



Montana Fish, Wildlife & Parks

P O Box 200701
Helena, MT 59620-0701

February 15, 2005

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RECEIVED

FEB 16 2005

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

Ladies and Gentlemen:

The enclosed Environmental Assessment (EA) was prepared for the proposed Beaverhead and Big Hole River Recreation Rules. Montana Fish, Wildlife & Parks (FWP) assessed the predicted impacts of proposed amendments to the administrative rules governing recreational use on the Beaverhead and Big Hole rivers, set forth by the Beaverhead and Big Hole Citizen Advisory Committee, as well as the predicted impacts of alternative actions.

This Draft EA is available for review in Helena at FWP's Headquarters, the State Library, and the Environmental Quality Council. It also may be obtained from FWP at the address provided above, or viewed on FWP's Internet website: <http://www.fwp.mt.gov>.

The FWP Commission will be holding several public hearings to consider the adoption of the proposed amendments to the administrative rules governing recreational use on the Beaverhead and Big Hole rivers. At that time FWP will also take public comment on the enclosed EA. The hearing dates and locations are as follows:

Bozeman: Tuesday Feb. 22, 6:30 pm, FWP Headquarters, 1400 S 19th Ave.

Butte: Wednesday Feb. 23, 6:30 pm, Red Lion Inn

Dillon: Thursday Feb. 24, 6:30 pm, James Short Building, Western Montana College

FWP invites you to comment on the attached proposal. The public comment period will run from February 15, 2005 to 5:00 pm, March 11, 2005. Comments should be sent to the following: Montana Fish, Wildlife & Parks, c/o Beaverhead and Big Hole Rules, P O Box 200701, Helena, MT 59620-0701 or e-mailed to: csperry@mt.gov.

Sincerely,

Patrick J. Flowers
Region Three Supervisor

Attachment



Montana Fish, Wildlife & Parks

1400 South 19th Avenue
Bozeman, MT 59718

RECEIVED

FEB 18 2005

February 17, 2005

Ladies and Gentlemen:

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

We have discovered an error in the Draft Beaverhead and Big Hole River Recreation Rules Environmental Assessment (EA) that we would like to bring to your attention.

Under Alternative C: "Modified Alternative" (Preferred Alternative), it was Montana Fish, Wildlife & Parks (FWP) intent to list retention of the prohibition on float outfitting on the section of the Beaverhead River between Tash Bridge and Selway Bridge in the same manner as it is listed in the administrative rule that is currently in effect. On the following pages, the dates July 1 – August 31 were inadvertently listed in parentheses, and should be replaced by the following language; **the third Saturday in May through Labor Day**:

Page 13, second paragraph, second sentence, under section entitled, "Principle Actions of Alternative C".

Page 32, second sentence of paragraph under section entitled, "3. Effects of Alternative C (Preferred Alternative) on Fisheries Resources (Beaverhead)".

Page 37, first sentence of second paragraph under section entitled, "3. Effects of Alternative C (Preferred Alternative) on Outfitted Use (Beaverhead)".

These changes will ensure consistency in the Draft EA and accurately reflect FWP's intention of retaining wording in Alternative C that is consistent with the existing Administrative Rule currently in effect for the Beaverhead River.

We apologize for any inconvenience this may cause in your review and comment on the Draft EA.

Sincerely,

Patrick J. Flowers
Region Three Supervisor



Montana Fish, Wildlife & Parks

Beaverhead and Big Hole River Recreation Rules

Environmental Assessment -- DRAFT



February 15, 2005

Montana Department of Fish, Wildlife & Parks
Region Three -- Bozeman, Montana

*Please Submit Comments on this Environmental Assessment
no later than March 11, 2005 to:*

*Charlie Sperry
Fish, Wildlife & Parks
1420 East 6th Avenue
PO Box 200701
Helena, MT 59620-0701
csperry@mt.gov*

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Cover Sheet

Beaverhead and Big Hole River Recreation Rules

Proposed Action: On December 16, 2004 the Montana Fish, Wildlife & Parks (FWP) Commission proposed amendments to the rules governing recreational use on the Beaverhead and Big Hole rivers. The proposed amendments are based on the recommendations of the Beaverhead and Big Hole Citizen Advisory Committee. The amendments would change or eliminate some of the restrictions on float outfitting, create temporary client days for one-boat outfitters, and retain the remaining elements of the current rules.

Type of Document: Environmental Assessment

Lead Agency: Montana Department of Fish, Wildlife & Parks

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Special Note: Comments received in response to this Environmental Assessment will be presented to the FWP Commission and available to the public.

I. Chapter One: Purpose and Need for Action

A. Proposed Action

At its December 16, 2004 meeting, the Montana Department of Fish, Wildlife & Parks Commission (“commission”) proposed amendments to the administrative rules governing recreational use on the Beaverhead and Big Hole rivers. The commission is now taking public comments on the proposed rules. The following environmental analysis was prepared by Montana of Fish, Wildlife & Parks (“department”) and assesses the predicted impacts of the administrative rules proposed by the commission and the predicted impacts of alternative actions. The environmental analysis identifies the department’s Preferred Alternative.

B. Benefits, Purpose and Need for Proposed Action and Environmental Analysis

The purpose of the proposed action is to manage recreational use on the Beaverhead and Big Hole rivers in a way that will maintain or improve the quality of the river recreation experience and the quality of the river resources for the benefit of the public.

Recreation conditions in the mid to late 1990s fueled public concerns about congestion on both the Beaverhead and Big Hole rivers. Because of the increased concern about recreational use of these rivers in regard to social conflicts, natural resource damage, property damage, and demands upon limited public facilities, the commission found it necessary to manage river recreation use on the two rivers. Section 87-1-303, MCA, as amended by House Bill 626 in the 1999 Legislature gives the commission the authority to adopt and enforce rules governing recreational uses of waters for public health, public safety, public welfare, protection of property, and protection of public resources.

On April 10, 2003, the commission adopted the Beaverhead and Big Hole rules as administrative rules, ARM 12.11.202 through 12.11.220, effective April 22, 2003. The commission added language to the rules that states the commission shall repeal or amend the rules on or before May 1, 2005. This language was added in order to allow time for the completion of the statewide river recreation rules and to ensure that the department would reevaluate the Beaverhead and Big Hole rules once the statewide rules were adopted.

The commission adopted the statewide rules, ARM 12.11.401 through 12.11.455, on October 7, 2004 (effective November 5, 2004). The statewide rules identify an analysis and decision-making process that is to be used when developing or amending a river recreation management plan or rule. The statewide rules also require the department to appoint a citizen advisory committee when developing a management plan or rules. Consistent with the statewide rules, the department appointed the Beaverhead and Big Hole Citizen Advisory Committee (“CAC” or “citizen advisory committee”). The committee’s charter was to evaluate the effectiveness of the Beaverhead and Big Hole river recreation rules and make

recommendations to the commissioners that would help them with their decision on repealing or amending the rules. The commission asked the committee to develop collaborative recommendations that would ensure that the Beaverhead and Big Hole rules are consistent with the statewide river recreation rules, and to develop recommendations that reflect the interests of the public that is affected by river recreation management decisions on these two rivers. The committee finished its assignment and submitted recommendations to the commission for improvements in managing recreation on the Beaverhead and Big Hole rivers.

It is necessary for the commission to decide whether to repeal, retain, or amend the administrative rules governing recreational use on the Beaverhead and Big Hole rivers. The department's environmental analysis will assist the commission with its decision.

C. Objectives of the Proposed Action

1. Objective #1

Preserve the public's opportunity to enjoy their recreational experience on the Beaverhead and Big Hole rivers and protect the river resources.

2. Objective #2

Implement management actions that reflect the Beaverhead and Big Hole Citizen Advisory Committee's recommendations for improving the effectiveness of the rules and ensuring that the rules are consistent with the statewide river recreation rules.

3. Objective #3

Update the rules to reflect current conditions on the rivers.

4. Objective #4

Manage river use in a way that provides reasonable and equitable opportunities for residents and nonresidents to use the rivers and results in conditions on the river that are acceptable to the recreating public.

5. Objective #5

Ensure that management actions are technically and socially feasible; legal; affordable; measurable; enforceable; and reasonable to administer.

D. Relevant Rules and Laws

The following rules, laws, and plans are relevant to this review process:

1. Existing administrative rules governing recreational use on the Beaverhead and Big Hole rivers (ARM 12.11.202 through 12.11.220)

2. Statewide river recreation management administrative rules (ARM 12.11.401 through 12.11.455)
3. Montana state law governing transfer of a fishing outfitter's business (MCA 37-47-310(4))
4. Montana state law granting FWP Commission authority to govern recreational uses of rivers and streams legally accessible to the public (MCA 87-1-303(2))
5. Beaverhead County Resource Use Plan

E. Decisions to be made

1. Department Decisions

- a) Determine if alternatives meet the identified objectives
- b) Identify a preferred alternative and determine if this alternative would cause significant effects to the human environment, which would require the preparation of an Environmental Impact Statement (EIS).
- c) Recommend a course of action to the commission.

2. Commission Decisions

- a) Decide whether to repeal, retain or amend the rules governing recreational use on the Beaverhead and Big Hole rivers.

F. Scope of this Environmental Analysis

This section describes the history of the current rules, identifies the issues studied within this analysis, and identifies issues eliminated from further study.

1. History of the river recreation rules

Rules have governed recreational use of the Beaverhead and Big Hole rivers since 1999. Recreation conditions in the mid to late 1990s fueled public concern about congestion on both of these rivers, concerns about conflicts among floaters, and conflicts between floaters and waders. In response to these concerns, Senators Swysgood and Tash sponsored SB 445 in the 1999 Legislature. This bill directly addressed the problems on the Beaverhead and Big Hole rivers. Governor Marc Racicot vetoed SB 445 because he believed parts of the bill were ambiguous and contained legal and implementation problems. However, in the veto letter of May 10, 1999, Governor Racicot charged the commission with the responsibility of adopting rules to solve the problems on the rivers.

On June 18, 1999, the commission adopted a set of temporary recreation rules for each river. This set of rules was adopted as a commission biennial rule distributing use on the Beaverhead and Big Hole rivers. This rule was later amended on January 12, 2000, to accommodate special circumstances of two outfitters operating on the rivers.

The commission adopted a second version of the biennial rule on February 9, 2001. The commission adopted this biennial rule based in part on the recommendations of two citizen advisory committees and input from the general public and the department. On April 10, 2003, the commission adopted the Beaverhead and Big Hole rules as administrative rules, ARM 12.11.202 through 12.11.220, effective April 25, 2003. The commission added language to the rules that states the commission shall repeal or amend the rules on or before May 1, 2005. This language was added in order to allow time for the completion of the statewide river recreation rules and to ensure that the department would reevaluate the Beaverhead and Big Hole rules once the statewide rules were adopted.

The commission adopted the statewide rules, ARM 12.11.401 through 12.11.455, on October 7, 2004 (effective November 5, 2004). The statewide rules identified an analysis and decision-making process that is to be used when developing a river recreation management plan or rule. Due to the fact that there were already rules in effect for the Beaverhead and Big Hole rivers when the statewide river recreation rules were adopted, the commission and department had to determine which aspects of the analysis and decision-making process could be applied when evaluating the Beaverhead and Big Hole rules.

Consistent with the statewide river rules, the department appointed the Beaverhead and Big Hole Citizen Advisory Committee (committee). Its charter was to evaluate the effectiveness of the Beaverhead and Big Hole river recreation rules and make recommendations to the commissioners that would help them with their decision on repealing or amending the rules. The commission asked the committee to develop collaborative recommendations that would ensure that the Beaverhead and Big Hole rules are consistent with the statewide river recreation rules, and to develop recommendations that reflect the interests of its members, the interests of the public that recreates on these two rivers, and the interests of the public that is affected by river recreation management decisions on these two rivers. The committee had the additional challenge of completing its work with enough time left to allow commission review of the committee's recommendations. In addition, the commission, department, and committee had to factor into the rulemaking timeline enough time for the department to conduct MEPA analysis and time for the commission to conform with Montana Administrative Procedure Act requirements that apply when the commission adopts administrative rules. To maintain protection of the rivers, all these processes must be complete before the Beaverhead and Big Hole rules expire on May 1, 2005.

The advisory committee completed its recommendations on December 2, 2004. The department drafted amendments to the current rules based on these recommendations and presented them to the commission on December 16, 2004. At that time the commission

agreed with the proposed amendments and directed the department to proceed with rulemaking according to the Montana Administrative Procedures Act. The department was then able to initiate an environmental analysis on the proposed rules.

2. Issues Studied in the Environmental Analysis

The department identified the following issues to be studied in this environmental analysis.

a) Issue A: Fisheries Resources

The department's first priority is to protect the fisheries resources of the Beaverhead and Big Hole rivers. Without these resources the topic of river recreation management becomes a moot point. The environmental analysis examines the status of the fisheries in both rivers, environmental influences such as drought, and impacts that angling pressure might have on fish populations.

b) Issue B: River Use (Resident and Nonresident)

The environmental analysis examines recreational use of the Beaverhead and Big Hole rivers and predicted effects of implementing various actions. The rules that currently govern recreational use on these two rivers restrict nonresident float fishing on Saturdays and Sundays for specified sections of the rivers. There are no restrictions governing resident use on the rivers.

c) Issue C: River Use (Outfitted)

The environmental analysis examines outfitting use on the Beaverhead and Big Hole rivers and predicted effects of implementing various actions. The rules that currently govern recreational use on these two rivers prohibit float outfitting on specified days of the week and reaches of the rivers. The rules also placed a moratorium on new outfitters and established a cap on the number of client days allocated to each authorized outfitter.

d) Issue D: Local economy

The environmental analysis examines the issue of whether the rules affect the local tourism economy.

3. Issues Eliminated from Further Analysis

The department concluded that the following issues did not warrant further analysis:

a) FWP authority to govern recreational use on rivers

The department's authority to govern recreational use on rivers and streams legally accessible to the public was challenged in a court of law. The plaintiff's suit against the department included allegations that department lacked proper authority to implement the rules governing recreation on the Beaverhead River. The judge presiding over the case issued a summary judgment that dismissed this allegation on all counts. For this reason the department deems it unnecessary to examine the department's authority to implement rules governing recreational use on the Beaverhead and Big Hole rivers.

b) Impact of rules on recreational use on other rivers

Some people believe that the presence of recreation rules on a river causes some people to shift their use to another river, and that this shift in use could result in problems on other rivers. Other people argue that in the absence of recreation rules some people become frustrated with the conditions present and choose to recreate somewhere else. This is often referred to as "displacement". At this point in time the department does not have any data to corroborate these theories and this issue is not addressed in the environmental analysis. The department notes that it is currently conducting a survey on Rock Creek near Missoula for the purpose of examining the subject of displaced anglers. The results of this survey should help the department gain a better understanding on this issue.

II. Chapter Two: Alternatives

A. Description of Alternatives

The department identified four alternatives: A, B, C, and D. The following table provides an overview on the features of each Alternative.

Alternative →	A Beav.	A B. Hole	B Beav.	B B. Hole	C Beav.	C B. Hole	D Beav.	D B. Hole
Action ↓								
Nonresident Float Restrictions	X	X	X	X	X	X	None	None
Outfitter Moratorium	X	X	X	X	X	X	None	None
Cap on Client Days	X	X	X	X	X	X	None	None
Outfitted Float Restrictions	X	X	Modified	Modified	X	Modified	None	None
Temporary Client Days			X	X	X	X	None	None
Boat Launch Limits	X	X	X	X	X	X	None	None

1. Alternative A: “No Action Alternative”

- **The commission would retain the rules that currently apply to the Beaverhead and Big Hole rivers (other than the language stating that the commission shall repeal or amend these rules on or before May 1, 2005).**

Principle Actions of Alternative A:

Under Alternative A, the commission would retain the rules that currently govern recreational use on the Beaverhead and Big Hole rivers (Appendix A). Technically, this alternative would require the commission to amend the existing rules by striking the language that says, “The commission shall repeal or amend these rules on or before May 1, 2005.” The department refers to this as the No Action Alternative though because the commission would not amend any other components of the existing rules. If Alternative A were selected for implementation the department would continue to implement the following types of restrictions:

- Restrictions on float outfitting for specified reaches of both rivers.
- Restrictions on nonresident float fishing on weekends for specified reaches of both rivers.
- Moratorium on new outfitters and cap on client days.
- Restrictions on number of launches allowed for specified reaches of both rivers.

2. Alternative B: “CAC Alternative”

- **The commission would amend the rules the rules based on the recommendations of the Beaverhead and Big Hole Citizen Advisory Committee.**

Principle Actions of Alternative B:

Under Alternative B the commission would adopt amendments to the rules based on the recommendations of the Beaverhead and Big Hole Citizen Advisory Committee Alternative B represents the administrative rules that were proposed by the commission at its December 16, 2004 meeting (Appendix B). If Alternative B were selected for implementation the following actions would occur:

- | | |
|-----------|---|
| Action 1. | Commission would eliminate May 1, 2005 sunset language. |
| Action 2. | Commission would review the rules within five years. |
| Action 3. | Commission would amend restrictions on float outfitting for specified reaches of each river. |
| Action 4. | Commission would create Temporary Client Days for One-boat Outfitters. |
| Action 5. | Commission would retain rules restricting nonresident float fishing on weekends for specified reaches of the Beaverhead and Big Hole rivers during the affected use period. |
| Action 6. | Commission would retain new outfitter moratorium and outfitter restrictions on the Beaverhead and Big Hole rivers. |

3. Alternative C: “Modified Alternative” (Preferred Alternative)

- **The commission would amend the rules the same as proposed in Alternative B with one exception: the commission would retain the prohibition on float outfitting for the Tash Bridge to Selway Bridge of the Beaverhead River.**

Principle Actions of Alternative C:

Alternative C is a modification of Alternative B. If Alternative C were selected for implementation, the commission would retain the prohibition on float outfitting on the section of the Beaverhead River between Tash Bridge and Selway Bridge (July 1 – August 31). The commission would adopt all other elements of Alternative B (Appendix B).

4. Alternative D: “No Rules Alternative”

- **Commission would repeal the rules governing recreational use on the Beaverhead and Big Hole rivers.**

Principle Actions of Alternative D:

Under Alternative D, the commission would repeal the administrative rules governing recreational use on the Beaverhead and Big Hole rivers. By default, the department would no longer implement any recreation rules for these two rivers. If Alternative D were selected, the following would occur:

- There would be no rules restricting nonresident float angling on the two rivers.
- There would be no rules restricting float outfitting on the two rivers.
- There would be no rules restricting the number of launches allowed on the two rivers.
- There would be no rules restricting the number of outfitters authorized to conduct use on the two rivers.
- There would be no rules restricting the maximum number of client days each outfitter could conduct on the two rivers.

B. Preferred Alternative

Alternative C is the department’s preferred alternative.

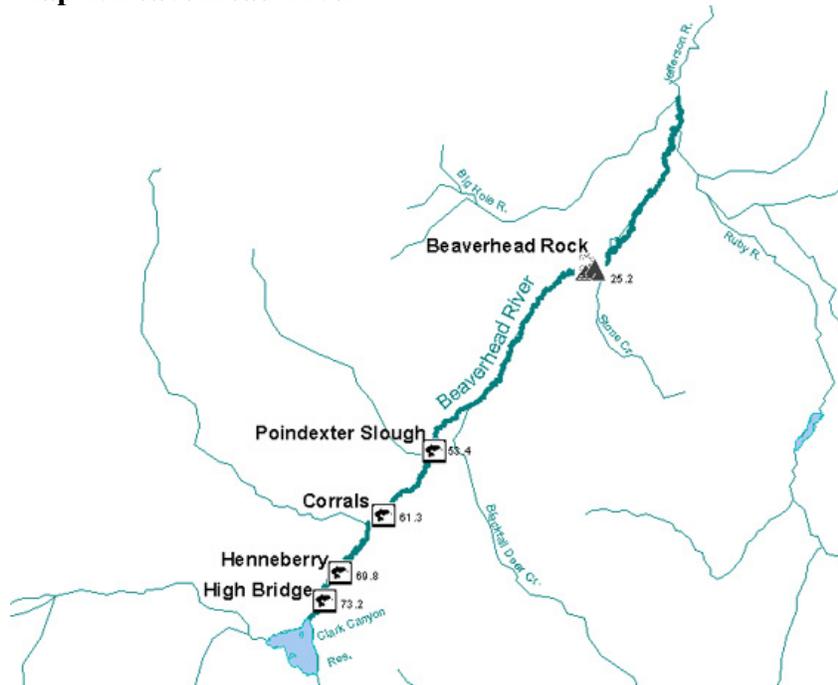
III. Chapter Three: Affected Environment

A. Description and Location of Rivers

1. Beaverhead River (Map 1)

Although originally formed at the confluence of the Red Rock River and Horse Prairie Creek, the Beaverhead River now begins its 80-mile-long journey at the outlet of Clark Canyon Reservoir, an irrigation storage facility constructed in 1964. It joins the Big Hole River at Twin Bridges, Montana, to form the Jefferson River. The river above Dillon is characterized by a tight channel meandering through densely covered willow banks. From Dillon, it flows through a broad open agricultural valley for 50 miles before reaching Twin Bridges. Its channel is restricted through a narrow canyon during part of its lower journey near Point of Rocks. The water in the Beaverhead River is comparatively cold, except in areas subject to dewatering, mainly located in the lower river. Fish cover primarily consists of submerged and overhanging bank vegetation, undercuts and long, deep pools.

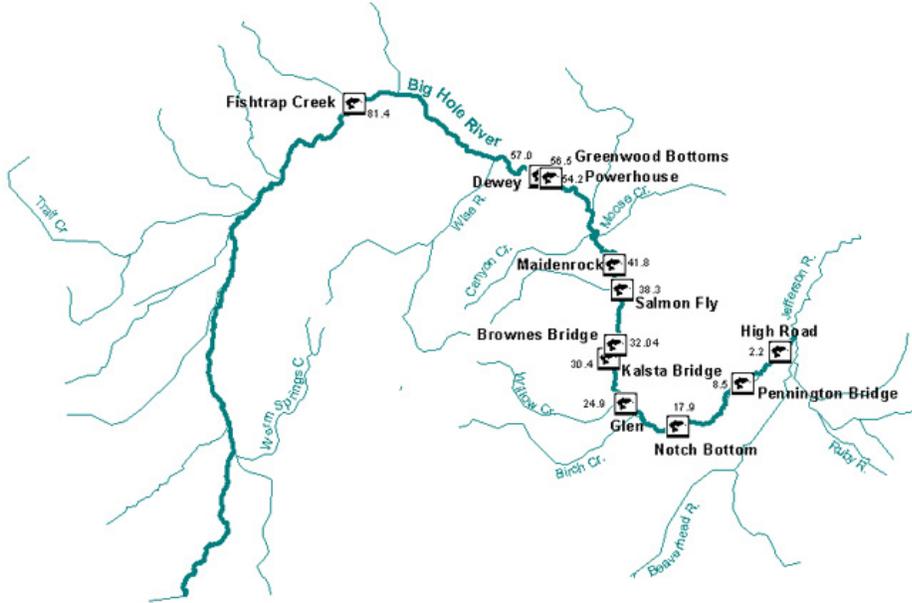
Map 1. Beaverhead River



2. Big Hole River (Map 2)

From its modest beginnings at Skinner Lake in the Beaverhead Mountains of southwest Montana, the Big Hole River flows 155 miles to its confluence with the Beaverhead River near Twin Bridges. Early explorers and settlers were drawn to the Big Hole by the sheer size, beauty, and richness of the high elevation valley or “hole” as the trappers called it. The Big Hole has been designated as a “Blue Ribbon” fishery and is one of the most heavily used fishing streams in Montana. The river remains free flowing for its entire course, adding to its uniqueness and charm. The Upper Big Hole contains the last stream-dwelling population of Arctic grayling in the lower 48 states, which has prompted many significant private partnerships and cooperative efforts to ensure the protection of this valuable resource.

Map 2. Big Hole River



B. Description of the Affected Environment

1. Fisheries Resources

a) Beaverhead River (Table 1)

Game Fish Opportunities: Brown Trout, Rainbow Trout, Mountain Whitefish

All Species Present: Brown Trout, Rainbow Trout, Brook Trout, Westslope Cutthroat Trout, Arctic Grayling, Mountain Whitefish, Burbot, Longnose Sucker, White Sucker, Longnose Dace, Redside Shiner, Common Carp, Mottled Sculpin

The fishery of the Beaverhead River can most conveniently be subdivided into three distinct reaches or segments based upon productivity, flow regime, and fish populations. The Upper “Tailwater” Reach extends from Clark Canyon Dam to Barretts Diversion. This reach is marked by abundant summer flow releases of highly productive water from Clark Canyon Reservoir and supports the highest standing crops of trout in the system under normal conditions. Conversely, this reach suffers from extremely limited fall – winter – spring flow regimes during periods of drought. Non-irrigation season flow releases from Clark Canyon dam have remained within the 25 – 30 cubic feet per second (cfs) range for the past four consecutive years and 10 of the past 16 years. These low flow releases result in downstream flow regimes of only 40 – 45 cfs at High Bridge, 60-65 cfs at Henneberry and Pipe Organ, and 80-85 cfs at Barretts. The department’s minimum flow reservation for the reach is 200 cfs for fisheries and Fisheries habitat. The Upper Reach also supports the highest fishing pressure in the system due to high population densities of large brown and rainbow trout and ample public access. The Middle Reach extends from Barretts Diversion to the northern limits of suburban Dillon and is marked by declining flows and a return from “tailwater” conditions to ambient free flowing conditions as major diversions withdraw irrigation water from dam releases. Under ample flow regimes, this reach can exhibit productive conditions but can suffer from summer and winter dewatering under drought conditions. The Middle Reach supports intermediate angling pressure that tends to be focused at or between convenient points of public access. The Lower River extends from the Dillon vicinity to the confluence with the Big Hole River near Twin Bridges and is marked by habitat problems including an inverted hydrograph (low spring and summer flows followed by high fall and winter flows), high summer water temperatures, sediment loading, channel atrophy, and poor riparian development. The Lower Reach supports the lowest fish populations in the system. It provides limited recreational

opportunity due to poor public access, poor summer flow regimes, and relatively low trout densities.

The Upper Reach is marked by abundant populations of very large brown and rainbow trout associated with the productive “tailwater” environment. Brown trout populations achieve moderate densities ranging from 1,250 to 2,155 (average 1,660) Age II and older fish per mile in the most productive segment. Population density has been quite stable over the past two decades with only 5 of the past 16 years of study revealing population estimates which deviated more than 300 fish per mile from the mean. Under optimum conditions, brown trout standing crop can exceed 3,700 pounds per mile reflecting densities of 18 inch and larger fish in excess of 800 per mile and 20 inch and larger fish in excess of 300 per mile. Downstream study sections in the Upper Reach support less productive brown trout populations exhibiting maximum standing crops of 1,933 pounds per mile and maximum observed densities of 18 inch and larger fish of 258 per mile. Modern brown trout densities within these lower segments range between 573 and 1,504 (average 1,216) Age II and older fish per mile and do not exhibit the stability, which marks upstream populations. Rainbow trout populations of the Upper Reach range from 301 – 868 (average 589) Age I and older fish per mile and exhibit high percentages of 18 inch and larger fish, exceeding 300 individuals per mile under optimum flow conditions. Recent drought conditions have resulted in substantial declines in brown trout populations in the Upper Reach. These declines have been most substantially manifested as declines in brown trout standing crop, numbers of older, larger fish in the population, and condition factor (heft) of older fish. In the most recent drought influenced period (1999 - 2004) brown trout standing crops exhibited maximum declines of 37.0% and 48.3% in Upper Reach study sections while numbers of 18 inch and larger brown trout declined 54.9% and 94.0%. Numbers of 20 inch and larger brown trout exhibited an 82.9% decline in the most productive study section of the Upper Reach over the 1999 – 2004 period of study. High angler concentration and fishing pressure in the Upper Reach are reflected in an incidence of permanent hook scars exceeding 18% for brown trout and 40% for rainbow trout in recent years. These are the highest rates observed for the respective species for any population study section in the Beaverhead, Big Hole, Ruby, or Red Rock Rivers. Rates of hook scarring for brown trout in the Upper reach maximized in 1997 and declined in a linear fashion to slightly more than 14% by 2004.

The brown trout populations of the Middle Reach are similar to those of lower segments of the Upper Reach in terms of population density while standing crops and maximum numbers of large fish under optimum conditions decline substantially. Modern brown trout densities range from 668 to 1,708 (average 1,188) Age II and older fish per mile. Brown trout

populations in the Middle Reach exhibit a relatively high degree of instability with dominant flow regime. Flows in the Middle reach depend upon the magnitude of release from Clark Canyon Dam, major irrigation withdrawals at Barretts and West Canal Diversions and flow accretions from localized tributaries. A residual rainbow trout population inhabits the reach at densities of about 20 – 25 fish per mile. Rainbow trout populations have been reduced from about 200 fish per mile associated with the discovery of whirling disease in the reach. The recent drought has affected brown trout populations within the Middle Reach with late fall flows as low as 40 to 45 cfs measured at the Highway 91 South Bridge. These flows are within the range measured at High Bridge and Henneberry Fishing Access Sites in the Upper Reach. The department's Minimum Flow Reservation for the Reach is 200 cfs. Despite minimum flows similar to those experienced in the Upper Reach since 1999, brown trout standing crop and numbers of 18 inch and larger fish did not exhibit declines until 2003. The maximum observed declines in brown trout standing crop and densities of 18 inch and larger fish were 27.5% and 30.9%, respectively. Indications of angling pressure in the Middle Reach via the incidence of permanent hook scars on brown trout exhibits a marked decline from those observed in the Upper Reach at 4% to 6% of the sample population.

The Lower Reach supports the lowest brown trout population densities of the Beaverhead River. Brown trout populations appear to be recruitment limited, supporting densities that range from 124 to 463 Age II and older fish per mile averaging about 337 fish per mile at Anderson lane and 251 fish per mile at Beaverhead Rock. Despite low population densities, surviving fish generally can attain a relatively large size and heavy condition factor. The recent drought, combined with extremely high summer water temperatures, has reduced Lower Reach populations to their modern observed lows in 2004. During the summer of 2003, the Lower Reach was closed to angling as water temperatures exceeded 70 degrees F. for 52 consecutive days. Daily maxima often exceeded 80 degrees F. with temperatures remaining in excess of 70 degrees F. for 15 to 20 hours per day. While the affects of drought on Lower Reach brown trout populations are currently evident, standing crop and numbers of large fish in the population continued to increase and maximized in 2002, similar to the situation observed in the Middle Reach. Following the high water temperatures of 2003, brown trout standing crop declined 45.5% at Anderson Lane and 64.4% at Beaverhead Rock while densities of 18 inch and larger brown trout declined 47.5% and 50.0% respectively. Incidence of permanent hook scars in the sample brown trout populations is negligible at less than 1.0%, reflective of low angling pressure in the reach.

Table 1. Fisheries Resources Beaverhead River

	Upper*	Middle**	Lower***
Drought Effects on Flow	Extreme: Fall/Winter/Spring	Extreme: Spring/Summer/ Fall/Winter	Extreme: Spring/Summer
Low Flows: Cubic feet per second (cfs)	25-85 cfs	40-100 cfs	25-100 cfs
Minimum Flow Recommendation: Cubic feet per second	200 cfs	200 cfs	200 cfs
Population Density Brown Trout: Age II/mile	High (declining downstream within reach)	Intermediate	Low
Population Density Brown Trout: ≥18"/mile	Extremely High	Moderate – High	Low - Moderate
Population Density Brown Trout: % decline of ≥18" in drought conditions	55-94%	31%	48-50%
Standing Crop Brown Trout	Extremely High	Moderate – High	Low
Standing Crop Brown Trout: % decline in drought conditions	37-48%	28%	45-65%
Hook Scarring Brown Trout: %, Range	14-19%	4-6%	<1%

- * Upper = Clark Canyon Dam to Barretts
- ** Middle = Barretts to Dillon Vicinity
- *** Lower = Dillon Vicinity to Twin Bridges

b) Big Hole River (Table 2)

Game Fish Opportunities: Brown Trout, Rainbow Trout, Brook Trout, Mountain Whitefish, Arctic Grayling, Westslope Cutthroat Trout, Burbot

All Species Present: Brown Trout, Rainbow Trout, Brook Trout, Mountain Whitefish, Arctic Grayling, Westslope Cutthroat Trout, Burbot, Longnose Sucker, Mountain Sucker, White Sucker, Longnose Dace, Redside Shiner, Common Carp, Mottled Sculpin

The Big Hole River is a free flowing stream exhibiting numerous channel configurations, habitat types, flow and temperature regimes, and aquatic species assemblages throughout its length. Headwater reaches downstream to about Fishtrap Creek are dominated by brook trout and mountain whitefish, and support core habitats for the last native fluvial Arctic grayling population in the contiguous United States. High gradient reaches with abundant tributary input between Fishtrap and the Maiden Rock Canyon upstream from Melrose are dominated by populations of rainbow trout and mountain whitefish with brown trout densities gradually increasing in a downstream direction. Upper portions of this reach also

provide deep pool habitat for adult Arctic grayling. The lower river is dominated by populations of brown trout and mountain whitefish as rainbow trout decrease in abundance in a downstream direction. Arctic grayling are regularly collected at low frequency throughout the lower reach. Angling pressure in the upper reach is relatively low while the mid and lower reaches of the river below Fishtrap Creek sustain most of the sport fishery and float fishing access.

Dramatically reduced streamflows and elevated water temperatures resulted in emergency angling closures applied under the Big Hole Watershed Committee's (BHWC) Drought Plan in the upper Big Hole in the past 6 consecutive summers. This is indicative of a failure to maintain minimum instream flows of 20 cubic feet per second (cfs) at Wisdom and 60 cfs at Mudd Creek. The department's Minimum Instream Flow reservation for this reach is 160 cfs with Wetted Perimeter inflection points at 60 and 160 cfs. Low drought based flow regimes have reduced upper river brook trout populations to less than 100 fish per mile and Arctic grayling populations to less than 30 per mile. These severe drought conditions have forced both of these species to seek refuge in the lower reaches of major tributaries such as Steel, Fishtrap, LaMarche, Seymour, and Deep Creeks. Conversely, ample flow regimes in the early 1980's and late 1990's have resulted in brook trout populations of 600 to 700 per mile and Arctic grayling populations of 80 –100 fish per mile.

Rainbow trout populations have fared relatively well during the recent drought episode. Flow and temperature regimes in the upper canyon habitat types generally remain somewhat better than reaches up and downstream. This is reflected in the relative abundance and health of both fish and aquatic macroinvertebrate populations within the reach. Rainbow trout populations typical of the Wise River to Divide reach average 1,680 Age I and older fish per mile and can attain populations in excess of 2,000 fish per mile in strong recruitment years but can decline into the 1,000 to 1,500 fish per mile range under conditions of persistent drought. Current rainbow trout population estimates of 1,644 are virtually at the long-term average. Rainbow trout density and standing crop have undergone slight linear declines of about 22% since 2001. Rainbow trout populations of the Melrose area average about 583 Age I and older fish per mile since 1981 but have declined about 30% since 1999 with persistent drought and declining recruitment. Recruitment declines and a relatively high incidence of cranial deformities have been linked to a severe whirling disease infection originating from a point source in the Melrose vicinity. Despite the recent loss in recruitment, rainbow trout standing crop has increased over the past 3 years due to the persistence of several year classes of older larger fish. While recruitment of yearling rainbow trout in the Melrose vicinity has struggled at about 100 fish per mile over the recent past, yearling recruitment in upstream reaches has maintained at

about 400 to 700 fish per mile over the same period. The highest incidence of permanent hook scars in the Big Hole River has been observed in rainbow trout in the Jerry Creek study section. The rate of hook scar incidence rose from about 12% in 1990 and 1991 to a maximum in excess of 19% in 1997. Hook scar incidence generally ranged between 15% and 16% prior to 1997 but underwent a recent declining trend dropping to about 14 % in 2001 and 2002 but increased to about 16% and 18% in 2003 and 2004.

Brown trout populations of the middle and lower reaches of the Big Hole River generally range between 1,000 and 1,400 Age II and older fish per mile but have been substantially impacted by recent drought conditions. August flow regimes have failed to attain the department's minimum instream flow recommendation of 260 cfs in the lower reach for the past 6 consecutive years and 14 of the past 20 years in the lower river reach. Brown trout densities at Maiden Rock, Melrose and Glen have declined 24.6%, 35.2%, and 61.6% from peak densities experienced following the abundant flow regimes of the late 1990's. Similarly, brown trout standing crop has declined in the respective study sections 25.4%, 29.3%, and 61.4%, again, reflecting decreasing flow regimes and increasing water temperatures in a downstream direction. Densities of 18 inch and larger (Age V and older) brown trout have also declined markedly in the current drought episode with declines of 71.4% at Maiden Rock, 63.9% at Melrose, and 79.5% at Glen. The 2004 estimate of 36 18 inch and larger brown trout per mile in the Maiden Rock Section was the lowest observed density of these larger fish since 1981, prior to the adoption of Special Restrictive Regulations (slot limit and artificial lures) to increase numbers of larger fish. Extreme declines in the lower river reaches below the Glen area are also directly correlated with extreme temperature regimes recorded at Notch Bottom and Pennington Bridge over the 2000 – 2003 period. Daily water temperatures at the Notch commonly exceeded 70 degrees F. for 5 to 7 hours to maxima of 73 degrees F while temperatures at Pennington remained in excess of 70 degrees F. for 8.5 to 14 hours per day to maxima of 78 degrees F. The mid and lower river reaches from Dickie Bridge to the mouth were last closed to angling under the Big Hole Watershed Committee's Drought Plan in 2000. Angling closures in the Lower Reach as defined under the BHWC Drought Plan are triggered when flows at the Melrose USGS Gage decline below 150 cfs and remain in effect until flows recover above 200 cfs for seven consecutive days.

Table 2. Fisheries Resources on Big Hole River

	Upper*	Middle**	Lower***
Drought Effects on Flows	Extreme	Moderate – High	Moderate - Extreme
Low Flows: Cubic feet per second (cfs)	10 – 80 cfs	200 – 400 cfs	150 – 300 cfs
Minimum Flow Recommendation: Cubic feet per second	160 cfs	800 cfs	650 cfs
Thermal Complications	Extreme	Moderate	Extreme
Population Density Grayling	Very low	N/A	N/A
Population Density E. Brook Trout	Low - Moderate	N/A	N/A
Population Density Rainbow Trout	N/A	High – Very high	Low - Moderate
Population Density Brown Trout	N/A	Low – Moderate	Moderate - High
Population Density Rainbow Trout: % decline due to drought conditions	N/A	22%	30%
Population Density Brown Trout: % decline due to drought conditions	N/A	N/A	25 – 62%
Population Density Brown Trout: % decline in $\geq 18''$ trout	N/A	N/A	64 – 80%
Standing Crop Rainbow Trout: % decline	N/A	22%	N/A
Standing Crop Brown Trout: % decline	N/A	N/A	25 – 61%
Hook scarring Rainbow Trout: % Occurrence	N/A	15 – 19%	8 – 10%
Hook scarring Brown Trout: % Occurrence	N/A	< 5%	< 6%

- * Upper = Headwaters to Fishtrap FAS
- ** Middle = Fishtrap FAS to Maiden Rock
- *** Lower = Maiden Rock to Twin Bridges

2. River Use (Resident and Nonresident)

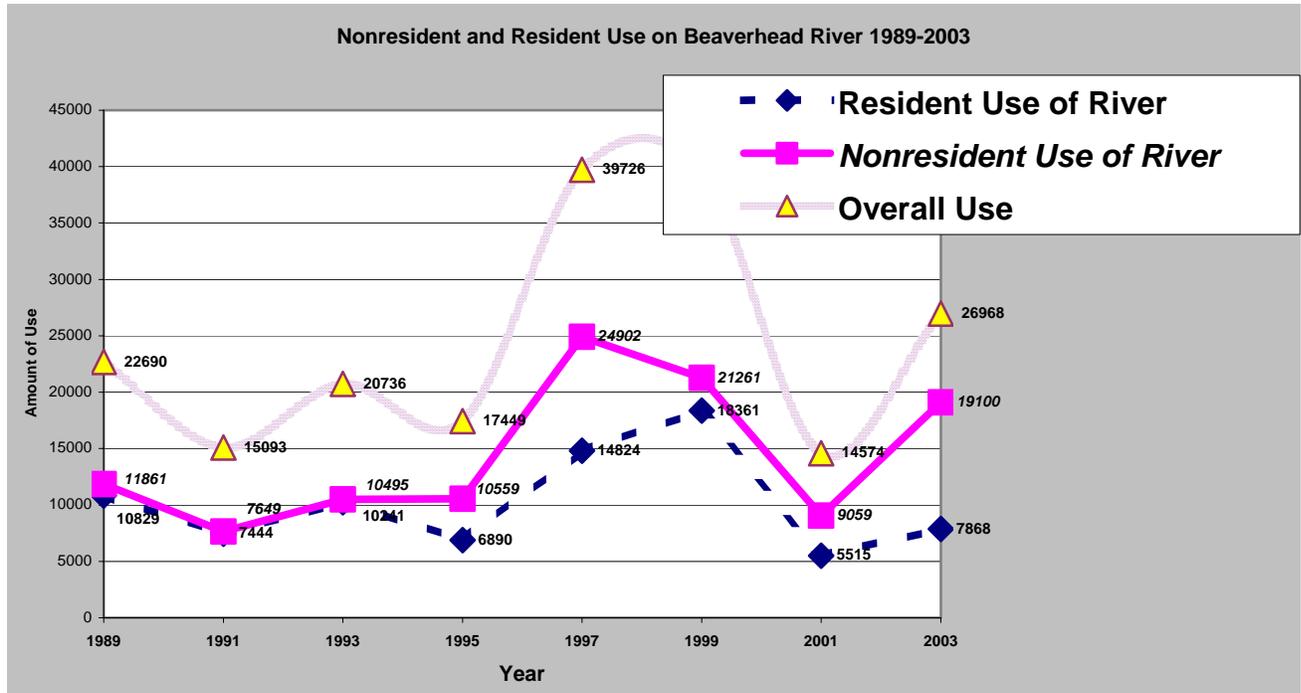
a) Beaverhead River

(1) Angling Pressure (Graph 1)

According to angling pressure surveys conducted by the department every other year, overall angling use on the Beaverhead River went from 22690 angler days in 1989 to a high of 39726 angler days in 1997. Since 1997, use on the Beaverhead River decreased to 14574 angler days in 2001 and then increased to 26968 in 2003. There were 11861 nonresident angler days and 10829 resident angler days in 1989. The greatest number of nonresident use occurred in 1997 (24902 angler days). The greatest number of residents occurred in 1999 (18361 angler

days). In 2001 nonresident angling dropped to 9059 angler days and then increased to 19100 in 2003. In 2001 resident angler days dropped to 5515 and then increased to 7868 in 2003.

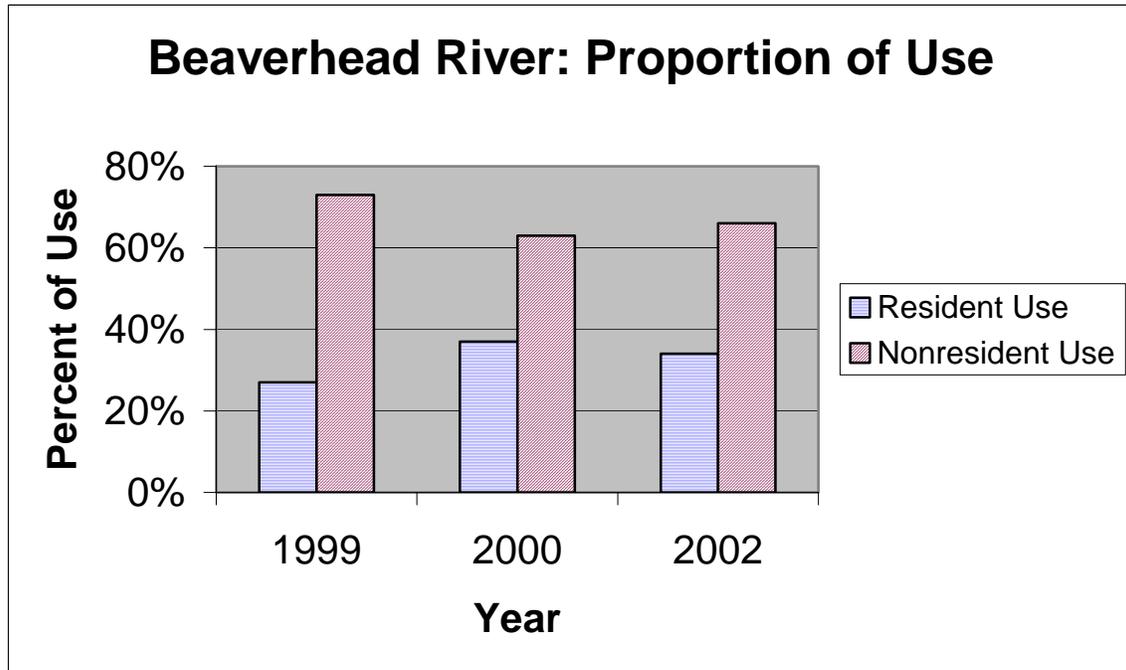
Graph 1. Beaverhead River Nonresident and Resident Angling Use



(2) Proportion of Users (Graph 2)

The department surveyed river users on the Beaverhead River in 1999, 2000, and 2002. The survey collected information on the residency of the users and the type, timing and location of use. In 1999 the survey estimated that 73% of the users were nonresidents (27% residents). In 2000 the percentage of nonresidents was estimated to be 63% (37% residents). In 2002, 66% of the users were nonresidents (34% residents).

Graph 2. Beaverhead River Proportion of Use



(3) Types of Use

Float angling was the predominate type of use reported in the 1999 survey (81% float angling and 19% wade/bank angling). In 2000, 65% of those surveyed were on a float trip, compared to 35% who were wading or fishing from the bank. In 2002, 70% of those surveyed were float fishing (30% wade/bank fishing).

(4) Opinions of Users

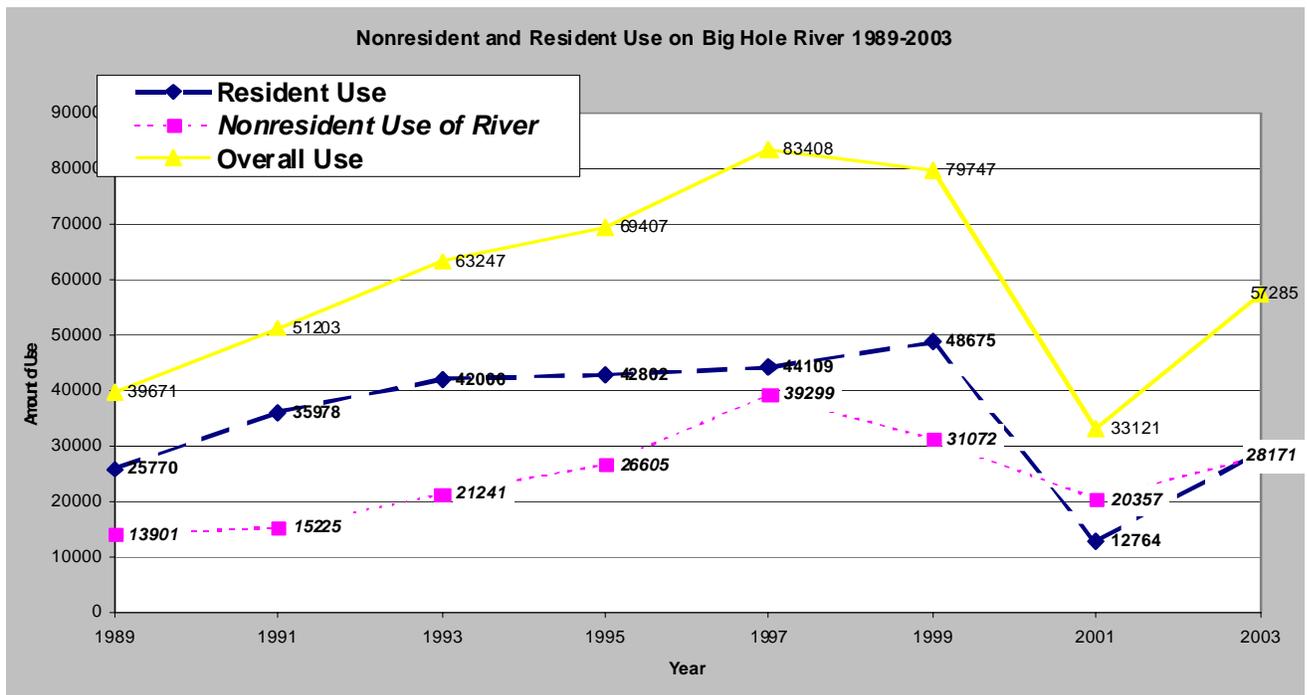
The department surveyed anglers who fished the Beaverhead River in 2001. The survey asked respondents to evaluate the effectiveness of the biennial rules governing recreational use on the two rivers. When asked to respond to the following “Overall, I think the rules are a good thing.” 80% of respondents agreed (84% of residents, 72% of non-residents, 50% for guides/outfitters, and 84% of non-guides/outfitters).

b) Big Hole River

(1) Angling Pressure (Graph 3)

For the Big Hole River, overall angling use went from 39671 angler days in 1989 to a high of 83408 in 1997. Overall angling use dropped to 33121 angler days in 2001 and then increased to 57285 in 2003. There were 13901 nonresident angler days and 25770 resident angler days in 1989. The greatest number of nonresident use occurred in 1997 (39299 angler days). The greatest number of resident use occurred in 1999 (48675 angler days). In 2001 nonresident angler days dropped to 20357 and then increased to 28171 in 2003. In 2001 resident angler days dropped to 12764 and then increased to 29114 in 2003.

Graph 3. Big Hole River Nonresident and Resident Angling Use

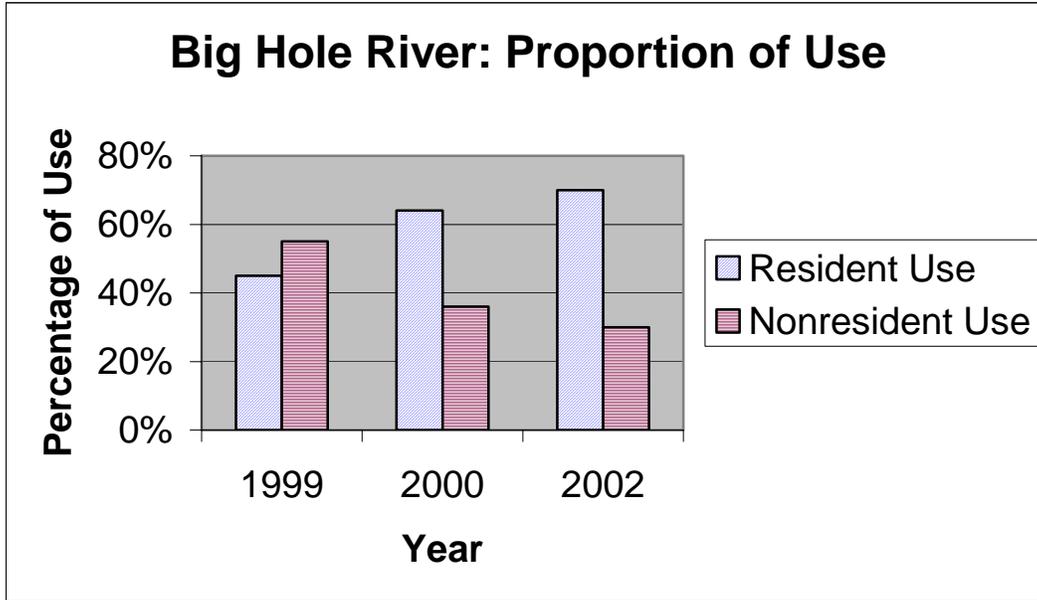


(2) Proportion of Users (Graph 4)

The department surveyed river users on the Big Hole River in 1999, 2000, and 2002. The survey collected information on the residency of the users and the type, timing and location of use. In 1999 the survey estimated that 55% of the users were nonresidents (45% residents). Thirty-six percent were nonresidents in 2000

(64% residents). In 2002 the survey estimated that 30% of the users were nonresidents (70% residents).

Graph 4. Big Hole River Proportion of Use



(3) Types of Use

Seventy-two percent of those surveyed in 1999 were on a float trip, compared to 28% who were wading or fishing from the bank. In 2000, 79% were on a float trip, compared to 21% who were wading or fishing from a bank. In 2002, 86% of those surveyed were on a float trip, compared to 13% who were wading or fishing from the bank.

(4) Opinions of Users

The department surveyed anglers who fished the Big Hole River in 2001. The survey asked respondents to evaluate the effectiveness of the biennial rules governing recreational use on the two rivers. When asked if to respond to the following, “Overall, I think the rules are a good thing.” 80% of respondents agreed (82% of residents, 73% of non-residents, 36% for guides/outfitters, and 84% of non-guides/outfitters).

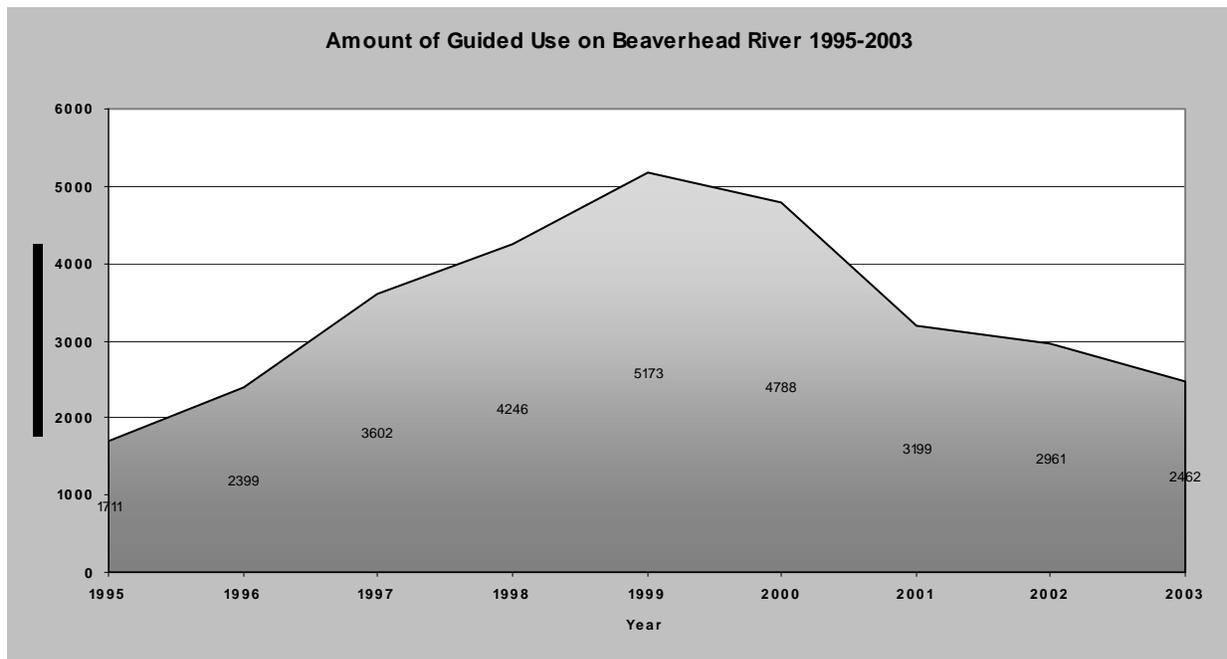
3. River Use (Outfitted)

a) Beaverhead River

(1) Overall Outfitting Use (Graph 5)

Based on records compiled by the Montana Board of Outfitters, the overall annual number of guided client days on the Beaverhead River ranged from a low of 1711 in 1995 to a high of 5173 in 1999. In 2003 there were 2462 guided client days on the river.

Graph 5. Beaverhead River Outfitted Use



(2) Authorized Use

The current rules governing recreation on the Beaverhead River state that, “Each outfitter from July 1 through August 31, inclusive, on the Beaverhead River shall not exceed the number of client days served by the outfitter on the Beaverhead River during those same months for the outfitter’s highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.”

The Montana Board of Outfitters recently audited the outfitter client logs (records) that were submitted by the outfitters for the years 1995, 1996, 1997, 1998, 1999, and 2000. The Board also updated the list of outfitters who are authorized to conduct use on the Beaverhead River. The results of the audit were released to the department on February 2, 2005.

The Board's records show that there are 84 licensed fishing outfitters who are authorized to conduct commercial use on the Beaverhead River. The audit revealed that 67 of the 84 outfitters are authorized to conduct use as an outfitter between July 1 and August 31. According to the audit, seventeen of the outfitters did not record use between July 1 and August 31 during the years 1995 to 2000, and therefore, consistent with the rules, do not have allocated client days for use between July 1 and August 31 of each year. According to the Board's audit, the total number of authorized client days for the Beaverhead River for use between July 1 and August 31 is 5064. This number may vary depending upon the Board of Outfitter's ongoing efforts to update its records.

(3) Percentage of Guided Use

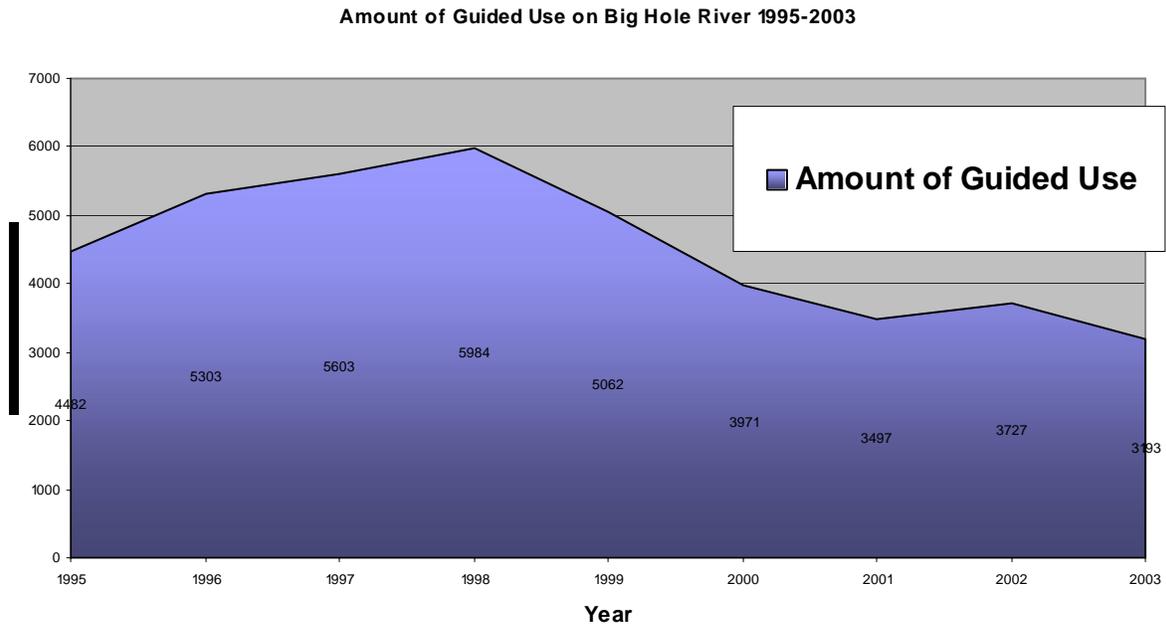
The department's survey of river users indicated that in 1999, 55% of those surveyed were on a commercial (guided) trip. In 2000 the percentage of users on a commercial (guided trip) was estimated to be 34%. In 2002 the survey estimated that 38% of the users were on a commercial (guided) trip.

b) Big Hole River

(1) Overall Outfitting Use (Graph 6)

Based on records compiled by the Montana Board of Outfitters, it is estimated that the overall number of guided days on the Big Hole River ranged from a low of 3193 in 2003 to a high of 5984 in 1998.

Graph 6. Big Hole River Outfitted Use



(2) Authorized Use

The current rules governing recreation on the Big Hole River state that, “Each outfitter from June 1 through July 31, inclusive, on the Big Hole River shall not exceed the number of client days served by the outfitter on the Big Hole River during those same months for the outfitter’s highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter and maintained by the board of outfitters will determine the number of client days in each year.” The Montana Board of Outfitters recently audited the outfitter client logs (records) that were submitted by the outfitters for the years 1995, 1996, 1997, 1998, 1999, and 2000. The Board also updated the list of outfitters who are authorized to conduct use on the Big Hole River. The results of the audit were released to the department on February 2, 2005.

The Board’s records show that there are 122 licensed fishing outfitters who are authorized to conduct commercial use on the Big Hole River. The audit revealed that 104 of the 122 outfitters are authorized to conduct use as an outfitter between June 1 and July 31. According to the audit, eighteen of the outfitters did not record use between June 1 and July 31 during the years 1995 to 2000, and therefore, consistent with the rules, do not have allocated client

days for use between June 1 and July 31 of each year. According to the Board's audit, the total number of authorized client days for the Big Hole River for use between June 1 and July 31 is 4678. This number may vary depending upon the Board of Outfitter's ongoing efforts to update its records.

(3) Percentage of Guided Use

The department's survey of river users in 1999 indicated that 33% of those surveyed were on a commercial (guided) trip. Thirty percent of those surveyed in 2000 were on a commercial (guided) trip. In 2002, 22% of those surveyed were on a commercial (guided) trip.

4. Local Economy

There is a limited amount of information available that is specific to river-associated tourism in Montana and its contribution to the local economy. A survey conducted by the Institute for Tourism and Recreation Research (ITRR) in 2002 estimated that 23% of the visitors to Gold West Country (southwest Montana) participated in fishing/fly fishing and 9% in river rafting/floating.

According to ITRR research, of the 4595 nonresidents who participated in a 2001-2002 Montana survey, 102 or 2% spent at least one night in Beaverhead County (sections of the Beaverhead and Big Hole rivers are located in Beaverhead County). Nineteen percent of those visitors reported that fishing was the primary attraction in the county and 21% participated in fishing. Eighty-five percent of those who participated in the survey reported that they intend to return within two years. The expenditures of nonresidents who spent money in Beaverhead County was estimated at \$25,910,000. This included \$1,454,000 spent on outfitting services.

IV. Chapter Four: Environmental Consequences for Beaverhead River

This chapter presents the predicted effects of implementing Alternatives A, B, C, and D.

A. Predicted Effects on Fisheries Resources in the Beaverhead

1. Effects of Alternative A on Fisheries Resources (Beaverhead)

If the rules currently governing recreational use on the Beaverhead River were retained, there would be no change in restrictions on nonresident float fishing and no change in restrictions on float outfitting.

It can reasonably be assumed that the retention of all of the current restrictions on recreational use of the Beaverhead River under the current rule would not result in increases in angling pressure throughout the system.

The Department predicts that under Alternative A, Beaverhead River fisheries would not be subjected to additional negative affects resulting from increased angling pressure under the current drought condition. Thus, the affects of the proposed action under Alternative A would be negligible.

2. Effects of Alternative B on Fisheries Resources (Beaverhead)

If Alternative B were chosen, temporary client days would become available for one-boat outfitters and the Tash Bridge to Selway Bridge reach would no longer be closed to float outfitting but would allow outfitters to launch one boat per day within the reach. All other restrictions under the current Rule would remain in place.

Under the current drought situation, an increase in angling pressure would likely add to stress already experienced by declining trout populations. The department has data that strongly suggest that reductions in angling pressure can partially mitigate trout population losses due to low flow regimes for up to three to four years. While the department has regulatory mechanisms in place to attempt to mitigate for drought affects (emergency drought based angling closures and bag limit reductions), they do not necessarily curtail angling pressure and resultant stress during periods of maximum angler use.

The proposed action of making client days available to one-boat outfitters would likely have the affect of increasing angling pressure on the Beaverhead in an indiscriminate and unpredictable manner. The proposed action to allow float outfitting in the Tash Bridge to Selway Bridge reach would likely result in an

increase in angling pressure within the reach (see Predicted Effects on Outfitted Use).

The Department predicts that under Alternative B, negative affects to depressed trout populations resulting from increased pressure due to the proposed action of making client days available to one-boat outfitters would be minor. While it is assumed that this action would increase pressure on the river as a whole, it is difficult to predict how and where such days would be utilized. Negative affects of increasing pressure on declining trout populations in the Barretts to Selway Bridge reach would be moderate due to the potential of the reach to suffer low flows and high water temperatures during the spring and summer, the potential for an increase in outfitted use, the lack of a winter angling closure, and the current condition of trout populations which had avoided drought based declines until the past two years.

3. Effects of Alternative C (Preferred Alternative) on Fisheries Resources (Beaverhead)

Alternative C differs from Alternative B in that the commission would retain the prohibition on float outfitting for the Beaverhead River between Tash Bridge and Selway Bridge (July 1 through August 31). If the prohibition on float outfitting for this reach of the river were continued the department predicts that there would not be any added fishing pressure due to float outfitting. Under the current drought situation, an increase in angling pressure would likely add to stress already experienced by declining trout populations. The department has data that strongly suggest that reductions in angling pressure can partially mitigate trout population losses due to low flow regimes for up to three to four years. While the department has regulatory mechanisms in place to attempt to mitigate for drought affects (emergency drought based angling closures and bag limit reductions), they do not necessarily curtail angling pressure and resultant stress during periods of maximum angler use. The department predicts that the effects of Alternative C on the fisheries would be negligible.

4. Effects of Alternative D on Fisheries Resources (Beaverhead)

If the rules governing recreational use on the Beaverhead River were repealed, there would be no restrictions on nonresident float fishing and no restrictions on float outfitting.

It can reasonably be assumed that removal of all restrictions on outfitter use of the Beaverhead River, number of daily outfitted launches per reach, outfitted float use of the excluded reach, and nonresident float fishing would have the affect of increasing angling pressure throughout the system. It can also be assumed that,

under optimum flow and economic conditions, angling pressure might approximate or even exceed maximum levels documented in 1997.

Under the current drought situation, an increase in angling pressure would likely add to stress already experienced by declining trout populations. The department has data that strongly suggest that reductions in angling pressure can partially mitigate trout population losses due to low flow regimes for up to three to four years. While the department has regulatory mechanisms in place to attempt to mitigate for drought affects (emergency drought based angling closures and bag limit reductions), they do not necessarily curtail angling pressure and resultant stress during periods of maximum angler use.

On the Beaverhead River, increases in outfitted use and the removal of boat restrictions by reach, if they resulted in increased total angling pressure, would likely be most heavily focused in reaches between the Clark Canyon Dam and Barretts Diversion. By reach definition, so would pressure resulting from nonresident float restrictions on weekend days between High Bridge and Pipe Organ Bridge. In the Dillon area reach where float outfitting has been excluded (Tash Bridge to Selway Bridge), angling pressure would likely increase substantially from the current condition. In the lower river (north of Dillon) angling pressure would likely increase moderately as outfitter use would no longer be mitigated by a one-launch restriction. Low summer flow regimes, high water temperatures, and long float distances would, however, probably mitigate some of the potential increase under the current drought conditions.

The Department predicts that under Alternative C, negative affects of increased angling pressure to depressed trout populations in the upper river (Dam to Barretts) would be minor due to relatively strong summer flow regimes. Emergency fall spawning closures and winter angling closures provide sufficient protection in lieu of any ability to increase streamflow. Negative affects of increasing pressure on declining trout populations in the middle river reach (Barretts to Selway Bridge) would be moderate due to the potential of the reach to suffer low flows and high water temperatures during the spring and summer, the potential for a substantial increase in outfitted use, the lack of a winter angling closure, and the current condition of trout populations which had avoided drought based declines until the past two years. Negative affects of increased angling pressure in the lower river reach (Selway Bridge to Twin Bridges) would be moderate to extremely high due to the potential of the reach to suffer extremely low summer flows and high water temperatures, the lack of a fall spawning closure, and brown trout populations currently at or near all time lows.

B. Predicted Effects on Nonresident Use of the Beaverhead

Note: It is difficult to predict with any certainty the amount of nonresident use that would occur under the four alternatives due to the fact that there are many

variables that contribute to a nonresident's decision to recreate on the river (nonresident interest, the ability of outfitters to recruit nonresident clients, drought, fire, economy, national security, etc.). The department also recognizes that the presence or absence of river rules could influence a person's decision to recreate on a river.

1. Effects of Alternatives A, B, and C (Preferred Alternative) on Nonresident Use (Beaverhead)

Under Alternatives A, B, and C the restrictions on nonresident float fishing would remain in place on Saturdays and Sundays (High Bridge FAS to Henneberry FAS on Saturday and Henneberry FAS to Pipe Organ FAS on Sunday). The department predicts that if the nonresident float restrictions were retained, the amount of nonresident use would fluctuate up and down but not exceed the amount of use that occurred in 1997 and 1999. The department's prediction is based on the angling pressure survey data that indicates the nonresident use of the Beaverhead River has fluctuated over the years, and most recently, nonresident use increased in 2003 after a decrease in 2001. These fluctuations occurred while the nonresident float restrictions were in place. The department predicts that retaining the nonresident float restrictions would help to ensure that the amount of nonresident float fishing does not reach the amount that occurred in 1997 and 1999.

2. Effects of Alternative D on Nonresident Use (Beaverhead)

Under Alternative D, the rules governing recreational use on the Beaverhead River would be repealed and there would be no restrictions on nonresident float fishing. The department's prediction is that nonresident float fishing would increase on weekends in the reach of the Beaverhead River between High Bridge FAS and Henneberry FAS, and the reach between Henneberry FAS and Pipe Organ FAS (reaches where the nonresident restrictions currently apply). In the absence of restrictions the department predicts that nonresident use would fluctuate from year to year with a continuing upward trend over the years in the upper reaches of the river. The department predicts that a return to more normal flow conditions and improvements to the fisheries could result in nonresident use levels comparable to the levels reached in the late 1990's. If the amount of nonresident use were to reach or exceed the amount of nonresident use that occurred in the late 1990s, the department predicts that congestion on the water would cause the recreating public to request restrictions on nonresidents, which could include rationing the number of people allowed to use the river.

The elimination of the restrictions on nonresident float fishing would probably be favorable to some members of the public who believe the existing rules are discriminatory and portray a message that nonresident anglers are not welcome in Montana. There are also nonresidents who have expressed support for the restrictions and the resulting improved conditions on the river.

C. Predicted Effects on Outfitted Use on the Beaverhead

1. Effects of Alternative A on Outfitted Use (Beaverhead)

If Alternative A were chosen, all aspects of the current rules pertaining to outfitting would remain the same.

Records maintained by the Board of Outfitters indicate that since 1995, the highest number of guided client days occurred in 1999 (5173 client days). This compared to 1711 guided client days in 1995. Overall use of the river in 1999 was estimated at 39622 angler days, slightly fewer than the peak overall use that occurred in 1997 (39726 angler days). Since 1999 the number of guided client days on the Beaverhead River has decreased to 2462 in the year 2003. Overall use decreased to 14574 angler days in 2001 and increased to 26968 in 2003.

The department predicts that under Alternative A, outfitting use on the Beaverhead River would, over time, mimic overall trends in use but would not exceed the maximum number of client days authorized by the existing rules. If overall use increases, such as it did in 2003, the department predicts that outfitting use would eventually increase over time due to the presence of more potential clients.

Alternative A would not provide opportunities for new outfitters to operate on the Beaverhead River unless they acquire an authorized outfitter's business in its entirety. This means that there would be no opportunities for non-authorized outfitters who want to take advantage of unused client days. Under Alternative A, unused client days would not be reallocated unless an authorized outfitter transfers their business in its entirety. As a result of deceased outfitters and outfitters who are no longer in business, the department predicts that there would be unused allocated client days under Alternative A.

Retaining the prohibition on float outfitting for the Tash Bridge to Selway Bridge reach of the river would be consistent with the Beaverhead County Resource Use Plan's goal to, "Strike a balance between the commercial (guides and outfitters) and recreational anglers." Furthermore, the Tash to Selway float outfitting restriction is consistent with the plan's objective to, "Encourage the designation of a section of the Beaverhead River for the exclusive use and enjoyment of the unguided and outfitted public."

2. Effects of Alternative B on Outfitted Use (Beaverhead)

If Alternative B were chosen, the moratorium on new outfitters on the Beaverhead River would remain in place. Temporary client days would be available for one-

boat outfitters. The temporary client days would come from authorized outfitters who reported zero annual use for the previous five years or zero annual use for any two consecutive years in the future. The upper reaches of the river (High Bridge to Henneberry and Henneberry to Pipe Organ) would remain closed to float outfitting on the weekends. The Tash Bridge to Selway Bridge section of the river would no longer be closed to float outfitting. Instead, outfitters would be restricted to launching one boat per day in this reach of the river. All other aspects of the current rules pertaining to outfitting would remain the same.

There are many variables that contribute to a potential client's decision to recreate on the river and hire a guide (interest, the ability of outfitters to recruit clients, drought, fire, economy, national security, etc.), and thus it is difficult to estimate the exact amount of outfitted use that would occur on the Beaverhead River if Alternative B were chosen. However, the moratorium on new outfitters and the cap on client days would dictate the highest amount of use that could occur between July 1 and August 31 (5064 client days).

The opening of the reach of the river from Tash Bridge to Selway Bridge to float outfitting (maximum one boat per day) would result in an increase in outfitted use on that reach of the river for the affected time period. In theory, there could be 84 boats launched if every authorized outfitter launched one boat on this reach at the same time and place. The department predicts that, in reality, this situation would probably not occur. The outfitters on the citizen advisory committee estimated that the elimination of the prohibition might result in an additional 10 to 12 boats at a single time for this reach of the river depending upon fishing conditions. The cap on client days would still be in effect and thus the increase in use on the Tash to Selway reach of the river would still remain within the overall cap on client days.

The opening of this section to float outfitting would likely upset some members of the public who prefer that there be a section of the river closed to float outfitting. This preference is supported in the Beaverhead County Resource Plan and is consistent with the plan's objective to "Encourage the designation of a section of the Beaverhead River for the exclusive use and enjoyment of the unguided and outfitted public."

The department predicts that the creation of temporary client days would result in an increase in the amount of outfitted use on the Beaverhead River. According to the proposed administrative rules, the temporary days could never exceed two thousand. Furthermore, the temporary days would be created from forfeited client days that are already within the overall cap. Therefore, the creation of temporary client days could not result in outfitted use exceeding the overall authorized cap on client days. The temporary client days would come from those outfitters who reported zero use within the effected period for the five years prior to the adoption of the proposed rules or zero use within the effected period for any two consecutive years following the adoption of the proposed rules. Based on the

records maintained by the Board of Outfitters, the department estimated there are 24 outfitters who did not report any use for the years 2000, 2001, 2002, and 2004. The records for the fifth year (2004) are not available yet. Based on the four years of records available, if these 24 “zero-use” outfitters did not report any use in 2004, the proposed administrative rules would result in these 24 outfitters forfeiting all of their client days and they would no longer be authorized to conduct use as an outfitter on the Beaverhead River. The total number of client days that were allocated to these outfitters is 45.

The audit conducted by the Board of Outfitters also revealed that there are 12 outfitters whose licenses have lapsed or are inactive. The records also show that one outfitter is deceased. The total number of client days that were allocated to these 13 outfitters is 67.

Based on the estimate of forfeited client days that might be available, and based on the number of client days that were allocated to deceased, lapsed, or inactive outfitters, the department estimates that there could be 112 temporary client days available to one-boat outfitters. The department emphasizes that this estimate is based on incomplete records and would likely change over time.

3. Effects of Alternative C (Preferred Alternative) on Outfitted Use (Beaverhead)

Under Alternative C the commission would retain the prohibition on float outfitting for the Beaverhead River from Tash Bridge to Selway Bridge. The rest of Alternative C is the same as Alternative B.

Under Alternative C the department expects that there would be no float outfitting on the Tash Bridge to Selway Bridge reach of the Beaverhead (July 1 through August 31). Retaining the prohibition on float outfitting would likely please members of the public who prefer that there be a section of the river closed to float outfitting. This preference is supported in the Beaverhead County Resource Plan and is consistent with the plan’s objective to “Encourage the designation of a section of the Beaverhead River for the exclusive use and enjoyment of the unguided and outfitted public.” Alternative C would not provide any additional opportunities for outfitters to conduct use on the Beaverhead River.

4. Effects of Alternative D on Outfitted Use (Beaverhead)

Under Alternative D, the commission would repeal the existing rules and there would no longer be any restrictions on outfitting use.

The department predicts that if the rules are repealed, including the moratorium on new outfitters and the cap on client days, outfitters who are currently not

authorized to operate on the Beaverhead River would choose to conduct services there and the number of client days would increase significantly. The department also predicts that the outfitters currently authorized to use the river would increase their use if the restrictions were repealed. If the amount of outfitted use were to reach or exceed the amount of outfitted use that occurred in 1997 and 1999, the department predicts that congestion on the water would cause the recreating public to request a reinstatement of restrictions on outfitters.

Furthermore, the department predicts that if there are no restrictions on outfitting on the Beaverhead River, people could reasonably argue that there would no longer be a reach of the river that was designated for the exclusive use and enjoyment of the unguided and unfitted public (see previous reference to Beaverhead County Resource Use Plan). Removal of the restrictions would, however, allow added opportunities to provide services to those members of the public seeking the services of a guide.

D. Predicted Effects on Local Economy of Beaverhead County

1. Effects of Alternatives A, B, and C (Preferred Alternative) on Local Economy

The department is not aware of any research that has examined the impact the rules might have on a person's decision to visit Beaverhead County. It is difficult to isolate the exact reasons why people choose to recreate or not recreate on these two rivers. Numerous variables can influence these decisions (drought, fire, economy, national security, etc.). Some people argue that the rules discourage people from visiting the area and thus conclude that the rules negatively impact the local economy. They argue that the rules have a direct negative impact on outfitters and that the outfitting industry contributes directly and indirectly to the local economy. Other people argue that the rules maintain the quality of the experience for everyone and thus conclude that the rules promote visitation to the area and are a benefit to the local economy, including the outfitting industry.

There is data that demonstrates the monetary value of tourism in Beaverhead County. According to a survey conducted by the Institute for Tourism and Recreation Research, in 2001-2002, nonresidents spent \$25,910,000 in Beaverhead County, including \$1,454,000 on outfitters. The survey also concluded that 17% of those surveyed identified fishing as the primary attraction in Beaverhead County.

In the absence of information directly related to the impact the rules might have on visitation to the area and associated impacts to the local economy, the department bases its predictions on the assumption that improving or maintaining the quality of the recreation experience benefits all users, and therefore the department predicts that Alternative A and B could lead to more people choosing to recreate in Beaverhead County and consequently more dollars being spent. Although the restrictions on the rivers could also result in some people choosing

not to visit Beaverhead County, and this would mean a loss in revenue for the county's residents, the department predicts that the benefits from retaining the rules would be greater.

2. Effects of Alternative D on Local Economy

Under Alternative D there would no longer be any rules governing recreational use on the Beaverhead River. As stated in the previous section, the department does not have information directly related to the impact the rules, or absence of rules, might have on visitation to the area and the associated impacts to the local economy. In the absence of this information, the department bases its predictions on the assumption that improving or maintaining the quality of the recreation experience benefits all users. The department predicts that under Alternative D the amount of use and associated social conflicts would increase over time, and that this would result in fewer people enjoying their recreational experience. Although additional people might choose to visit the area if there are no rules, the department predicts that a greater number of people would choose not to recreate on the Beaverhead River if the congestion and social conflicts go unaddressed, and that this would negatively impact the local economy.

V. Chapter Five: Environmental Consequences for Big Hole River

A. Predicted Effects on Fisheries Resources in the Big Hole

1. Effects of Alternative A on Fisheries Resources (Big Hole)

If the rules currently governing recreational use on the Big Hole River were retained, there would be no change in restrictions on nonresident float fishing and no change in restrictions on float outfitting.

It can reasonably be assumed that the retention of all of the current restrictions on recreational use of the Big Hole River under the current rule would not result in significant increases in angling pressure throughout the system.

The department predicts that under Alternative A, Big Hole River fisheries will be subjected to no additional negative effects resulting from increased angling pressure under the current drought condition. Thus, the effects of the proposed action under Alternative A would be negligible.

2. Effects of Alternative B and C (Preferred Alternative) on Fisheries Resources (Big Hole)

If Alternative B or C were chosen, temporary client days would become available for one-boat outfitters. The headwaters to Mudd Creek Bridge FAS section of the river would be closed to float outfitting. On Tuesdays, the Mudd Creek Bridge FAS to Fishtrap FAS section of the river would be closed any float outfitting. On Thursdays, the Fishtrap FAS to East Bank BLM access site would be closed to float outfitting. On Wednesdays, the East Bank BLM access site to Jerry Creek FAS section of the river would be closed to float outfitting. The restrictions on the Notch Bottom FAS to High Road FAS section of the river would be eliminated. All other aspects of the current rules would remain the same.

Under the current drought situation, an increase in angling pressure would likely add to stress already experienced by declining trout populations. The department has data that strongly suggest that reductions in angling pressure can partially mitigate trout population losses due to low flow regimes for up to three to four years. While the department has regulatory mechanisms in place to attempt to mitigate for drought effects (emergency drought based angling closures and bag limit reductions) they do not necessarily curtail angling pressure and resultant stress during periods of maximum angler use.

The proposed action of making client days available to one-boat outfitters would likely have the effect of increasing angling pressure on the Big Hole River in an indiscriminate and unpredictable manner. Under the wide array of reach choices

and limitations on outfitter launches per defined reach, it is difficult to predict if or where significant increases in angling pressure could result from this action. The proposed action to withdraw the river reach from Mudd Creek upstream to the headwaters from float outfitting would likely affect very few trips per year due to low flow regimes, poor public access, and low densities of sport fish. Proposed actions to add single day float outfitting withdrawals to the Mudd Creek to Fishtrap, Fishtrap to East Bank, and East Bank to Jerry Creek reaches merely rearranges boundaries and maintains the one day per week withdrawal from outfitting currently included under the existing rules. Removal of the lower river reach between Notch Bottom and High Road from one day per week float outfitting restrictions would likely have the affect of increasing angling pressure slightly within the reach.

The Department predicts that under Alternative B or C, negative affects to depressed Big Hole River trout populations resulting from increased pressure due to the proposed action of making client days available to one-boat outfitters would be minor. While it is assumed that this action would increase pressure on the river as a whole, it is difficult to predict how and where such days would be utilized. The potential positive affects of withdrawing the headwaters to Mudd Creek Reach from float outfitting would likely be negligible due to limited conditions and potential for float outfitting within the reach. Similarly, positive or negative affects of angling pressure in the Mudd Creek to Jerry Creek reach would likely be negligible as all portions of that segment of river are currently withdrawn from float outfitting one day per week. Some small but unquantifiable amount of angling pressure relief might be realized by redistribution of use under the new reach boundary designations. However, the potential ability of outfitters to increase launches by two boats into the newly designated reach (2 reaches modified into 3) could potentially result in increased pressure within the Mudd Creek to Jerry Creek segment. The withdrawal of the Notch Bottom to High Road reach from the current Wednesday outfitter float restriction would likely result in a slight increase in angling pressure throughout the reach. This could have a moderate negative affect on the substantially reduced brown trout population due to severe drought conditions and extremely high water temperatures.

3. Effects of Alternative D on Fisheries Resources (Big Hole)

If the rules governing recreational use on the Big Hole River were repealed, there would be no restrictions on nonresident float fishing and no restrictions on float outfitting.

It can reasonably be assumed that removal of all restrictions on outfitter use of the Big Hole River, number of daily outfitted launches per reach, and nonresident float fishing would have the affect of increasing angling pressure throughout the system. It can also be assumed that, under optimum flow and economic conditions, angling pressure might approximate or even exceed maximum levels documented in 1997.

Under the current drought situation, an increase in angling pressure would likely add to stress already experienced by declining trout populations. The department has data that strongly suggest that reductions in angling pressure can partially mitigate trout population losses due to low flow regimes for up to three to four years. While the department has regulatory mechanisms in place to attempt to mitigate for drought affects (BHC Watershed Drought Plan, emergency drought based angling closures and bag limit reductions) they do not necessarily curtail angling pressure and resultant stress during periods of maximum angler use.

The department predicts that under Alternative D, the elimination of restrictions on nonresident float fishing and float outfitting for the Jerry Creek to Melrose reach of the Big Hole would result in an increase in angling pressure and cause added stress to brown trout and rainbow trout populations that are declining in this reach of the river. Similarly, the elimination of float outfitting restrictions on the river would likely result in increased angling pressure and cause added stress to reduced brown trout and rainbow trout populations in the Melrose to Glen reach of the river, and to substantially depressed brown trout populations downstream from Glen. The department predicts that under Alternative D, angling pressure would generally increase during high flow regimes in the spring and early summer.

The department predicts that, under Alternative D, negative affects on fisheries from the headwaters to Dickie Bridge would be negligible due to the lack of sufficient flow for float fishing past early summer and ample drought mitigation under the BHC Drought Plan's Upper and Middle Reach designation. Negative affects on rainbow and brown trout fisheries between Dickie Bridge and Divide would be minor due to relatively ample flow and cool temperature regimes under current drought conditions. Potential negative affects on brown and rainbow trout fisheries from Divide to Glen would be moderate due to strongly depressed brown trout populations caused by the current drought and depressed rainbow trout populations complicated by a severe whirling disease infection. Potential negative effects on the reach from Glen to High Road would be very high due to substantially depressed brown trout populations as a result of drought flow regimes complicated by extremely high thermal regimes.

B. Predicted Effects on Nonresident Use on the Big Hole

Note: It is difficult to predict with any certainty the amount of nonresident use that would occur under the three alternatives due to the fact that there are many variables that contribute to a nonresident's decision to recreate on the river (nonresident interest, the ability of outfitters to recruit nonresident clients, drought, fire, economy, national security, etc.). The department also recognizes that the presence or absence of river rules could influence a person's decision to recreate on a river.

1. Effects of Alternative A, B, and C (Preferred Alternative) on Nonresident Use (Big Hole)

Under Alternatives A, B, and C the restrictions on nonresident float fishing would remain in place on Saturdays and Sundays (Jerry Creek to Divide on Saturdays and Divide to Salmon Fly on Sundays). The department predicts that if the nonresident float restrictions were retained, the amount of nonresident use would fluctuate up and down but not exceed the amount of use that occurred in 1997 and 1999. The department's prediction is based on the angling pressure survey data that indicates the nonresident use of the Big Hole River has fluctuated over the years, and most recently, nonresident use increased in 2003 after a decrease in 2001. These fluctuations occurred while the nonresident float restrictions were in place. The department predicts that retaining the nonresident float restrictions would help to ensure that the amount of nonresident float fishing does not reach the amount that occurred in 1997 and 1999.

2. Effects of Alternative D on Nonresident Use (Big Hole)

Under Alternative D, the rules governing recreational use on the Big Hole River would be repealed and there would be no restrictions on nonresident float fishing and no restrictions on float outfitting. The elimination of the restrictions on nonresident float fishing would probably be favorable to some members of the nonresident public who believe the existing rules are discriminatory and portray a message that nonresident anglers are not welcome in Montana. There are also nonresidents who have expressed support for the restrictions and the resulting improved conditions on the river. The department does not have information that directly assess the impact the rules might have on a nonresident's decision to visit the Big Hole River. Given the lack of such information, the department bases its prediction on the angling pressure survey conducted in the past that provide a sense of what amount of use might occur in the future.

The department's prediction is that, in the absence of any rules, nonresident fishing use would increase on the Big Hole River, particularly in the reaches of the river where there currently are nonresident float restrictions. The department predicts that a return to more normal flow conditions and improvements to the fisheries could result in nonresident use levels comparable to the levels reached in the late 1990's. The department bases its predictions on the angling pressure surveys that demonstrated an upward trend in nonresident use prior to the rules being established. If the amount of nonresident use were to reach or exceed the amount of nonresident use that occurred in the late 1990s, the department predicts that congestion on the water would cause the recreating public to request restrictions on nonresidents, which could include rationing of river users.

C. Predicted Effects on outfitted use on the Big Hole

1. Effects of Alternative A on Outfitted Use (Big Hole)

If Alternative A were chosen, all aspects of the current rules pertaining to outfitting would remain the same.

Records maintained by the Board of Outfitters indicate that since 1995, the highest number of guided client days occurred in 1998 (5984 client days). This compared to 4482 guided client days in 1995. Overall use of the river peaked in 1997 (83408 angler days). Since 1998 the number of guided client days on the Big Hole River has decreased to 3193 in the year 2003. Overall use decreased to 33121 angler days in 2001 and increased to 57285 in 2003.

The department predicts that under Alternative A, outfitting use on the Big Hole River would, over time, mimic overall trends in use but would not exceed the maximum number of client days authorized by the existing rules. If overall use increases, such as it did in 2003, the department predicts that outfitting use would eventually increase over time due to the presence of more potential clients.

Alternative A would not provide opportunities for new outfitters to operate on the Big Hole River. This means that there would be no opportunities for non-authorized outfitters who want to take advantage of unused client days. Under Alternative A, unused client days would not be reallocated unless an authorized outfitter transfers their business in its entirety. As a result of deceased outfitters and outfitters who are no longer in business, the department predicts that there would be unused allocated client days under Alternative A.

2. Effects of Alternative B and C (Preferred Alternative) on Outfitted Use (Big Hole)

If Alternative B or C were chosen, the moratorium on new outfitters would remain in place. Temporary client days would be available for one-boat outfitters. The headwaters to Mudd Creek Bridge FAS section of the river would be closed to float outfitting. On Tuesdays, the Mudd Creek Bridge FAS to Fishtrap FAS section of the river would be closed any float outfitting. On Thursdays, the Fishtrap FAS to East Bank BLM access site would be closed to float outfitting. On Wednesdays, the East Bank BLM access site to Jerry Creek FAS section of the river would be closed to float outfitting. The restrictions on the Notch Bottom FAS to High Road FAS section of the river would be eliminated. All other aspects of the current rules pertaining to outfitting would remain the same.

There are many variables that contribute to a potential client's decision to recreate on the river and hire a guide (interest, the ability of outfitters to recruit clients, drought, fire, economy, national security, etc.), and thus it is difficult to estimate the exact amount of outfitted use that would occur on the Big Hole River if

Alternatives B or C were chosen. However, the moratorium on new outfitters and the cap on client days would dictate the highest amount of use that could occur.

The department predicts that under Alternative B or C, outfitting use on the Big Hole River would, over time, mimic overall trends in use but would not exceed the maximum number of client days authorized by the existing rules. If overall use increases, such as it did in 2003, the department predicts that outfitting use would eventually increase over time due to the presence of more potential clients. The changes to the reach restrictions on float outfitting and the elimination of the restrictions from Notch Bottom to High Road FAS could result in an increase in outfitted use. The increase would still remain within the overall cap on client days. The department predicts these changes would disappoint those people accustomed to the prohibition on float outfitting for the Notch Bottom to High Road reach of the river on Wednesdays but would appeal to outfitters seeking additional places to take their clients. Because of the limited access available in the upper reaches of the river, the department does not predict any significant impacts to outfitting use due the prohibition on float outfitting from headwaters to Mudd Creek Bridge FAS.

The department predicts that the creation of temporary client days would result in an increase in the amount of outfitted use on the Big Hole River. According to the proposed administrative rules, the temporary days could never exceed two thousand. Furthermore, the temporary days would be created from forfeited client days that are already within the overall cap. Therefore, the creation of temporary client days could not result in outfitted use exceeding the overall authorized cap on client days. The temporary client days would come from those outfitters who reported zero use within the effected period for the five years prior to the adoption of the proposed rules or zero use within the effected period for any two consecutive years following the adoption of the proposed rules. Based on the records maintained by the Board of Outfitters, the department identified 37 outfitters who did not report any use for the years 2000, 2001, 2002, and 2004. The records for the fifth year (2004) are not available yet. Based on the four years of records available, if these 37 “zero-use” outfitters did not report any use in 2004, the proposed administrative rules would result in these 37 outfitters forfeiting all of their client days and they would no longer be authorized to conduct use as an outfitter on the Big Hole River.

The audit conducted by the Board of Outfitters revealed that there are 14 outfitters whose licenses have lapsed or are inactive. The records also show that one outfitter is deceased. The total number of client days that were allocated to these 15 outfitters is 140.

Based on the estimate of forfeited client days that might occur, and based on the number of client days that were allocated to deceased, lapsed, or inactive outfitters, the department estimates that there could be 315 temporary client days

available to one-boat outfitters. The department emphasizes that this estimate is based on incomplete records and could change over time.

3. Effects of Alternative D on Outfitted Use (Big Hole)

The department predicts that if the rules are repealed, including the moratorium on new outfitters and the cap on client days, outfitters who are currently not authorized to operate on the Big Hole River would choose to conduct services there and the number of client days would increase significantly. The department also predicts that the outfitter currently authorized to conduct use on the river would increase their use if the rules were repealed. If the amount of outfitted use were to reach or exceed the amount of outfitted use that occurred in 1998, the department predicts that congestion on the water would cause the recreating public to request a reinstatement of restrictions on outfitters.

D. Predicted Effects on local economy of Beaverhead County

1. Effects of Alternatives A, B, and C (Preferred Alternative) on Local Economy

The department is not aware of any research that has examined the impact the rules might have on a person's decision to visit Beaverhead County. It is difficult to isolate the exact reasons why people choose to recreate or not recreate on these two rivers. Numerous variables can influence these decisions (drought, fire, economy, national security, etc.). Some people argue that the rules discourage people from visiting the area and thus conclude that the rules negatively impact the local economy. They argue that the rules have a direct negative impact on outfitters and that the outfitting industry contributes directly and indirectly to the local economy. Other people argue that the rules maintain the quality of the experience for everyone and thus conclude that the rules promote visitation to the area and are a benefit to the local economy, including the outfitting industry.

There is data that demonstrates the monetary value of tourism in Beaverhead County. According to a survey conducted by the Institute for Tourism and Recreation Research, in 2001-2002, nonresidents spent \$25,910,000 in Beaverhead County, including \$1,454,000 on outfitters. The survey also concluded that 17% of those surveyed identified fishing as the primary attraction in Beaverhead County.

In the absence of information directly related to the impact the rules might have on visitation to the area and associated impacts to the local economy, the department bases its predictions on the assumption that improving or maintaining the quality of the recreation experience benefits all users, and therefore the department predicts that Alternative A, B, or C could lead to more people choosing to recreate in Beaverhead County and consequently more dollars being

spent. Although the restrictions on the rivers could also result in some people choosing not to visit Beaverhead County, and this would mean a loss in revenue for the county's residents, the department predicts that the benefits from retaining the rules would be greater.

2. Effects of Alternative D on Local Economy

Under Alternative D there would no longer be any rules governing recreational use on the Big Hole River. As stated in the previous section, the department does not have information directly related to the impact the rules, or absence of rules, might have on visitation to the area and the associated impacts to the local economy. In the absence of this information, the department bases its predictions on the assumption that improving or maintaining the quality of the recreation experience benefits all users. The department predicts that under Alternative D the amount of use and associated social conflicts would increase over time, and that this would result in fewer people enjoying their recreational experience. Although additional people might choose to visit the area if there are no rules, the department predicts that a greater number of people would choose not to recreate on the Big Hole River if the congestion and social conflicts go unaddressed, and that this would negatively impact the local economy.

VI. Chapter Six: Secondary and Cumulative Impacts, Significance Determination

The department examined each of the alternatives for secondary and cumulative impacts on the effected environment and the relevant issues. The department also assessed each alternative based on the criteria for determining the significance of impacts.

Under Alternatives A, B, and C the department does not predict any secondary or cumulative effects on the fisheries resources. Furthermore, the department reviewed the significance criteria and predicts that the impacts of Alternatives A, B, and C would not be significant. Although studies show that angling pressure does compound the effects of drought on the fisheries, fish mortality due to angling pressure associated with Alternatives A, B, and C would not be severe.

The department did not identify any secondary impacts on the fisheries resources under Alternative D. The department predicts that angling pressure would be the highest under Alternative D. Cumulative impacts associated with increased angling pressure during drought conditions could occur under this alternative. The department does not, however, predict that the increase in angling pressure would be severe.

Alternatives A, B, and C would retain the restrictions on nonresidents and this could have secondary impacts on resident use of the river. This type of restriction could lead to more residents using the river. The department did not identify any cumulative impacts as a result of these alternatives. Alternatives A, B, and C would still provide reasonable opportunities for nonresidents to use the river (the restrictions only apply to nonresident floating). The restrictions on nonresidents are limited in scope, location, and duration. Purposely, they do not prohibit nonresident use of fishing access sites, but rather they limit the types of uses on certain days on certain reaches. The restrictions only apply on weekends. For these reasons the department determined that Alternatives A, B, and C would not have significant impacts on nonresident use of the river. The department did not identify any secondary or cumulative impacts associated with Alternative D. Although the department predicts that nonresident use would increase if the rules were repealed, the department predicts that the greatest impacts would occur mostly during the months of June and July and therefore the duration of the impact would not be severe.

Alternatives A, B, and C would retain rules that prohibit float outfitting on sections of the river at various times. The prohibition would impact the authorized outfitters who want to conduct services on this reach of the river. This could have a cumulative effect on the overall viability of an outfitter's business. A secondary effect could be the inability of outfitters to meet the interests of their clients who want to fish from a boat on a restricted section of the river. Given that these restrictions only apply to certain sections of the rivers and not all of the time, the department believes that there would not be any significant impacts on outfitting as a result of Alternatives A, B, and C. Under Alternative D there would be no rules and therefore the department believes there would be no impacts on outfitting.

Alternatives A, B, and C would place restrictions on nonresidents and outfitters certain days of the week on specified sections of the river. These types of restrictions could have secondary impacts on the local economy if fewer people choose to visit and spend money in the area. This could have a secondary impact on the various businesses that cater to tourists. The department is unable to conclude whether there would be cumulative impacts on the local economy as a result of these alternatives. The rules are viewed positively by a large percentage of those surveyed by the department. The department estimates that the current rules restrict only 1 – 4 % of the recreational potential on these rivers and the department predicts that Alternatives A, B, and C would not cause a significant number of people to not visit the area. For these reasons the department believes that the rules would not result in a significant impact to the local economy. Under Alternative D there would be no rules in place. This could have a secondary impact on the local economy if crowding on the rivers reaches a level that causes people to stay away from the area in the future. Upon reviewing the criteria for significance, the department does not believe the impact would be significant.

Through this environmental analysis, the department determined that none of the effects associated with these alternatives would have a significant impact on the physical environment or human population in the area. An environmental assessment is therefore the appropriate level of analysis for the proposed action and an environmental impact statement is not required.

VII. Chapter Seven: Impacts on Property Rights

MEPA, 75-1-201, MCA, requires the department to include a detailed statement on any regulatory impacts on private property rights that include private, tangible personal property or real property under a regulatory statute adopted pursuant to the police power of the state.

Alternatives A, B, and C would restrict float outfitting at specified times on specified sections of the Beaverhead and Big Hole rivers. These alternatives would also place a moratorium on new outfitters operating on these rivers. Restrictions that limit an outfitter's ability to conduct use on these rivers could affect the outfitter's ability to maintain a viable business. Some people might argue that these restrictions reduce the monetary value of an outfitter's business or impede the ability of an outfitter to sell their business.

The department believes that the proposed action does not impact private property rights because it involves the regulation of angling on the State's waters. Because the proposed action does not place restrictions on private property, MEPA does not require the department to conduct an evaluation of regulatory restrictions on private property (75-1-201, MCA).

Under Alternatives A, B, and C, the rules would restrict nonresident float fishing and float outfitting and therefore the rules place controls on use. The rules would not, however, require mitigation for the use that occurs. The rules would place stipulations on use, e.g. the rules governing nonresidents would stipulate that the restriction applies to float use and only on specified sections of the rivers and on weekends.

VIII. Chapter Eight: List of Agencies with Jurisdiction

The Montana Fish, Wildlife & Parks Commission has jurisdiction over recreational use on rivers and streams in the State of Montana that are legally accessible to the public (MCA 87-1-303(2)). This statutory authority applies to recreational use on the Beaverhead and Big Hole rivers. There are other agencies with jurisdiction over lands adjacent to rivers in Montana, such as the Department of Natural Resources (DNRC), Bureau of Land Management (BLM), and United States Forest Service (USFS). The department often works with these other agencies in order to coordinate river recreation planning efforts. Because the Beaverhead and Big Hole rules apply to use on the water and do not apply to use of lands adjacent to the rivers (other than department-owned access sites), the department did not identify any agencies with overlapping or additional jurisdiction.

IX. Chapter Nine: Agencies or Groups Contacted or Contributing Information

1. Beaverhead Big Hole Citizen Advisory Committee

The Beaverhead Big Hole Citizen Advisory Committee developed recommendations for improving the effectiveness of the rules. The recommendations are the basis for Alternative B and most of Alternative C.

2. Montana Board of Outfitters

The Montana Board of Outfitters licenses fishing outfitters in Montana and maintains records on the outfitting use that occurs on the Beaverhead and Big Hole rivers. The department included information from the Board in this environmental analysis.

X. Chapter Ten: List of EA Preparers

Charlie Sperry	FWP Recreation Management Specialist
Jerry Walker	FWP R-3 Parks Manager
Bruce Rich	FWP R-3 Fisheries Manager
Richard Oswald	FWP R-3 Fisheries Biologist
Bob McFarland	FWP Systems Analyst
Martha Williams	FWP Legal Staff

XI. Chapter Eleven: References

Beaverhead County Resource Use Plan. 2001.

FWP Angler Opinion Survey, Beaverhead and Big Hole Rivers. 2002.

FWP Angling Pressure Surveys. 1989 – 2003.

FWP Annual Fisheries Reports: Beaverhead and Big Hole Rivers. 2000 – 2004.

FWP River User Survey. 1999, 2000, 2002.

Montana Board of Outfitters Data. 1995 – 2003.

Nickerson, N.; Wilton, J.; McBride, M. 2004. Niche News: Beaverhead County Visitor Characteristics. Institute for Tourism and Recreation Research. The University of Montana.

Appendix A: Rules Governing Recreational Use on the Beaverhead and Big Hole Rivers*

*These are the rules that currently apply to the Beaverhead and Big Hole rivers.

Biennial Rule Regarding Beaverhead and Big Hole Rivers

RECREATIONAL WATER USE

a) Sub-Chapter 2

b) Recreational Use of the Beaverhead and Big Hole Rivers

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) "Float fishing" means any fishing from a boat and wade fishing when fishing access is gained by boat.

(2) "Float outfitting" means the operation of any boat for the commercial purpose of float fishing by a fishing guide or fishing outfitter.

(3) "Guide" means a person as defined in 87-37-101, MCA.

(4) "Official access site" means those river access sites that are publicly owned, managed, and maintained as an access point. The following are official access sites on the Big Hole River:

- (a) High Road fishing access site;
- (b) Pennington fishing access site;
- (c) Notch Bottom fishing access site;
- (d) Glen fishing access site;
- (e) Brownes Bridge fishing access site;
- (f) Salmon Fly at Melrose fishing access site;
- (g) Maiden Rock FWP fishing access site;
- (h) Maiden Rock BLM fishing access site;
- (i) Divide fishing access site;
- (j) Power House fishing access site;
- (k) Dewey fishing access site;

- (l) Jerry Creek fishing access site;
- (m) Mallons fishing access site;
- (n) Dickie Bridge fishing access site;
- (o) Eastback BLM fishing access site;
- (p) Sportsman Park fishing access site;
- (q) Fishtrap fishing access site; and
- (r) Mudd Creek Bridge fishing access site.

(5) "Outfitter" means a person as defined in 37-47-101, MCA.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.

(History: 87-1-301, 87-1-303, MCA; IMP, 87-1-303, MCA; NEW, 2003 MAR p. 759, Eff. 4-25-03.)

12.11.205 BEAVERHEAD RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Beaverhead River from Clark Canyon Dam to its mouth shall be allowed and restricted in designated river reaches as follows:

- (a) in the river reach from Clark Canyon Dam to Henneberry fishing access site, each outfitter is limited to launching or use within the reach of a maximum of three boats in any day;
- (b) in the river reach from Henneberry fishing access site to Barretts Diversion, each outfitter is limited to launching or use within the reach of a maximum of three boats in any day;
- (c) in the river reach from Barretts Diversion to Highway 91 South (Tash) Bridge, each outfitter is limited to launching or use within the reach of a maximum of one boat in any day;
- (d) the river reach from Highway 91 South (Tash) Bridge to Selway Bridge is closed to any float outfitting; and
- (e) in the river reach from Selway Bridge to Jessen Park in Twin Bridges, each outfitter is limited to launching or use within the reach of a maximum of one boat in any day.

(2) Float fishing by nonresidents and float outfitting is limited as follows on the Beaverhead River from the third Saturday in May through Labor Day:

(a) each Saturday float fishing by nonresidents and float outfitting is not permitted on the river reach from High Bridge fishing access site to Henneberry fishing access site;

(b) each Sunday float fishing by nonresidents and float outfitting is not permitted on the river reach from Henneberry fishing access site to Pipe Organ fishing access site.

(3) The commission shall repeal or amend this rule on or before May 1, 2005.

(History: 87-1-301, 87-1-303, MCA; IMP, 87-1-303, MCA; NEW, 2003 MAR p. 759, Eff. 4-25-03.)

12.11.210 BIG HOLE RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Big Hole River from its headwaters to High Road fishing access site shall be allowed and restricted by defining seven river zones with one zone closed to float outfitting each day and with the zone that is restricted on Saturday and the zone that is restricted on Sunday also closed to nonresident float fishing. The seven river zones are defined by river reach and restricted each day of the week as follows:

(a) each Sunday, the river reach from Divide fishing access site to Salmon Fly fishing access site is closed to any float fishing by nonresidents and to any float outfitting;

(b) each Monday, the river reach from Salmon Fly fishing access site to Glen fishing access site is closed to any float outfitting;

(c) each Tuesday, the river reach from the headwaters to Fishtrap fishing access site is closed to any float outfitting;

(d) each Wednesday, the river reach from Notch Bottom fishing access site to High Road fishing access site is closed to any float outfitting;

(e) each Thursday, the river reach from Fishtrap fishing access site to Jerry Creek fishing access site is closed to any float outfitting;

(f) each Friday, the river reach from Glen fishing access site to Notch Bottom

fishing access site is closed to any float outfitting; and

(g) each Saturday, the river reach from Jerry Creek fishing access site to Divide fishing access site is closed to any float fishing by nonresidents and to any float outfitting.

(2) All float users, including each float outfitter, are limited to a total of two launches at or near each official access site per day on the Big Hole River. If a boat is launched at an unofficial site the launch will be counted as occurring at the nearest official site in determining the two-boat limit at or near each official access site.

(3) The commission shall repeal or amend this rule on or before May 1, 2005.

(History: 87-1-301, 87-1-303, MCA; IMP, 87-1-303, MCA; NEW, 2003 MAR p. 759, Eff. 4-25-03.)

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER

(1) Only an outfitter with documented use of the Beaverhead River prior to December 31, 1998, may continue to operate on the Beaverhead River, except as provided in (2).

(2) An outfitter who has not documented use on the Beaverhead River prior to December 31, 1998, may not operate on the Beaverhead River unless the outfitter was licensed by the board of outfitters between December 1, 1998, and July 1, 1999, and the outfitter's operating plan included the Beaverhead River.

(3) Each outfitter from July 1 through August 31, inclusive, on the Beaverhead River shall not exceed the number of client days served by the outfitter on the Beaverhead River during those same months for the outfitter's highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.

(4) In the event of the death of an outfitter who has an opportunity to outfit on the Beaverhead River as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supercede the outfitter licensing requirements and authority of the board of outfitters. The transfer of those outfitting businesses that these rules regulate on the Beaverhead

River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

(5) All outfitters given the opportunity to operate on the Beaverhead River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Beaverhead River.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.

(History: 87-1-301, 87-1-303, MCA; IMP, 87-1-303, MCA; NEW, 2003 MAR p. 759, Eff. 4-25-03.)

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER

(1) Only an outfitter with documented use of the Big Hole River prior to December 31, 1998, may continue to operate on the Big Hole River, except as provided in (2).

(2) An outfitter who has not documented use on the Big Hole River prior to December 31, 1998, may not operate on the Big Hole River unless the outfitter was licensed by the board of outfitters between December 1, 1998, and July 1, 1999, and the outfitter's operating plan included the Big Hole River.

(3) Each outfitter from June 1 through July 31, inclusive, on the Big Hole River shall not exceed the number of client days served by the outfitter on the Big Hole River during those same months for the outfitter's highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.

(4) In the event of the death of an outfitter who has an opportunity to outfit on the Big Hole River, as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supercede the outfitter licensing requirements and authority of the board of outfitters. The transfer of those outfitting businesses that these rules regulate on the Big Hole River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

(5) All outfitters given the opportunity to operate on the Big Hole River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Big Hole River.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.
(History: 87-1-301, 87-1-303, MCA; IMP, 87-1-303, MCA; NEW, 2003 MAR p. 759, Eff. 4-25-03.) Fish, Wildlife & Parks Commission

Appendix B: Proposed Administrative Rules*

***Based on CAC Recommendations**

The proposed new rules provide as follows:

NEW RULE I USE OF TEMPORARY CLIENT DAYS ON THE BEAVERHEAD RIVER (1) One-boat outfitters may apply on an annual basis for up to 60 temporary client days on the Beaverhead River.

(2) The department shall allocate available temporary client days to one-boat outfitters based on the applicant's experience outfitting or guiding on the Beaverhead River and the number of years the applicant has been a licensed outfitter or guide in Montana.

(3) When allocating temporary client days, the department shall give preference to applicants who were allocated temporary client days on the Beaverhead River the previous year.

(4) One-boat outfitters may use their assigned temporary client days the entire year with no more than two-thirds of the use occurring during the restricted period from July 1 through August 31.

(5) After a one-boat outfitter has used temporary client days for three consecutive years, the number of temporary client days that the one-boat outfitter may apply for in the following year must not exceed the highest number of temporary client days used by that one-boat outfitter in one of the previous three years.

(6) After a one-boat outfitter has used temporary client days for five consecutive years, the department may remove these temporary client days from the pool and allocate them to that one-boat outfitter for his or her use. These client days are then no longer considered temporary client days.

(7) In addition to temporary client days, one-boat outfitters may acquire nonpool client days from authorized outfitters on the Beaverhead River. They must remain a one-boat outfitter, however, in order to apply for or retain the use of temporary client days.

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

NEW RULE II REVIEW OF RIVER RECREATION RULES FOR BEAVERHEAD RIVER (1) The commission shall review the rules governing recreational use on the Beaverhead River within five years after the adoption of these rules.

(2) The statewide rules governing river recreation management shall apply to future recreation management actions on the Beaverhead River.

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

NEW RULE III USE OF TEMPORARY CLIENT DAYS ON THE BIG HOLE RIVER (1) One-boat outfitters may apply on an annual basis for up to 60 temporary client days on the Big Hole River.

(2) The department shall allocate available temporary client days to one-boat outfitters based on the applicant's experience outfitting or guiding on the Big Hole River and the number of years the applicant has been a licensed outfitter or guide in Montana.

(3) When allocating temporary client days, the department shall give preference to applicants who were allocated temporary client days on the Big Hole River the previous year.

(4) One-boat outfitters may use their assigned temporary client days the entire year with no more than two-thirds of the use occurring during the restricted period from June 1 through July 31.

(5) After a one-boat outfitter has used temporary client days for three consecutive years, the number of temporary client days that the one-boat outfitter may apply for in the following year must not exceed the highest number of temporary client days used by that one-boat outfitter in one of the previous three years.

(6) After a one-boat outfitter has used temporary client days for five consecutive years, the department may remove these temporary client days from the pool and allocate them to the one-boat outfitter for his or her use. The client days are no longer considered temporary client days.

(7) In addition to temporary client days, one-boat outfitters may acquire nonpool client days from authorized outfitters on the Big Hole River. They must remain a one-boat outfitter, however, in order to apply for or retain the use of temporary client days.

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

NEW RULE IV REVIEW OF RIVER RECREATION RULES FOR THE BIG HOLE RIVER (1) The commission shall review the rules governing recreational use on the Big Hole River within five years after the adoption of these rules.

(2) The statewide rules governing river recreation management shall apply to future recreation management actions on the Big Hole River.

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) "Float fishing" means any fishing from a boat and wade fishing when fishing access is gained by boat.

(2) "Float outfitting" means the operation of any boat for the commercial purpose of float fishing by a fishing guide or fishing outfitter.

(3) "Guide" means a person as defined in 87-37-101, MCA.

(4) "Official access site" means those river access sites that are publicly owned, managed, and maintained as an access point. The following are official access sites on the Big Hole River:

- (a) High Road fishing access site;
- (b) Pennington fishing access site;
- (c) Notch Bottom fishing access site;
- (d) Glen fishing access site;
- (e) Brownes Bridge fishing access site;
- (f) Salmon Fly at Melrose fishing access site;
- (g) Maiden Rock FWP fishing access site;
- (h) Maiden Rock BLM fishing access site;
- (i) Divide fishing access site;
- (j) Power House fishing access site;
- (k) Dewey fishing access site;
- (l) Jerry Creek fishing access site;
- (m) Mallons fishing access site;
- (n) Dickie Bridge fishing access site;
- (o) ~~Eastback~~ East Bank BLM fishing access site;
- (p) Sportsman Park fishing access site;
- (q) Fishtrap fishing access site; and
- (r) Mudd Creek Bridge fishing access site.

(5) "Outfitter" means a person as defined in 37-47-101, MCA.

~~(6) The commission shall repeal or amend this rule on or before May 1, 2005.~~

(6) "One-boat outfitter" means an outfitter who operates no more than one boat and is the sole guide.

(7) "Temporary client days" means client days that are available to one-boat outfitters.

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

12.11.205 BEAVERHEAD RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Beaverhead River from Clark Canyon Dam to its mouth shall be allowed and restricted in designated river reaches as follows:

(a) in the river reach from Clark Canyon Dam to Henneberry fishing access site, each outfitter is limited to launching or use within the reach of a maximum of three boats in any day;

(b) in the river reach from Henneberry fishing access site to Barretts Diversion, each outfitter is limited to launching or use within the reach of a maximum of three boats in any day;

(c) in the river reach from Barretts Diversion to ~~Highway 91 South (Tash) Bridge~~ Selway Bridge, each outfitter is limited to launching or use within the reach of a maximum of one boat in any day; and

~~(d) the river reach from Highway 91 South (Tash) Bridge to Selway Bridge is closed to any float outfitting; and~~

~~(e)(d)~~ in the river reach from Selway Bridge to Jessen Park in Twin Bridges, each outfitter is limited to launching or use within the reach of a maximum of one boat in any day.

(2) Float fishing by nonresidents and float outfitting is limited as follows on the Beaverhead River from the third Saturday in May through Labor Day:

(a) each Saturday float fishing by nonresidents and float outfitting is not permitted on the river reach from High Bridge fishing access site to Henneberry fishing access site; and

(b) each Sunday float fishing by nonresidents and float outfitting is not permitted on the river reach from Henneberry fishing access site to Pipe Organ fishing access site.

~~(3) The commission shall repeal or amend this rule on or before May 1, 2005.~~

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

12.11.210 BIG HOLE RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Big Hole River from its headwaters to High Road Notch Bottom fishing access site shall be allowed and restricted by defining ~~seven~~ eight river zones with one zone closed to float outfitting each day and with the zone that is restricted on Saturday and the zone that is restricted on Sunday also closed to nonresident float fishing. The ~~seven~~ eight river zones are defined by river reach and restricted each day of the week as follows:

(a) all seven days of the week, the river reach from the headwaters to Mudd Creek Bridge fishing access site is closed to any float outfitting;

~~(a)(b)~~ each Sunday, the river reach from Divide fishing access site to Salmon Fly fishing access site is closed to any float fishing by nonresidents and to any float outfitting;

~~(b)(c)~~ each Monday, the river reach from Salmon Fly fishing access site to Glen fishing access site is closed to any float outfitting;

~~(c)(d)~~ each Tuesday, the river reach from ~~the headwaters~~ Mudd Creek Bridge fishing access site to Fishtrap fishing access site is closed to any float outfitting;

~~(d)(e)~~ each Wednesday, the river reach from ~~Notch Bottom~~ East Bank BLM fishing access site to ~~High Road~~ Jerry Creek fishing access site is closed to any float outfitting;

~~(e)(f)~~ each Thursday, the river reach from Fishtrap fishing access site to ~~Jerry Creek~~ East Bank BLM fishing access site is closed to any float outfitting;

~~(f)(g)~~ each Friday, the river reach from Glen fishing access site to Notch Bottom fishing access site is closed to any float outfitting; and

~~(g)(h)~~ each Saturday, the river reach from Jerry Creek fishing access site to Divide fishing access site is closed to any float fishing by nonresidents and to any float outfitting.

(2) All float users, including each float outfitter, are limited to a total of two launches at or near each official access site per day on the Big Hole River. If a boat is launched at an unofficial site the launch will be counted as occurring at the nearest official site in determining the two-boat limit at or near each official access site.

~~(3) The commission shall repeal or amend this rule on or before May 1, 2005.~~

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER (1) ~~Only a~~An outfitter with documented use of the Beaverhead River prior to December 31, 1998, may continue to operate on the Beaverhead River, except as provided in ~~(2)(3)~~.

(2) Outfitters authorized to outfit on the Beaverhead River who do not use any of their allocated client days for any two consecutive years, effective [upon the adoption of these rules], or outfitters authorized to outfit on the Beaverhead River who did not use any of their allocated client days for the five years prior to [the adoption of these rules], forfeit all of their client days and are no longer authorized to outfit on the Beaverhead River. The department shall establish a pool of temporary client days that consists of the forfeited client days. The total number of temporary client days, including client days that have been allocated and client days available in the pool, shall not exceed 2,000.

~~(2)(3)~~ An outfitter who has not documented use on the Beaverhead River prior to December 31, 1998, may not operate on the Beaverhead River unless the outfitter was licensed by the board of outfitters between December 1, 1998, and July 1, 1999, and the outfitter's operating plan included the Beaverhead River, except as allowed in [NEW RULE I].

~~(3)(4)~~ Each outfitter from July 1 through August 31, inclusive, on the Beaverhead River shall not exceed the number of client days served by the outfitter on the Beaverhead River during those same months for the outfitter's highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.

~~(4)(5)~~ In the event of the death of an outfitter who has an opportunity to outfit on the Beaverhead River as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not ~~supercede~~ supersede the outfitter licensing requirements and authority of the board of outfitters. The transfer of those outfitting businesses that these rules regulate on the Beaverhead River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

~~(5)~~(6) All outfitters given the opportunity to operate on the Beaverhead River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Beaverhead River.

~~(6) The commission shall repeal or amend this rule on or before May 1, 2005.~~

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) ~~Only a~~An outfitter with documented use of the Big Hole River prior to December 31, 1998, may continue to operate on the Big Hole River, except as provided in ~~(2)~~(3).

(2) Outfitters authorized to outfit on the Big Hole River who do not use any of their allocated client days for any two consecutive years, effective [upon the adoption of these rules], or outfitters authorized to outfit on the Big Hole River who did not use any of their allocated client days for the five years prior to [the adoption of these rules], forfeit all of their client days and are no longer authorized to conduct use on the Big Hole River. The department shall establish a pool of temporary client days that consists of the forfeited client days. The total number of temporary client days, including client days that have been allocated and client days available in the pool, shall not exceed 2,000.

~~(2)~~(3) An outfitter who has not documented use on the Big Hole River prior to December 31, 1998, may not operate on the Big Hole River unless the outfitter was licensed by the board of outfitters between December 1, 1998, and July 1, 1999, and the outfitter's operating plan included the Big Hole River, except as allowed in [NEW RULE III].

~~(3)~~(4) Each outfitter from June 1 through July 31, inclusive, on the Big Hole River shall not exceed the number of client days served by the outfitter on the Big Hole River during those same months for the outfitter's highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.

~~(4)~~(5) In the event of the death of an outfitter who has an opportunity to outfit on the Big Hole River, as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not ~~supercede~~ supersede the outfitter licensing requirements and authority of the board of outfitters. The transfer of those outfitting businesses that these rules regulate on the Big Hole River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

~~(5)~~(6) All outfitters given the opportunity to operate on the Big Hole River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Big Hole River.

~~(6) The commission shall repeal or amend this rule on or before May 1, 2005.~~

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-303, MCA