

Montana Fish, Wildlife and Parks • Bureau of Land Management

Ladies and Gentlemen:

The enclosed Decision Notice and Finding of No Significant Impact (FONSI) has been prepared by Montana Fish, Wildlife & Parks (FWP) and the Bureau of Land Management (BLM) for the proposed Madison River Special Recreation Permit (SRP) Program. This SRP would provide authorizations for use of the Madison River by commercial, competitive, or organized groups. Thirty-eight public comments were received during the 30-day comment period ending August 13, 2007.

It is our decision to implement and administer a cooperative SRP Program that applies to both BLM and FWP lands and related waters. In addition, the types of commercial, competitive, and organized group activities analyzed in the EA may be authorized by the cooperative SRP Program as proposed. As stated in the EA, any activities that fall outside the scope of this analysis will be considered and analyzed on a case-by-case basis.

Sincerely,

Patrick J. Flowers
Region Three Supervisor
Montana Fish, Wildlife & Parks

Tim Bozorth
Field Manager
BLM Dillon Field Office

Attachment

INTRODUCTION AND BACKGROUND

The Bureau of Land Management, Dillon Field Office (BLM) and Region 3 Montana Fish, Wildlife & Parks (FWP) administer nearly all of the 25 river access sites along the Madison River. Each agency has the authority and responsibility to regulate via a permit system commercial use, competitive events, and organized group activities that occur on BLM and FWP lands and adjacent waters.

During initial planning for management of these activities, the agencies recognized the benefit of implementing a joint permit process to address the use of all public lands and recreation sites within the corridor. As a result, the agencies prepared an Environmental Analysis (EA) to evaluate the effects of administering and implementing a joint process or Special Recreation Permit Program (SRP Program). The EA also analyzed the impacts of common activities likely to require permits to determine if they might cause significant environmental impacts to area resources. This decision is based on careful consideration of the EA, public comments, and agency management goals and objectives for the river corridor.

Special Recreation Permits (SRPs) are authorizations which allow for commercial, competitive, and organized group recreational activities of public lands and related waters. They are issued as a means to manage visitor use, protect natural and cultural resources, and provide for the health and safety of visitors. SRPs are also issued as a mechanism to provide a fair return for the commercial recreational use of public lands.

2. DECISION

Tim Bozorth, Field Manager for the BLM Dillon Field Office, and Patrick Flowers, Supervisor for FWP Region 3, have decided to implement and administer a cooperative SRP Program that applies to both BLM and FWP lands and related waters. In addition, the types of commercial, competitive, and organized group activities analyzed in the EA may be authorized by the cooperative SRP Program as proposed. As stated in the EA, any activities that fall outside the scope of this analysis will be considered and analyzed on a case-by-case basis.

This decision accepts the Proposed Action Alternative with no modifications. The cooperative SRP Program meets the BLM's mandate to enforce permits and fees for commercial use, competitive events, and organized group activities. It also meets FWP's expectation of establishing a permit and fee system for commercial, group use, and special event activities for the Madison River and adjacent public lands.

By notification of this decision, the Draft EA is hereby made the Final EA.

2.1. Description of Proposed Action, Collaborative Permit Program (SRP Program)

The BLM and FWP will implement a cooperative SRP Program for administering commercial, competitive, and organized group activities on public lands and related waters managed by BLM and FWP within the Madison River corridor. The program would result in a unified policy for issuance of permits. Criteria analyzed in the EA were used to evaluate an application for

commercial, competitive, or organized group activities and determine whether to issue an SRP without further environmental analysis. Activities that fall outside the scope of that analysis would be considered and analyzed on a case-by-case basis. Such a request would be subject to all cost recovery guidelines.

The objectives of the proposed action include:

1. Develop a joint process that merges State and Federal regulations to manage, regulate, and charge fees for commercial, competitive, and organized group activities.
2. Develop a joint process with a single point of contact for permittees and the public.
3. Ensure balanced, equitable, and efficient management of permits.
4. Improve public service and reduce administrative costs for each agency and permittees.
5. Ensure resource protection remains a priority in managing authorized activities regardless of land ownership.
6. Ensure that the public receives fair return for commercial use of public lands and related waters.

This SRP program will not limit access to public land nor will it restrict use on the Madison River. If deemed necessary, however, BLM and FWP will initiate an independent planning process to evaluate the possibility of a more restrictive program to balance the needs of the public with appropriate resource management.

Below is a list of some commonly occurring commercial, competitive, or organized group activities that would require a permit for use of public lands and adjacent waters within the Madison River corridor:

- Wade-walk fishing outfitting
- River-based or river dependent commercial activities (whitewater floating, float fishing, group floats, etc.)
- Overnight camping at primitive areas – The number of commercial overnight permits currently on BLM is limited and will remain so until further analysis is conducted. All other camping opportunities, except camping related to a competitive event or group activity, are allowed in designated areas without a permit.
- All competitive events (land and/or water-based)
- Instructional/educational classes: either water-based (i.e. canoeing) or shore-based (i.e. art or casting)
- Shuttle services (on BLM properties only)

FWP Region 3 will administer the program with support from the BLM. Administration will include processing applications, issuing permits, collecting fees, monitoring for compliance, record keeping, and correspondence with permit holders.

Criteria for Activities and Fee Structure

Commercial Use Permit Criteria

Commercial use is defined as recreational use of public lands and related waters for business or financial gain. Financial gain includes gratuities, donations, gifts, bartering, etc. When any person, group, or organization makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation for recreational activities occurring on public lands, the use is considered commercial. Compensation for recreation services may come from participants and/or other sources.

Other indicators of commercial use are when:

- a. Anyone collects a fee or receives other compensation that is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity, service or use; or,
- b. There is paid public advertising to seek participants; or,
- c. Participants pay for a duty of care or an expectation of safety.

Additionally:

- d. Profit-making organizations and organizations seeking to make a profit are automatically classified as commercial, even if that part of their activity covered by the permit is non profit-making or the business as a whole is non profitable; and,
- e. The use of the Madison River and associated sites by scientific, educational, and therapeutic institutions or non-profit organizations is commercial and subject to a permit requirement if it meets any of the criteria described above. The non-profit status of any group or organization does not alone determine that an event or activity arranged by such a group or organization is noncommercial.

Examples of commercial activities that would require a permit include any fund-raising activity, outfitters and guides, college back-packing course for credit, jeep tours, horse trail and wagon train rides, and cattle drives.

Vending Permit Criteria

Vendor permits are authorizations to sell goods or services on public lands in conjunction with a recreation activity that directly supports or enhances the recreation experience. Examples might be equipment rentals and repairs, shuttle services, and firewood sales.

Shuttle services are the only Vendor Permit specifically addressed in this EA and would apply only to BLM-administered public lands and recreation sites. The FWP commission specifically exempted the transferring of vehicles or people to or from an FWP site. BLM sites that would require a permit for shuttle services include Windy Point, Palisades, Ruby Creek, Storey Ditch, Clute's Landing, Kobayashi Beach, Fall Creek, Bear Trap Canyon Wilderness Launch, Warm Springs, and Canaday.

Most vendor activities, with the exception of shuttle operations, will be administered independent of the cooperative SRP Program. Applicants are encouraged to contact the BLM and FWP offices directly.

1. Vending in association with permitted event. In most cases, vending is associated with a commercial event. Examples of vendor permits include T-shirt sales in conjunction with a raft race, a food or souvenir stand at an event, etc. The vending may be included in the permit for the event. If not, the vendors must acquire their own permit.

2. Vending not associated with permitted events. Vendors not in conjunction with an event should directly support or enhance the recreation experience and be appropriate for the area. Examples might be equipment rentals and repairs, shuttle services, and firewood sales. Sales of food, souvenirs, clothing, and convenience items are usually not appropriate since they are not necessary for most outdoor recreation experiences.

Competitive Events Permit Criteria

Competitive Use means any organized, sanctioned, or structured use, event, or activity on public land in which two or more contestants compete and either of the following elements applies:

- a. Participants register, enter, or complete an application for the event; or,
- b. A predetermined course or area is designated; or,
- c. One or more individuals are contesting an established record such as speed or endurance; or,
- d. The event is publicly advertised; or,
- e. The event awards cash prizes; or,
- f. The activity poses an appreciable risk for damage to public lands or water resource values; or,
- g. The activity requires specific management or monitoring.

Examples of competitive events include off-highway vehicle races, horse endurance rides, mountain bike races, rodeos, poker runs, orienteering, land speed records, and Eco-Challenge events. **Note:** Competitive events may also be commercial. See the section on commercial use above.

Organized Group Permit Criteria

An organized group is any group that is a structured, ordered, consolidated, or scheduled event on, or occupation of, public lands and related waters and associated sites for the purpose of recreational use that is not commercial or competitive.

A permit may be required if the organized group activity contains 15 or more people and/or meets one of the following criteria:

- a. The activity is publicly advertised; or,
- b. The activity poses an appreciable risk for damage to public lands or water resource values; or,
- c. The activity requires specific management or monitoring; or
- d. A reservation is required at a specific site or campground.

Examples of groups or events that may require a permit include a large scout campout, a fraternity activity, a large family reunion, reenactments, or a dual sport event held at a public recreation site or participating in recreation activities on public lands.

Permit Fees

Based upon existing permit fee structures established by BLM and FWP, the following permit fees will apply. These fees will support the purposes of administrating the SRP program and management and maintenance activities related to recreation and resource protection on BLM and FWP owned public lands along the Madison River.

Minimum Fees:

Commercial Activities including Vendors (i.e. Shuttle Operations)	\$90 per year or 3% of gross income, whichever is greater
Competitive Activities	\$90 per group or 3% of gross income or \$4/day/person, whichever is greater
Organized Group Activities	\$90 per group or 3% of gross income or \$4/day/person, whichever is greater

Vendor (shuttle) fees are the same as commercial use fees, including the minimum fee (currently \$90 per year), and are calculated using gross receipts of onsite sales associated with the permitted activity. BLM recognizes that FWP will not require a permit or fee for the shuttle operators when using FWP sites. Therefore, BLM will allow shuttle operators to reduce their reported trip revenue by 50% whenever a trip includes a BLM administered land and begins or ends on a FWP Fishing Access Site or private access site.

These fees are periodically evaluated against the Gross National Product (GNP) Index which may lead to adjustments in the fee structure.

2.2. Rational for the Decision

In making this decision, the BLM and FWP balanced the concerns of those likely to be affected by the cooperative SRP Program and the mission of each agency to manage resources and protect public interest. Commercial activities along some river corridors in Montana (Smith River, Alibon Gorge, Rock Creek, Missouri, Beaverhead, Blackfoot, etc.), as well as most BLM-administered rivers in the country, are already regulated or proposed for regulation. Collaborative management of rivers improves the agencies' ability to balance commercial and public use of rivers to reduce recreation conflicts and sustain natural resources. BLM and FWP have developed a successful collaborative SRP pilot project on the Blackfoot River in Western Montana which will serve as a template for the SRP Program on the Madison River.

Special Recreation Permits and joint permit processes are in conformance with the Dillon Resource Management Plan signed February 2006, 43 CFR 2930, and the BLM SRP handbook which provides direction for authorizing commercial use, competitive events, and organized group activities. They also comply with FWP's commercial use rules adopted December 14, 2006 (A.R.M. 12.14.101-170).

3. FINDING OF NO SIGNIFICANT IMPACT (FONSI)

The environmental assessment that analyzed the potential effects of implementing either a collaborative or separate recreation permit program has been reviewed, and after careful consideration of public comment, BLM and FWP decision makers have determined that the impacts associated with the Proposed Action, collaborative SRP Program are not expected to have any significant impacts on the human environment and therefore an EIS is not required.

4. PUBLIC INVOLVEMENT AND COMMENTS

4.1. Public Involvement Process

Early in the preparation of the EA, the BLM and FWP engaged the public through two scoping meetings in May 2007 in Ennis and Bozeman. There were a total of thirty-one participants at the

meetings, and their comments were considered and included into the EA that was later released for a 30-day public comment period.

The public comment period for the EA was July 13, 2007, to August 13, 2007. The Helena FWP office was designated the recipient of all the public comments and received fourteen written, along with two verbal communications, from interested individuals and groups. Many of the communications asked specific questions pertaining to the management of the resource, some provided suggestions on how to implement a collaborative permit program with the least inconvenience to permittees, and others either voiced their support (3 responses) or opposition (4 responses) to the proposed action.

All comments received during public scoping regarding implementation of the program have been taken into consideration. Although these comments/advice did not change the outcome of the Decision, they will help the agencies develop a more workable permit program.

4.2. Comments and Responses

Comments on the Affect of the Proposed Action on Outfitters

COMMENT 1: Three individuals felt that the outfitters and guides conducting business on the Madison River are being unfairly targeted by the program and are bearing the burden of the permit fees.

RESPONSE: As noted in the EA, the Madison River SRP Program would not apply to the general public unless they are engaging in commercial use, a competitive event, or an organized group activity. There are already mechanisms in place through which the general recreating public contributes to the operation and maintenance of access sites along the river and management of the river itself. A portion of the sale of fishing licenses goes to the FWP fishing access site program. The public also contributes to the program when they register their vehicle. The public contributes to the federal lands when they pay their federal income taxes. In contrast, until now commercial users have not had to pay a fee for conducting business on publicly-owned sites along the Madison River. The SRP fee system will compensate the public for conducting business on public lands and will offset the impacts associated with commercial use and generate revenue for river management and site improvements.

COMMENT 2: One person wrote they were interested in limiting outfitting on the Madison to only resident outfitters and guides.

RESPONSE: The authority for setting such limits rests with the State Legislature and is beyond the scope of this EA.

COMMENT 3: One person was interested how the SRP program would affect independent guides that work for licensed outfitters on the Madison River.

RESPONSE: The SRP requirement will only apply to the outfitters, not the guides. Each guide operating on FWP fishing access sites, including those along the Madison River, must obtain a FWP Commercial Use Fishing Access Site Permit. Guides will also need to provide proof that they are working for an outfitter who has an SRP for the Madison River. This proof could be in the form of a boat tag or decal and will be determined during the implementation phase of the program.

COMMENT 4: Some people expressed concern over the 3% of gross revenue fee system and requested that the agencies adopt an alternative approach.

RESPONSE: The BLM does not have the option to employ a different type of fee system. The BLM could convert the 3% gross fee into a per client day fee. Before considering this option, the BLM would need to assess the amount that commercial users charge their clients. The BLM may consider this in the future. While FWP does have the option to employ a different type of fee system, one of the primary objectives of a joint permit program is to provide consistency and avoid conflicting programs. Therefore, FWP will employ the same permit fee system used by the BLM: 3% of gross.

COMMENT 5: One person requested that the agencies close the river to all recreational activities due to concern that the river resources are already impacted by drought conditions and recreation adds more stress/impacts.

RESPONSE: FWP has a protocol for restricting or closing angling on a stream when water temperatures and/or flows reach a critical point for a sustained period of time. The agencies also have the ability to regulate use in order to address resource impacts at sites. An outright closure of all recreational opportunities on the Madison River is not necessary.

COMMENT 6: One person expressed concern that the agencies were not limiting the number of permits in order to protect the resources. They recommended issuing permit only to Montana (resident) outfitters and guides.

RESPONSE: The joint SRP Program will not limit the number of permits that are issued to commercial outfitters. This could change in the future through a river recreation planning process.

COMMENT 7: Some people expressed concern about illegal outfitting (unlicensed) on the Madison River and commented that the SRP Program could lead to more of this occurring. They are also concerned that people will operate illegally in order to avoid paying permit fees. Others expressed concern that some people will under-report use in order to avoid paying fees.

RESPONSE: Enforcement measures will be taken to address illegal outfitting and permit violations. Enforcement officials from both agencies will coordinate their efforts in order to provide more comprehensive coverage across jurisdictional boundaries. The agencies may conduct audits to ensure compliance with reporting requirements. Both agencies have the option to issue citations and ultimately suspend or revoke permits for cause. The outright loss of privileges on the Madison River will hopefully be a significant deterrent to non-compliance with the SRP process.

Comments and Suggestions for the Implementation of a Collaborative Permit Program

COMMENT 8: Four individuals expressed their concern about how the rules of the SRP program would be enforced and if the enforcement of the program will have any effect on the number of illegal outfitters and guides on the Madison River.

RESPONSE: The enforcement of permit stipulations is a high priority for both agencies. The SRP Program Manager and seasonal river ranger dedicated to the program as well as BLM and FWP law enforcement staff will enforce program compliance and use restrictions. BLM officers and FWP wardens, the SRP Program Manager, and seasonal staff will all have the authority to

issue citations. Shuttle permits will be accountable to BLM recreation staff and BLM officers on BLM properties only. There will be a formal system established where violators could be reported, investigated, and fines assessed. Penalties could range from a warning, monetary penalty, or loss of their Special Recreation Permit. In the most severe instances, non-compliance could result in court or Board of Outfitters actions.

COMMENT 9: One individual was curious which court system (State or Federal) would be used to enforce the program's penalties.

RESPONSE: It is likely that any SRP citations will be processed through the State of Montana court system. However, since vendor permits for shuttle operations will only be implemented on BLM lands, those in violation will be processed through the federal court system.

COMMENT 10: One person was curious if and how the SRP program would affect outfitters that have an overnight camping permit from the BLM.

RESPONSE: Two commercial outfitters are currently authorized to conduct overnight float trips on the Madison. The BLM has limited the number of overnight use permits to those two because of the unknown impacts to resources along the corridor.

COMMENT 11: Three interested parties inquired about the accountability and transparency of the program and if a citizens advisory committee might be established and/or an annual report would be produced.

RESPONSE: Both agencies feel strongly that it is important that the public understands and sees the work being accomplished by the program fees. It is possible that a committee will be established with representation from a cross-section of groups interested in the health of the corridor. Additionally, there is the potential for an annual report to highlight the program revenues and completed projects supported by permit fees.

COMMENT 12: One person was interested in how the program was going to expect outfitters to account for their gross revenue.

RESPONSE: The agencies are still working on the specifics of implementing the program. Permittees may be required to document their business activities. There is an administrative rule that states that FWP may require commercial users to maintain and have on their person for department inspection a logbook for recording commercial use which is one way to ensure compliance and accurate recordkeeping. Permittees may be required to provide proof of accurate reporting such as IRS reports or Board of Outfitters reports. All permittees will be subject to occasional audit.

COMMENT 13: One interested party expressed interest in knowing if there is a list of the prioritized projects that could receive financial support from the program's fees.

RESPONSE: Potential projects already exist and will need to be prioritized before projects begin such as additional support for enforcement activities or infrastructure improvements at the access sites. An additional benefit of the revenue generated from the fees is that they can be used to leverage support from other grant programs such as the one through PPL Montana. The agencies' first priority will be to cover the cost of administering the program. Remaining funding would then be allocated to special projects and/or operation and maintenance of access sites.

SUGGESTIONS submitted for consideration by the public:

- Preference of submitting the form at the end of the season
- Preference of the fee calculation based upon \$4 per client per guided day
- Suggestion that the tag/sticker is a specific shape and color to denote it is for use on the Madison vs. another river
- Suggests additional access sites be available for boat fishing (i.e. Raynold's Pass, Three Dollar Bridge, and Lyons Bridge) to alleviate some of the congestion of other parts of the river
- A centralized database for the program
- Issuance of annual permits vs. 5-year permits (see letter for reasoning)
- Preference toward the use of "hang" tags as identification
- Would appreciate a form designed like the one used by the Board of Outfitters

Comments on Charging Fees to the General Public

COMMENT 14: Five individuals express their concern the program was not addressing a group of users of the river (i.e. the general public) who they felt were contributing to the destruction and defacing of the natural qualities of the river corridor. They felt those users of the Madison River corridor should be include in the permit program.

RESPONSE: The SRP program does not apply to the general public unless they are conducting commercial use, competitive events, or organized group activities. One of the primary differences between public and commercial use is that the commercial users are making money from the use of a public resource whereas recreational users are not. This program is designed to compensate the public for the privilege of conducting business on public lands and related water. The Federal Lands Recreation Enhancement Act prohibits the BLM from charging the public for general use of public land and/or for sites with limited facilities like boat ramps or trailheads. Use fees are only allowed at sites that have a specific number and type of amenities such as drinking water, picnic tables, campsites, etc.

Comments on River Management of the Madison River

COMMENT 15: Some people requested that the agencies develop a management plan for the Madison River.

RESPONSE: The SRP Program is limited to regulating commercial use, competitive events, and organized group activities. It is not intended to serve as a management planning process. The decision to develop a management plan for the Madison River would take place through a different process.

Comments Referring to the Bear Trap Canyon

COMMENT 16: One person inquired if the program would affect permits allocated for the Bear Trap Canyon and since the use of the canyon is growing, could the number of permits currently issued for that area be reduced?

RESPONSE: The Bear Trap Canyon Wilderness is exempt from this SRP program. Permittees authorized to conduct business and or events within the wilderness will continue to be administered by the BLM and limited by the management direction of the wilderness. The BLM

re-evaluated the management plan for the Bear Trap in 2004, and at that time the use limits were exceeding the standard set for social encounters. The BLM and Lee Metcalf Wilderness Coordinating Committee (BLM & Forest Service) are reviewing the use data and management plan for the wilderness. Due to special management of wilderness and the high level of social encounters, however, the number and type of permitted uses are not expected to change.

5. Appeal Process

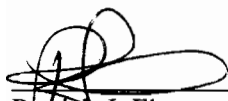
This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office at the above address within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

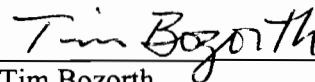
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



Patrick J. Flowers
Region Three Supervisor
Montana Fish, Wildlife & Parks



Tim Bozorth
Field Manager
BLM Dillon Field Office