



Region 5 CAC Meeting
October 2, 2019

Attending CAC Members: Bruce Hoiland, Josh McQuillan, Kayhan Ostovar, Chris Fleck, Doug Dreeszen, Pat Riley, Craig Hash, Bradford Grooms, Daniel Otis

Attending FWP Staff: Terri Walters, Bob Gibson, Barb Beck, Dianne Stiff, Megan O'Reilly, Matt Heaton, Harold Guse, Marina Yoshioka, Mike Ruggles, Kevin Rose

Absent CAC Members: Lee Deming, Dan Aadland, Jim Ballard, JW Westman, Lanie White, Steve Regele, Susan Gilbertz, David Russell, Philip Hughes, Rusty Butler, Bill Milton

Welcome and Introductions: Bob Gibson

State Park Feature: Cooney/Greycliff Prairie Dog Town SP's: Marina Yoshioka

- History of the Cooney SP
- As an irrigation reservoir this is first priority and all other recreation is secondary.
- Projects plans include rebuilding the park within the cottonwood campground using a flexamat concrete system and redesigning the marshall cove campground taking those sites that are underwater and moving to higher ground.
- Creation and recruitment of a Cooney SP Friends Group.
- Currently the focus at the parks is fishing and camping but looking to engage recreationists with other types of recreation like ice motorcycle kite skiing, plus increase the trail system around the entire lake.
- Working on private/public partnerships (includes a partnership for a boat dock on the north shore).
- Estimated visitor usage from May 15-September 15 is 260,000 recreationists.
- Management at Greycliff Prairie Dog Town is currently limited at this time.

Herrera Supreme Court Decision: Zach Zipfel, Legal

Background:

- Federal Indian Law – the federal government recognized Indian tribes as sovereign. An US supreme court case in 1959 says sovereignty is the right of reservation Indians and they have the right to make their own laws.
- The way the US government chose to settle disputes or various issues that came up was to enter treaties with the tribes. Treaties by definition are a contract between sovereigns. Thinking about a treaty, you think about an agreement in which frequently the tribe would give up a claim that it had with its traditional territory in exchange for a smaller parcel of land, the reservation. Frequently what they would do as a part of that negotiation is retain certain rights to do things that they always had done prior to European arrival. Frequently they would insist on retaining the ability to hunt and/or fish in those traditional territories as they knew those small reservations would not sustain them with enough food to survive over the course of a year. The courts call this the “reservation of rights doctrine”. It’s important to understand how the courts have conceived this issue - it’s not a grant of rights to the tribes, but it’s a reservation of rights by the tribes.
- Treaty rights – there are two particular areas of the country where we most commonly see off

reservation treaty rights being litigated from a legal standpoint. One of those areas is in the Pacific Northwest – Washington, Oregon and Idaho in particular. This is the reservation of the ability of off-reservation fishing because fish for those tribes in the Pacific Northwest was critical to their way of life. Throughout the 60's and 70's, the states litigated that and typically lost those cases. The treaties are high definition federal rights. The constitution tells us in the supremacy clause, article 6 section 2, when there is a conflict between a federal law and a state law, the federal law controls. Another part of the country where we see litigation with treaty rights is the Great Lakes - Minnesota, Michigan and Wisconsin. In Montana we have a couple of tribes who have negotiated treaties similar to the Washington treaties – CSKT (Stevens Treaty Tribe) and the Blackfeet. The other treaties in Montana are referred to as the Ft. Laramie treaties which was an issue in the Herrera decision.

Herrera Issue:

- Clayvin Herrera walked from the Crow reservation across the state line into Wyoming and Bighorn National Forest and shot three elk out of season. He was cited and went to jury trial in Wyoming state court and was convicted. There were some procedural issues that came up that then formed the basis of his appeal, which was appealed to the US Supreme Court and the Supreme Court agreed to hear the case.
- There were two questions that the Supreme Court was asked to decide.
 - First, whether Wyoming's admission as a state back in 1890, impliedly abrogated the Crow tribes' off-reservation treaty rights? On this issue Wyoming lost with the Supreme Court going with a more recent case saying statehood does not terminate treaty rights unless the treaty says statehood terminates treaty rights or unless the statehood act itself says it terminates treaty rights. Neither of these things were an issue in Herrera.
 - Second, whether Bighorn National Forest was still considered under the treaty unoccupied lands of the United States? The Supreme Court said what the Crow tribe in 1868 thought occupied meant European settlement of a territory. The court said setting aside the Bighorn Forest from the public domain actually made it more compatible with the Crow tribe exercising those off-reservation rights.
- The Supreme Court on Herrera remanded the case back to state court in Wyoming. First, they said to Wyoming, on remand you can argue that your state hunting regulations are necessary to be applied to these off-reservation treaty hunts. Second, on the issue of occupation they said to Wyoming you can go back into state court and argue that in fact this particular area was in fact occupied and therefore outside of the treaty right to hunt on unoccupied lands. The court indicated for example, that this could have been logging, mining, administrative buildings or campgrounds.
- We will get more guidance the next time Herrera is back in the US Supreme Court.

CAC members observations/input on all topics: CAC Members

Bruce Hoiland – Good comments about their game warden, Randy Hutzenbiler, Roundup area. Locals are supportive of catching the people responsible for the elk poaching. A couple of comments on permits for archery and rifle seasons. There is concern about archery mechanical tips.

Josh McQuillan – Thanks to Marina for taking the initiative on the north shore boat ramp at Cooney.

Daniel Otis – Glad to see the Indian Fort FAS road is getting the road repaired.

Bradford Grooms – Rumors of wild hogs coming into the state and wondered about the plans to control them. Concerns about the poaching around Roundup.

Craig Hash – Asked for clarification on CWD. Also, clarification on the state parks online reservation system.

Pat Riley – For landowners the grizzly issue is a whole different matter.

Doug Dreeszen – With the local FASs in his area, commended the great care of Captain Clark and Bundy Bridge. Received feedback from several unlimited bighorn sheep district hunters that they did not get the letter they normally do. Noticed the announcement on the phone message says 24-hour reporting instead of the 48-hour reporting.

Chris Fleck – Asked for an update on the designation and improvement on Two Bridges. Would like to get on the radar for site improvements both the upper and lower Stillwater River sites.

Kayhan Ostovar – Blue Creek FAS has gotten a lot of use this summer. Used for the annual Yellowstone River cleanup. Questions on the ramp which Ryan Taynton is working on. Thanks to FWP for the work on turtle research. Referenced the article in the Gazette regarding HB 348 on required warrants.

Current hot topics –

Bat Project – Megan O'Reilly asked for volunteers to help with bat collection or deploying bat detectors next season. This project is necessary because the bat white nosed syndrome is projected to be in Montana as early as 2020.

CWD – Kevin Rose

There are positives in Libby with our newest positive located locally near Huntley. There is a new CWD management zone to be added to the existing zone that will include all of Yellowstone County and some of Bighorn County. The high priority testing areas this fall are in Region 7, Region 6 and Libby. Our region is not high priority this fall. New this fall, FWP is paying for CWD sample testing. Sportsmen can take their own samples, ship or drop them off at the Bozeman lab with FWP covering the cost of processing. During the five-week season samples will be taken by CWD technicians during business hours, Monday-Friday, 8 a.m.-5 p.m. at all regional headquarters throughout the state including Region 5. Region 5 will be a priority testing area during the fall of 2020.

Grizzly Bears – Barb Beck

They are back on the Endangered Species list. FWP respond to conflicts, education, and monitoring animals. Populations are growing and their range is expanding. The state is not in control of them but are actively involved. There is a new Governor's Grizzly Bear Advisory Council with their first meeting on October 3&4.

Expiring CAC member term – Barb Beck

Barb asked members who have their terms expiring if they'd like to continue or not. She will contact other members soon on their term expirations.

Wrap-up and adjourn – Bob Gibson

Next meeting – after the first of the year.