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Montana Fish,
Wildlife & Parks

MINUTES

Montana Fish, Wildlife & Parks Commission Meeting FWP Headquarters - Helena, MT January 10, 2013

Commission Members Present: Bob Ream Chairman, Dan Vermillion Vice-Chairman, Ron Moody,
via Video Shane Colton and A.T. Stafne

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director and FWP Staff.

Guests: See January 10, 2013 Commission file folder for sign-in sheet.

Topics of Discussion:

1. Call to Order - Pledge of Allegiance
2. Approval of Minutes of December 10/20, 2012 Commission Meeting
3. Approval of Commission Expenses
4. Commission Reports
5. Director's Report
6. Salish & Kootenai Water Rights Compact – Informational
7. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Permit/Regulations – Proposed
8. Brucellosis Working Group Recommendations - Final
9. Open Microphone – Public Opportunity to Address FWP Issues Not on Agenda

1. Call to Order - Pledge of Allegiance.

Chairman Ream called the meeting to order at 8:32 a.m. and led the Pledge of Allegiance.

2. Approval of the Commission Meeting Minutes of December 10 and 20, 2012.

Action: Commissioner Vermillion and Commissioner Colton seconded the motion to approve the December 10 and 20, 2012 minutes. Motion carried.

3. Approval of Commission Expenses

Action: Commissioner Vermillion moved and Commissioner Colton seconded the motion to approve the Commission expenses.

Commissioner Vermillion asked about the year to date communications expense.

Coleen Furthmyre, Commission Secretary, explained FWP's video conference equipment at MT. Wild is not capable of recording audio or streaming of a Commission meeting when all seven Regions, MT. Wild and Headquarters need to be connected. When this is needed, SITSD hosts the video conference call which costs \$3,447.45 per month. This was the case for the July 2012 meeting.

Action on Motion: Motion carried.

4. Commission Reports

Commissioner Colton no report.

Commissioner Stafne no report.

Commissioner Vermillion no report.

Chairman Ream reported Region 2 has had numerous game damage hunts. Welcomed Director Hagener back to FWP.

Commissioner Stafne no report.

Commissioner Moody no report.

5. Director's Report

Director Hagener reported the new Administration is interested in what goes on with FWP resources. Legislature started and numerous bills regarding all aspects of FWP. Asked Becky Jakes Dockter to give an update on the activity with three lawsuits.

Becky Jakes Dockter, Chief Legal Counsel, reported FWP was issued a temporary restraining order on the Helena Hunters and Anglers Association v. Maurier case, regarding wolverine stop and prohibition. FWP asked to expedite the hearing but was denied. Hearing was scheduled for January 10; FWP expert witness was unable to attend hearing, had to vacate hearing and reschedule for a later time. Likely will forego wolverine trapping season but will move forward with case.

Commissioner Vermillion stated he thought the USFWS listed the wolverine as a threatened species.

Jakes Dockter stated that is incorrect. FWP has not seen a proposed rule.

Commissioner Vermillion asked if the wolverine were listed as a threatened species, there would no longer be a trapping season.

Jakes Dockter replied that is correct, unless FWP went through the process to receive permission from USFWS to trap wolverines.

Jakes Dockter explained Judge Phillips issued a decision on the Park County/Park County Stockgrowers bison case; all counts were in favor of FWP. Large win on the adaptive management process and what FWP can do to be more responsive to bison management around Yellowstone National Park (YNP). Citizens for Balanced Use v. FWP Commission is a new lawsuit challenging procedural grounds against the decision that was made at the December 10 Commission meeting. The Judge issued a temporary restraining order prohibiting FWP to close wolf hunting and trapping in areas around YNP. Hearing is set for January 14.

Chairman Ream congratulated Jakes Dockter on her win on the Park County/Park County Stockgrowers. It was a team effort between Jakes Dockter, Ann Brodsky and the Department of Livestock.

6. Salish & Kootenai Water Rights Compact – Informational

Bill Schenk, FWP Attorney, explained the compact with the Tribes would be a settlement of all claims to reserve water. There are two compacts in the state to be aware of. Missouri Breaks National Monument has been agreed upon between BLM and the State of Montana; should be ratified with the Legislature and Charles M. Russell National Wildlife Refuge is a more difficult compact with the Refuge and the State of Montana. Tough time coming to terms and have had a lot of public involvement and criticism. Not sure when it will be finalized.

Commissioner Vermillion asked if there is a date that it has to be finalized.

Schenk stated the Water Commission is schedule to sunset; they are trying to close all compacts.

The Montana legislature established the Montana Reserved Water Rights Compact Commission in 1979 to help integrate reserved water rights into the state adjudication process. The Confederated Salish & Kootenai Tribes (CSKT) and the Compact Commission have provisionally agreed to a water rights settlement, and intend to ask the Montana Legislature to ratify it during the 2013 session, and then the Compact must be approved by the Montana Water Court. In general the Compact contains:

- Provides protections for all current water users for non-irrigation rights in all affected water basins on and of reservation from the Tribes' exercise of their water rights.
- Provides protection for on-reservation irrigators within the Flathead Indian Irrigation Project through a water use agreement still being negotiated among the Tribes, the Flathead Joint Board of Control and the United States.

- Provides protection for other on-reservation irrigators either through the opportunity to protect a level of water use from call similar to the level of water use FIIP irrigators will have or through limitations on the enforceable levels of certain other tribal instream flow rights.
- Provides water for the Tribes for existing and future tribal water needs on the Reservation.
- Recognizes off-reservation instream flow rights for the Tribes, to which they have strong legal claims as a result of particular language in the 1855 Hellgate Treaty.
- Provides processes for the Tribes to lease portions of their water rights to on- and off-reservation users.
- Establishes a Water Management Board and a Unitary Management Ordinance to govern the administration and enforcement of all water rights within the boundaries of the Flathead Reservation, plugging the regulatory void that currently exists as a consequence of a series of Montana Supreme Court decisions. Appeal of Board decisions available to court of competent jurisdiction.
- No change to any off-reservation jurisdictional arrangement
- Provides for an allocation of 90,000 acre-feet of water stored in Hungry Horse Reservoir for the Tribes to use or market, of which 11,000 acre-feet must be made available for lease for off-reservation mitigation.
- In exchange for benefits recognized by the Compact, the Tribes agree to waive and relinquish all other water rights claims they could otherwise make in Montana.
- On-reservation instream flow rights recognized at several dozen specific measurement points.
- Exercise of on-reservation instream flow rights that overlap with streams used by the FIIP to be governed by FIIP Water Use Agreement. Still under negotiation between CSKT & Flathead Joint Board of Control.
- Off-reservation time immemorial instream flow rights on mainstems of Kootenai, Swan and Lower Clark Fork Rivers and Placid Creek. Limitations on enforcement of these rights provided in the Compact.
- Co-ownership of various water rights held by MFWP in Bitterroot, Flathead and Blackfoot River Basins. Co-ownership of FWP claims in Kootenai Basin still under discussion in wake of opposition from Lincoln County.
- Co-ownership of former Milltown Dam water right. Change in purpose of that right from hydro to fisheries made by legislative approval of Compact rather than through DNRC change process.
- Beneficial interest in contracts for stored water owned by MFWP in the Bitterroot.
- FIIP right made part of Tribal Water Right. Exercise of FIIP right subject to FIIP Water Use Agreement.
- Water right from mainstem of Flathead River for future development or lease.
- Minimum pool water right for Flathead Lake at elevation of 2883 feet above mean sea level.
- Water right for wetlands and high mountain lakes located on trust lands.
- Water right for Boulder Creek and Hellroaring hydroelectric projects (tribally owned).
- Water right co-owned with MFWP or USFWS (as applicable) for wetlands on lands owned by FWP and USFWS.
- Water rights for tribal religious and cultural uses and other existing tribal uses confirmed.

Jay Weiner, Montana Attorney General's Office and attorney for Water Compact Commission, expressed gratitude for FWP and staff for working with the Compact Commission to get an agreement that is acceptable by all parties. Tobacco River and Kootenai River to be co-owned have been scrutinized by Lincoln County Legislatures because of concerns about adequacy of water rights; City of Eureka holds for municipal water. Continuing to work with the Legislatures. The Compact Commission is due to sunset on June 30, 2013. If claims are not completed by June 30, 2013 and the Legislature does not change the law to extend the Commission, all water rights would be suspended to the parties involved.

Bruce Rich, Fisheries Administrator thanked everyone involved and all their hard work on the compacts; important for fisheries.

Commissioner Moody suggests having Charles M. Russell and Water Commission to give a briefing on what the future is going to be like in Eastern Montana for the water resources necessary to maintain the wildlife.

7. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Permit/Regulations – Proposed

Don Skaar, Fisheries Management Section Supervisor explained FWP received an application for a 2013 commercial fishing permit to harvest carp via active seining from Canyon Ferry Reservoir and Lake Helena. By statute, the FWP Commission is authorized to approve one commercial fishing operation for each body of water and to establish specific regulations regarding gear, limits, seasons, closures and any other limitations deemed necessary. This application is for a Class B Permit that requires a fee of \$200 plus a \$1,000 Surety Bond. The Commission has approved the commercial fishing regulations for Canyon Ferry and Lake Helena for the past six years. The proposed regulations are included in the information package. Commercial fishing regulations for Canyon Ferry Reservoir and Lake Helena were originally approved by the Commission in 2005 following public notice and an opportunity for public comment. An environmental assessment was prepared at that time to evaluate any potential impacts of commercial fishing on the human environment. The applicant, Tracy Fortner, has had the permit since 2010; in 2012 he fished 13 days, and took 8500 pounds of carp and applied as fertilizer. His objectives for 2013 are to develop feed for chicken, pigs or cattle. The public will be notified of the potential adoption of regulations for 2013. The public will have time to comment on the proposed regulations between approval of tentative regulations at the January 10 meeting and approval of final regulations at the March 14 meeting.

Action: *Commissioner Vermillion moved and Commissioner Moody seconded the motion the Commission approve the proposed regulations for a commercial fishing operation on Canyon Ferry Reservoir and Lake Helena for 2013 pending public comment.*

Commissioner Vermillion asked if the summary report was going to include a by catch description.

Skaar replied yes.

Action on Motion: *Motion Carried*

8. Brucellosis Working Group Recommendations – Final

Quentin Kujala, Bureau Coordinator, stated in 2011, the FWP Commission endorsed a citizen working group concept to explore elk management guidelines in areas with brucellosis. After an informational meeting that included research and management presentations from Montana, Idaho, Wyoming and Yellowstone National Park, the group crafted an issue statement, fundamental objectives and alternative actions over six meetings between January and June 2012. The alternative predicted to best address fundamental objectives generally identifies efforts to adjust elk distribution. Potential actions include hunting season and habitat adjustments. The working group suggests that new, or existing, local groups represent a critical element in helping FWP identify and implement specific management actions, which may require additional Commission approval. Except for clarifications made in response to public comments, the recommendations have remained largely unchanged from their initial adoption on November 8. Material was presented to four watershed/public meetings and public comment ended December 20. Explained test and slaughter is not part of the package.

Kujala and Commissioners had a lengthy discussion on the proposal.

Action: *Commissioner Vermillion moved and Commissioner Moody seconded the Commission adopt the proposed issue statement, fundamental objectives and action alternative from the Elk Management Guidelines in Areas with Brucellosis Working Group.*

Commissioner Moody stated the Commission needs to supervise the initial period with updates, would like to amend the motion to state this.

Kujala and Commissioners had a lengthy discussion on the proposal.

Chairman Ream asked for public comment

Shelby DeMars, United Property Owners of Montana, sees multiple issues with the plan and hopes FWP will work with the landowners.

Bill Orsello, Montana Wildlife Federation, feels the Commission is essential in moving this forward. Concerned about test and slaughter and late season hunts.

Blake Henning, Rocky Mountain Elk Foundation stated the new document is clarified well. Worried habitat management/enhancement, hopes FWP converses with the Forest Service, BLM and other public landowners around the winter ranges. Recommends Commission stay closely engaged.

Dick Raths, working group member, appreciates the comments from the Commission and hopes they stay involved with the working group. Please to work with Quentin and Justin.

John Anderson, working group member commented the working group is proud of they have accomplished and realize it is a work in progress. It's not a final product.

Joe Cohenor, working group member commented on the test and slaughter program; socially and financially it is not feasible.

Mark Albrecht, working group member commented it would be useful if the Commission could join in with other Government agencies for support to get brucellosis off the select agent list and allow vaccine research.

Chairman Ream asked for public comment from the Regions.

Glen Monahan, urges not to adopt proposal.

Kathryn QannaYahu, Bozeman, not a legally binding document and opens the door for abuse.

Joe Gutkoski, President Yellowstone Buffalo Foundation, the livestock industry wants to take over the management of elk.

Glenn Hockett, Gallatin Wildlife Association, would like FWP to clarify working to minimize transmission risk to livestock, vaccination protocols

Tim Aldrich, Montana Wildlife Federation, provides an opportunity to come together on a local basis, would appreciate the Commission to stay involved.

Chairman Ream asked for public comment from the Regions.

Chairman Ream stated there is a lot of concern. Asked if the local working groups put together a plan in advance, would it be a problem?

Anderson explained that is exactly what the working group is looking at and would bring the local plan back to the Commission.

Commissioner Colton supportive of the plan. Need to move carefully, watch the document; to be used as it is intended to be.

Amendment to the Motion: Commission Moody moved Commissioner Vermillion seconded to add an additional sentence to the motion, the Commission requires the Department to report to the Commission on outcomes and issues in August and periodically thereafter as required by the Commission.

Commissioner Vermillion stated local working groups are important. Inclined to authorize Supervisor Flowers, biologists and landowners to come to him after February 15 with limited scope actions to try and move elk around.

Kujala and Commissioners had a lengthy discussion on process of the proposal and action plan. Future work plans would be projected to the Commission for review and approval.

Commissioner Vermillion thanked the working group members for taking the time to come to attend the meeting. Important to remember the working group members consist of land owners, sportsman and variety of different stake holders around Montana. This was a working group effort, not the Department.

Amended Motion: Commissioner Vermillion moved and Commissioner Moody seconded the Commission adopt the proposed issue statement, fundamental objectives and action alternative from the Elk Management Guidelines in Areas with Brucellosis Working Group. The Commission requires the Department to report to the Commission on outcomes and issues in August and periodically thereafter as required by the Commission.

Action on Amended Motion: Motion passed.

9. Open Microphone – Public Opportunity to Address FWP Issues Not on Agenda

Commissioner Vermillion commented at the December 10 meeting, the Commission put forth a motion to limit closure to hunting and trapping in certain areas in Paradise Valley. Suggests asking for additional public comment and re-discussing the issue later in January, via telephone.

Commissioners decided to tentatively schedule the meeting for January 29.

The meeting adjourned at 1:52 p.m.



Bob Ream, Chairman



Jeff Hagener, Director

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