

**Revised Report to
Madison River Work Group**
from
Commercial Management Sub-Group
May 25, 2022

Over a series of eight meetings and extensive exploration of various alternatives for regulating guided trips by river service providers on the Madison River, the Commercial Management Sub-Group is presenting the following recommendation and analysis to the Madison River Work Group and FWP.

Overall Goals: Establish rules for commercial outfitting and users on the Madison River that:

1. Manage real (or perceived) social conflicts and crowding on the river and at Fishing Access Sites (“FAS’s”), particularly during Peak Season usage;
2. By managing commercial use, protect and optimize the opportunities and quality of the experience for diverse users of the river;
3. Are practical and least restrictive for river service providers, regulatory agencies, and the local business communities to sustain healthy local economies; and
4. Provide the opportunity for new river service providers to operate on the Madison River and for existing providers to transfer all or portions of their permitted trip allowances as business conditions change.

Executive Summary of Recommendations. *(Please see March 21, 2022 Report for background discussion of issues and options.)*

1. **No change to joint FWP/BLM Special River Permit.** Maintain current Special River Permit (“SRP”) system pursuant to 2007 Cooperative Management Agreement between FWP and BLM for governing access to Fishing Access Sites (“FAS’s”), reporting annual usage, and collection of fees. No limitation on granting of new SRP’s to new river service providers.
2. **New Montana River Use Permit.** Using existing authority under ARM 12.14.120 (Commercial Use Permit) and related ARM’s, Fish and Wildlife Commission can authorize a new State of Montana Madison River Use Permit (“RUP”) and related regulations to govern commercial river service providers’ allocation system. A RUP may only be issued to a properly licensed SRP holder. *(NOTE: FWP may wish to consider alternative names for the allocation permit, such as “Madison Commercial Use Permit.” Ideally the commercial allocation permit will be identified differently from any future non-commercial recreational floating permit system.)*
3. **Use “Best of” 2019 or 2020 Trips.** Implement ARM 12.11.605(2) limiting the total annual commercial RUP trips for each SRP holder at the number of trips reported for 2019 or 2020, whichever is higher. This should produce a total annual RUP trip allocation pool of approximately 16,200 trips. (NOTE: Preliminary reports show 2021 actual Madison SRP usage was approximately 18,000 trips – an increase of 4,000 trips over the highest historical usage in 2019 of approximately 14,000 trips.)
4. **Geographical Application of RUP.** The RUP system and allocated trip limits will apply to all sections of the Madison River that are covered by the SRP system. In other words, this would

apply from the outlet of Quake Lake to the junction with the Jefferson River, with the exception of Ennis Lake and the Bear Trap Wilderness boundaries.

5. **No Peak Season or Geographical Limits on RUP usage.** There has been very extensive discussion and analysis of historical use patterns by season and by reach of the river, the implications of managing either seasonal or geographic limitations, the stated desire of many interested parties to have a fixed annual cap on commercial usage, and the desire of others to either limit potential Peak Season growth or to allow some level of growth in Off-Peak usage. Although not unanimous, the majority recommendation is to use Adaptive Management review to monitor any changes in use patterns and implement either geographical or seasonal use limits if usage changes significantly.
6. **Limited Appeals Process for Initial Allocation of RUP Trips.** To address the potential of very unusual and extenuating circumstances that may have limited a river service provider's ability to conduct trips in 2019 or 2020, the Commission could:
 - a. Appoint an Appeals Board (no SRP or RUP holders) or FWP Staff to collect any appeals and make recommendations to the Commission for Commission action.
 - b. Appeals submitted by May 1, 2023, and final decisions no later than May 1, 2024. (NOTE: This appeals period could be adjusted depending upon timing for final approval of this proposal and the anticipated staff and commission schedules to handle any appeals.)
 - c. Unique and extenuating circumstances must be shown, such as:
 - i. Major and persistent medical issues,
 - ii. Active military service,
 - iii. Significant and unforeseen family crisis,
 - iv. Other unforeseen and unanticipated factors that clearly demonstrate extenuating circumstances, unique to their situation.
 - d. Appeals are limited to a request to have historic use from any portion of the 2016, 2017 or 2018 SRP reported trips to be considered in the allocation process.
 - e. Require proof that the provider returned to levels of historical operation during either the 2021 or 2022 operations.
 - f. The total number of additional trips that may be granted via appeals should be limited to no more than five hundred trips (approximately 3% of the initial RUP allocation). Prorated among appellants if the aggregate approved requests exceed the 3% limit.
7. **Donation of Charitable Trips Exemption.** Donations of trips to qualified charitable 501(c)3 organizations shall NOT be counted against a river service provider's RUP allocation. Any donated trips should be reported separately, together with written documentation of the IRS 501(c)3 designation and confirmation that NO compensation was received by the river service provider for the donated trip. The maximum number of exempt annual trips for charitable donations for each river service provider shall be limited to a maximum of three (3) trips or three percent (3%) of the river service provider's annual allocation determined at the beginning of the year, whichever is greater.
8. **Fluid Transferability of Allocated Trips.** Flexible and convenient transferability of allocated trips ("Trips") authorized under the RUP system, on a temporary or permanent basis, in whole or on a daily Trip basis, is a critical element of an effective and efficient limitation for commercial usage on the Madison River. Fluid transferability is consistent with recently passed legislation (SB275) now codified in MCA Section 37-47-310. An open, market-based transferability system will help

to maximize the utilization of the authorized RUP Trips and, in turn, support the local economies, allow more realistic entry of new SRP holders onto the Madison at a reasonable cost, and facilitate the normal fluctuations among river service providers' annual usage. Key items may include:

- a. All transfers must be recorded with FWP process (see example of NHCU online system).
 - b. Allow temporary use transfers (limited to one calendar year usage).
 - c. Allow permanent transfers.
 - d. Transferee must be a SRP holder.
9. **Use It or Lose It.** Persistent non-use of RUP trips could have adverse impacts on the health of local economies, the ease of entry for new river service providers, and the flexible transfer of RUP's among providers as business conditions change. The recommended provisions could include:
- a. If there is no usage for 3 consecutive years, complete forfeiture of RUP allocation.
 - b. A river service provider must operate more than 50% of their season ending trip allocation over a three year period, or their allocated trip allocation will be reduced to their highest level of annual use over the same period.
 - c. If a provider's SRP or RUP has expired, then all associated allocated trips are forfeit.
 - d. Forfeited Trips will be re-allocated to other river service providers through a lottery, with a preference for providers that have held a Madison SRP for two years or less.
10. **Adaptive Management Reviews.** The Madison River RUP system should be evaluated annually for the first three years and at least once every three years thereafter to determine if it is functioning as contemplated or if there are new conditions requiring modifications to the system. **The review could be conducted by the Commission or a Work Group assigned by the Commission to make recommendations for possible Commission actions.** Possible Guidelines for Adaptive Management Review could include:
- a. Coordination with any comprehensive Recreational River Management Plan for non-commercial usage.
 - b. If actual annual commercial usage drops below 75% of total RUP allocated Trips, review:
 - i. Any impediments to ease of transferability of allocated Trips among SRP holders,
 - ii. Any modifications to "Use it or Lose it" requirements,
 - iii. Possible issuance of additional RUP allocated Trips to increase overall pool of available Trips,
 - iv. Any broad economic or environmental conditions affecting RUP usage.
 - c. If actual usage becomes more condensed into the Peak Season or into certain periods on one or more sections of the Madison, review:
 - i. Potential for creating Peak Season limitations or Off-Peak Season changes,
 - ii. Potential for creating geographical limitations,
 - iii. Potential for specific FAS launch limitations by site, per day or week, etc.
 - d. **Review Charitable Trip exemption usage for effectiveness, abuse, or any adjustments, particularly if exempt trips exceed 300 per year.**
 - e. Review definition of a "Trip" if it becomes necessary to limit the number of guests per guide or otherwise more specifically define a "Trip".

- f. Review usage patterns on Ennis Lake to determine if any commercial use regulations are necessary.
- g. Review ease of entry for new river service providers and any needed modifications to the RUP system.

11. Enforcement Mechanisms. Enforcement should be via existing Commission regulations and enforcement mechanisms for compliance with all applicable SRP and RUP requirements.