

## 1 HOUSE BILL NO. 24

2 INTRODUCED BY D. ANKNEY

3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE PARKS AND RECREATION BOARD;  
 6 PROVIDING POWERS AND DUTIES; GRANTING RULEMAKING AUTHORITY; RENAMING THE FISH,  
 7 WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402,  
 8 2-15-3404, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403,  
 9 23-2-404, 23-2-408, 23-2-410, ~~23-2-501, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641,~~  
 10 ~~23-2-652, 23-2-801, 23-2-806,~~ 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202,  
 11 87-1-209, 87-1-218, 87-1-301, 87-1-303, ~~87-1-306,~~ 87-1-401, 87-1-622, AND 87-4-432, MCA; AND PROVIDING  
 12 AN EFFECTIVE DATE."  
 13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
 16 NEW SECTION. **Section 1. State parks and recreation board -- composition.** (1) There is a state  
 17 parks and recreation board.

18 (2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The  
 19 governor shall appoint one member from each of the following districts:

20 (a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli,  
 21 Granite, and Lewis and Clark Counties;

22 (b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater,  
 23 Gallatin, Park, and Sweet Grass Counties;

24 (c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith  
 25 Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

26 (d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield,  
 27 McCone, Richland, Dawson, and Wibaux Counties;

28 (e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,  
 29 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

30 (3) Appointments must be made without regard to political affiliation and must be made solely for the

1 wise management of state parks and outdoor recreational resources administered pursuant to Title 23, chapter  
2 1, and Title 23, chapter 2, parts 1, 4, ~~5, 6, 8~~; and 9.

3 (4) A person appointed to the board must be informed or experienced in the conservation and protection  
4 of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

5 (5) A vacancy on the board must be filled by the governor in the same manner and from the district in  
6 which the vacancy occurs.

7 (6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the  
8 requirement that at least one member be an attorney does not apply.

9 ~~(7) The administrator of the division that oversees state parks is the secretary of the board.~~

10

11 NEW SECTION. Section 2. Powers and duties of board -- rulemaking -- meetings. (1) Except as  
12 provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state  
13 historic sites, state monuments, and other heritage and recreational resources, land, and water administered  
14 pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, ~~5, 6, 8~~; and 9, the board shall:

15 (a) set the policies and provide direction to the department for:

16 (i) the management, protection, conservation, and preservation of these properties, lands, and waters  
17 ~~in a way that promotes their importance~~ AND THEIR APPROPRIATE ROLE RELATIVE to tourism and the economic health  
18 of Montana;

19 (ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these  
20 sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding,  
21 mountain biking, ~~and boating,~~ AND SWIMMING;

22 (b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

23 (c) establish the rules of the department governing the use of these properties; AND ~~lands, and waters.~~

24 The rules must be adopted in the interest of public health, public safety, PUBLIC WELFARE, and protection of  
25 property and public resources in regulating RECREATION, INCLUDING picnicking, camping, AND SWIMMING, AND  
26 sanitation, ~~swimming, and boating, including but not limited to boating speed regulations, the operation of~~  
27 ~~motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized~~  
28 ~~and nonmotorized boats, waterskiing, and surfboarding.~~ These rules are subject to review and approval by the  
29 department of public health and human services with regard to issues of public health and sanitation before  
30 becoming effective. Copies of the rules must show that endorsement.

1 (d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by  
2 the department, EXCEPT AS PROVIDED IN 87-1-209(4);

3 (e) review and approve the budget of the department for the administration of these properties, lands,  
4 and waters prior to its transmittal to the office of budget and program planning;

5 (f) review and approve construction projects that have an estimated cost of more than \$1,000 but less  
6 than \$5,000;

7 (g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote  
8 recreational opportunities statewide; and

9 (h) encourage citizen involvement in management planning for these properties, lands, and waters.

10 (2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the  
11 administration of fishing access sites.

12 (3) The members of the board shall hold quarterly or other meetings for the transaction of business at  
13 times and places considered necessary and proper. The meetings must be called by the presiding officer or by  
14 a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of  
15 the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the  
16 business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the  
17 board.

18

19 **Section 3.** Section 2-15-3110, MCA, is amended to read:

20 **"2-15-3110. Livestock loss board -- purpose, membership, and qualifications.** (1) There is a  
21 livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf  
22 management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts  
23 established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse  
24 livestock producers for livestock losses from wolf predation.

25 (2) The board consists of seven members, appointed by the governor, as follows:

26 (a) three members from a list of names recommended by the board of livestock;

27 (b) three members from a list of names recommended by the fish, and wildlife, ~~and parks~~ commission;  
28 and

29 (c) one member of the general public.

30 (3) Each board member must have knowledge of or have experience in at least one of the following:

- 1 (a) the raising of livestock in Montana;
- 2 (b) livestock marketing, valuations, sales, or breeding associations;
- 3 (c) the interaction of wolves with livestock and livestock mortality caused by wolves;
- 4 (d) wildlife conservation;
- 5 (e) administration; and
- 6 (f) fundraising.
- 7 (4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the
- 8 provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.
- 9 (5) The board is allocated to the department of livestock for administrative purposes only as provided
- 10 in 2-15-121.
- 11 (6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and
- 12 81-1-110 through 81-1-112."

- 13
- 14 **Section 4.** Section 2-15-3113, MCA, is amended to read:
- 15 **"2-15-3113. Additional powers and duties of livestock loss board.** (1) The livestock loss board shall:
- 16 (a) process claims;
- 17 (b) seek information necessary to ensure that claim documentation is complete;
- 18 (c) provide payments authorized by the board for confirmed and probable livestock losses, along with
- 19 a written explanation of payment;
- 20 (d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures
- 21 and the results of action taken on claims and maintain files of all claims received, including supporting
- 22 documentation;
- 23 (e) provide information to the board of livestock regarding appealed claims and implement any decision
- 24 by the board;
- 25 (f) prepare the annual budget for the board; and
- 26 (g) provide proper documentation of staff time and expenditures.
- 27 (2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted
- 28 a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide
- 29 that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that
- 30 livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant

1 to 2-15-3112.

2 (3) The livestock loss board shall:

3 (a) coordinate and share information with state, federal, and tribal officials, livestock producers,  
4 nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

5 (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses  
6 caused by wolves;

7 (c) perform or contract for the performance of periodic program audits and reviews of program  
8 expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction  
9 grants and reimbursement payments;

10 (d) adjudicate appeals of claims;

11 (e) investigate alternative or enhanced funding sources, including possible agreements with public  
12 entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in  
13 place;

14 (f) meet as necessary to conduct business; and

15 (g) report annually to the governor, the legislature, members of the Montana congressional delegation,  
16 the board of livestock, the fish, and wildlife, ~~and parks~~ commission, and the public regarding results of the  
17 programs established in 2-15-3111 through 2-15-3113.

18 (4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received  
19 pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part  
20 of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account  
21 established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

22

23 **Section 5.** Section 2-15-3401, MCA, is amended to read:

24 "**2-15-3401. Department of fish, wildlife, and parks -- head.** There is a department of fish, wildlife, and  
25 parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance  
26 with 2-15-111. The director is the secretary of the:

27 (1) fish and wildlife commission established in 2-15-3402; AND

28 (2) STATE PARKS AND RECREATION BOARD ESTABLISHED IN [SECTION 1]."

29

30 **Section 6.** Section 2-15-3402, MCA, is amended to read:

1           **"2-15-3402. Fish; and wildlife, ~~and parks~~ commission.** (1) There is a fish; and wildlife, ~~and parks~~  
2 commission.

3           (2) The commission consists of five members. At least one member must be experienced in the breeding  
4 and management of domestic livestock. The governor shall appoint one member from each of the following  
5 districts:

6           (a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli,  
7 Granite, and Lewis and Clark Counties;

8           (b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater,  
9 Gallatin, Park, and Sweet Grass Counties;

10          (c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith  
11 Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

12          (d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield,  
13 McCone, Richland, Dawson, and Wibaux Counties;

14          (e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn,  
15 Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

16          (3) Appointments must be made without regard to political affiliation and must be made solely for the  
17 wise management of fish, wildlife, ~~and state parks~~ and ~~other outdoor~~ related recreational resources of this state.  
18 A person may not be appointed to the commission unless the person is informed or interested and experienced  
19 in the subject of fish, wildlife, ~~parks~~, and ~~outdoor~~ recreation and the requirements for the conservation and  
20 protection of fish, wildlife, ~~parks~~, and ~~outdoor~~ recreational resources.

21          (4) A vacancy occurring on the commission must be filled by the governor in the same manner and from  
22 the district in which the vacancy occurs.

23          (5) The fish; and wildlife, ~~and parks~~ commission is designated as a quasi-judicial board for purposes of  
24 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to  
25 serve as a member of the commission."  
26

27           **Section 7.** Section 2-15-3404, MCA, is amended to read:

28           **"2-15-3404. Fish, wildlife, and parks crimestoppers board.** (1) There is a fish, wildlife, and parks  
29 crimestoppers board.

30           (2) (a) The board consists of five members, four of whom are appointed by the director of the department

1 of fish, wildlife, and parks; as follows:

2 (i) a person within the department responsible for the enforcement of fish and wildlife laws;

3 (ii) a member of a hunter's, angler's, or conservation group;

4 (iii) a member who is actively engaged in agricultural production; and

5 (iv) a member of the public with an interest in parks and recreation.

6 (b) The fifth member is a member of the fish, ~~and wildlife, and parks~~ commission who must be  
7 designated by the commission.

8 (3) The board shall elect a presiding officer from its members.

9 (4) A member must be appointed for a term of 2 years and may be reappointed.

10 (5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original  
11 appointment.

12 (b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

13 (6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only  
14 as provided in 2-15-121."

15

16 **Section 8.** Section 23-1-101, MCA, is amended to read:

17 **"23-1-101. Purpose Purposes -- definitions.** (1) For the ~~purpose~~ purposes of conserving the scenic,  
18 historic, archaeological, scientific, and recreational resources of the state, ~~and~~ providing for their use and  
19 enjoyment, ~~thereby~~ and contributing to the cultural, recreational, and economic life of the people and their health,  
20 the department of fish, wildlife, and parks (hereinafter referred to as department) ~~is~~ and board are hereby vested  
21 with the duties and powers ~~hereinafter~~ set forth in this part.

22 (2) For the purposes of this part, the following definitions apply:

23 (a) "Board" means the state parks and recreation board established in [section 1].

24 (b) "Commission" means the fish and wildlife commission established in 2-15-3402.

25 (c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

26 (d) "Director" means the director of fish, wildlife, and parks as provided in 2-15-3401."

27

28 **Section 9.** Section 23-1-102, MCA, is amended to read:

29 **"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall  
30 make a study to determine the scenic, historic, archaeological, scientific, and recreational resources of the state.

1 ~~The~~ With the consent of the board, the ~~THE~~ department may:

2 (a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites,  
3 or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas,  
4 state monuments, or state ~~historical~~ historic sites; ~~The department, with the consent of the commission, may~~

5 (b) WITH THE CONSENT OF THE BOARD, acquire by condemnation, pursuant to Title 70, chapter 30, lands  
6 or structures for the purposes provided in 87-1-209(2);

7 ~~(2)(c)~~ ~~The department may~~ accept in the name of the state, in fee or otherwise, any areas, sites, or  
8 objects conveyed, entrusted, donated, or devised to the state; and

9 (d) lease those portions of designated lands that are necessary for the proper administration of the lands  
10 in keeping with the basic purposes of this part.

11 (2) ~~†~~ The department may accept gifts, grants, bequests, or contributions of money or other property to  
12 be spent or used for any of the purposes of this part.

13 (3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred  
14 until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains  
15 to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land  
16 commissioners shall specifically approve the acquisition.

17 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public  
18 camping grounds, ~~historical~~ historic sites, and monuments, except wayside camps and other public conveniences  
19 acquired, improved, and maintained by the department of transportation and contiguous to the state highway  
20 system. The department may designate lands under its control as state parks, state ~~historical~~ historic sites, or  
21 state monuments; or by any other designation that it considers appropriate. The department may remove or  
22 change the designation of any area or portion of an area and may name or change the name of any area. ~~The~~  
23 ~~department may lease those portions of designated lands that are necessary for the proper administration of the~~  
24 ~~lands in keeping with the basic purpose of this part."~~

25

26 **Section 10.** Section 23-1-106, MCA, is amended to read:

27 **"23-1-106. Rules -- penalties -- enforcement.** (1) The department and the board may make rules  
28 governing the use, occupancy, and protection of the property under ~~its~~ their control.

29 (2) ~~Any~~ A person who violates ~~any of the rules made by the department this section~~ SUBSECTION (3) or  
30 a rule established pursuant to ~~subsection (1)~~ this section is guilty of a misdemeanor and shall be fined not more



1 than \$500 or be imprisoned in the county jail for not more than 6 months.

2 ~~(3) It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ A person may not  
3 refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and  
4 game warden, park ranger, or peace officer.

5 (4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The  
6 director ~~of the department~~ shall employ all necessary and qualified personnel for enforcement purposes.

7 (5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
8 support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of  
9 the department are granted peace officer status with the power:

10 (a) of search, seizure, and arrest;

11 (b) to investigate activities in this state regulated by this chapter and rules of the department and the fish,  
12 ~~wildlife, and parks commission board~~; and

13 (c) to report violations to the county attorney of the county in which they occur."  
14

15 **Section 11.** Section 23-1-108, MCA, is amended to read:

16 **"23-1-108. Acquisition of certain state parks, monuments, or historical historic sites.** (1) Any  
17 person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or  
18 area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish,~~  
19 ~~wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

20 (2) The ~~fish, wildlife, and parks commission board~~ shall present to the legislature by the 15th day of any  
21 legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state  
22 recreational areas, state monuments, or state ~~historical~~ historic sites with the money contained in the parks  
23 account.

24 (3) The legislature must appropriate funds from this account before any park, area, monument, or site  
25 may be purchased."  
26

27 **Section 12.** Section 23-1-110, MCA, is amended to read:

28 **"23-1-110. Improvement or development of state park or fishing access site -- required public**  
29 **involvement -- rules.** (1) ~~The fish, wildlife, and parks commission shall adopt rules establishing a policy~~  
30 ~~whereby any~~ Any proposed improvement or development of a state park or fishing access site that significantly

1 changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both  
 2 statewide and locally, and to opportunity for a public meeting and public comment on the advisability and  
 3 acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

4 (a) for state parks by the board; and

5 (b) for fishing access sites by the commission.

6 (2) The department shall prepare a public report regarding any project that is subject to the provisions  
 7 of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

8 (a) the desires of the public as expressed to the department;

9 (b) the capacity of the park or fishing access site for development;

10 (c) environmental impacts associated with the improvement or development;

11 (d) the long-range maintenance of the improvements;

12 (e) the protection of natural, cultural, and historical park or fishing access site features;

13 (f) potential impacts on tourism; and

14 (g) site-specific modifications as they relate to the park or fishing access site system as a whole."

15

16 **Section 13.** Section 23-1-121, MCA, is amended to read:

17 **"23-1-121. Park rangers -- qualifications -- powers and duties.** (1) The department is authorized to  
 18 establish a corps of park rangers and to select and appoint park rangers who must be qualified by their  
 19 experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural  
 20 resources and parks administered by the department.

21 (2) Park rangers shall:

22 (a) enforce the laws of this state and the rules of the department and the fish, wildlife, and parks  
 23 commission board that provide for the protection, conservation, and stewardship of the natural and cultural  
 24 resources in the state parks system;

25 ~~(3) Park rangers shall~~

26 (b) protect campers, picnickers, and other park users;

27 (c) keep the peace;

28 (d) supervise public use; and

29 (e) maintain public order in all units of the state parks system; and

30 ~~(4)(f) Park rangers shall perform all other duties prescribed by the department."~~

1

2           **Section 14.** Section 23-1-122, MCA, is amended to read:

3           **"23-1-122. Enforcement powers of park rangers and game wardens.** (1) Park rangers appointed  
4 pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with  
5 the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters  
6 1 and 2 of this title, except chapter 2, part 7.

7           (2) An authorized officer may:

8           (a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department  
9 upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title,  
10 except chapter 2, part 7, or rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

11           (b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply  
12 to the operation of motorboats on waters within areas managed by the department under this part; and

13           (c) exercise other powers of peace officers in the enforcement of:

14           (i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter  
15 2, part 7;

16           (ii) rules of the department, the board, and the ~~fish, wildlife, and parks~~ commission; and

17           (iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

18

19           **Section 15.** Section 23-2-301, MCA, is amended to read:

20           **"23-2-301. Definitions.** For purposes of this part, the following definitions apply:

21           (1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or  
22 through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use.  
23 A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of  
24 water.

25           (2) "Class I waters" means surface waters, other than lakes, that:

26           (a) lie within the officially recorded federal government survey meander lines of the waters;

27           (b) flow over lands that have been judicially determined to be owned by the state by reason of application  
28 of the federal navigability test for state streambed ownership;

29           (c) are or have been capable of supporting the following commercial activities: log floating, transportation  
30 of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the

1 transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19,  
2 1985; or

3 (d) are or have been capable of supporting commercial activity within the meaning of the federal  
4 navigability test for state streambed ownership.

5 (3) "Class II waters" means all surface waters that are not class I waters, except lakes.

6 (4) "Commission" means the fish, ~~and wildlife, and parks~~ commission provided for in 2-15-3402.

7 (5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

8 (6) "Diverted away from a natural water body" means a diversion of surface water through a constructed  
9 water conveyance system, including but not limited to:

10 (a) an irrigation or drainage canal or ditch;

11 (b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which  
12 the system obtains water;

13 (c) a flood control channel; or

14 (d) a hydropower inlet and discharge facility.

15 (7) "Lake" means a body of water where the surface water is retained by either natural or artificial means  
16 and the natural flow of water is substantially impeded.

17 (8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

18 (9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient  
19 periods to cause physical characteristics that distinguish the area below the line from the area above it.  
20 Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil  
21 of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent  
22 to surface waters is not considered to lie within the surface waters' high-water marks.

23 (10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small  
24 craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft  
25 propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

26 (11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing  
27 district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries  
28 of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or  
29 the directors of a grazing district.

30 (12) "Surface water" means, for the purpose of determining the public's access for recreational use, a

1 natural water body, its bed, and its banks up to the ordinary high-water mark."

2

3 **Section 16.** Section 23-2-403, MCA, is amended to read:

4 **"23-2-403. Definitions.** As used in this part, the following definitions apply:

5 (1) "Board" means the state parks and recreation board established in [section 1].

6 ~~(1)(2)~~ "Commission" means the fish, and wildlife, ~~and parks~~ commission ~~provided for~~ established in  
7 2-15-3402.

8 ~~(2)(3)~~ "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401."

9

10 **Section 17.** Section 23-2-404, MCA, is amended to read:

11 **"23-2-404. Applicability.** This part applies to that portion of the Smith River waterway located in  
12 Meagher and Cascade Counties lying between ~~the Camp Baker state fishing access site~~ in Meagher County and  
13 the confluence of the Smith River with the Missouri River. This description does not prevent the department from  
14 naming or renaming areas pursuant to 23-1-102."

15

16 **Section 18.** Section 23-2-408, MCA, is amended to read:

17 **"23-2-408. Rulemaking authority.** The ~~commission~~ board has authority to provide for the administration  
18 of the Smith River waterway. The ~~commission~~ board may adopt rules to:

19 (1) regulate and allocate recreational and commercial floating and camping to preserve the biological  
20 and social benefits of recreational and commercial use of the Smith River waterway in its natural state.  
21 Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural  
22 environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

23 (a) consider the tolerance of adjacent landowners to recreational use;

24 (b) consider the capability of the river and adjoining lands to accommodate floating and camping use;

25 and

26 (c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for  
27 a level of solitude.

28 (2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation  
29 of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to  
30 the public.

1 (3) regulate the activities of recreational and commercial users of the water and land in the Smith River  
 2 waterway that are legally accessible to the public and regulate the land in the river corridor that is under the  
 3 control of the department and ~~commission~~ the board:

4 (a) for the purposes of safety, health, and protection of property;

5 (b) to preserve the experience of floating, fishing, and camping in a natural environment;

6 (c) to protect the river's fish, wildlife, water, and canyon resources; and

7 (d) to minimize conflicts between recreationists and private landowners; and

8 (4) establish recreational and commercial user fees for floating and camping on the Smith River  
 9 waterway."

10

11 **Section 19.** Section 23-2-410, MCA, is amended to read:

12 **"23-2-410. Penalty -- enforcement.** (1) A person who violates a rule of the ~~commission~~ board adopted  
 13 pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500; or  
 14 by imprisonment in a county jail for not more than 6 months, or ~~by both fine and imprisonment.~~

15 (2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
 16 support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of  
 17 the department are granted peace officer status with the power:

18 (a) of search, seizure, and arrest;

19 (b) to investigate activities in this state regulated by this part and rules of the department, the board, and  
 20 the commission; and

21 (c) to report violations to the county attorney of the county in which they occur."

22

23 ~~Section 20.~~ Section 23-2-501, MCA, is amended to read:

24 ~~"23-2-501. Declaration of policy.~~ It is the policy of this state to promote safety for persons and property  
 25 in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating  
 26 thereto. For the purposes of this part:

27 ~~(1) the board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title~~  
 28 ~~23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4; and~~

29 ~~(2) the commission has jurisdiction over all waters that are not immediately adjacent to lands~~  
 30 ~~administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part~~

1 ~~4.~~"

2

3 ~~Section 21.~~ Section 23-2-502, MCA, is amended to read:

4 ~~"23-2-502. Definitions.~~ As used in this part, unless the context clearly requires a different meaning, the  
5 following definitions apply:

6 ~~(1) "Board" means the state parks and recreation board established in [section 1].~~

7 ~~(1)(2) "Certificate of number" means the certificate issued by the department of justice, an authorized~~  
8 ~~agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the~~  
9 ~~motorboat or sailboat an identifying number and containing other information as required by the department of~~  
10 ~~justice.~~

11 ~~(3) "Commission" means the fish and wildlife commission established in 2-15-3402.~~

12 ~~(2)(4) "Department" means the department of fish, wildlife, and parks of the state of Montana established~~  
13 ~~in 2-15-3401.~~

14 ~~(3)(5) "Documented vessel" means a vessel that has and is required to have a valid marine document~~  
15 ~~as a vessel of the United States.~~

16 ~~(4)(6) "Identifying number" means the boat number set forth in the certificate of number and properly~~  
17 ~~displayed on the motorboat or sailboat.~~

18 ~~(5)(7) "Lienholder" means a person holding a security interest.~~

19 ~~(6)(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new and~~  
20 ~~unused vessels or new and unused outboard motors for the purpose of sale or trade.~~

21 ~~(7)(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any~~  
22 ~~machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal~~  
23 ~~source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.~~

24 ~~(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard~~  
25 ~~or any successor federal agency.~~

26 ~~(8)(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.~~

27 ~~(9)(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a~~  
28 ~~motorboat or vessel.~~

29 ~~(10)(12) (a) "Owner" means a person, other than a lienholder, having the property in or title to a~~  
30 ~~motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel~~

1 subject to an interest in another person, reserved or created by an agreement securing payment or performance  
2 of an obligation:

3 ~~———— (b) The term does not include a lessee under a lease not intended as security.~~

4 ~~———— (11)(13) "Passenger" means each person carried on board a vessel other than:~~

5 ~~———— (a) the owner or the owner's representative;~~

6 ~~———— (b) the operator;~~

7 ~~———— (c) bona fide members of the crew engaged in the business of the vessel who have not contributed any  
8 consideration for their carriage and who are paid for their services; or~~

9 ~~———— (d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not  
10 contributed any consideration, directly or indirectly, for the guest's carriage.~~

11 ~~———— (12)(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.~~

12 ~~———— (13)(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine  
13 powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person  
14 sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the  
15 vessel.~~

16 ~~———— (14)(16) "Registration decal" means an adhesive sticker produced by the department of justice and  
17 issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the  
18 owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat,  
19 sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department  
20 of justice under 61-3-101.~~

21 ~~———— (15)(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.~~

22 ~~———— (b) The term does not include a canoe or kayak propelled by wind.~~

23 ~~———— (16)(18) "Security interest" means an interest that is reserved or created by an agreement that secures  
24 payment or performance of an obligation and is valid against third parties generally.~~

25 ~~———— (17)(19) "Uniform state waterway marking system" means one of two categories:~~

26 ~~———— (a) a system of aids to navigation to supplement the federal system of marking in state waters;~~

27 ~~———— (b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information  
28 and directions.~~

29 ~~———— (18)(20) "Validation decal" means an adhesive sticker produced by the department and issued by the  
30 department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the~~



1 identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the  
 2 owner to meet requirements of the federal standard numbering system:

3 ~~———— (19)(21) "Vessel" means every description of watercraft, unless otherwise defined by the department,  
 4 other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

5 ~~———— (20)(22) "Waters of this state" means any waters within the territorial limits of this state."~~

6

7 ~~———— **Section 22.** Section 23-2-506, MCA, is amended to read:~~

8 ~~———— **"23-2-506. Enforcement.** (1) The department is a criminal justice agency for the purpose of obtaining  
 9 the technical assistance and support services provided by the board of crime control under the provisions of  
 10 44-4-301. Authorized officers of the department are granted peace officer status with the power:~~

11 ~~———— (a) of search, seizure, and arrest;~~

12 ~~———— (b) to investigate activities in this state regulated by this part and rules of the department, the board, and  
 13 the fish, wildlife, and parks commission; and~~

14 ~~———— (c) to report violations to the county attorney of the county in which they occur.~~

15 ~~———— (2) All sheriffs and peace officers of the state of Montana and all United States coast guard law  
 16 enforcement officers shall have authority to enforce provisions of this part, as amended."~~

17

18 ~~———— **Section 23.** Section 23-2-525, MCA, is amended to read:~~

19 ~~———— **"23-2-525. Restricted areas.** (1) A person may not anchor a vessel or other obstacle for fishing or  
 20 pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a  
 21 passageway ordinarily used by other vessels.~~

22 ~~———— (2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area  
 23 that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming  
 24 areas must be marked with white buoys having international orange markings in conformance with the uniform  
 25 state waterway marking system by the owners of the areas.~~

26 ~~———— (3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting waterfowl,  
 27 unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake speed or at a  
 28 minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing  
 29 or hunting waterfowl.~~

30 ~~———— (4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of~~

1 this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

2 ~~—— (b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there~~  
 3 ~~is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator~~  
 4 ~~may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency~~  
 5 ~~exists or that there is insufficient water is on the operator.~~

6 ~~—— (c) The fish, wildlife, and parks commission or the board may by rule determine areas where~~  
 7 ~~establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water~~  
 8 ~~traffic."~~

9

10 ~~—— **Section 24.** Section 23-2-529, MCA, is amended to read:~~

11 ~~—— **"23-2-529. Waterskis and surfboards.** (1) A person may not operate a motorboat or vessel on any~~  
 12 ~~waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device~~  
 13 ~~unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be~~  
 14 ~~a second person, at least 18 years of age, in the vessel to observe the person being towed. The fish, wildlife, and~~  
 15 ~~parks commission and the board shall adopt rules regarding the proper observation and safe towing of persons~~  
 16 ~~on waterskis or similar devices, based on density of use of a body of water.~~

17 ~~—— (2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing,~~  
 18 ~~surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities~~  
 19 ~~at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer~~  
 20 ~~engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.~~

21 ~~—— (3) All right-of-way rules applying to a towing vessel apply to a person being towed."~~

22

23 ~~—— **Section 25.** Section 23-2-531, MCA, is amended to read:~~

24 ~~—— **"23-2-531. Personal watercraft operation.** In addition to applicable provisions in this part, a person may~~  
 25 ~~not operate a personal watercraft:~~

26 ~~—— (1) unless a person operating or riding on the vessel is wearing a United States coast guard approved~~  
 27 ~~type I, II, III, or V personal flotation device;~~

28 ~~—— (2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the~~  
 29 ~~lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific~~  
 30 ~~vessel;~~

1 ~~\_\_\_\_\_ (3) (a) except as provided for standup personal watercraft in subsection (3)(b) or when towing a~~  
 2 ~~waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer,~~  
 3 ~~swimming raft, nonmotorized boat, or anchored vessel on a lake or river;~~

4 ~~\_\_\_\_\_ (b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or~~  
 5 ~~returning directly from or to a dock or shore for the purpose of launching or docking; or~~

6 ~~\_\_\_\_\_ (4) on any surface waters restricted in whole or in part by rule of the fish, wildlife, and parks commission~~  
 7 ~~or the board;~~

8 ~~\_\_\_\_\_ (5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."~~

9  
 10 ~~\_\_\_\_\_ **Section 26.** Section 23-2-601, MCA, is amended to read:~~

11 ~~\_\_\_\_\_ **"23-2-601. Definition of terms Definitions.** As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through~~  
 12 ~~23-2-618 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the~~  
 13 ~~context requires otherwise, the following definitions apply:~~

14 ~~\_\_\_\_\_ (1) "Board" means the state parks and recreation board established in [section 1].~~

15 ~~\_\_\_\_\_ (1)(2) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for~~  
 16 ~~the snowmobile to be validly registered.~~

17 ~~\_\_\_\_\_ (2)(3) "Certificate of title" means the document issued by the department of justice as prima facie~~  
 18 ~~evidence of ownership.~~

19 ~~\_\_\_\_\_ (4) "Commission" means the fish and wildlife commission established in 2-15-3402.~~

20 ~~\_\_\_\_\_ (3)(5) "dbA" means sound pressure level measured on the "A" weight scale in decibels.~~

21 ~~\_\_\_\_\_ (4)(6) "Department" means the department of fish, wildlife, and parks of the state of Montana established~~  
 22 ~~in 2-15-3401.~~

23 ~~\_\_\_\_\_ (5)(7) "New snowmobile" means a snowmobile that has not been previously sold to an owner.~~

24 ~~\_\_\_\_\_ (6)(8) "Operator" includes each person who operates or is in actual physical control of the operation of~~  
 25 ~~a snowmobile.~~

26 ~~\_\_\_\_\_ (7)(9) "Owner" includes each person, other than a lienholder or person having a security interest in a~~  
 27 ~~snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the~~  
 28 ~~snowmobile.~~

29 ~~\_\_\_\_\_ (8)(10) "Person" means an individual, partnership, association, corporation, and any other body or group~~  
 30 ~~of persons, regardless of the degree of formal organization.~~

1 ~~———— (9)(11) "Registration decal" means an adhesive sticker produced and issued by the department of justice,~~  
 2 ~~its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed~~  
 3 ~~for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.~~

4 ~~———— (10)(12) "Roadway" means only those portions of a highway, road, or street improved, designed, or~~  
 5 ~~ordinarily used for travel or parking of motor vehicles.~~

6 ~~———— (11)(13) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding~~  
 7 ~~accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not~~  
 8 ~~otherwise registered or licensed under the laws of the state of Montana."~~

9

10 ~~———— **Section 27.** Section 23-2-641, MCA, is amended to read:~~

11 ~~———— **"23-2-641. Enforcement.** (1) With respect to the sale of any new snowmobile that is subject to the~~  
 12 ~~provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618 23-2-617, 23-2-621, 23-2-622, 23-2-631~~  
 13 ~~through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department,~~  
 14 ~~sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary~~  
 15 ~~or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the~~  
 16 ~~sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618 23-2-617, 23-2-621,~~  
 17 ~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.~~

18 ~~———— (2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance~~  
 19 ~~and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers~~  
 20 ~~of the department are granted peace officer status with the power:~~

21 ~~———— (i) of search, seizure, and arrest;~~

22 ~~———— (ii) to investigate activities in this state regulated by this part and rules of the department, the board, and~~  
 23 ~~the fish, wildlife, and parks commission; and~~

24 ~~———— (iii) to report violations to the county attorney of the county in which they occur.~~

25 ~~———— (b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol,~~  
 26 ~~authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."~~

27

28 ~~———— **Section 28.** Section 23-2-652, MCA, is amended to read:~~

29 ~~———— **"23-2-652. Definitions.** As used in 23-2-651 through 23-2-655, the following definitions apply:~~

30 ~~———— (1) "Snowmobile" means a vehicle defined in 23-2-601(11).~~

1 ~~———(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the~~  
 2 ~~operation of snowmobiles.~~

3 ~~———(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile~~  
 4 ~~trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators~~  
 5 ~~may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and~~  
 6 ~~parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons~~  
 7 ~~who offer snowmobile equipment for rent, and private trail grooming contractors.~~

8 ~~———(4) "Snowmobiler" means any person operating or riding a snowmobile."~~

9

10 ~~———**Section 29.** Section 23-2-801, MCA, is amended to read:~~

11 ~~———**"23-2-801. Definition Definitions.** (1) As used in this part, the following definitions apply:~~

12 ~~———(1) "Board" means the state parks and recreation board established in [section 1].~~

13 ~~———(2) "Commission" means the fish and wildlife commission established in 2-15-3402.~~

14 ~~———(3) (a) "off-highway Off-highway vehicle" means a self-propelled vehicle used for recreation or~~  
 15 ~~cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not~~  
 16 ~~limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other~~  
 17 ~~means of land transportation deriving motive power from any source other than muscle or wind.~~

18 ~~———(2) Off-highway vehicle (b) The term does not include:~~

19 ~~———(a)(i) vehicles designed primarily for travel on, over, or in the water;~~

20 ~~———(b)(ii) snowmobiles; or~~

21 ~~———(c)(iii) except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under~~  
 22 ~~the laws of the state, unless the vehicle is used for off-road recreation on public lands."~~

23

24 ~~———**Section 30.** Section 23-2-806, MCA, is amended to read:~~

25 ~~———**"23-2-806. Enforcement.** (1) The department of fish, wildlife, and parks enforcement personnel, park~~  
 26 ~~rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce~~  
 27 ~~the provisions of this part.~~

28 ~~———(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and~~  
 29 ~~support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of~~  
 30 ~~the department are granted peace officer status with the power:~~

- 1 ~~\_\_\_\_\_ (a) of search, seizure, and arrest;~~  
 2 ~~\_\_\_\_\_ (b) to investigate activities in this state regulated by this part and rules of the department, the board, and~~  
 3 ~~the fish, wildlife, and parks commission; and~~  
 4 ~~\_\_\_\_\_ (c) to report violations to the county attorney of the county in which they occur.~~  
 5 ~~\_\_\_\_\_ (3) Park rangers may not carry firearms in the execution of their duties."~~

6  
 7 **Section 20.** Section 37-47-310, MCA, is amended to read:

8 **"37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner**  
 9 **of fishing outfitter business.** (1) An outfitter's license may not be transferred.

10 (2) An individual person may, upon proper showing, have that person's outfitter's license amended to  
 11 indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or  
 12 corporation.

13 (3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased  
 14 or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of  
 15 an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting  
 16 services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee  
 17 obtains an outfitter license.

18 (4) (a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that  
 19 have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on  
 20 restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or  
 21 transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner  
 22 that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish; and  
 23 ~~wildlife, and parks~~ commission and that a property right does not attach to the transferred river-use days.

24 (b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted  
 25 by the state parks and recreation board pursuant to 23-2-408."

26  
 27 **Section 21.** Section 75-1-220, MCA, is amended to read:

28 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:  
 29 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control  
 30 measures that would accomplish the same objectives as those included in the proposed action by the applicant.

1 For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to  
2 the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

3 (2) "Appropriate board" means, for administrative actions taken under this part by the:

4 (a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

5 (b) department of fish, wildlife, and parks, the fish; and wildlife, ~~and parks~~ commission, as provided for  
6 in 2-15-3402, and the state parks and recreation board, as provided for in [section 1];

7 (c) department of transportation, the transportation commission, as provided for in 2-15-2502;

8 (d) department of natural resources and conservation for state trust land issues, the board of land  
9 commissioners, as provided for in Article X, section 4, of the Montana constitution;

10 (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas  
11 conservation, as provided for in 2-15-3303; and

12 (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

13 (3) "Complete application" means, for the purpose of complying with this part, an application for a permit,  
14 license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures  
15 required to be included with the application sufficient for the agency to approve the application under the  
16 applicable statutes and rules.

17 (4) "Cumulative impacts" means the collective impacts on the human environment within the borders of  
18 Montana of the proposed action when considered in conjunction with other past, present, and future actions  
19 related to the proposed action by location or generic type.

20 (5) "Environmental review" means any environmental assessment, environmental impact statement, or  
21 other written analysis required under this part by a state agency of a proposed action to determine, examine, or  
22 document the effects and impacts of the proposed action on the quality of the human and physical environment  
23 within the borders of Montana as required under this part.

24 (6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an  
25 action that requires an environmental review. If the action involves state agency-initiated actions on state trust  
26 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of  
27 Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through  
28 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

29 (7) "Public scoping process" means any process to determine the scope of an environmental review.

30 (8) (a) "State-sponsored project" means:

- 1 (i) a project, program, or activity initiated and directly undertaken by a state agency;
- 2 (ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant,  
3 subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one  
4 or more other state agencies; or
- 5 (iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in  
6 a land management capacity for a lease, easement, license, or other authorization to act.
- 7 (b) The term does not include:
- 8 (i) a project or activity undertaken by a private entity that is made possible by the issuance of permits,  
9 licenses, leases, easements, grants, loans, or other authorizations to act by the:
- 10 (A) department of environmental quality pursuant to Titles 75, 76, or 82;
- 11 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;
- 12 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or
- 13 (D) department of natural resources and conservation or the board of land commissioners pursuant to  
14 Titles 76, 77, 82, and 85; or
- 15 (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for  
16 permission to act by another agency acting in a regulatory capacity, either singly or in combination with other  
17 state agencies."

18

19 **Section 22.** Section 77-1-405, MCA, is amended to read:

20 **"77-1-405. Island parks established -- development limited.** (1) In order to retain the integrity of the  
21 recreational experience associated with Montana's river and lake islands, development of undisputed state-owned  
22 or state-leased island property, which is hereby designated as island parks, including islands designated as state  
23 property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April  
24 30, 1997, to:

25 (a) the installation of minimal signage indicating that the island is a designated island park in which  
26 development has been limited and encouraging the public to help in maintaining the island park's primitive  
27 character by packing out trash;

28 (b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks and  
29 recreation board established in [section 1];

30 (c) footings or pilings necessary for the construction of a bridge; and



1 (d) oil and gas leasing.

2 (2) Improvements made to and agricultural operations on state-owned or state-leased island property  
3 prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this  
4 section.

5 (3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds  
6 that the highest and best use of island property administered as school trust land, except islands designated as  
7 natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left  
8 in as primitive state as possible to protect from the loss of potential future revenue that could result from the  
9 failure to leave the islands in an undeveloped condition.

10 (4) For purposes of this section, state ownership or state lease of island property is disputed if the  
11 dispute arises before, on, or after April 30, 1997."

12

13 **Section 23.** Section 85-2-102, MCA, is amended to read:

14 **"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
15 apply:

16 (1) "Appropriate" means:

17 (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial  
18 use;

19 (b) in the case of a public agency, to reserve water in accordance with 85-2-316;

20 (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream  
21 flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

22 (d) in the case of the United States department of agriculture, forest service:

23 (i) instream flows and in situ use of water created in 85-20-1401, Article V; or

24 (ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow  
25 to protect, maintain, or enhance streamflows in accordance with 85-2-320;

26 (e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the  
27 fishery resource in accordance with 85-2-408;

28 (f) a use of water for aquifer recharge or mitigation; or

29 (g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

30 (2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or

1 controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse  
2 effects resulting from net depletion of surface water.

3 (3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily  
4 store water through various means, including but not limited to injection, surface spreading and infiltration, drain  
5 fields, or another department-approved method. The stored water may be either pumped from the injection well  
6 or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

7 (4) "Beneficial use", unless otherwise provided, means:

8 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited  
9 to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and  
10 recreational uses;

11 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141  
12 and of water leased under a valid lease issued by the department under 85-2-141;

13 (c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right  
14 for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under  
15 85-2-436;

16 (d) a use of water through a temporary change in appropriation right or lease to enhance instream flow  
17 to benefit the fishery resource in accordance with 85-2-408;

18 (e) a use of water for aquifer recharge or mitigation; or

19 (f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

20 (5) "Certificate" means a certificate of water right issued by the department.

21 (6) "Change in appropriation right" means a change in the place of diversion, the place of use, the  
22 purpose of use, or the place of storage.

23 (7) "Commission" means the fish, ~~and wildlife, and parks~~ commission provided for in 2-15-3402.

24 (8) "Correct and complete" means that the information required to be submitted conforms to the standard  
25 of substantial credible information and that all of the necessary parts of the form requiring the information have  
26 been filled in with the required information for the department to begin evaluating the information.

27 (9) "Declaration" means the declaration of an existing right filed with the department under section 8,  
28 Chapter 452, Laws of 1973.

29 (10) "Department" means the department of natural resources and conservation provided for in Title 2,  
30 chapter 15, part 33.

1 (11) "Developed spring" means any artificial opening or excavation in the ground, however made,  
2 including any physical alteration at the point of discharge regardless of whether it results in any increase in the  
3 yield of ground water, from which ground water is sought or can be obtained or through which it flows under  
4 natural pressures or is artificially withdrawn.

5 (12) "Existing right" or "existing water right" means a right to the use of water that would be protected  
6 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water  
7 rights created under federal law and water rights created under state law.

8 (13) "Ground water" means any water that is beneath the ground surface.

9 (14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of  
10 abandonment under 85-2-226.

11 (15) "Mitigation" means the reallocation of surface water or ground water through a change in  
12 appropriation right or other means that does not result in surface water being introduced into an aquifer through  
13 aquifer recharge to offset adverse effects resulting from net depletion of surface water.

14 (16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter  
15 2.

16 (17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303  
17 and 85-2-306 through 85-2-314.

18 (18) "Person" means an individual, association, partnership, corporation, state agency, political  
19 subdivision, the United States or any agency of the United States, or any other entity.

20 (19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district  
21 created pursuant to state law or other public body of the state empowered to appropriate water.

22 (b) The term does not mean a private corporation, association, or group.

23 (20) "Salvage" means to make water available for beneficial use from an existing valid appropriation  
24 through application of water-saving methods.

25 (21) "State water reservation" means a water right created under state law after July 1, 1973, that  
26 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water  
27 throughout the year or at periods or for defined lengths of time.

28 (22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable  
29 legal theory upon which the department should proceed with the action requested by the person providing the  
30 information.

1 (23) "Waste" means the unreasonable loss of water through the design or negligent operation of an  
2 appropriation or water distribution facility or the application of water to anything but a beneficial use.

3 (24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner  
4 of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

5 (25) "Water division" means a drainage basin as defined in 3-7-102.

6 (26) "Water judge" means a judge as provided for in Title 3, chapter 7.

7 (27) "Water master" means a master as provided for in Title 3, chapter 7.

8 (28) "Watercourse" means any naturally occurring stream or river from which water is diverted for  
9 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

10 (29) "Well" means any artificial opening or excavation in the ground, however made, by which ground  
11 water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

12

13 **Section 24.** Section 87-1-101, MCA, is amended to read:

14 **"87-1-101. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

15 (1) "Board" means the state parks and recreation board provided for in [section 1].

16 ~~(1)(2)~~ "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

17 ~~(2)(3)~~ "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15,  
18 part 34.

19 ~~(3)(4)~~ "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

20 ~~(4)(5)~~ "Warden" means a state fish and game warden."

21

22 **Section 25.** Section 87-1-106, MCA, is amended to read:

23 **"87-1-106. Fish, wildlife, and parks offices.** The principal offices of the commission, the board, and  
24 the department shall must be located in or near Helena, and suitable and adequate space therefor together with  
25 janitor services, light, heat, and water ~~shall must~~ be furnished by the state of Montana."

26

27 **Section 26.** Section 87-1-202, MCA, is amended to read:

28 **"87-1-202. Publication of orders and rules.** (1) Except as provided in subsection (2), annual and  
29 biennial rules adopted by the commission or the board setting seasonal hunting, fishing, trapping, and land use  
30 regulations OR BY THE BOARD SETTING SEASONAL LAND USE REGULATIONS must be published in a pamphlet format

1 that is made available to the public at all department offices and through all license providers.

2 (2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management  
3 area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions  
4 or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes,  
5 must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management  
6 area, park site, or other department land.

7 (3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing  
8 special seasons pursuant to 87-1-304 may be published by:

9 (i) use of the department's website;

10 (ii) use of a telephone hotline number; or

11 (iii) any other method that is readily available to the public.

12 (b) The method for notifying the public of the closure of a special season must be stated in the rule that  
13 establishes the special season.

14 (4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing,  
15 and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to  
16 the extent that the department considers necessary in light of the facts surrounding the emergency, including,  
17 when practical, onsite posting of the emergency closure."  
18

18

19 **Section 27.** Section 87-1-209, MCA, is amended to read:

20 **"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218 AND  
21 SUBSECTION (8) OF THIS SECTION, the department, with the consent of the commission or the board and, in the case  
22 of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land  
23 commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon  
24 land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this  
25 subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an  
26 additional 20% above the purchase price to be used for maintenance of land or water acquired by the department.  
27 The additional amount above the purchase price or \$300,000, whichever is less, must be deposited in the account  
28 established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent  
29 with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land  
30 or water rights:

- 1 (a) for fish hatcheries or nursery ponds;
- 2 (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
- 3 protection;
- 4 (c) for public hunting, fishing, or trapping areas;
- 5 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing
- 6 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- 7 (e) for state parks and outdoor recreation;
- 8 (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

9 (2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as

10 provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~ historic or archaeological sites

11 that are threatened with destruction or alteration.

12 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the

13 ~~commission~~ or the board, may dispose of land and water rights acquired by it on those terms after public notice

14 as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of

15 state land and with or without reservation, as it considers necessary and advisable. The department, with the

16 consent of the ~~commission~~ or the board, may convey department land and water rights for full market value to

17 other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or

18 (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000.

19 When the department conveys land or water rights to another governmental entity or to an adjacent landowner

20 pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give

21 notice by mail to the landowners whose property adjoins the department property being conveyed.

22 (b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights

23 to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation

24 printed and published in the county where the land or water right is situated or, if a newspaper is not published

25 in that county, then in any newspaper with general circulation in that county.

26 (c) The notice must advertise for cash bids to be presented to the director within 60 days from the date

27 of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal

28 to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days

29 after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due,

30 then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be

1 returned to the unsuccessful bidders except bidders defaulting after notification.

2 (d) The department shall reserve the right to reject any bids that do not equal or exceed the full market  
3 value of the land or water right as determined by the department. If the department does not receive a bid that  
4 equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted  
5 on any private sale must exceed the highest bid rejected in the bid process.

6 (4) When necessary and advisable for the management and use of department property, the director  
7 is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads,  
8 drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be  
9 acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval  
10 of the commission or the board is not required for grants and acquisitions made pursuant to this subsection. In  
11 granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the  
12 department is not otherwise required to follow the disposal requirements of subsection (3). The director shall  
13 report any easement grant or acquisition made pursuant to this subsection to the commission or the board at its  
14 next regular meeting.

15 (5) The department shall convey land and water rights without covenants of warranty by deed executed  
16 by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary  
17 of state and further countersigned by the director.

18 (6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the  
19 installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame  
20 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to  
21 fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized  
22 by the department and appropriated by the legislature.

23 (7) The department is authorized to enter into leases of land under its control in exchange for services  
24 to be provided by the lessee on the leased land.

25 (8) APPROVAL OF THE BOARD FOR THE ACQUISITION OR DISPOSAL OF LAND OR WATER PURSUANT TO THIS  
26 SECTION IS REQUIRED ONLY FOR LAND AND WATER ADMINISTERED UNDER TITLE 23, CHAPTER 1, OR TITLE 23, CHAPTER  
27 2, PARTS 1 AND 4. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

28 **87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters.** (1) Subject to 87-1-218  
29 AND SUBSECTION (8) OF THIS SECTION, the department, with the consent of the commission or the board and, in the  
30 case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land

1 commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon  
2 lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain  
3 acquired lands or waters:

4 (a) for fish hatcheries or nursery ponds;

5 (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or  
6 protection;

7 (c) for public hunting, fishing, or trapping areas;

8 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing  
9 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

10 (e) for state parks and outdoor recreation;

11 (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

12 (2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as  
13 provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ historic or archaeological  
14 sites that are threatened with destruction or alteration.

15 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the  
16 ~~commission~~ or the board, may dispose of lands and water rights acquired by it on those terms after public notice  
17 as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of  
18 state lands and with or without reservation, as it considers necessary and advisable. The department, with the  
19 consent of the ~~commission~~ or the board, may convey department lands and water rights for full market value to  
20 other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or  
21 (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000.  
22 When the department conveys land or water rights to another governmental entity or to an adjacent landowner  
23 pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give  
24 notice by mail to the landowners whose property adjoins the department property being conveyed.

25 (b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to  
26 be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation  
27 printed and published in the county where the lands or waters are situated or, if a newspaper is not published in  
28 that county, then in any newspaper with general circulation in that county.

29 (c) The notice must advertise for cash bids to be presented to the director within 60 days from the date  
30 of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal



1 to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days  
2 after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due,  
3 then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be  
4 returned to the unsuccessful bidders except bidders defaulting after notification.

5 (d) The department shall reserve the right to reject any bids that do not equal or exceed the full market  
6 value of the lands and waters as determined by the department. If the department does not receive a bid that  
7 equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted  
8 on any private sale must exceed the highest bid rejected in the bid process.

9 (4) When necessary and advisable for the management and use of department property, the director  
10 is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads,  
11 drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be  
12 acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval  
13 of the commission or the board is not required for grants and acquisitions made pursuant to this subsection. In  
14 granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the  
15 department is not otherwise required to follow the disposal requirements of subsection (3). The director shall  
16 report any easement grant or acquisition made pursuant to this subsection to the commission or the board at its  
17 next regular meeting.

18 (5) The department shall convey lands and water rights without covenants of warranty by deed executed  
19 by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary  
20 of state and further countersigned by the director.

21 (6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the  
22 installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame  
23 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to  
24 fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized  
25 by the department and appropriated by the legislature.

26 (7) The department is authorized to enter into leases of land under its control in exchange for services  
27 to be provided by the lessee on the leased land.

28 (8) APPROVAL OF THE BOARD FOR THE ACQUISITION OR DISPOSAL OF LAND OR WATER PURSUANT TO THIS  
29 SECTION IS REQUIRED ONLY FOR LAND AND WATER ADMINISTERED UNDER TITLE 23, CHAPTER 1, OR TITLE 23, CHAPTER  
30 2, PARTS 1 AND 4."

1

2           **Section 28.** Section 87-1-218, MCA, is amended to read:

3           **"87-1-218. Notice of proposed land acquisitions.** (1) For all land acquisitions proposed pursuant to  
4 87-1-209, the department shall provide notice to the board of county commissioners in the county where the  
5 proposed acquisition is located.

6           (2) The notice must be provided at least 30 days before the proposed acquisition appears before the  
7 commission or the board for its consent.

8           (3) The notice must include:

9           (a) a description of the proposed acquisition, including acreage and the use proposed by the department;

10           (b) an estimate of the measures and costs the department plans to undertake in furtherance of the  
11 proposed use, including operating, staffing, and maintenance costs;

12           (c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the  
13 department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of  
14 taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

15           (d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission  
16 or the board and information on how the board of county commissioners may provide comment."

17

18           **Section 29.** Section 87-1-301, MCA, is amended to read:

19           **"87-1-301. Powers of commission.** (1) Except as provided in ~~subsection~~ subsections (7) and (8), the  
20 commission:

21           (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,  
22 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment  
23 of all other responsibilities of the department related to fish and wildlife as provided by law;

24           (b) shall establish the hunting, fishing, and trapping rules of the department;

25           (c) except as provided in [section 2], ~~23-2-501,~~ and 87-1-303(3), shall establish the rules of the  
26 department governing the use of lands owned or controlled by the department and waters under the jurisdiction  
27 of the department;

28           (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

29           (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as  
30 provided in [section 2] and 87-1-209~~(4)~~(2) and (4);

1 (f) except as provided in [section 2], shall review and approve the budget of the department prior to its  
2 transmittal to the ~~budget~~ office of budget and program planning;

3 (g) except as provided in [section 2], shall review and approve construction projects that have an  
4 estimated cost of more than \$1,000 but less than \$5,000; and

5 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided  
6 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as  
7 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider  
8 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular  
9 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal  
10 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting  
11 district where a restriction on elk hunting on public property is proposed.

12 (2) The commission may adopt rules regarding the use and type of archery equipment that may be  
13 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in  
14 archery equipment change.

15 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,  
16 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance  
17 hunting by Montana's youth and persons with disabilities.

18 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

19 (i) separate deer licenses from nonresident elk combination licenses;

20 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the  
21 deer tag;

22 (iii) condition the use of the deer licenses; and

23 (iv) limit the number of licenses sold.

24 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and  
25 appropriate to regulate the harvest by nonresident big game combination license holders:

26 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

27 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

28 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321  
29 through 87-1-325.

30 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license

1 preference systems to distribute hunting licenses and permits:

2 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant  
3 who has been unsuccessful for a shorter period of time; and

4 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying  
5 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by  
6 the commission.

7 (b) The commission shall square the number of points purchased by an applicant per species when  
8 conducting drawings for licenses and permits.

9 (6) (a) The commission may adopt rules to:

10 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

11 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting  
12 districts.

13 (b) The commission shall consider, but is not limited to consideration of, the following factors:

14 (i) harvest of lions by resident and nonresident hunters;

15 (ii) history of quota overruns;

16 (iii) composition, including age and sex, of the lion harvest;

17 (iv) historical outfitter use;

18 (v) conflicts among hunter groups;

19 (vi) availability of public and private lands; and

20 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

21 (7) The commission may not regulate the use or possession of firearms, firearm accessories, or  
22 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

23 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
24 establishment of special archery seasons;

25 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
26 bows and arrows, traditional handguns, and muzzleloading rifles;

27 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

28 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

29 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

30 (8) Pursuant to [section 2], the commission does not oversee department activities related to the

1 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic  
2 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant  
3 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9."

4

5 **Section 30.** Section 87-1-303, MCA, is amended to read:

6 **"87-1-303. Rules for use of lands and waters.** (1) Except as provided in [section 2], 87-1-301(7), and  
7 subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are  
8 acquired or held under easement by the commission or lands that it operates under agreement with or in  
9 conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public  
10 health, public safety, and protection of property in regulating the use of these lands. All lease and easement  
11 agreements must itemize uses as listed in 87-1-209.

12 (2) Except as provided in [section 2], 23-2-501, and 87-1-301(7), the commission may adopt and enforce  
13 rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally  
14 accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with  
15 a federal or state agency or private owner. These rules must be adopted in the interest of public health, public  
16 safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing,  
17 trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the  
18 operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats,  
19 waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers,  
20 and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated  
21 pursuant to the authority contained in this section must be areas that are legally accessible to the public. These  
22 rules are subject to review and approval by the department of public health and human services with regard to  
23 issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

24 (3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity  
25 or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land  
26 owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through  
27 3.

28 (b) The commission may authorize domestic livestock trailing across land owned or controlled by the  
29 department that is designated as a wildlife management area. The commission may adopt rules governing the  
30 timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are

1 necessary both to enable the trailing of domestic livestock across the designated wildlife management area and  
 2 to protect and enhance state lands. The rules may not:

- 3 (i) require a fee for domestic livestock trailing or related activities; or  
 4 (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

5 (4) For the purposes of this section, the following definitions apply:

6 (a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not  
 7 limited to horses, cattle, sheep, goats, and dogs.

8 (b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use  
 9 of the lands for forage by domestic livestock for a maximum of 96 consecutive hours."

10  
 11 ~~Section 42. Section 87-1-306, MCA, is amended to read:~~

12 ~~"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use~~  
 13 ~~prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public~~  
 14 ~~resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to~~  
 15 ~~its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their~~  
 16 ~~reservoirs.~~

17 ~~(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.~~

18 ~~(3) This section does not apply to the use of the designated waters for search and rescue, official patrol,~~  
 19 ~~or scientific purposes.~~

20 ~~(4) This section may not be construed to limit the authority of the commission, the board, or the~~  
 21 ~~department to enact by administrative rule or to enforce any other restrictions on any surface waters in the~~  
 22 ~~interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of~~  
 23 ~~conflicts between users of motorized and nonmotorized boats."~~

24  
 25 **Section 31.** Section 87-1-401, MCA, is amended to read:

26 **"87-1-401. Director to carry out policies.** The director shall carry out the policies of the commission  
 27 and the board and shall adopt rules authorized by law to implement those policies."

28  
 29 **Section 32.** Section 87-1-622, MCA, is amended to read:

30 **"87-1-622. Forest management plan -- sustainable yield study required -- definition.** (1) The

1 commission and the board shall adopt a forest management plan plans for lands under their jurisdiction, based  
 2 on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

3 (2) The department, under the direction of the commission, shall, before July 1, 2012, commission a  
 4 study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield  
 5 on forested department lands. The department shall direct the qualified independent third party to determine the  
 6 annual sustainable yield pursuant to all state and federal laws.

7 (3) The annual timber sale requirement for the timber sale program administered by the department to  
 8 address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual  
 9 sustainable yield.

10 (4) The commission and the board shall review and redetermine the annual sustainable yield for lands  
 11 under their jurisdiction at least once every 5 years.

12 (5) Expenditures necessary to meet the requirements of this section are authorized to be made by the  
 13 department pursuant to 87-1-601.

14 (6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that  
 15 can be harvested from forested department lands each year, taking into account the ability of forested lands to  
 16 generate replacement tree growth and in accordance with:

17 (a) the provisions of 87-1-201(9)(a)(iv);

18 (b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and  
 19 maintenance of watersheds; and

20 (c) water quality standards that protect fisheries and aquatic life and that are adopted under the  
 21 provisions of Title 75, chapter 5."

22

23 **Section 33.** Section 87-4-432, MCA, is amended to read:

24 **"87-4-432. Alternative livestock advisory council -- appointment of members -- duties.** (1) There  
 25 is an alternative livestock advisory council to advise the department on the administration of alternative livestock  
 26 ranches in this state.

27 (2) The alternative livestock advisory council is composed of five members, appointed by the governor  
 28 as follows:

29 (a) one member of the board of livestock or the department of livestock;

30 (b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

- 1 (c) one member who is a representative of the alternative livestock industry;
- 2 (d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and
- 3 (e) one member who is a representative of the sportspersons of Montana.
- 4 (3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member
- 5 may serve one additional consecutive 2-year term.
- 6 (4) The alternative livestock advisory council is attached to the department and the department of
- 7 livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock
- 8 shall provide staff support and assistance necessary for the council to perform its functions."

9

10 **NEW SECTION. Section 34. Name change -- directions to code commissioner.** (1) Unless otherwise

11 provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established

12 in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission

13 related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish

14 and wildlife commission.

15 (2) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning

16 the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to

17 functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title

18 23, chapter 2, parts 1, 4, ~~5, 6, 8,~~ and 9, the code commissioner is directed to change it to an appropriate

19 reference to the state parks and recreation board.

20

21 **NEW SECTION. Section 35. Codification instruction.** (1) [Section 1] is intended to be codified as an

22 integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

23 (2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the

24 provisions of Title 23, chapter 1, part 1, apply to [section 2].

25

26 **NEW SECTION. Section 36. Saving clause.** [This act] does not affect rights and duties that matured,

27 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

28

29 **NEW SECTION. Section 37. Effective date.** [This act] is effective July 1, 2013.

30 - END -