



# Montana State Parks & Recreation Board

## Agenda Item Cover Sheet

THE **OUTSIDE** IS IN US ALL.

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**Meeting Date:** March 3, 2022

**Agenda Item:** Smith River State Park and River Corridor Biennial Rule and Administrative Rule 12.14.120

**Time Needed on Agenda:** 20 Minutes

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**Background:** At its December 2021 meeting the Parks & Recreation Board extended the Smith River State Park & River Corridor biennial rules for one year to allow time for Fish, Wildlife and Parks (FWP) to update the Smith River State Park and River Corridor Recreation Management Plan. The Environmental Assessment (EA) Decision Notice for the updated plan was signed by FWP on February 2, 2022. FWP is recommending changes to the biennial rule to implement elements of the updated plan. FWP is also recommending striking language in the biennial rule and administrative rule 12.14.120 that pertains to the transfer of a Smith River Outfitter's business to reflect statutory changes made by the 2021 Legislature.

**Public Involvement Process:** The Decision Notice was informed by 104 public comments. FWP would conduct a public involvement process if the Board initiates rulemaking.

**Alternatives & Analysis:**

➤ **Management of Camp Baker**

**Alternative A:** Establish Camp Baker as day-use only with exception of the time-period from September 1 – November 30. The rule would address natural and cultural resource impacts and congestion at Camp Baker and allow for a limited amount of camping during off-peak times. Registration and boat camp selection would occur via phone or online.

**Alternative B:** Allow camping at Camp Baker. This alternative wouldn't address the resource impacts & congestion concerns. Historically, much of the overnight use was associated with first-come, first-served selection of boat camps. The phone boat camp selection process eliminated the need for this.

➤ **Human Waste Management**

**Alternative A:** Require all floaters to pack-out solid human waste using self-contained toilet systems with disposal at or near the Eden Bridge take-out. Sixty-five percent of the EA public comments supported this alternative. The rule would address natural and cultural resource impacts and health concerns associated with the pit latrines.

**Alternative B:** Continue using pit latrines. This alternative would appeal to floaters opposed to a pack-out system but there would still be natural and cultural resource impacts and human health concerns.

➤ **Smith River Fee System**

**Alternative A:** Increase fees. Float fees were last increased in 2003 (residents, outfitters) and 2010 (nonresidents). The revenue would be used for operation and maintenance of the human waste pack-out and disposal system.

**Alternative B:** Retain current fees. The current fee system would not provide enough revenue for operation and maintenance of a human waste disposal system at Eden Bridge or ranger presence at boat camps and on the river.

➤ **Outfitter Trip Transfers**

**Alternative A:** Strike language in the biennial rule and ARM 12.14.120(14) that pertain to the temporary or permanent transfer of an outfitter trip (launch) to avoid conflict with 37-47-310(4)(a), MCA.

**Alternative B:** Retain current language in the biennial rule and the administrative rule pertaining to the transfer of a Smith River Outfitter trip (launch). Language conflicts with 37-47-310(4)(a), MCA.

**Agency Recommendation & Rationale:** FWP recommends Alternative A for all four topics for the purpose of implementing the updated recreation management plan and complying with statutory changes by the 2021 Legislature.

**Proposed Motion:** I move the Parks and Recreation Board approve the proposed rules establishing Camp Baker as day-use only with the September 1 to November 30 exception, requiring human waste pack-out using self-contained toilet systems, increasing the Smith River float fees, and striking language pertaining to outfitter trip transfers.

# Smith River State Park and River Corridor Biennial Rule

**DRAFT ONLY!**

## Fees and Rules for Smith River State Park and River Corridor

Proposed by the Montana State Parks and Recreation Board<sup>1</sup>

March 3, 2022

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<sup>1</sup> All proposed changes are preliminary until approved by the Board.

# Smith River State Park and River Corridor Biennial Rule

## Proposed by the Montana State Parks and Recreation Board

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**I. SMITH RIVER STATE PARK USER FEES**

<b>PRIVATE FLOAT TRIPS</b>		
<b>Item</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
<b>Permit Application</b>	\$10 (nonrefundable)	<b>\$15</b>
<b>Super Permit Lottery</b>	\$5 per chance (unlimited chances)	No change
<b>Private Float Trip</b>	\$0 per resident or nonresident child (less than 6 years old)	No change
	\$15 per resident or nonresident youth (age 6 through 12)	No change
	\$25 per resident (age 13 and above)	No change
	\$60 per nonresident (age 13 and above)	No change
<b>LANDOWNER FLOAT TRIPS (DAY FLOATS ONLY)</b>		
<b>Item</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
<b>Landowner Float Trip</b>	\$0 per landowner & immediate family member	No change
	\$0 per agent, assignee, or guest within landowner’s fee title	No change
	\$7.50 per non-immediate family member, agent, assignee, or guest outside of landowner’s contiguous fee title property boundaries	No change
<b>COMMERCIAL OUTFITTER FLOAT TRIPS</b>		
<b>Item</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
<b>Commercial Outfitter Float Trip</b>	\$200 per float trip	No change
	\$25 per commercial outfitter staff or contractor	No change
	\$100 per commercial outfitter client	<b>\$110</b>
<b>Commercial Business Transfer</b>	<del>\$200 per transfer transaction</del>	<b>\$0</b>

## II. INTRODUCTION AND APPLICABILITY OF RULE

- A. The Smith River State Park and River Corridor Biennial Rule establishes fees and administrative rules for private, commercial, and landowner float trips in Smith River State Park.
- B. This biennial rule is in effect for the two calendar years following the date of adoption. The Montana State Parks and Recreation Board (“Board”) may amend the rule at any time during this period.
- C. The Smith River State Park and River Corridor Biennial Rule applies to the Smith River from Camp Baker to Eden Bridge and all lands adjacent to this section of the river that are under the jurisdiction or management of the department, including Camp Baker and Eden Bridge.
- D. Through a cooperative management agreement between Fish, Wildlife and Parks and the United States Forest Service, some elements of this rule are in effect on Forest Service lands along the Smith River between Camp Baker and Eden Bridge and are identified in the cooperative management agreement.
- E. The Smith River State Park and River Corridor Recreation Management Plan of 2009, revised **2009 2022<sup>2</sup>**, provides guidance to the Board in the adoption of this rule.

## III. LEGAL AUTHORITY

- A. The Smith River Management Act, §§ 23-2-401 through 23-2-410, MCA, authorizes the Board to provide for the administration of the Smith River waterway and adopt rules for this purpose.
- B. Other statutes and rules applicable to this rule are as follows:
  - i. 87-1-301 and 87-1-303, MCA
  - ii. 12.14.101 through 12.14.170, ARM
  - iii. 12.8.801 through 12.8.824, ARM

## IV. DEFINITIONS

- A. “Attended” means as least one adult person (attendee) is physically present within 100 feet of food and attractants during daytime hours.
- B. “Attendee” means an adult (18 years of age or older) in the physical presence of food and other attractants.
- C. “Attractant” means any nourishing substance, which includes human food and drink (canned, solid, or liquid), unwashed cookware containing food residue, fish and fish entrails, game carcasses, garbage, toiletries, cosmetics or other odorous substances.
- D. “Board” means the Montana State Parks and Recreation Board.
- E. “Boat camp” means a designated campsite on the Smith River corridor where floaters are authorized to camp, including areas within 200 yards of the campsite fire grate.
- F. “Commercial use” is defined as per 12.14.101(4), ARM.
- G. “Commercial float trip” means a trip conducted by an authorized commercial user.
- H. “Commercial launch transfer” means the temporary transfer of a commercial launch from one authorized commercial user to another within a single season.

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<sup>2</sup> Rationale: 2009 Plan was recently updated.

- I. “Contiguous fee title property” means adjoining private property that is adjacent to the Smith River and does not include U.S. Forest Service, Department of Natural Resources and Conservation, Fish, Wildlife & Parks, or other public properties.
- J. “Daytime hours” means ½ hour before sunrise until ½ hour after sunset.
- K. “Department” means the Montana Department of Fish, Wildlife and Parks.
- L. “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.
- M. “General lottery” means the process through which the Department randomly allocates private launch permits.
- N. “Group” means a group of people who share planning and expenses for a trip, generally remain together while traveling to and on the river and have a distinct and identifiable kitchen and camping unit within the same declared campsite.
- O. “Immediate Use” means transporting, organizing, preparing, cooking, serving, eating, washing cooking equipment and/or otherwise handling or using food and attractants.
- P. “Landowner” means a person or entity that owns fee title private property adjacent to the Smith River within the boundaries of this fee rule, or a person designated by the landowner per individual trip.
- Q. “Landowner float trip” means a day float conducted by a landowner or other person authorized by this fee rule.
- R. “Landowner immediate family member” means a landowner’s spouse, children, parents, siblings, grandchildren, niece, or nephew.
- S. “Launch date” means the specific date that a float trip group launches on the Smith River.
- T. “Lottery ticket” means an individual entry or application for the Super Permit lottery.
- U. “Nighttime Hours” means ½-hour after sunset until ½-hour before sunrise.
- V. “Nonresident” means a person who does not meet the definition of a resident as defined in § 87-2-101, MCA.
- W. “Peak season” means the time-period from May 15 through July 15 when demand for launch dates is greatest.
- X. “Permit application fee” means the nonrefundable fee that must be submitted when applying for a private float trip permit.
- Y. “Private float trip” means a non-commercial float trip.
- Z. “Private float trip fee” means the fee each private floater pays prior to floating the Smith River.
- AA. “Resident” means a resident of the State of Montana as defined in § 87-2-102, MCA.
- BB. “Service group” means a group that donates proceeds or services to the management or improvement of fish, wildlife, and parks, including the maintenance, management, or the improvement or development of facilities.
- CC. “Smith River” for the purpose of this rule refers to the Smith River from Camp Baker to Eden Bridge and is interchangeable with “Smith River State Park.”
- DD. “Smith River State Park” for the purpose of this rule refers to the Smith River from Camp Baker to Eden Bridge and lands in between under the jurisdiction and/or management of Montana State Parks, a division of Montana Fish, Wildlife and Parks.
- EE. “Super permit” means one permit issued each year by the department through the Super Permit lottery that is valid for one private launch any time during the float season.

FF. “Super permit lottery” means the process through which the Department randomly allocates the Super Permit.

## V. RIVER CAPACITY

- A. A permit is required for private and commercial groups to float the Smith River. This does not apply to a landowner conducting a day float solely for the purpose of performing maintenance on the landowner’s contiguous fee title property.
- B. A permit authorizes one private or commercial group to launch and float the Smith River.
- C. The maximum group size for all float trips is 15 people of any age. This includes guides and other commercial staff.
  - i. Exception: Landowner day floats that extend beyond the contiguous fee title property of the landowner shall be limited to a maximum of six people.
- D. The maximum number of private and commercial float trips combined shall not exceed nine launches per day.
  - i. Exception: Each year the Department may issue one additional private float permit that is valid any day of the year of issuance, hereafter referred to as a “Super Permit.” The Super Permit may result in ten launches occurring on the day of use.

## VI. FLOATER REGISTRATION, BOAT CAMP SELECTION, AND PRE-LAUNCH PROCEDURES

- A. ~~All float groups must sign in upon arrival at Camp Baker to establish the order of registration and boat campsite selection. The earliest a group may sign in is 7:30 a.m. one day prior to the launch date. Floater registration and boat camp selection will be conducted in advance of the permit holder’s launch date.~~<sup>3</sup>
- B. ~~All float groups must register and receive orientation at Camp Baker prior to floating the river. Registration and boat campsite selection shall occur on the official permit launch date.~~<sup>4</sup> A group arriving at Camp Baker when staff is not present may self-register using the self-registration box located at the information kiosk. ~~Orientation will include verification of all float groups’ compliance with the requirements of Section XIV.~~<sup>5</sup>
- C. Waterproof boat tags shall be issued by ~~State Park staff~~<sup>6</sup> for each boat or watercraft on the river. Separate boat tag colors shall be used to distinguish between private, commercial, and landowner float trips.
- D. All boats must visibly display a boat tag while on the river and at boat campsites. This requirement does not apply to landowner maintenance floats.
- E. During registration groups must select and confirm the boat campsites they will camp at during their float trip. Groups may use the boat campsite declaration board if no staff is present at Camp Baker.
- F. All float trip groups must stay at their declared boat campsites with no more than 15 people allowed at each campsite.

<sup>3</sup> Rationale: FWP is now conducting registration and boat camp selection via the phone prior to the float date.

<sup>4</sup> Rationale: With exception of times when staff aren’t present at Camp Baker, registration and boat camp selection no longer occur at Camp Baker.

<sup>5</sup> Rationale: Orientation serves as an opportunity to educate and check for compliance with the pack-pout requirement.

<sup>6</sup> Rationale: Language struck for purpose of rule simplification.

- G. During the peak season all float trip groups shall be limited to four nights while on the river.
- H. During the peak season layover nights (e.g., more than one night at same boat campsite) shall only be allowed at boat campsites in the section of river starting at the Two Creek boat campsite and ending at the Upper Parker Flat boat campsite.

## **VII. PRIVATE FLOAT TRIPS**

### **Permit Applications**

- A. A person must submit a permit application to participate in the general lottery.
- B. A person must be a minimum of 12 years of age at the time they submit a permit application.
- C. No person may submit more than one permit application. Exception: A person may purchase an unlimited number of Super Permit lottery tickets.
- D. A person receiving a private float permit through the general lottery for a launch date during the peak season may not apply for a permit the following calendar year for a launch date within this same time-period. They may apply for a permit outside of this time-period, accompany another permitted group during this time-period, obtain a cancelled launch permit, or apply for a Super Permit. The park manager may waive this rule for trips cancelled due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances. This does not include trips cancelled due to undesirable fishing conditions.

### **Permits**

- A. A private float trip permit authorizes the permit holder and his or her group to launch and float the Smith River beginning on the date specified on the permit.
- B. Float trip permits are issued to an individual and are non-transferable and non-refundable.
- C. The department shall use a random lottery to allocate float trip permits authorizing a launch date during the time-period of April 1 through October 31.
- D. Float trip permits for launch dates occurring during the time-period of November 1 through March 31 may be obtained on a first come, first serve basis at Camp Baker or by contacting the department's regional office in Great Falls.
- E. The availability of float trip permits for launch dates occurring during the time-period of November 1 through March 31 are not guaranteed. Floaters expecting to obtain a float trip permit at Camp Baker during this time-period when staff may not be present are encouraged to contact the department's regional office in Great Falls to confirm the availability of a float trip permit prior to arriving at Camp Baker.
- F. Any float trip permits on dates not fully subscribed during the general lottery shall be made available to the public for private float trips by the end of March on a first come, first serve basis.

### **Super Permit**

- A. Each year the Department will issue one additional private float trip permit that is valid any day of the year of issuance ("Super Permit").
- B. The Department will administer the Super Permit through a lottery system. An individual may purchase an unlimited number of Super Permit lottery chances.
- C. Super Permit lottery chances may be purchased beginning on the same date that private float trip applications are accepted.



- D. The Super Permit lottery shall occur approximately one month after the application deadline of the private float trip lottery.
- E. The recipient of the Super Permit may launch on any date of their choosing during the year of issuance and must comply with registration requirements stated in this rule. This may result in ten launches occurring on the day of use.
- F. All revenue received through the Super Permit lottery shall be deposited into the Smith River Corridor Enhancement Account.

### **Permit Cancellation**

- A. The recipient of a private float trip permit must notify the Department's regional office in Great Falls or the Camp Baker ranger station when cancelling a float trip permit.
- B. A person cancelling their float trip permit less than two days before their launch date shall be prohibited from applying for a float trip permit the following season. This does not apply if the river flows are below 100 cfs. The park manager may waive the cancellation penalty for float trip permits cancelled less than two days prior to the launch date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances. This does not include float trip permits cancelled due to undesirable fishing conditions.
- C. The float trip permit is non-transferable and non-refundable.
- D. A cancelled float trip permit shall be made available to private floaters on a daily basis on a first come, first served basis.

### **Fees**

- A. No person may float within Smith River State Park without first paying all required fees. The park manager may adjust the permit fee on a case-by-case basis for an educational group or service group.
- B. Float trip fees are applicable year-round.
- C. The permit application fee is nonrefundable.
- D. There is no float trip fee for children ages 5 and under.
- E. Float trip fees are due upon registering at Camp Baker.
- F. There is no float trip fee for a landowner or their immediate family members conducting a day float.
- G. There is no float trip fee for a landowner's agent, assignee, or guest conducting a day float on the river within the landowner's contiguous fee title property boundaries.
- H. There is no float trip fee for landowner property maintenance floats.

## **VIII. LANDOWNER FLOAT TRIPS**

- A. This section applies to landowner float trips. Landowner float trips shall be of one day duration only and consecutive, "back-to-back" landowner floats are prohibited. Landowners must secure a private float trip permit to conduct a multi-day overnight float trip.
- B. No more than one day float trip per landowner shall be allowed per day.
- C. There shall be no restriction on the number of landowner float trips allowed each day that occur entirely within the boundaries of the landowner's contiguous property. The landowner or their designee must accompany the float trip.

- D. There shall be no restriction on the number of landowner float trips allowed each day that extend beyond the boundaries of the landowner’s contiguous property when the float involves and is limited to the landowner and their immediate family members.
- E. Landowners are allowed up to three float trips per day that extend beyond the landowner’s contiguous property and involve non-immediate family and/or guests, to be allocated by the department on a first come, first serve basis. The landowner or an immediate family member must accompany the float trip. Landowner maintenance float trips shall not count against the three landowner float trips per day.
- F. Landowner float trips conducted entirely within the landowner’s contiguous property boundaries shall not exceed 15 people per float trip.
- G. Landowner float trips that extend beyond the landowner’s contiguous property boundaries shall not exceed six people per float trip.
- H. All landowner float trips must register in advance at Camp Baker, by mail, or by telephoning the department.
- I. Landowner maintenance float trips are allowed for work by the landowner and/or their agents or employees. No boat tags are required for maintenance float trips.

## IX. COMMERCIAL OUTFITTER FLOAT TRIPS

- A. No person, group or entity may conduct commercial use within the Smith River State Park without first obtaining a commercial use permit from the Department.
- B. Commercial use shall be administered according to the Department’s commercial use rules. This includes the authority to establish terms and conditions for commercial use.
- C. Commercial outfitters authorized to conduct commercial float trips on the Smith River are limited to those outfitters listed in Appendix A. The Department may update Appendix A to reflect business transfers.
- D. Commercial outfitters and guides conducting angling trips must be licensed in the State of Montana.
- E. Commercial outfitters are limited to a maximum of 73 float trips per year.
- ~~F. An authorized Smith River commercial outfitter may lease, rent, or otherwise receive compensation from another authorized Smith River commercial outfitter for the opportunity to use a Smith River commercial float trip within a single use season.<sup>7</sup>~~
- G. The Department shall establish commercial outfitter float trip dates in consultation with the commercial outfitters and in accordance with the following criteria:
  - i. **During the months of April, August, and September:** All commercial outfitters must finalize their float trip dates seven days prior to the private permit lottery. Commercial outfitters seeking to reschedule a float trip in April, August, or September after the private permit lottery must use the reservation system to request a cancelled float trip. All commercial float trips not reserved by an outfitter will be available to the public in the lottery.
  - ii. **During the months of May, June, and July:** All commercial float trips [see Section VIII (H)] not reserved by an outfitter will be designated “On Hold” and will not be included in the public lottery. After the lottery, commercial outfitters may utilize available “On Hold”

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<sup>7</sup> Rationale: Language struck to comply with 37-47-310(4)(a), MCA that states except as provided in subsection (4)(b) [of the statute] the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited.

float trips 29 or more days in advance of an available date. Commercial outfitters seeking to reschedule a float trip to an available date 28 days or fewer from a desired float trip date must use the reservation system to request an open float trip. All commercial float trips not utilized by an outfitter will be available to the public via the reservation system 28 days prior to the float trip date.

- H. There is a maximum of one commercial float trip allowed on Sundays and Wednesdays. This equates to a maximum of nine commercial float trips per week.
- I. Commercial outfitters must cancel all un-booked float trips a minimum of 14 days prior to the float trip date. The park manager may waive disciplinary action for float trips cancelled less than 14 days prior to the float trip date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances. This does not include float trips cancelled due to undesirable fishing conditions.
- J. Commercial float trip fees must be paid at Camp Baker prior to launching.
- K. The park manager may waive the float trip fee and other related fees for a maximum of two commercial float trips each season on a case-by-case basis when the commercial user donates one or more float trips to a recognized charitable or not-for-profit event and the commercial user is not compensated. No additional commercial float trips may be authorized under this provision. Commercial outfitters requesting a fee waiver must submit a written request to the park manager a minimum of 30 days prior to the anticipated float trip date. Waiver requests shall be considered in the order received.
- ~~L. When an authorized Smith River commercial outfitter sells or transfers their entire Smith River commercial outfitting business the department may collect a business transfer fee to offset the cost of processing the request and issuing a new commercial use permit to the buyer of the business.<sup>8</sup>~~

## **X. EDUCATIONAL OR SERVICE FLOAT TRIPS**

- A. The park manager may issue a float trip permit and adjust fees on a case-by-case basis for an educational group or service group. To receive consideration, the group must comply with the following criteria:
  - i. Groups must contact the park manager at least 30 days in advance.
  - ii. The proposed activity may not be primarily for recreational purposes.
  - iii. The group may not meet the department's definition of commercial use as per 12.14.101(4), ARM.
  - iv. Educational or scientific purposes must be directly related to the resources of the Smith River.
  - v. The service project must directly benefit Smith River State Park and River Corridor.
  - vi. Educational and service float trips may not unreasonably displace other private or commercial float trips.

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<sup>8</sup> Rationale: Language struck to comply with 37-47-310(4)(a), MCA that states except as provided in subsection (4)(b) [of the statute] the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited. The business transfer fee portion of the stricken rule language would be incorporated in the department's Commercial Use Fee Rules.

## XI. CORRIDOR ENHANCEMENT ACCOUNT

- A. Smith River fee revenue shall be deposited into the Smith River Corridor Enhancement Account as follows:
- i. Fifty dollars of each commercial outfitter client fee.
  - ii. All revenue generated by the sale of Super Permit lottery chances.
  - iii. 5 percent of all other float fee revenue, excluding the nonrefundable permit application fee.
- B. Revenue deposited in the account shall be expended according to § 23-2-409, MCA, of the Smith River Management Act.

## XII. PUBLIC USE REGULATIONS

- A. The Department's public use regulations, 12.8.801 through 12.8.824, ARM, apply to all state parks including Smith River State Park and shall be indicated through signs, the Smith River State Park web page, and the private float information packet.
- B. Camp Baker is managed for day use during the typical float season and is open from sunrise to sunset within the time-period of December 1 through August 31. Overnight use at Camp Baker is allowed within the time-period of September 1 to November 30.<sup>9</sup>

## XIII. FOOD STORAGE REGULATIONS

- A. \*To minimize human-bear and other wildlife conflicts and thereby provide for public safety the following food, garbage and attractant storage regulations are established for Smith River State Park and River Corridor from March 1 to December 1 annually:
- i. During daytime hours Smith River floaters and other recreationists in Smith River State Park must store all food, garbage, and other attractants in a bear-resistant manner using one or more of the following methods, at all times except when in immediate use and/or when attended:
    - Secured in a portable bear-resistant container, portable electric fence, or other storage device or system approved for such use by the Interagency Grizzly Bear Committee (IGBC).
    - Suspended at least 10 feet vertically above the ground and four feet horizontally from the trunk of a tree or other upright support that a bear could climb. Cutting, limbing, nailing into or otherwise damaging trees and/or constructing a fixed device is prohibited.
    - Secured inside a hard-sided vehicle, camping unit or towed unit (applicable at Camp Baker and Eden Bridge only).
  - ii. During nighttime hours, all Smith River floaters and other recreationists in Smith River State Park (including all designated boat camps) must store all food, garbage, and other attractants in a bear-resistant manner using one or more of the following methods, at all times except when in immediate use:

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<sup>9</sup> Rationale: Language proposed to implement the updated management plan direction for Camp Baker.

- Secured in a portable bear resistant container, portable electric fence, or other storage device or system approved for such use by the Interagency Grizzly Bear Committee (IGBC).
  - Suspended at least 10 feet vertically above the ground and four feet horizontally from the trunk of a tree or other upright support that a bear could climb. Cutting, limbing, nailing into or otherwise damaging trees and/or constructing a fixed device is prohibited.
  - Secured inside a hard-sided vehicle and/or camping unit or towed unit (applicable at Camp Baker and Eden Bridge only).
- C. All approved food and attractant storage methods or equipment must be installed and/or utilized in accordance with manufacturer’s specifications.
- D. Attractants (including food, food leftovers, food residue, grease, etc.) shall not be buried, discarded, deposited in pit toilets or burned or deposited in the fire grate or open fire.
- E. All garbage and refuse (including food, food leftovers, food residue, grease, etc.) must be properly attended or stored as referenced above and must be packed out.
- F. Food and attractant storage regulations shall be prominently signed and posted and shall be included in the terms and conditions for Smith River float permits.

#### XIV. HUMAN WASTE PACK-OUT REGULATIONS<sup>10</sup>

- A. To address impacts to natural and cultural resources, and to address human sanitation concerns, effective January 1, 2023, all people floating the Smith River between Camp Baker and Eden Bridge must remove (pack out) all solid human waste and associated waste products (i.e., toilet paper, sanitary items, etc.).
- B. All permitted float trips, including private, commercial, and landowner float trips, must carry with them throughout the duration of their trip a human waste carry-out system that has been authorized by the department. The use of unauthorized human waste carry-out systems is prohibited. Exception: Registered landowners conducting a day float are encouraged but not required to carry a human waste carry-out system.
- C. All solid waste and associated waste products must be placed in the department-authorized human waste carry-out system and securely stored while on the water. Burning of toilet paper or solid human waste is not an acceptable means for removing human waste and is prohibited.
- D. Depositing human waste or any sanitary items, including toilet paper, anywhere in the Smith River Corridor other than in a department-authorized human waste carry-out system is prohibited.
- E. At the conclusion of a float trip, all human waste and associated waste products including toilet paper must be placed in the department-authorized disposal system at Eden Bridge or removed from the premises to be properly disposed of elsewhere. If the human waste disposal system at Eden Bridge is not functioning, all human waste and toilet paper must be removed from the premises and properly disposed of.

<sup>10</sup> Rationale: Language proposed to implement the updated management plan direction for a human waste pack-out system to address natural and cultural resource impacts and public health concerns.

**SIGNATURE PAGE**

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**ADOPTED BY:**

\_\_\_\_\_  
*Russ Kipp, Chairman*  
*Montana State Parks and Recreation Board*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Henry Worsech, Director*  
*Montana Fish, Wildlife & Parks*

\_\_\_\_\_  
*Date*

**APPENDIX. AUTHORIZED SMITH RIVER COMMERCIAL OUTFITTERS**

Revised Updated \_\_\_\_\_, 2022

<b>BUSINESS OWNER'S NAME</b>	<b>BUSINESS/COMPANY NAME</b>	<b>ALLOCATED FLOAT TRIP LAUNCHES</b>
Brandon Boedecker	Pro Outfitters	12
Todd France	Blast & Cast	5
Randy Gaynor	Glacier Wilderness Guides	1
Mike Geary	Lewis & Clark Expeditions	26
John Herzer	Blackfoot River Outfitters	2
Brian McGeehan	Montana Angler Fly Fishing	11
Joe Sowerby	Montana Fly Fishing Connection	16
<b>TOTAL</b>		<b>73</b>

BEFORE THE STATE PARKS AND RECREATION BOARD AND  
THE FISH AND WILDLIFE COMMISSION OF THE STATE OF MONTANA  
[COMMISSION WILL CONSIDER APRIL 19]

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.14.120 pertaining to the ) PROPOSED AMENDMENT  
transfer of outfitter trips )

TO: All Concerned Persons

1. On \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m., the State Parks and Recreation Board (board) and Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: \_\_\_\_\_  
Meeting ID: \_\_\_\_\_  
Passcode: \_\_\_\_\_

2. The board and commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on \_\_\_\_\_, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.14.120 COMMERCIAL USE PERMITS (1) through (13) remain the same.  
~~(14) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.~~

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA  
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

REASON: The board and commission are proposing striking language pertaining to the prohibition of the selling, leasing, or renting of allocated commercial use from ARM 12.14.120 to reflect statutory changes made by the 2021 legislature. SB 275 (2021) amended 37-47-310, MCA, to state, "the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited." Due to the statutory



change, the language in ARM 12.14.120(14) conflicts with the statutory language and must be removed.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: \_\_\_\_\_, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail \_\_\_\_\_, and must be received no later than \_\_\_\_\_, 2022.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on February 18, 2022.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

\_\_\_\_\_  
Zach Zipfel  
Rule Reviewer

\_\_\_\_\_  
Russ Kipp  
Chair  
State Parks and Recreation Board

\_\_\_\_\_  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State \_\_\_\_\_, 2022.