



Montana Fish & Wildlife Commission

MINUTES

Montana Fish and Wildlife Commission Video Conference Meeting

Steve Bullock, Governor

FWP Headquarters
1420 East 6th Avenue, Helena, MT

February 12, 2015

Dan Vermillion, Chairman
PO Box 668
Livingston, MT 59047
406-222-0624
District 2

Commission Members Present: Dan Vermillion, Chairman, and Gary Wolfe via video
Richard Stuker Vice-Chairman and Matt Tourtlotte via telephone

Gary J. Wolfe
4722 Aspen Drive
Missoula, MT 59802
406-493-9189
District 1

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director; Paul Sihler, Chief of Operations and FWP Staff.

Richard Stuker
1155 Boldt Road
Chinook, MT 59523
406-357-3495
District 3

Guests: February 12, 2015 - See Commission file folder for sign-in sheet.

Larry Wetsit
121 East Indian Street
Wolf Point, MT 59201
406-650-7071
District 4

Topics of Discussion:

1. Call to Order and Pledge of Allegiance
2. Approval of Minutes of January 15, 2015 Commission Meeting
3. Approval of Commission Expenses
4. Commission Reports
5. Director's Report
6. Deep Creek Instream Flow Water Right Lease – Final
7. Canyon Ferry Reservoir and Lake Helena Commercial Fishing Regulations – Final
8. Annual Rule to close Bitterroot River for user safety at Supply Ditch-Proposed
9. Repeal of Mclean Game Preserve – Final
10. WMA Biennial Public Use Rules – Final
11. 2015 Spring Turkey Quotas – Final
12. 2015 Spring Black Bear – Final
13. 2015 Deer Regulations – Final
14. Tendoy's Bighorn Sheep Season Structure - Final
15. Bighorn Sheep HD 315 Boundary Change – Final
16. Choteau Mountain Ranch Conservation Easement – Endorsement
17. Public Comment – For Issues Not On This Agenda

Matthew Tourtlotte
940 Blonco Circle
Billings, MT 59105
406-698-9696
District 5

1. Call to Order - Pledge of Allegiance

Chairman Vermillion called the meeting to order at 8:31 a.m. and led the Pledge of Allegiance.

M. Jeff Hagener, Director
MT Fish, Wildlife & Parks
1420 East Sixth Avenue
PO Box 200701
Helena, MT 59620-0701
406-444-3186
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2. Approval of Minutes of January 15, 2015 Commission Meeting

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion to approve the January 15, 2015 minutes. Motion passed.

3. Approval of Commission Expenses

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion to approve the Commission expenses. Motion passed.

4. Commission Reports

Vice-Chairman Stuker reported he received several calls regarding the Fort Belknap/warden situation that occurred last summer, spoke with Chief of Staff, Mike Volesky; attended the brucellosis workshop in Bozeman, well put together presentation.

Commissioner Wolfe reported he reviewed and approved several late management and game damage hunts for antlerless elk in Region 2; attended Region 1 and 2 Citizen Advisory Council (CAC) meetings- various discussions on legislative bills that could impact FWP-encouraged members to contact their local legislatures and make their views known, discussed the use and regulations of trail cameras during hunting season at the Region 1 CAC meeting; received a call concerning the WMA biennial rule.

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Fish & Wildlife Commission
web page at
fwp.mt.gov



Montana Fish,
Wildlife & Parks

Commissioner Tourtlotte reported he has received calls related to legislative bills; Region 7 is conducting early season deer counts, numbers are looking good.

Chairman Vermillion reported he has received several calls thanking the Commission for the new waterfowl regulations, and concerned citizens regarding the Glendive oil spill.

5. Director's Report

Director Hagener reported the brucellosis panel met in Bozeman, all around better understanding of the situation; met with plaintiffs and have a tentative settlement agreement on the lynx case, settlement will be contingent upon the Commission approving at the May meeting; Fish and Wildlife Service (FWS) has been sued on the Arctic grayling ruling; Corps of Engineers, Bureau of Reclamation (BOR) and FWP have been sued over the Intake Bypass proposal; attending meeting in Denver to discuss Greater Yellowstone grizzly bear delisting, hoping for a mutual agreement between the states and FWS. Director Hagener excused himself from the Commission meeting to attend to legislative issues. Paul Sihler will finish conducting the meeting.

Paul Sihler, Chief of Operations gave a legislative update on the status of numerous bills effecting FWP.

Becky Dockter, Chief Legal Counsel explained the stream access legislative bill.

Bruch Rich, Fisheries Administrator gave a brief update on the Yellowstone River oil spill near Glendive.

6. Deep Creek Instream Flow Water Right Lease – Final

Bruce Rich, Fisheries Administrator explained Deep Creek is an important spawning tributary for the Missouri River; during the summer and fall, dewatering due to irrigation negatively impacts stream flow and the fishery. In 2013, flow in Deep Creek substantially improved due to a change in source of supply from Deep Creek to the Broadwater-Missouri Canal; legally changing existing irrigation rights to instream flow will protect these flow improvements. The City of Townsend has the second priority irrigation water rights and wants to negotiate a water right lease with FWP; in August 2014, the Commission directed FWP to negotiate a water-right lease with the city. FWP drafted a 10-year lease agreement at a cost of \$1,000 per year; the Townsend City Council approved the agreement January 6, 2015 and is subject to the approval of the Montana Department of Natural Resources and Conservation (DNRC). The city has expended considerable resources in researching its water rights and will benefit FWP in preparing the water-right application. FWP must make application to DNRC to change the city's water rights to instream flow and would allow additional opportunity for comment; DNRC will conduct an environmental review. One alternative would be for FWP not acquire the water rights for instream flow conservation; improvements to flow-related habitat in Deep Creek may be foregone; another alternative would be for the City of Townsend to temporarily change its water right to instream flow without the involvement of FWP.

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion that the Commission approve the water-right lease with the City of Townsend and direct FWP 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.

Vice-Chairman Stuker asked how many cubic feet per second (cfs) are being discussed.

Rich stated 0.4 cfs is what is in the agreement.

Chairman Vermillion thanked the Department and the City of Townsend for working together.

Action on Motion: Motion passed.

7. Canyon Ferry Reservoir and Lake Helena Commercial Fishing Regulations – Final

Bruce Rich, Fisheries Administrator stated the final proposal is unchanged from the tentative proposal (see minutes from the December 11, 2014 Commission meeting). Public comment was taken from December 12, 2014 – January 12, 2015; one comment was received.

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion to approve the regulations for a commercial fishing operation on Canyon Ferry Reservoir and Lake Helena for 2015.

Action on Motion: Motion passed.

8. Annual Rule to close Bitterroot River for user safety at Supply Ditch-Proposed

Bruce Rich, Fisheries Administrator explained in 2011 the Bitterroot River shifted its primary flow over the Supply Ditch Diversion on the Bitterroot River and soon after accidents were reported at the diversion. Despite posting signs and other education efforts, serious accidents continued, including one fatality in 2013; additional outreach was implemented, and there were no more accidents in 2013. Early spring 2014, more accidents occurred; April 11, 2014, FWP initiated an emergency rule closure for a five mile section of the Bitterroot River for user safety; the decision was controversial. Public comment was taken on the emergency rule and a court petition was implemented. Opponents felt FWP should allow individual users to use it at their own risk rather than close the river; other concerns

included lack of public comment prior to implementing the closure, the question of FWP authority to close a portion of the river without Commission approval, and since the danger was chronic and known, an emergency rule was not warranted. There are more signs posted and plans to increase public awareness; it is uncertain whether these attempts will be enough to improve safety. Fundraising has started and the Department hopes to modify the dam late 2015/early 2016 so river users can safely pass the structure and irrigators can still get their water. The Department recommends soliciting new public comment on an annual rule to possibly close the river when conditions warrant.

Bitterroot River Closure Rule

I. PURPOSE

1. The following rules govern any possible temporary closure of a portion of the Bitterroot River surrounding the Supply Ditch Diversion Dam to protect public safety.
2. The dam is a low-head structure that creates dangerous currents that have caused numerous boat accidents including a fatality.
3. During flood stages, portage around the dam is very difficult.
4. Conditions are unpredictable and an immediate temporary closure may need to be instated to educate the public and address the safety concerns around the dam.
5. The Fish and Wildlife Commission (commission) is outlining the circumstances that the Department of Fish, Wildlife and Parks (Department) may temporarily close all or a portion of the Bitterroot River between Woodside Fishing Access Site and Tucker West Fishing Access Site.

II. BITTERROOT RIVER TEMPORARY CLOSURE REQUIREMENTS

1. The department may close a portion or the entire length of the Bitterroot River between Woodside Fishing Access Site and Tucker West Fishing Access Site when:
 - a. danger at the dam is heightened; and
 - b. alternative ways to avoid the dam are difficult or impossible to navigate.
2. The department must reopen the Bitterroot River as soon as the flows are below 4000 cubic feet per second at the USGS Missoula Gauge or July 10, whichever occurs first.
3. This rule does not affect any rules that may be adopted to address unforeseen temporary, emergency situations.

Commissioner Wolfe stated this is the beginning of public process.

Action: Commissioner Wolfe moved and Vice-Chairman Stuker seconded the motion that the Commission propose an annual rule outlining the conditions for the Department to possibly close all or portions of the Bitterroot River between Woodside and Tucker FASs for reasons of public safety.

Vice-Chairman Stuker asked Commissioner Wolfe if this is the area the Commissioners toured last July.

Commissioner Wolfe stated yes, it is the same area.

Chairman Vermillion asked for public comment.

George Corn, Attorney, against proposal; did not give appropriate notice; significant legal issues; discriminatory against floaters, there are no closures for hunters.

Doug Jones, Outfitter, against proposal.

Jay Dixon, Outfitter, against proposal; system is flawed; education is the key.

Craig Pablo, Missoula, against proposal; Bitterroot River Irrigation District should be responsible for making this area safe.

Bob Olwell, Outfitter, closing access at wrong time; against proposal.

Chad Williams, Guide, against proposal.

Sean O'Brien, Outfitter, against proposal.

Brooks Jessen, Guide, all rivers are dangerous; against proposal.

Kurt Long, Guide, against proposal.

Jere Long, Choteau, supports proposal.

Robin Cunningham, Fishing Outfitters of Montana (FOAM), supports the idea of the proposed rule because it allows public comment.

Tony Reinhardt, Outfitter, need to look at liability of what is safe and not safe; need to educate; against proposal.

Rich stated what is being proposed is a rule that would allow the Department to close a specific section to floating under two specific conditions: If the danger of the dam is heightened at any certain time and an alternative way to avoid the dams are difficult or impossible to navigate at that time.

Commissioner Wolfe asked if the motion is passed, when would public comment go out, how long would it last and when would the Commission take final action.

Pat Saffel, Region 2 Fisheries Manager stated his understanding is a press release would be sent on February 16 and run through March 9; would come back to the Commission at the April meeting.

Chairman Vermillion asked the Department to explain the public notice that was done for this proposal.

Paul Sihler, Chief of Operations explained a statewide press release was sent out; agenda was posted on the website, extensive mailing list and sent to myfwp contact list.

Commissioner Wolfe explained the vote today is not to give the Department the authority to close the river, it is to take the proposal out for public comment; this is part of the educational process; will support today to raise awareness and for additional public comment.

Chairman Vermillion explained the compelling state interest in this proposal is to protect human life; there are only two conditions that would prompt the closure; provides guidance for the Department and educates the public; does not necessarily mean a closure; the Commission and the Department have enacted closures on hunting areas; supports the proposal.

Action on Motion: Motion passed.

9. Repeal of McLean Game Preserve – Final

Ken McDonald, Wildlife Administrator explained the 1,464 acre McLean Game Preserve in Pondera County, consisting entirely of private land and closed to all hunting, was established over 40 years ago to provide for upland game bird nesting habitat. Following the death of the original property owner, the land within the Preserve was purchased by two separate individuals. Much of the native rangeland has been converted to small grains production; the remainder is seasonally grazed and does not provide quality nesting habitat for upland game birds. One landowner desires to abandon the game preserve status and supports all hunting on his property within the Preserve; the other landowner does not support deer hunting on his property; repealing the designation of the Preserve does not inhibit his choice to allow or not allow hunting on his portion of the preserve. The Department recommends repealing the designation of the Preserve. The Preserve was established through the ARM process and Commission approval is needed to repeal ARM 12.9.206. Notice of the proposed repeal was published on December 11, 2014; public comment ran until January 9, 2015; news releases were submitted, published in local newspapers and posted on the FWP website; three comments were received, two in support and one opposed.

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion that the Fish and Wildlife Commission repeal ARM 12.9.206 McLean Game Preserve.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

10. WMA Biennial Public Use Rules – Final

Ken McDonald, Wildlife Administrator stated the final proposal is unchanged from the tentative proposal (see minutes from the December 11, 2014 Commission meeting). Public comment was taken from December 12, 2014 - January 12, 2015; one comment was received. A 30-day public review and comment period was conducted; information was sent via an interested person's letter and was posted on the FWP website; no comments were received.

Action: Commissioner Wolfe moved and Vice-Chairman Stuker seconded the motion the Fish & Wildlife Commission adopt the proposed 2015-2016 biennial WMA Public Use Rules.

Commissioner Wolfe stated he received a call from a gentleman in Augusta asking the opening date for the Sun River Wildlife Management Area (WMA) be the third weekend in May rather than May 15 to provide more opportunity for businesses.

Chairman Vermillion asked what the reasoning for not opening on a weekend is.

McDonald stated the Department is trying to standardize the opening date on all WMA's; the date doesn't seem to be impairing people.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

11. 2015 Spring Turkey Quotas – Final

John Vore, Game Management Bureau Chief explained season structures and hunting district (HD) boundaries are adopted biennially for most game species; upland game bird season dates for 2015, with the exception of sage grouse, were finalized in February 2014. Other season elements including bag and possession limits may be changed annually. Two changes for 2015 Spring Turkey quotas and limits in HD 395 were proposed during the December meeting; Region 4 submitted a late proposal during the comment period asking to increase the number of permits in Cascade County from 5 to 10 to allow more harvest opportunity as the population grows. The proposed quotas are:

- HD 395-20: increase general permits from 35 to 50
- HD 395-21: increase youth permits from 5 to 10
- Cascade County: increase permits from 5 to 10

Other elements of the spring turkey quotas and limits are proposed to remain unchanged from 2014. Public comment ran through 5 pm, Friday, January 23; five comments were received; three in support, one wanting more permits near Townsend; one speaking to the difference in allowable weapons between spring and fall seasons; no comments were received on the late proposal.

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion that the Commission adopt the proposed spring 2015 turkey quotas and limits in HD 395 and Cascade County as presented by FWP.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

12. 2015 Spring Black Bear – Final

John Vore, Game Management Bureau Chief stated the final proposal is unchanged from the tentative proposal (see minutes from the December 11, 2014 Commission meeting). Public comment ran through January 23, 2015; three comments were received; one speaking to closed gates on the National Forest, one wanting baiting during the last two weeks of the season, and another wanting to raise the quota in Region 7. The Department does not have the ability to conduct trichinella testing anymore; surrounding states do not offer testing; can call the FWP lab in Bozeman if anyone has questions or concerns.

Action: Commissioner Wolfe moved and Vice-Chairman Stuker seconded the motion that the Commission adopt the 2015 Black Bear Hunting Quotas as presented by FWP.

Action on Motion: Motion passed.

13. 2015 Deer Regulations – Final

John Vore, Game Management Bureau Chief explained season structures and HD boundaries for deer are adopted biennially in odd-numbered-years between December and February. The Commission agreed to consider proposals outside of the regular cycle to address specific issues. Public comment ran through January 23, 2015; 41 comments were received; 22 spoke to the specific FWP proposals with three-quarters opposed to increase B-licenses, others addressed a variety of subjects including point restrictions, hunter numbers, trend counts and other matters. FWP final proposals are:

Region 3

- HD 300 - propose issuing 75 mule deer B-licenses to address over-browsing and to follow Adaptive Harvest Management (AHM).
- HD 331 - propose issuing 200 mule deer B-licenses to address over-browsing and to follow AHM.

Region 6

- All Region 6 HDs except HDs 600, 611, 621, 622 and 652 propose allowing either-sex mule deer on the general license to follow AHM and address hunters' concerns about overharvesting bucks with the current buck-only season.

Region 7

- All Region 7 HDs propose issuing some antlerless mule deer B-licenses to follow AHM and provide the tools to address game damage. The number of B-licenses issued in each HD would vary and depend on the spring 2015 deer surveys; if the surveys show deer numbers below long-term average in a hunting district then no B-licenses would be issued for that district. If the population is at or above long-term average then the number of B-licenses issued would be on a sliding scale and depend upon by how much the population exceeds the long-term average.

Action: Vice-Chairman Stuker moved and Commissioner Wolfe seconded the motion that the Commission adopt the final 2015 deer hunting seasons and hunting districts as presented by FWP and also move to adopt all other portions of the previous 2014-2015 deer season regulations not affected by the Commission's actions today.

Vice-Chairman Stuker stated in HD 600 mule deer populations are coming back; supports recommendations.

Commissioner Wolfe stated there are different opinions amongst the public whether this is a wise proposal for Region 6 and 7; appreciates biologist's recommendations.

Craig Fager, FWP Region 3 Wildlife Biologist explained the reasoning behind Region 3's proposal.

Chairman Vermillion asked for public comment.

Sam Milodragovich, Montana Sportsman Alliance (MSA), appreciated the meeting the Department held in Butte to discuss deer issues; very beneficial and eye-opening; encourages Department to educate the public and other groups the way the meeting was held; supports proposal for Region 3.

Commissioner Wolfe asked the Department to explain the Region 6 proposal.

Mark Sullivan, FWP Region 6 Wildlife Manager explained the rationale behind Region 6's proposal.

Action on Motion: Motion passed.

14. Tendoy Bighorn Sheep Season Structure – Final

John Vore, Game Management Bureau Chief explained in December, FWP informed Commissioners of the concept of depopulating a struggling population of bighorn sheep to make way for restocking the range. Bighorn sheep of the Tendoy Mountains in HD 315 have experienced very low lamb recruitment since the all-age pneumonia die offs of 1993 and 1999, in spite of augmentations in 1997, 2001 and 2012 aimed at speeding up population recovery. A 2012 disease survey of the Tendoy Mountains identified pathogens endemic in the herd and is a suitable candidate for depopulation and restocking. If the environmental assessment (EA) for the project is adopted, and the decision made to go forward with depopulation and restocking approved, an aggressive public hunting harvest could begin fall 2015. There is currently one limited either-sex license offered through the drawing; FWP does not want a hunter who draws a coveted license to be in competition with hunters harvesting animals of both sexes and all ages to depopulate the herd. FWP seeks to reduce the limited draw either-sex license quota from one to zero; the limited-draw license would not be offered in the 2015 regulations book, which goes to print in February; the Department doesn't want to close the season but to remain open so a possible depopulation hunt could still take place. The licenses for a depopulation hunt wouldn't appear in the 2015 regulations book. Such licenses would only be offered after an EA is approved; FWP would like to keep the either-sex License/Permit Type (LPT) in place and change the acceptable range to "unlimited" to facilitate depopulation. FWP estimates it would take a couple of years of aggressive harvest to achieve depopulation; once achieved, the season would be closed to make way for restocking sheep. After restocking and the population grew to support a harvest, the season could reopen with a few limited-draw licenses. If no limited-drawing license is offered in 2015, and issues are identified in the EA or other circumstances prevent a depopulation season, there would be no bighorn sheep season in HD 315 this year. The local biologist, the Region 3 wildlife manager and game management bureau chief have been in contact with some local sportsmen's groups, the Montana Chapter of the Sheep Foundation, and others about the idea of depopulating the Tendoy Mountains herd for later restocking and has been general support for the idea. Comments were taken through January 26; 17 comments were received: 12 in support, 2 opposed, and 3 spoke to other matters.

Action: Vice-Chairman Stuker moved and Chairman Vermillion seconded the motion to adopt the final quota change in bighorn sheep hunting district 315 as presented by FWP.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

15. Bighorn Sheep HD 315 Boundary Change – Final

John Vore, Game Management Bureau Chief explained the bighorn sheep the Tendoy Mountains HD 315 currently includes the year-round range of the sheep herd and a portion of the summer range of an interstate herd on the Idaho border in Idaho's Hunt Area 30; the 2 ranges are separated by Big Sheep Basin and the Medicine Lodge and Muddy Creek drainages. The interstate herd offers very limited harvest opportunity to Montana hunters; sheep typically move back into Idaho by the time the season opens; no rams from the interstate herd have been taken in Montana's HD 315 over the last 15 years. Harvest management of the interstate herd best rests with Idaho Fish & Game. FWP wants to focus its management on the Tendoy sheep and do not want to harvest sheep out of the interstate herd. FWP is proposing to redefine the boundary of HD 315 to include only the Tendoy Mountains. Area biologist, Craig Fager, would like this proposed new boundary to be permanent to facilitate management of the Tendoy Mountains bighorn sheep herd and not affect the interstate herd. Public comment was taken through 5 p.m., January 26, 2015; 14 comments were received; 11 in favor, 2 asking to expand the current HD boundary and 1 spoke to the interstate herd.

Action: Commissioner Wolfe moved and Vice-Chairman Stuker seconded the motion to adopt the final boundary change in bighorn sheep hunting district 315 as presented by the Department.

Chairman Vermillion asked for public comment.

Action on Motion: Motion passed.

16. Choteau Mountain Ranch Conservation Easement – Endorsement

Ken McDonald, Wildlife Administrator stated the Department is withdrawing this agenda item; need more time to speak with the land owner and potential buyer.

17. Public Comment – For Issues Not On This Agenda

Brad Skramstad, Blackfoot Access Group (BAG), requesting to restore permit to hunt from a vehicle privileges.

George Hershberger, BAG, reiterated Mr. Skramstad comments.

Chairman Vermillion stated this will be a process that the Commission will be look at this year with the wildlife managers to see what can be done within the confines of sound elk management.

Commissioner Wolfe asked if this would be part of next biannual season setting process.

Vore stated yes, that is correct.

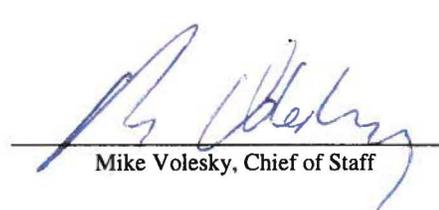
Vice-Chairman Stuker stated it does need to be looked at to see if it can be restored.

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

The meeting adjourned at 11:15 a.m.



Dan Vermillion, Chairman



Mike Volesky, Chief of Staff

