



MONTANA FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

THE **OUTSIDE** IS IN US ALL.

Meeting Date: October 28, 2021

Agenda Item: Request for Accommodation to Use Crossbow by Four Individuals

Action Needed: Final

Time Needed on Agenda for this Presentation: 30 mins

Background: FWP received four individual requests for accommodations due to disabilities. Brad Molnar, Bruno Friia, Tim Gardipee, and David Helmers submitted requests for the use of a crossbow during the archery only season running from Sept. 4 through Oct. 17 of this year. The Commission rule currently prohibits the use of crossbows during the archery only season. The Department conducted an individual assessment with 3 of the 4 individuals prior to their filing a claim against the department alleging violations of the Americans With Disabilities Act (ADA) for the denial of their request to use a crossbow. The fourth assessment was not completed due to the litigation being filed. The claims also included a request for preliminary injunction to allow the Plaintiffs to use a crossbow this season though they were told the Commission would consider their requests in the Oct. 28 meeting (after the season ended). The Department appeared before Judge Christensen in federal district court in Missoula defending the Commission's decision to deny the use of a crossbow. The Court agreed, in part, that the Department has not violated the ADA and need not allow the use of crossbows for purposes of a preliminary injunction analysis because of a 2004 Department of Interior decision on the very issue raised by the individuals, and issued an Order denying the preliminary injunction. See attached Order and DOI decision. The Court also agreed with the Department that the Commission is a more appropriate venue to decide this matter where the public could weigh in.

Public Involvement Process and Results: The public has not been involved in the individual requests. The opportunity for the public to address these requests would be allowed during the Oct. 28 Commission meeting. The individual requestors have the opportunity to address the Commission but are not required to share sensitive medical information in the public venue. For information necessary to understand individual needs, please see the following attachments: 1. Court transcript; 2. Notes from individual assessments.

Alternatives and Analysis: The options for addressing the individual requests are broad. The Commission could deny the requests and maintain the status quo, which is to accommodate disabilities through the permit to modify archery equipment. That process does not prescribe the way in which a person may modify archery tackle to accommodate their use during the archery only season. The other option is for the Commission to allow for a qualified use of crossbow under an application designed to allow only those who can have a licensed physician attest to their disability under a rubric passed by the Commission. Another option is to allow broad use of the crossbow during the archery only season by redefining what constitutes archery equipment.

Agency Recommendation and Rationale: The agency recommends the Commission address the individual requests in their decision.

Proposed Motion: I move the Commission deny the requests of Mr. Friia, Mr. Gardipee, Mr. Molnar, and Mr. Helmers to use crossbows during the archery only season.

OR

I move the Commission accept the requests of Mr. Friia, Mr. Gardipee, Mr. Molnar, and Mr. Helmers to use crossbows during the archery only season.