and maintenance costs incurred during the first five years of FWP ownership. FWP completed an EA; public comment ran from August 1 - September 2 with a public hearing held in Anaconda on August; 20 comments were received, 16 in support, 3 no opinion and 1 was supportive contingent on allowing wolf trapping on the WMA; strong input particular in Anaconda was favorable and demonstrated the value that residents place on wildlife habitat, access, and outdoor recreation in general and specifically securing habitat and recreational opportunities on the proposed Garrity addition.

Action: Commissioner Wolfe moved and Vice-Chairman Stuker seconded the motion that the Fish & Wildlife Commission approve FWP's recommendation to purchase 640 acres adjacent to the Garrity Mountain WMA.

Chairman Vermillion asked for public comment.

Vice-Chairman Stuker and McDonald discussed access onto the WMA.

Action on Motion: Motion passed.

10. Marias River WMA – Brekke exchange Region 4 - Final

Ken McDonald, Wildlife Administrator explained FWP proposes to transfer 35.9 acres of the Marias River WMA to the Marias River Bird Preserve, LLC. The Preserve would transfer to FWP 76.7 acres, extend an existing access agreement to FWP, and grant administrative access across their property; a monetary exchange will not occur. A final EA and decision notice have been completed and published; two comments were received in support of the exchange. The land exchange would protect native habitats, provide secure administrative access to the southern portion of the Marias River WMA and expand FWP's management to benefit wildlife populations.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion that the F&W Commission approve the land exchange between FWP and the Marias River Bird Preserve.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

11. Nevada Lake WMA – Clear Creek Addition – Region 2 – Informational

Ken McDonald, Wildlife Administrator explained FWP administers the 740-acre Nevada Lake WMA which provides crucial elk and deer winter range and travel corridor habitat for bears, lynx, and wolverine. The Nature Conservancy (TNC) purchased an adjacent 760-acre parcel from Plum Creek Real Estate Investment Trust in 2004 to avert potential subdivision and development. TNC intended to retain the property temporarily as a part of the 89,000-acre Blackfoot Community Project. FWP was recently awarded a $595,000 grant from the Forest Legacy Program (FLP) intended for purchasing this addition to the WMA; this project received endorsement by the Commission in April 2008. TNC has committed to selling the land to FWP at 75 percent of appraised value, which will provide a 25 percent match for the Forest Legacy grant. This parcel shares the same wildlife habitat values as the WMA and provides a legal access connection between the WMA and US Forest Service (USFS) lands, which hasn't existed in the past. The parcel is adjacent to the 4,911-acre Dalton Mountain Conservation Easement (CE). No formal FWP public process has been initiated for this project; when the FLP grant was submitted in 2014, the FLP received 22 letters of support from the local community, neighboring landowners, and conservation groups.

12 Marias River WMA Access Settlement – Final

Aimee Fausser, FWP Attorney explained the Marias River WMA is located nine miles southwest of Shelby along the Marias River in Toole and Pondera counties. The Marias River runs the entire 14-mile length of the property with wide riparian habitats and associated river breaks, all composed primarily of native habitat. Existing public access points on the north side of the WMA only reach the WMA boundary and do not provide vehicle access to the river bottom. No public or administrative access is currently possible to the east side, where the WMA headquarters is located, pending a settlement or court's determination otherwise. The current lawsuit between Wanken Farms, Troy Wanken ("Wankens") and FWP is centered on the question of whether historic use created an implied easement for access to the Marias River WMA on the east side via the Lincoln Road. April 2013, a court-ordered mediation resulted in a negotiated settlement agreement between the parties that was rejected by the Commission, citing concerns about the limited nature of the access that was negotiated. FWP and the Wankens negotiated an alternative settlement, with Commissioners Stuker and Tourtlotte participating in the settlement negotiations. Public comment ran from September 15 - October 3; 33 comments were received; 26 opposed, 4 in favor, 3 neutral. Changes from the previously proposed settlement are:

- FWP will transfer approximately 483 acres to Wanken Farms. This is an increase in acreage compared to the previous settlement; FWP will retain the right of public access and recreational use on that property. The previous settlement did not include any recreational public access on the property to be deeded to Wankens.
- FWP grants the Wankens the opportunity to match the high bid for any grazing lease on the WMA; currently there are no plans in place to establish a grazing lease.
- Wanken Farms and Troy Wanken grant an easement for public recreational access on the Lincoln Road from April 1 to January 15 of each year. The previously negotiated settlement limited access solely for hunting and only from the beginning of archery season to the end of big game season.
- Access on the Lincoln Road will be administered by FWP through a reservation only system; each reservation representing a single vehicle. The number of reservations would be as follow: (5) April 1 – June 1, (7) June 2 – September 1, (15) September 2 – December 1 and (7) December 2 – January 15; a person may make multiple reservations for consecutive days subject to the WMA rules. The previously proposed settlement limited access to three day use and three overnight parking spots.

Commissioner Tourtlotte asked how a person acquires a reservation.

Gary Bertellotti, Region 4 Supervisor stated the details are still being worked out; a couple different options are being looked at; similar to block management.

Chairman Vermillion, Commissioner Tourtlotte Director Hagener and Bertellotti discussed access and expanded opportunity.

Commissioner Tourtlotte asked if the Department has heard of neighbors possible pulling their access because of the settlement.

Bertellotti stated he spoke with neighboring landowners and there have not been any positive responses.

Vice-Chairman Stuker and Bertellotti discussed access onto the WMA.

Chairman Vermillion stated his concerns on the settlement; recommends postponing the action until the next meeting and have the Department work with the landowners and explain the benefits and costs.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion that the Commission postpone the final decision until the November meeting and solicit public comment.

Vice-Chairman Stuker explained his outlook and concerns over the settlement; cost compares to other easements.

Chairman Vermillion asked for public comment.

Joe Perry, Conrad, strongly opposed; Department driven; did not speak with sportsmen or the general public; Commissioners should not be part of the negotiations.

Glen Hockett, GWF, opposes settlement; go to court if necessary.

Nick Gevok, MWF, opposed to settlement.

Commissioners, Director Hagener and Bertellotti discussed river recreational access on the WMA.

Action on Motion: Motion passed.

13. Whitefish River Petition Administrative Rule – Final

Jim Kropp, Chief of Law Enforcement stated in February 2014, the Commission initiated rule making on the Whitefish City Council's proposed amendment restricting the Whitefish River to electric motors or manually powered vessels from the BNSF train trestle to the JP Bridge.

Lee Anderson, Region One Warden Captain explained in June 2014, the Commission voted down the original proposal of a yearlong closure and extended the comment period for FWP proposed seasonal closure from July 5 - September 30. The issues in the public comment were resource damage/protection, public safety, historic use, property rights and recreational opportunity; during the initial comment period, FWP received 104 comments in support and 105 against the proposal to restrict usage to electric motors and manually powered vessels; during the extended comment period ending August 8, 2014, FWP received 1 comment supporting the seasonal compromise, 1 supporting a yearlong closure but would rather have the compromise over status quo, 2 comments supporting the compromise over a yearlong closure but would rather have status quo, 35 comments supporting status quo, 95 comments supporting a yearlong closure and 2 blank comments. FWP recommends not adopting the proposed amendments with the exception of "or minimum operating speed necessary to progress upstream"; this addition is necessary because there are several short stretches of river where the current is too swift to travel upstream without causing a wake. The FWP proposed seasonal closure was aimed at balancing the conflict between two polarized user groups, but neither group supported the compromise in the extended public comment. FWP time-lapse cameras in the closure area showed low levels of motorized use, few wake violations this summer, and one complaint in the

closure area. FWP recognizes the conflicting social values over the shared usage of this stretch of river and strong public and political support to make it non-motorized; FWP received a significant number of comments advocating for maintenance of the status quo. The current no wake rule limits resource damage, provides safety to all users, maintains historic recreational access by motorized vessels, and provides a unique opportunity for non-motorized users. The Department recommends not adopting the proposed amendments with the exception of adding *"or minimum operating speed necessary to progress up stream"*.

Action: Commissioner Vermillion moved and Commissioner Wolfe seconded the motion that the Commission adopt that the Whitefish River is limited to manually and electric powered watercraft from the confluence at the railroad trestle south of Whitefish Lake outlet, through the bridge at JP Road.

Richard Hildner, Whitefish Deputy Mayor, encourages adoption of the proposed rule as requested by the City of Whitefish.

Lenord Howke, Whitefish, opposes motion.

Don Spivey, Whitefish, in support of the City's position.

Michael Jamison, Whitefish, supports motion.

Chuck Stearns, City of Whitefish Manager, supports year round closure to motorized boats; supports motion.

John Phelps, Whitefish, supports City's position.

Steve Thompson, Whitefish, supports motion.

Nancy Woodruff, Whitefish, supports motion.

Nick Gevok, MWF, opposes motion.

John Muhlfeld, City of Whitefish Mayor, supports proposed motion.

Vice-Chairman Stuker asked if there are any other towns that have requested or have closed rivers or streams throughout their town.

Commissioner Wolfe stated yes, there are rivers, mostly in western Montana that have year-round or seasonal closures; reasonable request from the City of Whitefish.

Chairman Vermillion thanked Captain Anderson for his work on this proposal.

Action on Motion: Motion passed.

14. Commercial Use Administrative Rules – Proposed

Charlie Sperry, explained in August the Commission, in conjunction with the Parks and Recreation Board, adopted amendments to the Commercial Use Administrative Rules for all FWP land, including fishing access sites (FAS), wildlife management areas (WMA), and state parks. The Department is recommending an additional rule amendment to allow a guide to collect fees from clients when conducted permitted use on behalf of a permitted outfitter; this practice is currently prohibited under the commercial use rules. If the Commission and the Board propose the amendment to the commercial use administrative rules, FWP would solicit comments and bring back to the Commission and Board for final approval.

12.14.120 COMMERCIAL USE PERMITS

(1) A permit is required in advance to conduct commercial use on Department lands and restricted waterbodies.
(2) The Department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the Department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.
(3) A commercial use permit authorizes the permittee to conduct commercial use subject to the conditions designated on the permit.
(4) A commercial use permit is valid for the time period specified on the permit, not to exceed five years. The permit holder may request changes to a multi-year permit through submission of an updated plan of operation or other material.
(5) The Department may place conditions on the commercial use permit, including but not limited to the type, timing, location, duration, volume of the use, and any other conditions the Department deems necessary. The Department's statewide river recreation rules shall govern the development of conditions for water-based outfitters and guides on rivers and fishing access sites.
(6) The Department may require commercial users to report their use of Department land. The Department may require commercial users to maintain and have on their person for Department inspection a logbook for recording commercial use. The Department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:
(a) not be cash;
(b) name the outfitter that hired or contracted the services; and
(c) be directly deposited to the outfitter that hired or contracted the guide.
This rule does not prohibit the person hired or contracted from receiving a cash tip that is separate from any payment received for services provided. Proof of compliance with this rule must be made available to the Department upon request. Any violation of these rules is subject to any and all penalties and fines by law.

(9) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(10) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(11) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the Department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the Department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit.

(12) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the Commission and that no property right attaches to the rationed units of use.

(13) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

Chairman Vermillion stated he was under the understanding the Parks and Recreation Board had passed that allowed cash that was accompanied by a receipt.

Director Hagener, Chairman Vermillion, Kropp and Sperry discussed guides being allowed to take payments in cash.

Chairman Vermillion asked for public comment.

Action: Commissioner Tourtlotte moved and Vice-Chairman Stuker seconded the motion that the Commission approve putting out for public comment the proposed rule signed by Parks and Recreation Board Chairman Tom Towe on October 15, 2014.

Action on Motion: Motion passed.

15. 2015 Fishing Regulations – Final

Bruce Rich, Fisheries Administrator stated the final proposal is unchanged from the tentative proposal (see minutes from the August 7, 2014 Commission meeting). FWP conducted a 30-day public comment period from August 13 - September 12; one comment was received expressing support for the proposed change to the perch bag limit on Holter Reservoir.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion that the Commission adopt FWP's proposed final regulation changes for the 2015 fishing season.

Chairman Vermillion reminded the Department of the commitment to look at catfish in the lower Yellowstone River.

Rich stated it was discussed at the Fisheries management team meeting; will be included in next year's regulations.

Action on Motion: Motion passed.

16. Cow Creek Instream Flow Lease – Final

Bruce Rich, Fisheries Administrator explained in May the Commission directed FWP to negotiate a water-right lease on Cow Creek with the Sand Creek Ranch, subject to final Commission approval; negotiations were completed in August. The dam on Cow Creek Reservoir on the east side of the Bears Paw Mountains was repaired as part of a Future Fisheries Project. Cow Creek above the reservoir supports a

brook trout fishery; Cow Creek Reservoir supports a popular mixed fishery including walleye, tiger muskellunge, yellow perch, channel catfish, black crappie and brook trout. The project agreement calls for the owner, Sand Creek Ranch, to cease diverting water from Cow Creek Reservoir or Cow Creek for 20 years. A water lease and temporary change to instream flow is needed to protect the water rights and stream flow in Cow Creek. If the water lease is approved, FWP will make application to Department of Natural Resource and Conservation (DNRC) to temporarily change a portion of the landowner's water right to instream in Cow Creek. There would be no additional monetary compensation for the water right lease; FWP already provided $73,705 through the Future Fisheries Improvement Program for rehabilitation of the Cow Creek Dam.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion that the Commission approve the water-right lease on Cow Creek with Sand Creek Ranch and direct FWP staff to submit to DNRC an application to temporarily change the water rights to instream flow as described in the lease agreement.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

17. Eight Mile Ford FAS Temporary Construction Closure – Final

Bruce Rich, Fisheries Administrator explained the Eight Mile Ford Fishing Access Site (FAS) is located in Madison County on the Madison River. The bridge leading into the FAS crosses an irrigation canal operated by West Madison Canal Company; lies on 10x10 wooden abutments, which have rotted, providing little or no structural support for the bridge trusses which has resulted in a separation of the bridge decking from the trusses; shoring was installed this spring to provide additional support to the deteriorating trusses. The proposed project is to replace the wooden abutments with concrete footings and abutments, reinstall the existing bridge with new trusses, and new wooden bridge decking as needed. The project requires the FAS be closed for 30 days for construction; the public will be notified of the closure through FWP's website and signage at the FAS; no EIS needs to be completed.

18. Sheep Mountain FAS Temporary Construction Closure – Final

Bruce Rich, Fisheries Administrator explained the Sheep Mountain FAS is located in Park County on the Yellowstone River, five miles east of Highway 89. The road leading into the FAS crosses an irrigation canal operated by a neighboring landowner. The canal crossing consists of two 48-inch culverts, which lay within the irrigation canal. The culverts were originally installed by FWP 20 years ago and in deteriorated condition requiring replacement. A retracement of the property boundaries was made to confirm the access road and irrigation canal crossing are on FWP property. The proposed project is to replace the culverts with concrete footings and abutments and install wooden trusses and bridge decking; this type of structure will be better suited to the needs of both the sportsmen and the landowner who accesses his agricultural property on either side of FWP lands and will be more cost effective a longer period of time. The project requires the FAS to close for 30 days during construction; the public will be notified of the closure through FWP's website and signage at the FAS.

Action: Commissioner Tourtlotte moved and Vice-Chairman Stuker seconded the motion that the Commission approve as final the temporary construction closure of the Sheep Mountain and Eight Mile Ford FAS for a period of up to 30-days within the months of October and November.

Chairman Vermillion asked for public comment for both construction closures.

Action on Motion: Motion passed.

19. Shed's Bridge FAS Closure - Proposed

Bruce Rich, Fisheries Administrator explained the Sheds Bridge FAS is located in Gallatin County, along the Gallatin River, seven miles west of Bozeman on Montana Highway 84. Over the past two years, the river bank at this site has experienced severe erosion leaving a steep slope and near vertical 14-foot terrace. The terrace extends along the river's edge onto private property from about 100 feet above the FAS to a point 150 feet below the site. Routine inspections find the river bank to be unstable and any attempt to restore or stabilize it for safe public use may have detrimental impacts to the private landowners above and below the FAS. FWP will conduct a feasibility analysis to determine what can be done to stabilize the stream bank in both the short and long term; any stream bank restoration plan will need to include potential impacts on neighboring properties. An EA will be prepared to allow for public comment and a Decision Notice will be provided prior to any final action by the Commission.

Action: Vice-Chairman Stuker moved and Commissioner Tourtlotte seconded the motion that the Commission propose closing of Sheds Bridge FAS until an action plan for area can be developed.

Action on Motion: Motion passed.

20. Yellowstone River (near Sidney) Channel Migration Easement – Endorsement

Bruce Rich, Fisheries Administrator explained a channel migration easement is an easement on land bordering a stream or river that precludes the owner from rip-rapping a bank allowing natural erosive processes to continue. In collaboration with the Western Area Power Administration (WAPA) and the Upper Basin Pallid Sturgeon Governing Board and Work Group, FWP developed a pilot Channel

Migration Easement Program to protect naturally functioning floodplains along the Yellowstone River, which sustain pallid sturgeon and other aquatic and terrestrial wildlife. In 2009 and 2010, WAPA provided FWP funds to develop and implement the program for the Yellowstone and Missouri Rivers; FWP was unable to locate a willing seller for an acceptable price; as of December 2013, these funds had not been spent. Montana Aquatic Resource Services (MARS), after entering an agreement with FWP to facilitate application of the WAPA funds, located a willing seller. Gerald and Maryellen Navratil own approximately 230 acres on the Lower Yellowstone River, 88 acres of which are being considered for a channel migration easement. The Montana Land Reliance (MLR) has agreed to hold the channel migration easement as a part of a traditional CE which covers their entire ownership, rather than only the channel migration area, thereby conserving a broader set of conservation values. FWP must retain a third-party right of enforcement for at least the channel migration/erosion hazard portion of the easement. Upon approval, terms of the easement will be negotiated; once the easement is agreed upon, an EA will be completed, a public-comment period and additional public involvement and final Commission approval would be necessary to complete the transaction.

Action: Commissioner Tourtlotte moved and Commissioner Wolfe seconded the motion that the Commission grant FWP preliminary approval to negotiate the terms of a conservation easement on 230 acres of property belonging to Gerald and Maryellen Navratil, which includes protections for channel migration and is to be held by the Montana Land Reliance, but is enforceable by FWP.

Chairman Vermillion stated he strongly endorses; asked what the benefit of a channel migration is.

Mike Backes, Region 7 Fisheries Manager, stated it is a mechanism for landowners to get compensationed but still an opportunity to use as an agricultural function.

Chairman Vermillion asked for public comment.

Patrick Byorth, MARS, encourages endorsement; explained MARS involvement with endorsement.

Representative Kendall Van Dyke, MLR, explained MLR's background and involvement with easement.

Chairman Vermillion asked if there was not a financial change, would this would qualify for a CE donation if the landowners gave up development rights.

Representative Van Dyke stated it depends; the appraiser would have to work with the IRS.

Tom Hinz, MARS, stated this landowner has lost 75 acres and are going to lose a lot more; other landowners are interested in this type of projects.

Action on Motion: Motion passed.

21. Public Comment – For Issues Not On This Agenda

Vice-Chairman Stuker asked if the White Bear FAS issue that was discussed at the August 7 meeting been resolved.

Rich stated a solution is still in progress.

Action: ***Commissioner Tourtlotte moved and Vice-Chairman Stuker seconded the motion to adjourn the meeting. Motion Passed.***

The meeting adjourned at 3:59 p.m.

Dan Vermillion, Vice-Chairman

M. Jeff Hagener, Director