Draft Rule Proposed to Commission on December 20, 2012

Montana Fish, Wildlife & Parks

Fish and Wildlife Division

Fishing Access Site Annual Rule

Fees and Rules for Fishing Access Sites

Valid for 2013 Calendar Year

Adopted by FWP Commission on DATE

DRAFT

FISHING ACCESS SITE USE FEE TABLE

FEE CATEGORY:	FEE AMOUNT:
CAMPING	
Montana fishing license holders	$7 per night
Montana fishing license holders (Montana Residents: disabled or 62 years or older)	$3.50 per night
Non-license holders	$12 per night
Non- license holders (Montana Residents: disabled or 62 years or older)	$6 per night
GROUP USE PERMITS[1] (GROUPS, EVENTS, ACTIVITIES INVOLVING MORE THAN 30 PEOPLE)	
Permit	$3 per person per day or $5 per vehicle per day
FACILITY RENTALS	
Rental	$75 per day
Deposit	$100
SPECIAL RECREATION PERMITS (BLACKFOOT AND MADISON RIVERS)	
Commercial Use	Fee amount subject to FWP Commercial Use Permit Fee Rule
Organized Groups	$3 per person per day, or $100[2], whichever amount is greater
Competitive Events	$3 per person per day, or $100, whichever amount is greater
COMMERCIAL USE PERMITS	
Permit	Fee amount subject to FWP Commercial Use Permit Fee Rule

[1] *Amendment*. Group Use Permit formerly referred to as Special Use Permit. Change made to avoid confusion with Special Recreation Permit.
[2] *Amendment*. The minimum fee has been increased by $5 (used to be $95) to be consistent with the Bureau of Land Management's fee schedule (SRPs are administered through a partnership with the BLM).

Fishing Access Site Annual Rule (2013)

APPLICABILITY OF RULE & SPECIAL RULES/REGULATIONS

A. This annual rule applies to non-commercial use of fishing access sites, organized groups and competitive events on the Blackfoot and Madison rivers, and commercial use of the Alberton Gorge (all other commercial use of fishing access sites are governed by 12.14.101 through 12.14.170, ARM).
B. The rule is in effect from date of adoption through December 31, 2013. The Fish, Wildlife and Parks Commission may amend the rule at any time during this time period.
C. Fees shall be prominently signed and posted where applicable.
D. The department's public use regulations, 12.8.201 through 12.8.213, ARM, unless otherwise posted or noted in this fee rule, shall apply to use of fishing access sites.
E. The Commission delegates to the director or the director's designee the authority to post special rules, consistent with existing department or commission authority, related to public use, health, safety, welfare, and resource protection per 23-1-106, MCA.

LEGAL AUTHORITY

A. The Fish, Wildlife and Parks Commission has the authority to adopt these rules as annual or biennial rules not subject to the specific requirements of the Montana Administrative Procedures Act per section 2-4-102(11)(b)(iv), MCA.
B. Sections 23-1-105, 23-1-106, 61-3-321, 87-1-303, MCA, and 12.8.213, ARM, authorize the collection of fees and charges for use of Montana fishing access sites, and rulemaking for the sites' use, occupancy, and protection.

DEFINITIONS

A. "Camp" means to occupy a campsite overnight at a fishing access site.
B. "Campsite" means any area officially authorized to allow camping. This includes designated, numbered sites, and dispersed non-numbered sites.
C. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly used for sleeping.
D. "Commercial use" is defined as per ARM 12.14.101(3).
E. "Commission" means Fish, Wildlife and Parks Commission.
F. "Department" means Department of Fish, Wildlife and Parks.
G. "Dispersed camping" means camping that occurs in areas that are not individually signed or numbered.
H. "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service. The definition of an education group includes home schooling per 25-5-111, MCA.

I. "Fishing access site[3]" means lands that are under the control, administration, and jurisdiction of the department's Fish and Wildlife Division and were purchased for the primary purpose of providing fishing access to streams, rivers, lakes, reservoirs, ponds, and other water bodies.
J. "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.
K. "Nonprofit organization" means an organization that is officially registered as a 501(c)(3) tax exempt organization.
L. "Nonresident" means a person who does not meet the definition of a resident as defined in 87-2-102, MCA.
M. "Resident" means a resident of Montana as defined in 87-2-102, MCA.

PENALTIES

A. No person shall use campgrounds or facilities, or otherwise participate in activities for which a fee has been established without first paying the required fee. Any violation of this provision is punishable by a fine not to exceed $500 per 23-1-106, MCA, and 12.8.213, ARM.
B. Violation of fee requirements, administrative rules, or state laws may result in immediate expulsion from the area in addition to other enforcement actions.

SEVERABILITY CLAUSE

A. If a part of this fee rule is invalid, all valid parts are severable from the invalid part and shall remain in effect. If a part of this fee rule is invalid in one or more of its applications, the part remains in effect in all valid applications severable from the invalid applications.

CAMPING AT FISHING ACCESS SITES

A. There are no daily entrance fees at fishing access sites. The funding sources for operation and maintenance of fishing access sites include revenue from the sale of fishing licenses, motor vehicle registration fees, permit fees, and federal funding sources[4].
B. There is a fee to camp at fishing access sites that are posted as fee areas. A visitor must immediately pay the required camping fee upon arriving at or occupying a campsite. The camping permit must be attached to the campsite post if available or displayed on driver's side dashboard.
C. A camping fee is charged per each individually signed or numbered campsite unless otherwise posted. The department may apply the campsite fee to each camping unit for dispersed camping areas and campsites that accommodate multiple camping units.
D. Fishing access site camping seasons vary based upon specific site conditions, location, and other factors. Some sites may be closed during the winter season or other portions of the year (contact a department regional office for details).
E. A person must have a valid Montana fishing license to qualify for the reduced (lower) camping fee at fishing access sites.

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[3] *New*. Rule now includes a definition for "fishing access site" to distinguish these sites from other FWP land units/types.
[4] *New*. Rule clarifies that there are no fees charged to enter a fishing access site, and describes the funding sources for the FAS program.

F. 23-1-105(2), MCA, provides that an overnight camping fee will be discounted 50% for a campsite rented by a Montana resident who is a:
   i. senior citizen 62 years of age or older and provides a photo identification with Montana resident address (e.g., Montana Driver's License); or
   ii. person with a disability, verified by either a disability form obtained from the department and signed by a physician, a Resident Disability Conservation License, or a disability permit or license plate issued by the Montana Motor Vehicle Division.

   Only one discount may be applied to an overnight camping fee, not a combination.
G. Campsites may not be "held" by an individual or party for another individual or party arriving later. No person may pay a camping fee or leave an item as a means to reserve or hold an unoccupied site.
H. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is eight (8) people.
I. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is one camping unit and up to two additional tents. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly used for sleeping.
J. All camping units with the exception of tents, and all motor vehicles, boats, trailers, motorcycles, non-licensed recreational vehicles, and other similar forms of transportation must be confined within the designated parking area of the campsite or at designated overflow (alternative) parking areas.
K. The department may establish a dispersed camping area with occupancy limits and terms and conditions for use of the area. These areas may require a group use permit.
L. No person may leave a campsite unattended overnight. Nightly occupancy is required.
M. No person may leave a vehicle unattended for more than 48 hours unless the area is otherwise posted[5].
N. Camping at one or more campsites in any one designated recreation area for a period longer than fourteen (14) days during any 30-day period is prohibited unless otherwise posted. In areas so posted, said occupancy shall be limited to seven (7) days during any 30-day period. Such 30-day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year.
O. No person may set up camp in areas other than designated campgrounds, or in any department-administered shelter building unless the shelter is posted as a camp shelter.
P. No person or group may set up camp or otherwise occupy a campsite that has already been occupied or paid for by another person or group.
Q. Checkout time for campers using fee areas is 2:00 p.m. the following day unless otherwise posted.
R. All camping fees include the 7% State of Montana accommodation tax as per 15-65-111 & 15-68-102, MCA.

GROUP USE PERMITS[6]

A. All groups, events, or activities that include more than 30 people must secure a group use permit prior to using a fishing access site. Examples of groups or events that may require a group use permit include but are not limited to wedding parties, family reunions, fishing contests, and research activities. A group use permit may also be required for groups of 30 or fewer people or special

[5] *Amendment*. Amended to clarify that the intent of this language is to prohibit people from using FASs as a place to leave vehicles unattended.
[6] *Amendment*. See earlier footnote for explanation on changing "Special Use Permit" to "Group Use Permit".

events and activities based on management or resource protection objectives for a site, special rules or regulations, or other determining factors.

B. Groups, events or activities that meet the definition of commercial use are governed by the department's commercial use rules (Commercial Use Administrative Rules, ARM 12.14.101 through 12.14.170 and the Commercial Use Permit Fee Rule).
C. Group use permit applications should be submitted to the appropriate regional office a minimum of seven (7) days prior to the proposed date of use.
D. A group use permit may be issued to a group or individual representing a group.
E. The department may deny or amend a request for a group use permit based on the management and resource protection goals for a site or other extenuating circumstances.
F. The proposed group use must comply with pertinent state and federal laws and regulations including public health, safety, and air and water quality.
G. A group or individual receiving a group use permit must comply with the terms, conditions, and stipulations of the permit. The department may establish limits on the size of groups.
H. The proposed group use must not adversely impact neighboring properties, existing archaeological, historical, cultural, or natural values and must not conflict with management objectives and guidelines.
I. The department may assess a fee for group use at fishing access sites. The fee must be submitted in advance with the permit application unless otherwise specified by the department. Refer to the Fishing Access Site Use Fee Table to calculate applicable fees.
J. The department may adjust the group use permit fee upward or downward to accommodate the nature of the activity, compensate for site impacts or department staffing needs, or for other unique circumstances pertaining to the permitted activity.
K. The department may adjust the group use permit fee on a case-by-case basis for educational groups when the following conditions are met:
    i. the group is from a bona fide institution that meets the definition of an educational group;
    ii. the group provides a written explanation of the educational purpose of the visit; and
    iii. the use is not primarily for recreational purposes.
L. The department may adjust the group use permit fee on a case-by-case basis when the group or event:
    i. donates proceeds or services to the management or improvement of fishing access sites, including the maintenance, management, or the improvement or development of facilities;
    ii. donates proceeds from the event or activity to a nonprofit organization or charitable cause; or
    iii. is organized primarily for children under the age of thirteen.
M. A cleaning/security deposit may be required in advance for group use permits. The department may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities and compliance with the permit terms and conditions.

FACILITY RENTALS

A. An individual or group may reserve a shelter or other facility subject to availability and approval by staff. The department may deny the reservation request or stipulate the conditions of use based on the nature of the proposed use and the regulations and management objectives in place at the fishing access site where the use would occur.
B. There is a rental fee for use of shelters and other facilities. The fee must be paid prior to use of the facility.

C. The department may adjust the rental fee on a case-by-case basis for educational groups or an individual or group that donates money or services to the management or improvement of fishing access sites.
D. A cleaning/security deposit may be required and must be submitted in advance with the facility rental fee. The department shall assess the cleanup and/or restoration of resources and facilities and if conditions are satisfactory the department shall refund the deposit.
E. The department may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities.
F. The department shall refund the cleaning/security deposit if the reservation is canceled more than seven (7) days in advance. If a reservation is canceled less than seven (7) days before the intended use period, the cleaning/deposit shall be retained. If the facility is unavailable for the intended use due to unforeseen conditions, both the fee and deposit shall be refunded.

SPECIAL RECREATION PERMITS

A. The department, in conjunction with the Bureau of Land Management (BLM), requires a Special Recreation Permit for commercial use, competitive events, and organized group activities at department and BLM access sites along the Blackfoot River and Madison River.
   i. "Commercial use" is defined as per ARM 12.14.101(3).
   ii. "Competitive event" means any organized, sanctioned, or structured use, event, or activity on lands owned or managed by the department or related waters in which two or more contestants compete, the participants register, enter, or complete an application for the event, and/or a predetermined course or area is designated.
   iii. "Organized group activity" means a structured, ordered, consolidated, or scheduled event on, or occupation of, lands owned or managed by the department or related waters that is not commercial or competitive.
B. The department shall issue Special Recreation Permits pursuant to ARM 12.11.6501 through 12.11.6575, the department's Commercial Use Administrative Rules (ARM 12.14.101 through 12.14.170), and the Commercial Use Permit Fee Rule.

Blackfoot River Special Regulations:

C. The maximum sizes for organized and commercial groups on the Blackfoot River are as follows:

River Reach	Organized Groups Maximum size, (individuals)	Commercial Groups Maximum size, (individuals)
1. Headwaters to the Mineral Hill area	0	0 floating, 3 wading
2. Mineral Hill area to North Fork confluence	12	12
3. North Fork confluence (or Harry Morgan FAS) to Russell Gates FAS	21	21
4. Russell Gates FAS to Roundup FAS	30 (40 May 1 - June 15)	30 (40 May 1 - June 15)
5. Roundup FAS to Johnsrud Park FAS*	30 (40 May 1 - June 15)	30 (40 May 1 – June 15)
6. Johnsrud Park FAS to Bonner	Based upon site capacity	Based upon site capacity
7. North Fork of Blackfoot to Harry Morgan FAS (confluence).	0	12

*At Whitaker Bridge FAS, the maximum commercial group size will be 25 individuals from June 15 through Labor Day.

D. Exceptions to the maximum group sizes on the Blackfoot River are as follows:
   i. river reaches four (4) and five (5) include a whitewater season (May 1 through June 15) with special group sizes to accommodate the traditional spring runoff and whitewater rafting season;
   ii. the Regional Supervisor or designee may adjust this time period annually to address seasonal peak spring flow conditions.

E. A person may apply for a Blackfoot River special recreation permit and request to exceed the maximum group size limit. In such cases, the department may conduct an environmental assessment to assess the predicted impacts of the request. Such requests may be subject to cost recovery.

F. "Site capacity" on the Blackfoot River is the number of people each site can accommodate without significant impacts to the site resources or social experience. It is the maximum use level for all recreational use, including the combined use of a recreation site by the general public and any permitted recreational uses (commercial, competitive and organized groups). Each permit in this river reach shall be determined on a case-by basis.

G. The impacts and acceptable size limits for competitive events on the Blackfoot River shall be assessed on site-specific capacities and suitability. The permitted group size for a competitive event may be smaller than the maximum group size for organized and commercial use based on the cumulative impacts of all anticipated use. Special recreation permits do not grant exclusive use of a recreation site to any permitted group.

H. The following criteria shall be used to determine the maximum group size for a proposed competitive event on the Blackfoot River:
   i. whether the competitive events is consistent with the management objectives outlined in the Blackfoot River Recreation Management Plan;
   ii. whether the combination of the anticipated general public use and the special recreation permit use is expected to be within the site capacity limits;
   iii. whether the site is capable of accommodating the proposed number of people and vehicles without damage or degradation to the facilities or resources;
   iv. whether the proposed activity and group size is compatible with the site facilities;
   v. the timing and duration of the proposed event; and
   vi. benefits to the public and/or river resources.

I. If the proposed event is to occur in critical native fish recovery areas, the activity must be consistent with current bull trout recovery considerations.

COMMERCIAL USE PERMITS

A. Commercial use permit requirements and fees are indentified in the department's Commercial Use Administrative Rules (ARM 12.14.101 through 12.14.170), and the Commercial Use Permit Fee Rule. Exception: See below for special regulations on commercial use on the Alberton Gorge.

Alberton Gorge Special Regulations:

B. Alberton Gorge shall be defined as the region between and including Cyr fishing access site to Tarkio fishing access site along the Clark Fork River.

C. Commercial use, as defined in ARM 12.14.101(3), within the Gorge is limited to commercial use that demonstrated "Historical Commercial Use" of the Gorge prior to January 1, 1998 by registering with the department by March 15, 1999. Those who failed to demonstrate proof of prior commercial

use by that date are not considered historical commercial users and therefore are prohibited from conducting commercial use within the Gorge.

D. In accordance with ARM 12.14.120(1), a restricted use permit is required in advance to conduct commercial use within the Alberton Gorge.
E. The department's Commercial Use Administrative Rules (ARM 12.14.101 through ARM 12.14.170) and Commercial Use Permit Fee Rule apply to commercial use within Alberton Gorge.

FOOD STORAGE[7]

A. The department may designate fishing access sites where bear resistant food storage is required.
B. Food storage requirements shall be prominently signed and posted where applicable.
C. Bear resistant food storage shall be required at designated fishing access sites per the following food storage order:
    1. Human, pet and livestock food (except baled or cubed hay without additives), garbage, and all other attractants shall be stored in an approved bear resistant manner or container when camp is unattended or during nighttime hours.
    2. Wildlife carcasses, birds, fish or other animal parts that are within ¼ mile of any camp or sleeping area shall be stored in an approved bear-resistant manner or container when unattended. If a wildlife carcass is within an attended camp during daytime hours it may be on the ground.
    3. Attractants (such as food leftovers or bacon grease) shall not be buried, discarded, or burned in an open campfire.
        a) Leftover food or food waste products may be placed in an appropriate, sealed container and packed out with garbage or deposited in a bear resistant trash receptacle where provided.
        b) Leftover food or other attractants may be burned in a contained stove fire.
        c) Attractants may be placed into a suitable container (e.g. tin can) to prevent leaching into the ground and burned over an open campfire. Any remaining attractants unconsumed by burning shall be placed with other garbage and packed out or deposited in a bear resistant trash receptacle where provided.
    4. The responsible party for any dead pack animal or livestock shall report the death and location of any livestock to a FWP employee within 24 hours of discovery. The responsible party will be required to dispose of the carcass as directed by the department. In some very remote areas, it may not be possible to meet the 24-hour requirement. In these special cases, the responsible party shall report to a FWP employee, the discovery of any dead livestock within 48 hours.
    5. Bear-resistant containers must meet the following criteria:
        a) A securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact.
        b) The container, when secured and under stress, will not have any openings greater than 1/4 inch, that would allow a bear to gain entry by biting or pulling with its claws.

    Bear-resistant container testing and approval programs are available through the US Forest Service. Other bear-resistant containers developed for personal use may be inspected for approval by the local FWP game warden or fishing access site coordinator or their designated representative(s).

[7] *New*. The FAS Rule includes a new section that would allow the department to require food storage at fishing access sites. This authority would be applied at fishing access sites where there is a concern for human – wildlife conflicts, primarily sites where bears may be present and there is a public safety concern.

D. Definitions:

1. "Attended" means at least one adult person (attendee) is physically present within 100 feet of, and can visually observe attractants at all times. Attended camp policy does not apply when campers are asleep or do not have visual contact with and physical control of the attractants. During nighttime hours, control is defined by having the attractant within arm's reach or secured in an agency approved container or manner.
2. "Attractant" means any item potentially attracting and/or rewarding a bear. This shall include:
   a) food as defined below
   b) food leftovers (bones, scraps, grease)
   c) garbage from humans
   d) livestock foods (except baled or cubed hay without additives)
   e) pet foods
   f) wildlife carcasses
   g) livestock carcasses
3. "Food" means any nourishing substance, which includes human food or drink (canned, solid or liquid), livestock feed (except baled or cubed hay without additives), pet food, toothpaste, soap, birdseed, and hummingbird food.
4. "Attendee" means an adult (14 years of age or older) in control of attractants.
5. "Bear-resistant container" means a securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact. The container, when secured and under stress, will not have any openings greater than one-quarter (1/4) inch, that would allow a bear to gain entry by biting or pulling with its claws.
6. "Bear-resistant manner" means the storage of any attractant or foods in one of the following ways:
   a) Secured in a hard-sided camper, vehicle trunk, cab or trailer cab.
   b) Secured in a hard-sided dwelling or storage building.
   c) Suspended at least 10 feet up (from the bottom of the suspended item) and 4 feet out from any upright support (i.e. tree, pole).
   d) Stored in an agency approved bear-resistant container.
   e) Stored within an approved and operating electric fence.
   f) Stored in any combination of these methods.
   g) Stored by methods other than those described in a-f, that shall be approved in writing by the FWP Regional Supervisor.
7. "Contained fire stove" means a metal stove that completely encloses the fire.
8. "Daytime" means 1/2-hour before sunrise until 1/2-hour after sunset.
9. "Nighttime" means 1/2-hour after sunset until 1/2-hour before sunrise.
10. "Livestock" means cattle, sheep or a domesticated pack or riding animal, such as mule, horse, llama, or goat.
11. "Wildlife carcass" means the body, or any parts thereof, of any deceased wild animal, bird, or fish.
12. "Approved electric fence means, at a minimum:
    a) The fence will be set up as a "tight wire" fence. The wire will be tight and under tension, not loose or sagging, and posts will be firmly installed.
    b) Minimum fence height: 40 inches to top wire.
    c) Maximum spacing between posts: 8 feet.
    d) Wire conductors: Minimum of 4 hot wires evenly spaced with no more than 10-inch spacing between wires. Bottom hot wire must be within 10 inches of the ground. Top hot wire must be within 1 inch of the top of each post or attached to the highest connector on fabricated posts. All wire must be smooth metal fence wire of at least 16-guage or poly

wire of 9 or more steel strands. The minimum length ground rod is 2 feet, of which a minimum of 23" is driven into the ground.

e) Fence charger (minimum): (1) stored energy of 0.7 joules; (2) tested peak output of 5000 volts; (3) 40 shocks per minute. User must be able to test electrical output in the field.

f) The charger must be made inaccessible to disturbance from a bear. The charger may be stored within the interior of the fence or located a minimum of 10 feet above the ground.

g) Minimum distance between fence and items enclosed by electric fence: 3 feet.

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