

BEFORE THE STATE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I and II pertaining to the Smith)
River bonus point permit system)

TO: All Concerned Persons

1. On September 8, 2023, the State Parks and Recreation Board (board) published MAR Notice No. [12-607](#) pertaining to the public hearing on the proposed adoption of the above-stated rules at page 976 of the 2023 Montana Administrative Register, Issue Number 17.

2. The board has adopted the following rules as proposed: New Rule I (12.3.650) and II (12.3.651).

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received, and the board's responses are as follows:

COMMENT 1: Several commenters supported or opposed House Bill (HB) 846 passed by the 2023 legislature.

RESPONSE 1: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. However, the board appreciates public interest in managing the Smith River. HB 846 established the Smith River bonus point system and the requirement that nonresidents may purchase no more than 10 % of the available permits. The board's responsibility is to adopt rules to implement the new law as described in 23-2-408, MCA. Comments regarding the legislature's actions are outside the scope of the board's authority and this rulemaking process.

COMMENT 2: Several commenters expressed support for NEW RULE II, which establishes the procedures for administering the Smith River bonus point system for residents and nonresidents as enacted by the 2023 Montana State Legislature.

RESPONSE 2: The board appreciates the participation and support for the proposed procedures.

COMMENT 3: One commenter suggested that nonresidents pay a higher fee than residents when launching on the Smith River.

RESPONSE 3: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. The board notes that many of the fees were established by HB 846. Nonresidents pay a higher fee for a bonus point than residents (\$50 versus \$5). Other fees for the Smith River are established in the

board's Smith River State Park and River Corridor Biennial Rule. Under the current board rule, nonresidents already pay a higher state park user private float fee for the Smith River than residents (\$60 versus \$25). The permit application fees are the same for residents and nonresidents (\$15). Comments requesting changes to the existing fee structure are outside the scope of this rulemaking process and should be directed to the board's biennial rulemaking process for the Smith River.

COMMENT 4: One commenter expressed dissatisfaction that canceled Smith River float permits are available to the public. They suggested that residents who are unsuccessful in the permit drawing be given the option to be placed on a waitlist and notified when canceled permits become available.

RESPONSE 4: The board disagrees that a change is needed. The board will instruct the department to monitor the effectiveness of the new bonus point system and limit on permits available. The board or legislature can consider additional methods for increasing opportunities to obtain a permit if needed.

COMMENT 5: One commenter suggested that the board amend the rule prohibiting someone from applying for a permit during the peak season if they received a permit for a peak season float the previous year. They recommended that people obtaining a peak season permit should be prohibited from applying for a Smith River permit for one or two years.

RESPONSE 5: The board disagrees that the change is needed. The proposed rule already prohibits a second peak season float permit the following year. The board will instruct the department to monitor the effectiveness of the new bonus point system and may consider additional means for increasing opportunities to obtain a peak season permit in the future.

COMMENT 6: One commenter expressed concern that by modeling the Smith River bonus point system after the hunting bonus points system, permit applicants will unfairly manipulate the system. The commenter also advocated for the board to reduce the overall number of permits allocated through the lottery by 3-5% and to offer those permits to deserving organizations.

RESPONSE 6: The board disagrees that the changes are needed. The intent of NEW RULE II (12.3.651) is to mimic the hunting bonus point system as much as possible at the request of the legislators who sponsored HB 846. The bonus point system is familiar to people applying for special hunting licenses and permits. It is a mechanism designed to improve the chances of drawing a permit to float the Smith River. The board has instructed the department to monitor the effectiveness of the Smith River bonus points system. It may consider additional options for obtaining a permit if needed.

COMMENT 7: One commenter expressed concern that the Smith River bonus point system being modeled after the hunting bonus point system will result in people

accumulating bonus points but not drawing a permit, therefore not achieving the desired outcome.

RESPONSE 7: The board disagrees with this comment. The board and legislature have instructed the department to monitor the effectiveness of the Smith River bonus points system. They may consider additional options for affecting the odds of obtaining a permit at a later date. As presently set up, individuals successful in getting a permit would have their bonus points balance reduced to zero, and those who are unsuccessful may continue accumulating bonus points to increase their chances of drawing a permit in the future.

COMMENT 8: A commenter raised a concern about how active-duty military members are supposed to compete for a Smith River permit with only 10 percent of permits available if they live in Montana.

RESPONSE 8: This comment does not require acceptance or rejection by the board regarding the substance of the rules as proposed. An active-duty military member who is a resident of the state is considered a Montana resident under HB 846.

4. The board received comments supporting the rule proposed by HB 846's sponsors, Rep. Tom France and Rep. Gary Parry. The board also did not receive comments opposing adopting the rules as proposed by the legislative rule review committee.

/s/
Jaime MacNaughton
Rule Reviewer

/s/
Russ Kipp
Chair
State Parks and Recreation Board

/s/
Dustin Temple
Director
Fish, Wildlife, and Parks

Certified to the Secretary of State on November 7, 2023.