

CAC AGENDA: Citizen's Advisory Committee

Wednesday, December 1, 2010

6 p.m. to 9 p.m.

FWP Headquarters, North Meridian Road, Kalispell

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| 6 p.m.-6:30 p.m. | Dinner and informal discussions with Current CAC members and alumni. |
| 6: 30 p.m. | Administrative matters, Deer and Elk Hunting Season wrap-up |
| 7:00 p.m. | <p>Church and Fennon Sloughs, proposed boating rule changes</p> <p>The CAC members will hear details of the petitions, and may hear a presentation from one or both of the petitioners. FWP legal staff will be available on video conference to answer questions.</p> <p>The CAC's responsibility is to review the petitions and decide whether or not they recommend the commission develop rules based on the petition. The CAC has two choices for <u>each</u> petition – 1) recommend the commission consider the rule or 2) recommend the commission doesn't.</p> <p>CAC members: please read through attached information on the proposals and on the rules and policies.</p> |
| 9:00 p.m. | Set future meeting date,
Adjourn |
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RE: 2010 Recreational Water Use Petitions and Recommendations

The Department of Fish, Wildlife and Parks has received several petitions and has developed several recommendations regarding Recreational Water Use rules. The petitions and recommendations propose rule changes to rivers, lakes in the western fishing district, and lakes outside of the western fishing district.

PETITIONS AND RECOMMENDATIONS

Petitions and draft rules are attached for review.

Region 1

Fennon Slough

Owen David Sowerwine petitioned the Fish, Wildlife and Parks Commission to establish a no wake status for Fennon Slough, an oxbow of the Flathead River, and authorize installation of a buoy maze and sign at the entrance of the slough. Mr. Sowerwine states the rate of damage to private property is escalating dramatically due to the increased numbers of boats, some designed specifically to throw large wakes. Part of the compromised shore is a dike intended to protect homes and farmland from flooding. Mr. Sowerwine is recommending the no wake zone on Fennon Slough as a temporary measure pending development of a comprehensive plan for the use, management, and maintenance of the Flathead River basin.

Church Slough

Flathead Wildlife, Inc. petitioned the commission to establish a no wake status for Church Slough, an oxbow of the Flathead River, and close Church Slough to boating March 1 to April 10. Flathead Wildlife Inc. states boating use has increased steadily in the entire lower Flathead River and associated sloughs over the past 16 years and the increased use seasonally conflicts with migrating waterfowl. Flathead Wildlife Inc. claims this puts an unwanted energy demand on the birds and also eliminates a popular watchable wildlife opportunity. The petition also states increased boat use is a partial cause of increased bank erosion and safety hazards for boaters. A lawsuit forced Flathead County to adopt horsepower restrictions for boaters launching from the recently constructed boat ramp at the county access however the restrictions do not apply to boaters launching elsewhere.

GOVERNING RULES AND POLICIES

Each petition and recommendation is governed by unique statutory authority and department processes requiring each petition and recommendation to be addressed individually. However, the general process for rulemaking and public involvement of the rulemaking process is delegated in the Montana Administrative Procedures Act (MAPA). See Montana Code Annotated 2-4-101 through 2-4-711. For the purposes of this memo I will not be detailing the requirements of MAPA but wanted to inform you that MAPA is a determining factor in the scheduling and requirements of this rulemaking process. If

you have any questions regarding MAPA, generally or specifically to this process, please feel free to contact the Legal Unit.

Fennon Slough and Church Slough

Fennon Slough and Church Slough are oxbows to the Flathead River and are governed by the River Recreational Use rules (ARM 12.11.401 through 12.11.155) and department's River Recreation Management Planning Manual.

The regional citizen advisory committee's (CAC) responsibilities include advising the department and commission on the management of recreation on a river including the development of river recreation rules. See ARM 12.11.430.

Regional staff and landowners should present the petition to the CAC. The CAC should evaluate the petition and develop any recommendations suitable for presentation to the commission. Prior to the development of any recommendations the CAC should be made aware of and receive all pertinent information regarding the priorities and responsibilities in regards to recommending rules. Chapter 2 of the planning manual provides valuable information that may assist the CAC members, department staff, and any other interested parties with this process.

The planning manual also discusses conducting a public scoping process for the purpose of identifying issues, interested parties, and concerns. For this specific petition I do not believe this step is necessary. Region 1 has an established CAC, the requests of the petition are very specific, and the regional staff is aware of the issues presented in the petition. The initial CAC meeting should be publicly advertised informing any interested persons that the CAC will be evaluating the petition and developing recommendations to the commission. The public should have an opportunity to comment and discuss the petition at the CAC meeting.

The petitions and drafted rule language need to be presented to the CAC for consideration. The CAC will submit a final recommendation to the department. The River Recreational Use rules outline the responsibilities of the CAC, department, and commission; and provide priorities and preferences to consider when recommending rules to the commission. "The general premise of these rules is that the public prefers to recreate on rivers without controls on their recreational experience" and "[t]he demand on the natural resources and the social experience will continue to grow, and the best approach is a balance between quality of experience and unrestricted use of a limited resource. On any river or stream, there may be a time and a need for management intervention in order to maintain the quality of the river resources and the quality of the recreational experience. The quality of the river resource should be protected as the first and foremost priority." ARM 12.11.405.

Management plans or rules must not allow unlimited recreation to compromise long-term conservation and must maintain a balance between quality of experience and unlimited quantity of experience. Management plans and rules must be technically and socially feasible; legal; affordable; measurable; enforceable; and reasonable to administer. ARM 12.11.410.

ARM 12.11.415 requires the department to implement the Montana Environmental Policy Act (MEPA) when developing a management plan or when proposing rules for a specific river. The department shall conduct an analysis and decision-making process that complies with MEPA including collection and analysis of

data, appointment of a citizen advisory committee (see ARM 12.11.425 and 12.11.430), development of alternatives, and public review and comment. When determining how a river should be managed, the commission shall consider management methods in this order: 1) nonrestrictive management methods; 2) restrictive management methods; and 3) rationing methods. ARM 12.11.435. An EA should evaluate the CAC's recommendation and no action. The EA may only need to be a checklist EA and the Legal Unit can help with that determination when necessary. The MEPA and MAPA process should run concurrently.

Once the CAC submits its final determination and the department has drafted an EA, the recommendation is ready to be submitted to the commission for consideration.