

## Smith River Biennial Rule:

### Summary of Public Comments on the Proposed Rule Changes and the Department's Responses

April 13, 2022

FWP received 91 comments on the Parks and Recreation Board's proposed changes to the Smith River Biennial Rule. Nineteen of these comments were submitted via a survey form not developed by FWP. Two organizations submitted comments supporting all the proposed changes (Montana Trout Unlimited and the Fishing Outfitters Association of Montana). Some comments did not pertain to the proposed rule changes and therefore are not included in this summary (staff noted these for future reference). What follows is a numeric and thematic summary of the comments and the department's responses to questions and concerns.

#### 1. Proposed Rule Change: Manage Camp Baker for day-use during the float season, with camping allowed September 1 through November 30.

Sixteen (16) people expressed support for managing Camp Baker for day use only during the float season, with camping allowed September 1 through November 30.

- Some supporters encouraged continued campsite selection via the phone.
- Some noted that overnight use in the past was largely a product of people wanting to be there to select boat camps. That is no longer necessary.
- Some supporters asked FWP to allow people to check-in at Camp Baker later in the day to allow time to travel there on the day of their float.
  - Department Response: People are allowed to check-in anytime during the day as long as they have allowed sufficient time to check-in, launch, and float to their first designated boat camp.
- Two people recommended managing Camp Baker for day use only year-round. They expressed concern over allowing camping in the fall if there are no staff present. Particular concerns included fire danger, trespass issues on private land, vandalism, poor road conditions getting to Camp Baker in the off-season, and the value in allowing Camp Baker vegetation to recover after the busy float season.
  - Department Response: If the Board adopts the rule as proposed, the department plans to have a staff presence at Camp Baker in the fall when camping is allowed.

Eight (8) people opposed managing Camp Baker for day use only.

- The most common concern is that this would displace camping to other locations in the vicinity of Camp Baker and result in undesirable impacts to those sites.
  - Department Response: The department plans to monitor use and resource conditions on public lands in the vicinity of Camp Baker.
- Another concern is that not allowing people to camp the night before their float date will result in people organizing their gear and boats at the put-in and the potential for congestion and conflicts with other floaters.
  - Department Response: The department will continue to encourage people to organize their gear before backing their boat onto the ramp.

- One person stated that day-use only will mean people have to pay for a shuttle.
  - Department Response: The department assumes this comment is from someone who camped at Camp Baker and would conduct their own vehicle shuttle the day before their launch date. There would still be the option to camp at another location nearby or stay in White Sulphur Springs.
- Some people recommended that FWP develop a small number of reservable campsites at Camp Baker.
  - Department Response: The department does not plan to make the campsites reservable. As a general practice, reservations are not taken for any department sites except cabins for dates after mid-September and until the following April/May depending on the site type.

## **2. Proposed Rule Change: Require pack-out of human waste using a department-approved pack-out system**

Twenty-one (21) people expressed support for a mandatory pack-out system.

- Supporters of a mandatory human waste pack-out system noted that the number of pit toilets dug each year threatens natural and cultural resources and presents a health hazard to staff digging the holes.
- They expressed concern that the pit latrines result in harmful nutrients and pathogens.
- Some people expressed the importance of being able to dispose of waste at the Eden Bridge take-out. There was specific support for having a SCAT machine at Eden Bridge.
  - Department Response: The department would install a SCAT machine for disposal of human waste at Eden Bridge.
- Some advocated that there be a variety of authorized toilet systems; some specifically requested ability to use bag systems.
  - Department Response: While the types of toilet systems that would be allowed are not a part of these rules, the department is researching all the available options.
- Some people emphasized the need for toilet systems that work for smaller watercraft.
  - Department Response: The department is researching toilet systems that would work for smaller watercraft.
- Some supporters suggested that the department rent hard-sided toilet systems.
  - Department Response: The department is aware of private sector business interest in renting toilet systems if the Smith moves to a pack-out requirement.
- One person emphasized it will be important to remove all the pit latrines and privacy screens before the '23 float season.
  - Department Response: If a decision is made to move forward with the pack-out requirement, the department would begin removing the pit latrines after there is a human waste disposal system in place at Eden Bridge (not before). The department is considering options to ensure the transition goes smoothly. The department is considering the idea of leaving some privacy screens in place in locations where this would be advantageous for floaters to place a toilet system during their stay at a site to mitigate impacts of pioneered privacy areas.

Thirty-three (33) people opposed a mandatory pack-out system.

- The most common concern is that people won't comply with a mandatory pack-out system and instead will go to the bathroom in the vicinity of boat camps and on private lands in the river

corridor. Commentors worry that this will become a compliance and enforcement issue that the department is not prepared to handle.

- Department Response: The department appreciates the public's concern for the welfare of the resources and the recreation experience. It is this same level of interest that the department anticipates will lead to broad public respect for the resources and therefore compliance with a pack-out requirement. People care deeply about the Smith River and the majority of floaters are conscientious about resource impacts. Rangers will continue to conduct river patrols and compliance will be a part of their duties. Staff would use the 2022 float season to educate floaters about the coming changes and use of toilet systems.
- There was a common perception that the reason for the proposed pack-out system is that the department is concerned about the amount of labor it takes to dig the pit latrines. These commentors suggested that the fee increase revenue be used to hire more river rangers to dig latrines.
  - Department Response: The department acknowledges that maintaining the pit latrines is time consuming and that there are other duties the rangers could be doing that benefit the floaters and the river resources. However, the department's primary reasons for proposing the pack-out requirement are to address the cumulative natural and cultural resource impacts and health and sanitation concerns resulting from the roughly 1,200 pit latrines dug since 1983. Hiring more rangers to dig latrines would not address these impacts and concerns. (See page 11 of the [environmental assessment](#) for more details.)
- Some of those opposed recommended reducing the maximum group size and/or number of permits issued as a way to reduce the volume of human excrement and related need for pits.
  - Department Response: The department agrees that smaller group sizes could result in less waste. The department notes that there would still be a need to dig pits each season at the boat camps. The rate at which the pits fill could be less. It is unclear that the decrease in the rate they fill would have a meaningful positive effect on existing resource and cultural resource impacts and health and sanitation concerns.
- A number of people expressed concern about being able to carry toilet systems in smaller watercraft, particularly during low water conditions.
  - Department Response: As noted previously, the department is researching toilet systems compatible with smaller watercraft.
- There was a concern that there would be no means of disposing of human waste at Eden Bridge.
  - Department Response: As noted previously, the department would place a SCAT machine at Eden Bridge for disposal of human waste.

### **3. Proposed Rule Change: Increase Smith River Permit Application Fee**

Thirteen (13) people supported the proposed fee increase.

- Some noted that the increase is modest and would be used to cover additional operational expenses.
- Several people supported a fee increase but recommended that it should apply to the float fees, not the application fees. They felt that fees should be paid by those who actually float the river; they are the ones who benefit.
  - Department Response: The department considered this option but ultimately felt that increasing the application fee would generate the revenue needed without a significant increase on any one user group.
- One person supported a fee increase but asked for an increase in available permits too.

- Department Response: While the department recognizes the desire to obtain a permit exceeds the number that is available, increasing the number of permits is counter to addressing existing cultural and natural resource impacts and health and sanitation concerns and the quality of the visitor experience.
- One person recommended that the SCAT machine be in place at Eden Bridge before assessing the increased application fee.
  - Department Response: Depending on the outcome of rulemaking and the construction season, the department expects the SCAT machine would be in place prior to the start of the 2023 peak float season.

Zero (0) people outright opposed the proposed fee increase but there were comments that recommended different approaches for increasing fees and how those fees should be used.

- As noted previously, some people recommended that the increased revenue be used for digging pit latrines and not to support the pack-out system.
- One person recommended more fiscal analysis before increasing the fees.
- A few people observed that the percentage of increase to the application fee is higher than the percentage of increase to the outfitted client fee. Some recommended making the percentage equal. Others recommended increasing outfitter fees in general.
- Some thought nonresidents should be subject to a fee increase.
- Some people observed that increasing the application fee only affects the non-commercial public (outfitters don't pay application fee).
  - Department Response: The department considered various alternatives in proposing a fee increase. This proposal was put forth as the best attempt to fairly generate additional revenue without placing undue burden on any one user group.

**4. Proposed Rule Change: Strike rule language pertaining to the transfer of a Smith Outfitter's business and to eliminate the transfer fee.**

Seven (7) people expressed support for striking the rule pertaining to Smith River outfitter trip transfers and the transfer fee.

- They concurred with the need to be consistent with the recent change in the law.

Two (2) people opposed striking this language.

- They fear that this change will result in a bidding war for trips, and that at a minimum, current Smith River outfitters should be offered a first right of refusal.
  - Department Response: Department and Board rules cannot conflict with the law. The department will need to review its administrative procedures to align with the new statute.

## 5. Smith River Comment Form

FWP received nineteen (19) comments via a comment form that was not developed by the department. The comment form allowed people to select from two choices for three of the proposed rule changes. The respondents all responded in the same way with three exceptions:

- Allow camping at Camp Baker via a reservation system only (2 people indicated support for day-use only).
- Retain the [pit] toilets.
- Use fee increase to cover further maintenance of pit toilets (1 person did not respond to this topic).
  - Department Response: Nothing prohibits the practice of development of such a form. The department notes the survey form answers were all the same. The department appreciates the input on the proposed rules and has responded to the topics identified in the survey elsewhere in this document.