

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

November 13, 2003

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Lane; Mike Murphy, John Brenden (on speaker phone).

Fish, Wildlife & Parks Staff: Chris Smith, Chief of Staff; other Department personnel.

Guests: Jack Atcheson, Skyline Sportsmen's Association; Bruce Bugbee, APLE Company; Don Nickman, PPSA; Loren Flynn, Traveler's Rest President and Heritage Association; Elmer Palmer, Lolo Community Council; Bill Carey, Missoula County Commissioner; Kim Kaufman, Traveler's Rest Chapter; Bill Scullion, Travelers Rest acquisition landowner; Tom Schultz, DNRC.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of October 9, 2003 Commission Minutes**
- 3. Approval of Commission Expenses through October 31, 2003**
- 4. Approval of 2004 Schedule of Commission Meetings**
- 5. 2004 Proposed Annual Rule for Sale of MT Nonresident Combination Licenses (Variable Priced Licensing Rule) - Final**
- 6. Petition for Special Motor Boat Regulations on Echo Lake**
- 7. Petition for Special Motor Boat Regulations on Yellow Bay at Flathead Lake**
- 8. Adoption, Amendment, & Repeal of Recreational Water Use Rules- Final**
- 9. Ehnes Conservation Easement - Final**
- 10. Traveler's Rest Acquisition Phase III - Final**
- 11. Deer / Elk Auction Rules - Final**
- 12. Montana Sage Grouse Plan Update - Informational**
- 13. Public Opportunity to Speak on Issues Not Discussed at this Meeting**

1. Opening - Pledge of Allegiance. **Chairman Dan Walker** called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes.

Mulligan noted a correction to the October minutes where he had been named as the Commissioner who had seconded the motion regarding the Smith River Rule, when in fact the minutes should reflect that Commissioner Brenden had seconded the motion.

Action: Mulligan moved and Murphy seconded the motion to approve the minutes of the October 9, 2003 meeting with the noted correction. Motion carried.

3. Approval of Commission Expenses through October 31, 2003.

Action: Murphy moved and Lane seconded the motion to approve the Commission expenses through October 31, 2003 as presented. Motion carried.

4. Approval of 2004 Schedule of Commission Meetings. **Walker** introduced the two proposed options concerning the 2004 Commission meeting schedule. Option 1 depicts the traditional monthly schedule, while Option 2 illustrates meetings in only 8 months of the year. **Chris Smith, FWP Chief of Staff**, further explained that while Option 1 identifies routine topics as they have been presented over the last several years, additional topics will certainly be introduced as well. He pointed out that a number of the meeting dates have relatively few, if any, topics, therefore a second option was drafted which reduced the number of meetings to 8. The months there would be no meetings would be January, March, June and October. **Smith** said topics previously addressed in those months would be rescheduled into the remaining meetings; he added that the July meeting would most likely become a two-day meeting. Both options reassign the final elk quotas to the July meeting to allow earlier issuance of deer and elk permits (special drawings) - possibly mid to late July. Flying surveys are still underway for Antelope at this time, so they will be left until August when the data is compiled. Conference calls can be convened to deal with issues that come up requiring immediate attention. **Smith** said FWP recommends Option 2.

Walker and **Brenden** prefer Option 1, as they felt it maintains contact and continuity with the Department and public. They both concurred that eliminating the January meeting was acceptable, however. **Walker** and **Mulligan** were pleased with setting earlier dates for dealing with deer and elk. **Mulligan** said the content of Option 2 was well organized; if Option 1 is chosen, he suggested he topics be laid out in the same manner as Option 2.

Don Childress, FWP Wildlife Division Administrator, said the dates specified in Option 2 work best for the Division. He pointed out the earlier date of August 5th works best for setting final Antelope quotas, and for setting final bird seasons. **Walker** said August 5 would be agreeable with him.

Walker expressed his desire to hold at least three meetings regionally, and asked for suggestions or preferences. He would like to meet in Region 7, and **Mulligan** suggested that since river issues are high profile, it might be beneficial to visit a river. **Brenden** suggested meeting in Glasgow to visit the fish hatchery. **Mulligan** said the Regional Managers may have thoughts / ideas as well.

Smith said the Department will revise the schedule, utilizing Option 1 and maintaining the content of Option 2. The January meeting will be eliminated with those topics rescheduled for February, and the August meeting will be set for August 5 rather than August 12. Recommendations for regional meetings / topics will also be presented for approval.

5. 2004 Proposed Annual Rule for Sale of MT Nonresident Combination Licenses - Variable Priced Licensing Rule - Final. **Dan Ellison, FWP Administration & Finance Administrator**, said 29 comments were received during the comment period, which ended October 17, regarding the Variable Priced Licensing Rule that was approved by the Commission in September. The tentative rule that was approved recommended a quota of 5,800 B-10 Outfitter Sponsored Big Game licenses at a cost of \$975 each, a quota of 2,300 for the B-11 Outfitter Sponsored Deer Combination licenses at a cost of \$775, and the amendment to allow landowners who have been tardy in submitting their paperwork the eligibility to participate in a separate license drawing, subject to submittal of their paperwork. **Ellison** said the comments received did not compel any changes to the tentative rule.

*Action: **Murphy** moved and **Mulligan** seconded the motion to adopt the 2004 Annual Rule for the sale of Nonresident Combination Licenses with fees and targets set at quota of 5,800 B-10 Outfitter Sponsored Big Game licenses at a cost of \$975 each, and a quota of 2,300 for the B-11 Outfitter Sponsored Deer Combination licenses at a cost of \$775, and to allow landowners who fail to submit his/her records on time to be eligible for remaining landowner sponsored licenses after compliance with the requirements to submit the previous year's client records.*

Discussion on Motion: **Worsech** responded to the question of how many tags were left over on September 2nd, by saying that there were 201 B-10 licenses left and the B-11 licenses sold out on September 2nd.

Action on Motion: Motion carried.

Walker asked if there is a possibility of issuing lifetime or 5-year licenses in Montana. **Ellison** said that he would research **Walker's** inquiry, and requested time to gather information to get an answer back to the Commission, which was acceptable to **Walker**.

6. Petition for Special Motor Boat Regulations on Echo Lake. Petition was withdrawn.

7. Petition for Special Motor Boat Regulations on Yellow Bay at Flathead Lake. **Dan Vincent, FWP Region 1 Supervisor**, received a petition from Jack Stanford of University of Montana Biological Station, requesting implementation of a no-wake rule - a 5 mph speed limit - in Yellow Bay from the boat ramp to the southern end of the peninsula, known as the Point. **Vincent** said the Commission went through an extensive process four years ago to establish the 200 foot DFS ARM rule addressing water safety concerns, and provided a process for exceptions.

Walker said it is hard to visualize how much area is being considered, and asked how far it is across this area. **Vincent** said it is close to 500 yards across the bay. **Vincent** said the residences and buildings in this area are related to the University Biological Station, they are not personal residences. **Vincent** said this petition is primarily a safety issue request. **Mulligan** asked if there is a reason the

dive station is located where it is, if a different location would work. **Murphy** said his impression is that the Biological Station was working inside of the 200 foot no-wake area. **Vincent** replied that a great deal of their work occurs in the Bay, however they also work throughout the entire lake. Diving activities occur primarily in the Bay itself.

Vincent said if the Commission directs the Department to go forward with a hearing on this matter, he will get answers to the Commissioner's questions. He reminded the Commission that they had directed Region One to go forward with a public hearing to address conflicts on the Swan River. January 17th has been set as that hearing date, and if a hearing would be proposed for Yellow Bay, he suggested combining the two hearings. **Vincent** also invited the commissioners to attend the hearings.

*Action: **Murphy** moved and **Mulligan** seconded the motion to direct Region One and the FWP Legal Unit to conduct a legal hearing on January 17, 2004 to address motorboat closures at Yellow Bay.*

Discussion: **Vincent** said that Dr. Stanford's request is for a 5 mph speed limit, however, FWP recommends "no-wake" for the sake of consistency. **Mulligan** asked if there would be an impact on the State Park, if there are areas for water skiers to take off from shore. **Vincent** replied there are, and he added that Dr. Stanford recognizes the need for public recreation and is willing to work with the public. **Vincent** said he will specifically address the boat ramp at the public hearing as well.

*Action: **Murphy** modified his motion to direct Region One to conduct a legal hearing on January 17, 2004 to address the potential for additional no-wake considerations in Yellow Bay versus the motor boat closure. **Mulligan** agreed with this modification to the motion.*

Walker asked how the boundaries will be identified, and who will set and maintain the buoys. **Mulligan** said maintenance of buoys has been an issue in the past, and this issue needs to be addressed. He suggested that possibly the Biological Station could be responsible for them. **Murphy** asked if the Biological Station uses any type of indicator when they dive, to which **Vincent** replied he assumes they do. **Mulligan** asked if this issue has been presented to the public before – **Vincent** said it had not. **Brenden** said he would like to know how many feet it is to the deepest part of the cove; he also said he does not want to take the boat dock away from public usage. **Vincent** said he would address these issues with Dr. Stanford, and would also visit with him about the University taking responsibility for the buoys. **Walker** said he does not want people to be in violation due to difficulty in identifying the borders. **Lane** asked if there was a specific time the University uses this area for research. **Vincent** replied that it is year around, however the conflicts would predominantly be in July and August.

Action on Motion: Motion carried.

8. Adoption, Amendment, and Repeal of Recreational Water Use Rules - Final. **Bob Lane, FWP Chief Legal Counsel**, said there were no changes to the tentative water use rules that were approved by the Commission in July. He stated that only one comment was received during the comment period, and that was by someone who misunderstood what was being done. **Lane** said all rules are set according to each body of water, and each rule describes what is restricted to that particular water body. Rule 12.11.345 dealing with 14 hydro-powered dams was repealed, as it was all-inclusive, so that it could be rewritten into separate rules for each dam, thereby coinciding with the

river rule. A correction will also be made regarding the middle Thompson Lake, which was inadvertently written as entirely a no-wake zone.

Mulligan asked about no-wake zone on Ennis Lake, and he wanted to know if the rule made it in. Lane assured him that if it is not, it will be. **Lane** will check into it.

Action: Mulligan moved and Lane seconded the motion to approve the adoption of the new ARM rules I through XIV, repeal ARM 12.11.345, and amend ARM 12.11.501, 12.11.3435, 12.11.3455, and 12.11.3460 as outlined in the rule adoption notice. Motion carried.

9. Ehnes Conservation Easement - Final. Doug Monger, FWP Parks Division Administrator, said the Ehnes family has proposed the donation of a conservation easement of 160 acres near Giant Springs State Park. He said this easement would protect the property from waste dumping, the construction of additional homes, and would allow the Ehnes family to continue utilizing the motorcycle trail already established. They have used this trail for a number of years, with no impact to the park. The main focus of this easement is to protect the historic value of Sulphur Springs along the river by Morony Dam, made famous by the Lewis & Clark Expedition. In addition to this donation of the easement, the Ehnes ask for an easement of a 150-foot easement across FWP property so they can access their homestead.

Action: Lane moved and Murphy seconded the motion to accept this easement donation as written.. Motion carried.

Amendment to Motion: Lane amended his motion to include the approval of the 150-foot road access easement across FWP property to the Ehnes property. Murphy seconded the amendment. Motion carried.

Lane and Walker expressed gratitude to the Ehnes family. Monger expressed appreciation to the Ehnes Family and to Mr. Bruce Bugbee as well.

10. Traveler's Rest Acquisition Phase III - Final. Doug Monger presented the acquisition proposal of an 11.5 acre parcel of land adjoining Traveler's Rest State Park. Travelers Rest is located in Lolo, approximately 8 miles south of Missoula. In 2001, a 15-acre parcel was donated to FWP by the Deschamps family that was believed to be the true Travelers Rest location of the Lewis and Clark expedition. Subsequent to that donation, FWP, Missoula County, the and CFSK Tribe sought to find proof that this was indeed the original Travelers Rest campsite. Archaeological excavations and research proved that Travelers Rest did indeed lay in this 15 acre parcel. **Monger** explained that the Lewis and Clark expedition was a military expedition, with rigid practices of setting up camp. Approximately 300 feet from the cooksite of the camp, archaeologists discovered the camp latrine and trench through detection of mercury traces left by the party. The trench is on FWP property, but within 20 feet of FWP's property line. It is on the original 15 acres that was donated to FWP, but is so close to the property line that it is of concern that it could easily be disturbed.

This land has been appraised according to stringent federal standards, which also require a secondary appraiser to confirm prices determined in the first appraisal. The acquisition of this property would be through the utilization of Land and Water Conservation Funds (LWCF) which require a one to one

match (50% federal money - 50% match money). The appraised value is \$490,000. The property owner (Bill Scullion) is willing to donate part of the value of that property - \$51,000 worth of value. That donated value can be considered as match. Additionally, the Department can use values that were originally donated in the 15-acre donation. The Travelers Rest Preservation & Historical Association (TRPHA), currently operating Travelers Rest State Park for FWP, is also contributing \$50,000 cash as match.

In conclusion, **Monger** said, FWP has this proposed acquisition valuing \$490,000 with the purchase price established at \$438,720. We have \$51,000 donated value, \$50,000 in cash from TRPHA, and FWP will spend \$388,720 of federal Land and Water Conservation Funds.

Of the \$388,720 FWP controls all of that money, but it is 100% federal Land and Water Conservation Fund money. **Monger** explained that every year Montana receives a federal apportionment of LWCF dollars, which has ranged from \$3 million dollars per year in the early-1970s, to zero dollars during the late 1980s. The last few years, Montana has received approximately \$800,000 per year. In rules that were established for management of LWCF monies given to the State of Montana, FWP was named as the agency in charge of them. Those rules designate that 50% of those funds stay within FWP, and 50% goes to local communities for community projects - swimming pools, soccer fields, etc. A one-to-one match is required for all and that can be through donated value, in-kind service, or cash.

Murphy said \$40,000 per acre is a high appraisal. **Darlene Edge, FWP Land Agent**, said the \$40,000 per acre is deceiving as the property was evaluated as three separate tracts, two of which were commercial due to bordering Highway 93, and the other nine acres were appraised at residential values, so it comes to \$3.50 per square foot for the two tracts along highway 93, and \$25,000 per acre for residential tracts.

Walker asked if FWP will have compromised ability to look at purchasing additional sites, to which **Monger** replied no. He added that there are two other parcels that would be integral to Traveler's Rest State Park that is being negotiating by TRPHA.

Monger said this property protects the immediate latrine site, and allows access to frontage on Lolo Creek for hiking and walking trails. This will allow a connection between the Highway 93 bike / pedestrian paved trail to get access to the Park.

Walker invited the audience to comment, as several people from the Lolo area were in attendance.

Loren Flynn, Executive Director of Traveler's Rest Preservation and Heritage Association (TRPHA), said TRPHA is the private non-profit organization with the management responsibility in partnership with FWP. They support this acquisition for the visitors' experience. This site protects the integrity of the historic site. He thinks it is a great recreational access as it does tie into existing non-motorized trails.

Bill Zader, Real Estate Broker / Owner of Missoula Properties, has worked with FWP and with Loren for a year and a half on this acquisition. He supports this acquisition. He said the Missoula area is

facing tremendous growth which will have a tremendous impact on the area. He added there is a tree on this land that is over four hundred years old with historical value as it was mentioned in the Lewis and Clark journals. This acquisition would mean a lot to the local community. He noted that generous offers have been made to Mr. Scullion from buyers who would use this land for commercial development, but Mr. Scullion has declined the offers. Zader also pointed out that his real estate agency has a buy / sell agreement on a parcel of land two miles south of this parcel, with no highway access, and that contract is for \$165,000.

Elmer Palmer, a resident of Lolo, and current Chairman of the Lolo Community Council, said this creek-side piece of property allows a trail into the park where people can actually touch Lolo Creek. He said the Lolo area is growing rapidly, that the Lolo Community Council has seen 8 development packages come before them. He said people can experience the history of Lewis and Clark here, they can gain access to Lolo Creek, and he feels it needs to be added to Traveler's Rest.

Kim Coffman, Secretary of Travelers Rest Chapter which is a part of the Lewis & Clark Trail Heritage Foundation, expressed her support, and she read a letter written by Charles Sundstrom, President of the Chapter (endorsed by their Board, and supported by their 175 members). The letter began with the history of their involvement in establishing Travelers Rest, followed by their desire to see this parcel added to the Park. They feel it will bring economic growth to the community as well as preserve a historical site. They enthusiastically support this acquisition.

Bill Carey, Missoula County Commissioner, and member of TRPHA Board, said this is a tremendous opportunity, and encouraged the Commission to accept this proposal.

Bill Scullion, owner of this piece of ground, said he acquired this property about two years ago. He and his wife do not want to see this property developed, although it is conducive to development. From a value standpoint, he said he could easily develop it into 8 building sites at \$100,000 per site, but he and his wife do not want to go that route. The tree that Lewis and Clark mentioned in their journals is still there. This is a pristine piece of property.

Tom Cook, a 30-year Lolo resident, and President of Lolo Area Community Association (LACO), said they have looked at this acquisition extensively. He was on the steering committee for the original Travelers Rest State Park, and he said the people in Lolo feel that the larger and more pristine this park can be, the better it is. He said estimates are running as high as eight million visitors over the next several years. He noted as a specific point that Lolo is the only place where Lewis and Clark stayed twice. LACO supports this acquisition.

Murphy asked if this acquisition will add additional cost to the Department from the management standpoint. Monger said TRPHA will manage this property as they do the existing Park. There may be incidental costs but nothing significant.

Action: Murphy moved and Mulligan seconded the motion for the Department to proceed with the acquisition of the 1.5 acres of Scullion property for the Traveler's Rest State Park.

Discussion on the Motion: Monger said by virtue of it being a State Park, there will be no property taxes. No comments were received noting concern of property tax loss, and the County Commissioner made no mention of taxes. The economic value and economic draw of Traveler's Rest should make up for any loss of tax. **Murphy** asked if the Chamber of Commerce had expressed any concerns relative to loss of tax values in comparison to if the land was developed. **Monger** said the only concern he has heard from the Chamber is that this acquisition has taken too much time to accomplish.

Action on Motion: Motion carried.

Mulligan asked if there are more segments that may also come up for consideration. Monger said there is a 5-acre parcel that they hope will be donated, as well as adjoining parcels along Lolo Creek adjoining the property.

Monger invited the Commission to visit the site to see the property as well as observe the great working relationship between TRPHA and FWP.

Monger thanked Mr. Scullion his donation and for his patience.

11. Deer / Elk Auction Rules - Final. **Jeff Herbert, FWP Assistant Wildlife Administrator**, said FWP received four comments from sportsmens' organizations relative to the proposed 2004 Auction License Rules for mule deer and elk licenses. The Prickly Pear Sportsmens Group and the Anaconda Sportsmens Club are opposed to the proposed auction and sale of licenses from a commercial standpoint, as they feel it is commercialization of wildlife. The Montana Bowhunters Association supports the proposed rules, and the Montana Taxidermists Association supports the proposed rules, however, they are concerned about the ability of an individual being able to successfully bid on the license more than one year in a row. They feel there should be restrictions stopping an individual from competing if they were successful the year before.

Herbert said he had reviewed prior moose and sheep auction licenses to see if that had occurred with them, and over 15 years of moose license issuance there were 15 different individuals who bid on the license. He said the sheep auction license has been in effect 18 years, and there has been 12 different individuals who have applied. He said in the first three years of the auction one same individual bid on the license, and from 1990-1991, from 1994-1995, and 1998-1999 there were three sets of bidders who were awarded the licenses back to back. He did not check to see if the individuals were successful every year. In deference to those people with commercial concerns, he said it is a commercial venture as FWP is generating money for the program; it is not equitable when compared to individual people applying.

Mulligan said he had received a letter from Skyline Sportsmens Group opposing this proposal.

Jack Atchison, Skyline Sportsmen's Club, said finding people who are willing to compete is difficult. His opinion is to let the person with the most money have it. He said that's what an auction is about - the highest bidder wins. He added that promotion is vital.

Mulligan asked if the Commission has the authority to limit the process to a lottery rather than an auction. He said it appears from documentation he has read that lotteries raise as much money as auctions. He added that lotteries give everyone an opportunity, and get away from the concerns that only the wealthy will be afforded the opportunity to buy the license. **Herbert** said the Commission does have the authority to choose the method if so desired. **Herbert** said that this is an annual rule, and as specified in statute, it is within the Commission's authority to set restrictions each year regarding limitations or a waiting period for bidding. **Mulligan** said he can support either option, but he would favor a lottery.

Brenden said if it's the purpose to raise money for FWP, it is unwise to institute too many limitations, and he stated he does not want to limit anyone from participating.

Action: Walker moved and Brenden seconded the motion to adopt the 2004 Mule Deer and Elk Auction License Rules as proposed by the Department with no restrictions. The bidding organization or individual could propose to use this as a lottery or an auction as they so choose. Motion carried.

12. Montana Sage Grouse Plan Update - Informational. **Herbert** said staff has been working on finalizing the Sage Grouse Plan. Rick Northrup has worked diligently in summarizing public comments, and revising portions of the Plan where appropriate. The Statewide Technical Working Group addressed various issues and recommended some wording changes. Once the Plan is finalized, two signature pages will be provided. One will be for agencies with commitments to the Plan's implementation, and the other for the non-governmental organizations who supported the Plan. **Herbert** said an Environmental Assessment will commence soon.

Murphy asked if the Commission will be involved in the review process. **Herbert** said they certainly could be; the draft Plan will certainly be provided to the Commissioners for their review as soon as the latest revisions are made.

13. Citizens' Open Microphone - Public Opportunity to Speak on Issues Not Discussed at this Meeting.

Jack Atchison, Skyline Sportsmens' Group, said FWP is missing an opportunity to generate revenue by not putting advertising flyers in mail-outs or placing advertisements in the regulation booklets. **Chris Smith** stated that a bill was introduced in legislature requiring advertisement in the regulations, and the Senate asked that FWP look into it as an option. **Smith** said FWP is looking into it, and **Herbert** added that ads will be placed in the 2004 big game regulations as a pilot project.

Ron Aasheim, FWP Conservation Education Division Administrator, added there will be no ads involving liquor, tobacco, or suggestive campaigns. He added that there is a guide or "cookbook" on what is good and what should be avoided.

Meeting adjourned at 11:53 a.m.

Dan Walker, Chairman

M. Jeff Hagener, Director