

Public Comments on the Proposed FWP Consolidated Public Use Rules

Lesley Robinson, Chair, FWP Commission

Dear Chair Robinson,

The Montana Shooting Sports Association is the primary political advocate for Montana gun owners. We offer comment on the newly proposed DFWP rules, those posted at:

<https://rules.mt.gov/gateway/ShowNoticeFile.asp?TID=11776>

What are proposed are "public use rules for all department lands (e.g., state parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas)." In this proposed rule body, public use sites (hereinafter PUS) are defined as " (20) 'Public use sites' means fishing access sites, wildlife management areas, wildlife habitat protection areas, state parks, state parks-affiliated lands, fisheries conservation areas, or any other lands managed by the department for public use."

We restrict our comment specifically to NEW RULE XIII, proposed as follows:

"NEW RULE XIII (ARM 12.12.113) WEAPONS (1) Except as posted by the department, discharge of any weapon as defined in 45-2-101, MCA, such as firearms, explosives, air or gas weapons, paintball guns, arrows from a bow, spears, or spear guns on or over either land or water is prohibited in public use sites.

"(2) The possession, display, carrying, discharge, or use of a firearm in public use sites must be in compliance with Title 45, chapter 8, part 3, MCA."

Subsection (2) is acceptable as is, merely a reference to existing statutes.

Subsection (1) has several serious, probably fatal problems, addressed as follows:

1. Inadequate authority. Because a firearm discharge ban directly affects the right to keep or bear arms that the people have reserved to themselves specifically from government interference, if this may be legally done at all it may only be done by concurrence of the Legislature and the Governor, but not by administrative action of some agency subset of the executive branch. Stated simply, this infringement upon the right to keep and bear arms, if legally possible, is well above the pay grade and authority of the Commission.

Further, because of the recent SCOTUS *Bruen* decision, for a government entity to sustain such a restriction will require showing historical analogs from the founding era, circa 1791. It is unlikely that this can be accomplished.

Also, no argument about seeking or supporting public safety will allow this rule to survive a legal challenge under the new *Bruen* standard. In *Bruen*, SCOTUS very deliberately and clearly prohibited any sort of balancing test to justify government intrusion into Second Amendment rights.

2. Fatal flaw. This rule is also fatally flawed and unenforceable because it makes no exception for legitimate self-defense. That omission flies in the face of Article II, Section 12 of the Montana Constitution.

3. Overbroad. Not all PUS work with one set of rules. E.g., a blanket archery and firearm discharge ban is in

conflict with hunting in wildlife management areas. Despite the desire for uniform rules for different PUS, there is enough difference between circumstances and use to require different rules.

4. Slippery slope. If this rule is adopted, that opens the door for future expansion of PUS. This existing ban would then spread to become additional constitution-free zones.

Recommendation: Delete Section (1) entirely and rely on existing law as stated in Section (2).

Sincerely,

Gary Marbut, president
Montana Shooting Sports Association

Additional discussion

It is easy to imagine scenarios in which this rule would be simply unworkable. Imagine an angry bear attacks people at a PUS. Suppose the last uninjured person present has an adequate firearm for self defense. However, if that person complies with the proposed policy, she will get eaten by the bear. If she violates the rule and shoots the rampaging bear, she will become subject to some form of prosecution and punishment for her rule violation.

But, we would never prosecute somebody for that, you might assure us. Another way to say the same thing is that you expect us to rely on your good will and selective enforcement of the law by allegedly wise and benevolent government employees in the exercise of our liberty.

No. Just no. Properly crafted public policy does not depend on selective enforcement by well-intentioned people for its proper administration.

But, you might argue, without the prohibition in this rule, people could do crazy and dangerous things in a PUS. Just imagine drunken trapshooting at a busy fishing access site, you say.

In First Amendment context, this is called prior restraint and is specifically and staunchly disallowed by the courts. People may not be prohibited the exercise of reserved constitutional rights on the theory that if they are allowed to exercise the right then some one or more are sure to abuse the right. Rather, a person may only be punished afterwards for any actual abuse of right, but not prevented in advance from exercising the right. This principle is one of the hallmarks of a society of free people, as opposed to some form of tyranny.

This principle is sometimes mistakenly explained as, "You can't shout fire in a crowded theater." This statement is flat wrong. A person may be punished afterwards for shouting fire in a crowded theater if there is no fire. However, what is not allowed is to place duct tape over the mouths of every entrant to the theater on the theory that without that restraint some fool will surely and improperly shout "Fire" - that someone will surely abuse the right of free speech if not prohibited with a prior restraint.

But, you may ask, what about that crazy, drunk person dangerously shooting a shotgun at clay pigeons at a fishing access site? Answer: There are already laws (not rules) on the books to punish any conduct that is actually dangerous to others, laws such as for endangerment and assault.

Some might argue that the Commission has a duty to provide safety for people using a PUS. Maybe so, but the

Commission has a superior duty to the Constitution, both state and federal. The Commission may not simply ignore the Constitution that Commissioners have taken an oath to uphold because of pursuit of a lesser duty.

Some legal-minded sophomore will likely offer the argument that the proposed rule only prohibits the discharge of firearms (and other arms), and that the Constitution only protects keeping and bearing arms, but not discharge of arms. This sophomore then must also make the argument that although freedom of the press requires that people be allowed to buy printing presses, it doesn't guarantee that they can actually print anything on these presses. Therefore, the sophomore must claim, freedom of the press is satisfied if people can obtain a printing press, even if they are not allowed to print anything. Of course, this is a ridiculous argument, as is the one that "keep or bear" does not include use such as discharge.

My first concern is, how does this new rule apply to hunting on state forest lands and state school lands? Certainly these lands must be exempt from this new rule or hunting will be prohibited on stated lands. Furthermore, I agree with the points submitted by the Montana Shooting Sports Association. Your proposed new rule is not enforceable because it violates both the US and the State Constitutions and Supreme Court decisions. I strongly propose you follow the suggestions made by the Montana Shooting Sports Association.

Thank you for this opportunity to submit my suggestions.

Sincerely,
Philip Gregory
2320 Mission Trail
Kalispell, Mt 59901

Chair Robinson

I agree with the comment submitted by Montana Shooting Sports Association. That Public Use Site rule should not be enacted.

Lewis Higinbotham
Missoula

Chair Robinson

I agree with the comment submitted by Montana Shooting Sports Association. That Public Use Site rule should not be enacted.

Lewis Higinbotham
Missoula

I agree completely and wholeheartedly with Montana Shooting Sports Association!!!!

Dear Chair Robinson,

I write to offer comment on the newly proposed DFWP rules, those posted at:

<https://rules.mt.gov/gateway/ShowNoticeFile.asp?TID=11776>

Please note that I agree completely with the comment submitted by the Montana Shooting Sports Association (MSSA), of which I am a member. In particular, I am especially concerned about the following:

- NEW RULE XIII Subsection (1) is unconstitutional for many reasons, as explained in the MSSA comment. Please note that I am an attorney licensed in MT as well as in NC, and understand such matters.
- I am a hunter, a hiker and outdoor enthusiast. I have received hours of certified training on bear avoidance and self-defense against bear attacks, including the proper use of firearms in self-defense. The proposed rule would put my life at risk, as well as the lives of others enjoying a PUS, if faced with an attacking bear. This is unacceptable.
- Likewise, as an older, small female, and a CWP holder and certified firearms instructor who has received many hours of training in the legal use of firearms in self-defense, compliance with the proposed rule would render me incapable of defending myself against a human attacker. This is also unacceptable.

For the reasons above and in the comment from MSSA, I respectfully request that Section (1) be deleted in its entirety. Reliance on existing law as stated in Section (2) is sufficient to protect the public.

Thank you for your consideration.

Sincerely,
 Gloria Cabada-Leman
 Gallatin Gateway, MT

I am in absolute agreement to Gary Marbut's arguments against the fire arms public land infringement.

Moreover, and most importantly, this is far above a buerocrats pay grade and such proposals go to the people and not people and agencies such as yourself.

Respectfully Submitted,

Stan J Koslow

Dear FWP,

I am an active FWP volunteer serving as a full time volunteer at Lewis and Clark Caverns as well as donating my time as a hunters safety instructor. I'm proud to be an me of the FWP family. Enjoying State land and the public's ability to participate in the resources FWP manages is a very important part of my daily life.

I am deeply concerned by the proposed rule change that would eliminate the ability to posses and responsibly use firearms, archery and other tools defined as weapons at Public Use Areas.

Our right to keep and bear arms is a constitutional right protected under both the United States Constitution and the Constitution of the Great State of Montana.

Using a back door policy to restrict those rights is not only illegal but it's a disturbing and dangerous example of governmental over reach.

The FWP has always had an integral part in managing the land and resources available to the people of Montana. The possession and legal and responsible use of firearms in those public use areas is a very important part of that management. Completely eliminating that right is a direct attack on the people and culture of Montanans. I'm so very disappointed to see this policy being proposed.

Please boldly take a stand against this policy and continue to effectively support the rights of the people of Montana.

Thank you so much for your time and consideration.

Stay Safe,
Julie Hill
Montana Gun Gal
(406)224-8216
montanagungal@gmail.com

I agree with the comment submitted by the Montana Shooting Sports Association.

Thank you.

Don Doig
PO Box 362
White Sulphur Springs MT 59645

"I agree with the comment submitted by the Montana Shooting Sports Association."

Thank you.

Beau's Detailing & Fab
Justin J. Beauregard
Estimator/Detailer
justinothebeau@hotmail.com
Cell: 406-799-2952

I am in complete agreement with MSSA regarding the proposed rule change. Please dismiss it in its entirety. Sincerely; Clayton Bunch 5 Ghost Horse Trail, Park City MT 59063.

Dear Chair Robinson,
please accept my agreement with the MSSA comments below as testimony to your committee's proposed rule changes.

Thank You
Brian Cayko
Great Falls
406-799-0366

Greetings,
I am in complete agreement with the comments of the Montana Shooting Sports Association concerning Proposed Rule XIII [ARM 12.12.113].
I could not have said it more clearly in 10 pages.
The proposed rule is also ripe for litigation and such litigation would be supported by many, such as myself.

Sincerely,

Martin Moore
Noxon Montana

Dear Montana DNRC Commissioner Region 6 and DNRC Public Use Rules:

1. Agencies do make law that is the job of the Montana legislators.
2. I agree and support the comments below submitted by the Montana Shooting Sports Assoc.

Jack Venrick

I agree with the comment submitted by
the Montana Shooting Sports Association

I and my family wholly endorse and support the comments made by Gary Marbut of The Montana Shooting Sports Association regarding the blatantly illegal proposed "NEW RULE XIII".

This is nothing more than another nazi attempt to subdue and subjugate the citizens of America and Montana to the fascist design to enslave the citizens of America.

For those of you in the DFWP who are not interested in supporting The Constitution Of The United States Of America and The Constitution Of Montana and the freedoms thereby GUARANTEED, may I heartily suggest that you take yourselves to North Korea or China where your totalitarian views will be greatly appreciated.

Sincerely,

Chris Garramon
Choteau Montana

I DISAGREE with the comment submitted by the Montana Shooting Sports Association regarding "public use sites."

Sarah Lester
Missoula

" I agree with the comment submitted by
the Montana Shooting Sports Association".

G.W. Garver

I agree with the comment submitted by
the Montana Shooting Sports Association.

Dear Chair Robinson,

I agree with the comment submitted by
the Montana Shooting Sports Association in regard to the newly
proposed DFWP rules, those posted at:

<https://rules.mt.gov/gateway/ShowNoticeFile.asp?TID=11776>

Best,
Dr. Louis Van Blarigan

Chair Robinson,

Regarding the newly proposed DFWP rules posted at <https://rules.mt.gov/gateway/ShowNoticeFile.asp?TID=11776>, I agree with the comment submitted by the Montana Shooting Sports Association. As a retired deputy sheriff I have absolutely no confidence in individual members of the government to apply this rule with appropriate discretion and I'm opposed to any infringements on my right to self defense.

Regards,
Dave Swaim
Evergreen, Montana

I agree with the comment submitted by the Montana Shooting Sports Association.

The Commission does NOT have the authority to enact this rule.

This rule is fatally flawed, unenforceable, and unconstitutional.

Mike

I respectfully wish to voice my opposition to this proposed new rule..... I agree with the statement submitted by the Montana Sports Shooting Association.

In Him,

Randy

Dear Commission Chair Robinson:

I disagree with the proposed new rules banning firearms usage in "public use sites". I am a Montana citizen and have used a firearm to dispatch a rattlesnake in a public use site, gophers and a rabid skunk. It is my belief these rules would be in violation of our Montana and Federal constitution. I agree with the comments submitted by the Montana Shooting Sports Association.

Thank you for your time.

Sincerely,
Earl Mainwaring
Pony, Montana

I agree with the comment submitted by the Montana Shooting Sports Association
Thank you, Kevin

From Bozeman

I don't know who thought this was a good idea but it was very poorly thought out.

I like to go shooting and it's public property so it means it's mine.

And the people who manage the game animals, I.E the public Hunters, are the ones who need to go shooting on those areas to take care of that problem.

So who's going to manage the problem then, if you can't shoot on public areas?

So I say no to that.

Thank you for your time, Mike Dillon

My comment on new rules proposed by the Montana Department of Fish, Wildlife, and Parks, banning discharge of firearms in a wide array of places labeled as "public use sites."

I agree with the comment submitted by the Montana Shooting Sports Association.

Thank you;

Lloyd

Lloyd C. Phillips
5828 Miller Crk Rd Missoula, MT 59803

Dear Chair Robinson,

I am a long time Montana citizen and a member of the Montana Shooting Sports Association, I fully agree with the statements made by the MSSA concerning the proposed discharge of weapons rules changes by the FWP Commission.

Respectfully,

Rocky Bailey, Corvallis, MT

Dear Chair Robinson,

I agree with all comments submitted by Gary Marbut, president Montana Shooting Sports Association in regards to, <https://rules.mt.gov/gateway/ShowNoticeFile.asp?TID=11776>.

His comments are pasted below.

Thank you,

Jason McKinney
127 Rolling Prairie Way
Three Forks, MT 59752
(406) 285-8596

Lesley Robinson, Chair, Commission, Dear Chair Robinson

"I agree with the comment submitted by the Montana Shooting Sports Association."

Sincerely

Wayne Delzer PE

I oppose the ban on the use of arms in the Public Use Areas because this flies in the face of the SCOTUS decision contained in NYSRPA v Brien while restricting the Constitutional right to keep and beat arms.

There has been activity to restrict the use of public lands throughout the country, and cannot be tolerated in the state of Montana.

I respectfully request that this rule be struck down.

Robert Reese
Plains, MT

I agree with the comment submitted by the Montana Shooting Sports Association.

Wes

Dear Chair Robinson,

I am writing to comment on Montana Administrative Register Notice 12-603 No. 17 dated 09/08/2023. Gary Marbut, President Montana Shooting Sports Association, has already submitted his comments on this rule and I completely agree with him. His comments are included below for your convenience.

Sincerely,

William White
Kalispell, Montana

I agree with the comment submitted by the Montana Shooting Sports Association."

Dear Sir,
I totally agree with the comment submitted by the Montana Shooting Sports Association.

Neto Garcia
Bozeman, MT

The proposed new rule changes are very problematic.
I agree with all the statements made by Gary Marbut of the Montana Shooting Sports Association.
Please feel free to contact me.
Roy Brown

In regard to this proposal, I agree with the comments submitted by the Montana Shooting Sports Association.

Thank you;

Terri H. Phillips

Terri H. Phillips
5828 Miller Creek Rd
Missoula, MT 59803
Phone (406) 251- 5730
thpbox@aol.com

Dear Chair Robinson,

I have read the proposed Public Use Rules and am in complete agreement with the position of the Montana Shooting Sports Assc.

Thank you,

David Broberg
Cut Bank, MT

Dear Chair Robinson,

I am opposed to the proposed New rules proposed by the Montana Fish, Wildlife, and Parks, banning discharge of firearms in a wide array of places labeled as "public use sites."

I doubt the DFWP has the Federal or State constitutional authority to take such a broad measure.

There is no exception in this proposal for defense of life or property which is particularly disturbing.

The whole proposal seems quite overly broad in addressing an undefined problem.

I also oppose including under prohibited conduct "arguing with" any state official. This is a ridiculous suppression of the First Amendment Right of free speech.

I urge the Department to delete these proposed rules and focus on targeted educational campaigns to address any specific problem.

Sincerely,

*Charles D. Sunderlin
183 Black Bear Lane
Bigfork, MT 59911*

I agree with the comment submitted by the Montana Shooting Sports Association.

(see below)

Thank you,
Thomas Millett
Marion, MT

Dear Chair Robinson:

I write to you today regarding the new rules proposed by the Department of Fish, Wildlife, and Parks, banning discharge of firearms in "public use sites."

I come with a background that I would suggest provides qualification to present an opinion on this matter.

My degree is in Criminal Justice, and have fairly extensively studies of Constitutional Law. I was a deputy sheriff for five years. I was on the Security Panel of the International Civil Aviation Organization for seven years, and active in managerial roles in counter-terrorism and aviation security for 38 years, both US and international, and have been involved with US government law enforcement agencies for many years, often in an advisory capacity.

Firearms and their responsible use were, of course, a key part of our considerations in many of our deliberations, proposals, and determinations.

I do not write the above paragraphs to say, "Hey, look what I have done", but to provide you with an encapsulation of why I hold the perspectives that I do.

Rather than going into detailed reasons for having strong and varied objections to the proposed rule change, may I say that I agree in total with the perspectives as outlined in the extensive comments submitted by the Montana Shooting Sports Association.

I respectfully request that you consider the input from the MSSA in your decisions.

Yours sincerely,

Peter T Reiss

Dear Chair Robinson,

1. I agree with the comment submitted by the Montana Shooting Sports Association (MSSA). It is pasted at the bottom below my name for reference or confirmation.

2. I would like to comment that rules (laws) are a substitute for good judgement. We already have basic laws for reckless endangerment and property damage. There is no reason for anyone to author more laws specific to public use sites.

No person could ever know all the laws we already have...which leaves us to act with good judgement. I am told the US code is over 60,000 pages. I can't even find details on the size of the Montana Codes Annotated.

3. Please answer the following question:

How many pages is the Montana Code Annotated?

If you can answer that question, please tell me the size of the pages and the font size so I can have some perspective.

Sincerely,

Mark McMillin

1605 S 10th W

Missoula, MT 59801

406-370-2468

Dear Chair Robinson,

I agree with the the comment submitted by the Montana Shooting Sports Association below.

Dear Chair Robinson,

The Montana Shooting Sports Association is the primary political advocate for Montana gun owners. We offer comment on the newly proposed DFWP rules, those posted at:

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We restrict our comment specifically to NEW RULE XIII, proposed as follows:

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"(2) The possession, display, carrying, discharge, or use of a firearm in public use sites must be in compliance with Title 45, chapter 8, part 3, MCA."

Subsection (2) is acceptable as is, merely a reference to existing statutes.

Subsection (1) has several serious, probably fatal problems, addressed as follows:

1. Inadequate authority. Because a firearm discharge ban directly affects the right to keep or bear arms that the people have reserved to themselves specifically from government interference, if this may be legally done at all it may only be done by concurrence of the Legislature and the Governor, but not by administrative action of some agency subset of the executive branch. Stated simply, this infringement upon the right to keep and bear arms, if legally possible, is well above the pay grade and authority of the Commission.

Further, because of the recent SCOTUS Bruen decision, for a government entity to sustain such a restriction will require showing historical analogs from the founding era, circa 1791. It is unlikely that this can be accomplished.

Also, no argument about seeking or supporting public safety will allow this rule to survive a legal challenge under the new Bruen standard.

In Bruen, SCOTUS very deliberately and clearly prohibited any sort of balancing test to justify government intrusion into Second Amendment rights.

2. Fatal flaw. This rule is also fatally flawed and unenforceable because it makes no exception for legitimate self-defense. That omission flies in the face of Article II, Section 12 of the Montana Constitution.

3. Overbroad. Not all PUS work with one set of rules. E.g., a blanket archery and firearm discharge ban is in conflict with hunting in wildlife management areas. Despite the desire for uniform rules for different PUS, there is enough difference between circumstances and use to require different rules.

4. Slippery slope. If this rule is adopted, that opens the door for future expansion of PUS. This existing ban would then spread to become additional constitution-free zones.

Recommendation: Delete Section (1) entirely and rely on existing law as stated in Section (2).

Sincerely,

Gary Marbut, president
Montana Shooting Sports Association

Additional discussion

It is easy to imagine scenarios in which this rule would be simply unworkable. Imagine an angry bear attacks people at a PUS. Suppose the last uninjured person present has an adequate firearm for self defense. However, if that person complies with the proposed policy, she will get eaten by the bear. If she violates the rule and shoots the rampaging bear, she will become subject to some form of prosecution and punishment for her rule violation.

But, we would never prosecute somebody for that, you might assure us.

Another way to say the same thing is that you expect us to rely on your good will and selective enforcement of the law by allegedly wise and benevolent government employees in the exercise of our liberty.

No. Just no. Properly crafted public policy does not depend on selective enforcement by well-intentioned people for its proper administration.

But, you might argue, without the prohibition in this rule, people could do crazy and dangerous things in a PUS. Just imagine drunken trapshooting at a busy fishing access site, you say.

In First Amendment context, this is called prior restraint and is specifically and staunchly disallowed by the courts. People may not be prohibited the exercise of reserved constitutional rights on the theory that if they are allowed to exercise the right then some one or more are sure to abuse the right. Rather, a person may only be punished afterwards for any actual abuse of right, but not prevented in advance from exercising the right. This principle is one of the hallmarks of a society of free people, as opposed to some form of tyranny.

This principle is sometimes mistakenly explained as, "You can't shout fire in a crowded theater." This statement is flat wrong. A person may be punished afterwards for shouting fire in a crowded theater if there is no fire. However, what is not allowed is to place duct tape over the mouths of every entrant to the theater on the theory that without that restraint some fool will surely and improperly shout "Fire" - that someone will surely abuse the right of free speech if not prohibited with a prior restraint.

But, you may ask, what about that crazy, drunk person dangerously shooting a shotgun at clay pigeons at a fishing access site? Answer:

There are already laws (not rules) on the books to punish any conduct that is actually dangerous to others, laws such as for endangerment and assault.

Some might argue that the Commission has a duty to provide safety for people using a PUS. Maybe so, but the Commission has a superior duty to the Constitution, both state and federal. The Commission may not simply ignore the Constitution that Commissioners have taken an oath to uphold because of pursuit of a lesser duty.

Some legal-minded sophomore will likely offer the argument that the proposed rule only prohibits the discharge of firearms (and other arms), and that the Constitution only protects keeping and bearing arms, but not discharge of arms. This sophomore then must also make the argument that although freedom of the press requires that people be allowed to buy printing presses, it doesn't guarantee that they can actually print anything on these presses. Therefore, the sophomore must claim, freedom of the press is satisfied if people can obtain a printing press, even if they are not allowed to print anything. Of course, this is a ridiculous argument, as is the one that "keep or bear" does not include use such as discharge.

Concerned,
Dr. David F. Simpson
POB 7, 39 Birdtail Creek Road
Ft. Shaw, MT 59443

I agree with the comment submitted by the Montana Shooting Sports Association. Please be sure to read it a second time.

I would add and amend that without subsection 2, which offends Montana gun law, the rule merely states that Montana gun laws be respected.

This is redundancy. Strike the proposed rule XIII.

This also illustrates that subsection 1 MUST be removed, so that the rule isn't void for its logical invalidity (it makes no sense because the proposed rule violates the proposed rule). That sort of thing is obviously legally void.

> Dear Chair Robinson,

> I agree with the comment submitted by
> the Montana Shooting Sports Association.

Daryl Reames

I agree with the comment submitted by the Montana Shooting Sports Association.
Dear Commissioners,

I have read the proposed rule change concerning discharging firearms, et. al., at Public Use Sites (PUS). I have also read the opinion on such rule changes submitted to the Commission by the Montana Shooting Sports Association (MSSA). I completely agree with MSSA's opinion and think that the Commission proposing rules that are in conflict with the US and Montana Constitutions is a step way too big for an Executive Branch agency.

Please scrap your ideas to limit rights of Montanan's via this administrative action. If you believe these new rules are necessary, I encourage you to get a Montana Congressman to submit it as a bill and try to get it through the Legislature and then past the Executive Branch (the Governor) before it will get litigated by the courts, which it undoubtedly will.

Sincerely,
Dr. Steven M. Mazur
Chiropractor

Dear Chair Robinson,

We strongly object to the proposed New Rule XIII (ARM 12.12.113) WEAPONS Subsection (1).

1. This rule exceeds the authority of FWP under the U.S. and Montana constitutions regarding the people's right to keep and bear arms.
2. There is no exception for discharging weapons for lawful self-defense.
3. It is overbroad with no allowance for lawful hunting in, for example, WMAs.

We urge you to delete Section (1) entirely and rely on existing law as stated in Section (2).

Thank you.

Robert Hall and Penny Oliver
Bozeman

Greetings Chair Robinson,

I support and agree with the comment submitted by the Montana Shooting Sports Association.

Very sincerely,

David L. Arbenz
DLArbenz@CenturyLink.net

The commission does not have the authority to rescind citizens 2nd amendment rights under the US Constitution. This rule will not stand up in a court of law therefore it needs to be deleted from proposed rule changes which by the way are overreaching and onerous to the extreme.

Please rethink these proposed rule changes and keep In mind not every citizen in Montana is a criminal but these rule changes would go a long way towards making every citizen a criminal.

Howard Morkert
Trout Creek, MT.

Friends of Two Rivers, Inc. is a grassroots organization based in Bonner/Milltown, Montana, with history of strong support for the creation and sound management of state parks. We strongly oppose NEW RULE XIV (ARM 12.12.114) "(2) State Parks are open to all commission-established hunting seasons unless prohibited by the board." The rule should prohibit hunting in state parks unless specifically permitted by the board.

Gary Matson, Secretary/Treasurer
Friends of Two Rivers

Good morning,

I object to the proposed rule XIII. I concur with the comments submitted by the Montana Shooting Sports Association.

They present my feelings about this subject better than I can express.

V/R

Tim Sowa
2665 Colt DR
East Helena, MT. 59635

Subsection 1 should not be included in the rule. It is not needed (state law already covers inappropriate use of firearms), and an administrative overreach. I support the statement of the Montana Shooting Sports Association on the rule, which goes into more detail.

-Marshall Pierce

Dear Chair Robinson,

As a MT local bowhunter, duck hunter, deer rifle hunter I am strongly opposed to "NEW RULE XIII (ARM 12.12.113) WEAPONS (1) Except as posted by the department, discharge of any weapon as defined in 45-2-101, MCA, such as firearms, explosives, air or gas weapons, paintball guns, arrows from a bow, spears, or spear guns on or over either land or water is prohibited in public use sites."

This is directly an attack towards ethical and legal hunting in multiple places, not only near fish access sites. Please, do not let this regulation move further as it would seriously hamper local hunting and recreation activities.

In addition, I believe that the comments made by the Montana Shooting Sports Association further strengthen the position that this is a flawed regulation that needs to be stopped and I also support Montana Shooting Sports Association in their comments.

Sincerely
Kjell Hedstrom
Missoula, MT.

Dear Commissioner,
I strongly agree with MSSA ON THIS ISSUE.

I agree with the comment submitted by the Montana Shooting Sports Association.

John Vining
Darby, Montana

Hello ~

I have copied the response from Gary Marbut of the Montana Shooting Sports Association (below) and I am in total agreement with his analysis and opinions re: the proposed weapons regulations.

Thank you. Sincerely ~

John R. Mercer
11807 Hwy 261
Sidney MT 59270
(406-489-1776)

I agree with the comments submitted by Montana Shooting Sports Association.

Matthew Mozingo
406-529-5862

As a professional competitive shotgun shooter, an avid hunter (who is planning to visit Montana within the next two weeks to hunt), an employee of the hunting/firearm industry and a concerned citizen who supports the second amendment, I ask that you remove Subsection 1 from your New RULE XIII.

While visiting your state I plan to be armed at all times for hunting and personal protection. If in a moment where my life is threatened, I plan to take swift action as needed to protect my life and the life of my friend who will be travelling with me. Burdening us with regulations that do not allow discharge of a firearm in specific areas is wrong for a variety of reasons:

Inadequate authority: laws pertaining to constitutional rights such as the second amendment must be enacted by the executive branch not by an agency that is a subset of the executive branch.

Self-Defense Exception: There is no exception in this rule for legitimate self-defense.

Broad by Definition: A blanket policy can't work for all public use areas. There are many different factors that make public use areas different.

Public Safety: This will have no (or relatively no) positive impact. Laws are already in place for dangerously handling firearms.

The Juice Isn't Worth The Squeeze: This is a slippery slope. This opens the door for future hunter unfriendly rules to pass. I personally considered cancelling my trip when I read about this rule. Other hunters will feel the same way, especially if more similar rules pass. Hunting brings in ~\$288 Million in revenue in your state. I firmly believe that amount will be drastically reduced if this rule continues to be in place and if any further ones follow it.

Please feel free to reach out with any questions or concerns.

Thanks,

Ryan Smithart

Ryan Smithart

Wholesale Marketing Specialist

October 10, 2022

Charlie Sperry

Montana Fish, Wildlife and Parks

P.O. Box 200701

Helena, Montana 59620-0701

fwppublicuserules@mt.gov

Re: CTVA comments on Consolidated Set of Public Use Rules Proposed for all FWP Lands

Dear Charlie and Project Team,

We have assembled the following comments, information and issues from our members and other motorized recreationists for the project record. We appreciate the opportunity to provide our comments for the proposed Consolidated Set of Public Use Rules Proposed for all FWP Lands. We enjoy riding our OHVs on primitive trails and roads in our public lands. All multiple-use land managed by the Montana Department of Fish, Wildlife and Parks provides a significant source of these recreational opportunities. Moreover, the pandemic has reconnected visitors to our public lands as a critical way to counter the stresses of ever day life. Ninety-eight percent of these visitors are looking for multiple-use activities. We are passionate about OHV recreation for the following reasons:

Enjoyment and Rewards of OHV Recreation

- Opportunity for a recreational experience for all types of people.
- Opportunity to strengthen family relationships.
- Opportunity to experience and respect the natural environment.
- Opportunity to participate in a healthy and enjoyable sport.
- Opportunity for relief from the pandemic and stress.
- Opportunity to experience a variety of opportunities and challenges.
- Camaraderie and exchange of experiences.
- We like to build and maintain trails for use by everyone.
- We enjoy observing flora, fauna, and landscapes.
- For the adventure and “flow” of it.

Acknowledged Responsibilities of Motorized Visitors

- Responsibility to respect and preserve the natural environment. We are practical environmentalists who believe in a reasonable balance between the protection of the natural environment and the human environment.
- Responsibility to respect all visitors.
- Responsibility to use vehicles in a proper manner and in designated places.

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- Responsibility to work with land, resource, and recreation managers. We are committed to resolving issues through problem solving and not closures.
- Responsibility to educate the public on the responsible use of motorized vehicles on public lands.

Motorized recreation represents and supports many different visitor interests. Supporting motorized recreation is the best way to support diversity of uses and multiple-use. This over-arching fact should be adequately addressed in the purpose and need and adequately considered in the analysis and decision. We are representative of the needs of most visitors who recreate on public lands but may not be organized with a collective voice to comment on their needs during the public input process. These independent multiple-use recreationists include visitors who use motorized routes for family outings and camping trips, weekend drives, mountain biking, sightseeing, exploring, picnicking, hiking, ranching and grazing, rock climbing, skiing, camping, hunting, RVs, shooting targets, timber harvesting, fishing, viewing wildlife, snowmobiling, accessing patented mining claims, and collecting firewood, natural foods, rocks, etc. Mountain bikers have been observed to prefer OHV trails because we clear and maintain the trails and the trails have a desirable surface for biking.

Multiple-use also provides for the needs of physically challenged visitors including the elderly and veterans who must use wheeled vehicles to visit public lands. These multiple-use visitors use roads and motorized trails for their recreational purposes and the preferred alternative and decision should adequately consider motorized designations serve many recreation activities, not just recreational trail riding. We have observed and documented that 98% of the visitors to our public lands are represented by the activities discussed above (24 years of observation data). Ninety-eight percent of the visitors are there to enjoy activities associated with motorized access and motorized recreation.

COMMENTS

The 2020-2024 Statewide Comprehensive Outdoor Recreation Plan (SCORP) identified six high-level goals and recommendations:

- *Promote outdoor recreation opportunities for all Montanans* –
- Enhance public access to outdoor recreation resources and facilities-
- *Support the economic vitality of communities and the state-*
- *Improve quality of life through outdoor recreation experiences* –
- *Adapt outdoor recreation for a changing environment* –
- *Honor Montana’s outdoor legacy* –

(<https://leg.mt.gov/content/Committees/Interim/2019-2020/EQC/Meetings/Jan-2020/scorp-2020-2024.pdf>)

SCORP strongly recommends the enhancement of multiple-use recreation opportunities as the overarching goal and recommendation for management of public land in Montana. **We are extremely concerned that the proposed rules represent additional restrictions on access and use of public lands which is contrary to the needs of the public and the direction recommended by SCORP. The proposed rules must be re-written to address this significant deficiency.** *We are a locally supported association whose purpose is to preserve trails for all recreationists through responsible environmental protection and education. Page 3 of 7*

Significant issues with the proposed rules include:

1. The proposed rules will reduce and/or restrict use and access on public land and are therefore in conflict with the 2020-2024 Statewide Comprehensive Outdoor Recreation Plan.
2. The proposed rules significantly affect the human environment and should follow all of the requirements of the Montana Environmental Policy act.
3. The proposed rule changes default access from an “open unless posted closed” to a “closed unless posted open”. This proposed change represents a major restriction on public access and use and must be considered a significant action under MEPA.
4. The agency must adequately consider all of the management trends that have restricted and impacted public use of public lands as part of the rules process.
 - a. Current public land use management is characterized by significant closures of access and recreation opportunities including motorized opportunities.
 - b. This significant trend has occurred over the past 40 years,
 - c. There is a significant negative cumulative impact on public access and recreation associated with the closure/restriction trend,
 - d. As currently written the proposed rules would add to the significant negative cumulative impact on public access and recreation by producing further closures and restrictions.
 - e. The rules should be re-written to mitigate the significant negative cumulative impact of all closures/restrictions on public access and recreation.
- 5. The agency should adequately consider significant issues and questions including: a. How the public is affected if signage at State Parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas is missing, stolen, or damaged?

— b. The proposed rules do not include an adequate public education program to go along with the rule change. i. The proposed rule change does not provide a reasonable way for the user to know their responsibility and whether they are in conformance with the new rules.

— ii. The proposed rules must include an adequate public education program including user-friendly web pages with maps and information providing all requirements for each area administered by the rule.

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— iii. The same rule education information needs to be provided in paper form for those not able to access and use the web resources.

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— c. Who is responsible for replacing signs or making sure all sites are signed?

— d. Does FWP have the capacity to monitor these sites for proper signage and maintain them? i. Is the agency setting these rules up for failure?

— ii. The USFS has found that it does not have the ability to adequately administer a closed unless posted open policy.

— iii. The public has suffered significantly because of the USFS closed unless posted open requirement from both lost recreation opportunities and unjust enforcement actions.

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— e. What is the projected cost to replace all the current signs and add all of the needed signs? i. Has this cost been budgeted for?

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6. Rule 4(e): “immediate vicinity” needs to be reasonably defined and is not adequately defined in the proposed rules.

7. Rule 5(2): FWP can increase or set fees without public comment or input which is not reasonable for a public agency.

8. Rule 5(6): FWP should be required to solicit public input, and issue public notice and a press release any time special regulations are imposed in special wildlife management areas. This important requirement for a public agency is missing from the rules.

9. Rule 6 (d): The word “permanent” should be inserted between “any” and “structure” in first line.

10. Rule 5 (f): Using a mineral detection device to explore for recreation purposes is a pastime for many and should not be restricted if the individuals are not mining, digging, etc. This restriction is not reasonable and consistent with the enhancement of recreation opportunities recommended by SCORP.

11. Rule 7 (h) and Rule 9 (b) (ii) state “100 yards” and “200 yards” and then Rule 9 (b) (iii) states “one quarter mile” and “two hundred yards” and then Rule 9 (c) states “one hundred yards” and “one quarter mile”. a. All these different distances are confusing to the public.

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b. The rules must be clear and understandable in order to be accepted by the public and to be enforceable.

c. The proposed 50 yards should be increased and made consistent throughout the rules.

12. Rule 8 (2): It is not necessary to state “allowed” in a rule that is listing “prohibited” uses. Rule 8 (1) already states “Unless otherwise posted”. a. This is one of many examples of language in the rule that is confusing and will lead to misunderstandings and misinterpretation.

b. This rule is unnecessary and should be deleted.

13. Rule 10 (g): It would be reasonable to allow burning of paper products and other items in a fire pit if the fire pit was required to be clean of these materials upon leaving the site. We would recommend alternative language based on the “requirement to clean all trash out of firepit before leaving site.”

14. Rule 13 (1): The definition of “weapon” in 45-2-101 only states “capable of being used to produce death or serious bodily injury”. a. We would suggest listing only those items restricted and not reference MCA 45-2-101.

b. This rule prohibits use unless the department post signage to allow the use.

c. Closed unless posted open imposes significant signing requirements and restrictions on the public.

d. This language is contrary to the direction given in SCORP to enhance recreation on public lands.

15. Rule 17 (1): FWP should not restrict “unmanned” vehicle operation except where required on a site-specific basis. a. This use should be an allowed unless the department posts a closure sign.

b. Many of these recreation sites are desirable for this type of use and the public has a great need for this type of use.

c. The department is proposing to move to a “closed unless posted open” rather than “open unless posted closed” approach and all of the significant signing requirements and restrictions on the public that go along with this proposed approach.

d. The proposed rule is not consistent with the goals and recommendations found in SCORP and must be modified to be consistent with the direction provided in SCORP.

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16. Rule 19 (4) (b): It is not reasonable for the public to be significantly impacted because the department does not have capacity to manage an event or activity. a. Again, a lack of FWP support for the needs of the public would be contrary to SCORP.

b. Goals for FWP should include serving the needs of the widest possible cross-section of the public.

c. FWP should serve all of the needs of the public not just fish and wildlife interests.

— d. The proposed rules should be modified to provide significant consideration of the purpose and needs of the FWP Parks division and the programs that it provides including the OHV and Snowmobile programs. i. The proposed rules should adequately mitigate for the lack of adequate support suffered by programs in the Parks division in the past including the OHV and Snowmobile programs.

— e. Restricting an event or activity in a specific recreation area because of lack of capacity is not reasonable and should not be in Rule 19 or anywhere else in these rules.

17. New Rule 20 (2): It is unreasonable to define “public assembly” as “one or more individuals.” a. This rule would require a permit to talk, as an individual, to another individual at a public site.

b. We are extremely concerned about the heavy-handed approach that this sort of language represents.

c. This rule is in conflict with basic rights and must be amended.

18. New Rule 21(1): “Temporary” should be defined. a. There should be a time frame for when the temporary rule must be reviewed, and the steps taken by the department to mitigate the dangerous condition.

19. Note that the link provided in the public notice email (copied below) does not work. This important link must be corrected, and the comment period should be extended so that the public has an adequate amount of time to access, review and comment on the draft rules document.

<https://fwp.mt.gov/public-notices/news/2023/sept/0908-notice-of-public-hearing-for-adoption-and-repeal-of-arm-rules-pertaining-to-the-public-use-rules-of-fwp-lands> *We are a locally supported association whose purpose is to preserve trails for all recreationists through responsible environmental protection and education. Page 7 of 7*

We are looking forward to your consideration of these significant issues and your use of them to develop a reasonable Pro-Recreation Alternative for the Consolidated Set of Public Use Rules Proposed for all FWP Lands.

Thank you for considering our comments and issues.

Sincerely,

/s/ CTVA Action Committee on behalf of our 240 members and their families and friends
Capital Trail Vehicle Association (CTVA)1

1 CTVA members also belong to Montana Trail Vehicle Riders Association (mtvra.com), Blue Ribbon Coalition (sharetrails.org), New Mexico Off highway Vehicle Alliance (nmohva.org), American Motorcycle Association (ama-cycle.org), Citizens for Balanced Use (citizensforbalanceduse.com), Montana 4X4 Association, Inc. (m4x4a.org), Snowmobile Alliance of Western States (snowmobile-alliance.org), and United Four Wheel Drive Association (ufwda.org)

P.O. Box 5295
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Contacts:

Mike Sedlock, President

Jody Loomis, VP

Doug Abelin

Ken Salo

Parks and Recreation Board

October 10th, 2023

To whom it may concern,

Please accept my comments on the proposed FWP rule changes that the Board is currently reviewing.

If I read the language correctly public land is closed unless it is posted as being open? How can this be? It is public land. Maybe I am mistaken on how I am reading this, but it doesn't seem right that this agency can just decide to open or close public land with signage without consulting the general public. If this is the case, why is there not more public notice and more opportunity for public comment? I have seen no press releases or news media indicating any of these changes. FWP's own website indicates the "page is not found". The public is not being made aware of these new rule changes. These new rule changes affect all outdoor recreationists and those of us that use these public lands. Please vote against public lands being closed unless posted open. FWP should be in the best interest of serving the public and ensuring access for public lands of which they have jurisdiction over, not closing them. If they are going to continue to rewrite the rules that are not in the best interest of the public what is the point of even having a Parks and Recreation Board to represent the people? If all the decision-making authority is being placed under one individual the director, then why even have a board that is intended to make decisions in the best interest of the public? They may as well dissolve the board and grant FWP the authority to do what they please with public land. Please vote against these new rule changes as the public has not been properly informed of these new rules.

Kevin Horne
410-1984

Charlie Sperry
Montana Fish, Wildlife & Parks
P.O. Box 200701
Helena, MT, 59602-0701

Comments from Citizens for Balanced Use on the new proposed rules.

It seems to me the new rules VII are changing from an "open unless posted closed" to a "closed unless posted open". What if signage at State Parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas is missing, stolen, or damaged? Is it the responsibility for the user to know what is allowed? Who is responsible for replacing signs or making sure all sites are signed? Does

FWP have the capacity to monitor these sites for proper signage? What is the projected cost to replace all the current signs?

Closed unless posted open is a major policy change and should not be left up to the agency but rather should be only considered by legislative action. The FWP does not have the capacity to implement a major change such as this and the cost would be significant. **I would request a fiscal note on this rule change before adopted.**

If this policy of closed unless posted open goes forward the FWP must provide a comprehensive map, of all FWP and state-owned lands and access sites, to the public of all open areas which must be updated annually.

Rule 4(e): Define immediate vicinity

Rule 5(2): Looks like FWP can increase or set fees without public comment or input.

Rule 5(6): FWP should be required to issue public notice or a press release any time special regulations are imposed in special wildlife management areas.

Rule 6 (d): Insert "permanent" between "any" and "structure" inn first line.

Rule 5 (f): This restriction seems unreasonable. To just being using a mineral detection device and not mining, digging, etc. should not be restricted.

Rule 7 (h): 50 yards should be increased. If you look at Rule 9 (b) (ii) it states "100 yards" and "200 yards" and then Rule 9 (b) (iii) states "one quarter mile" and "two hundred yards" and then Rule 9 (c) states "one hundred yards" and "one quarter mile". All these different distances are confusing to the public. The rules should be clear and understandable, also enforceable.

Rule 8 (2): Delete this rule. Its not necessary to state "allowed" in a rule that is listing "prohibited" uses. Rule 8 (1) already states "Unless otherwise posted".

Rule 10 (g): I don't think there is a problem with burning paper products and even glass and aluminum cans in a fire pit if the fire pit was required to be clean of these materials upon leaving the site. I would suggest language to reflect the "requirement to clean all trash out of firepit before leaving site."

Rule 13 (1): The definition of "weapon" in 45-2-101 only states "capable of being used to produce death or serious bodily injury". I would suggest listing only those items restricted and not reference MCA 45-2-101. And again, this rule prohibits use unless the department post signage to allow the use. (closed unless posted open)

Rule 17 (1): FWP should not restrict "unmanned" vehicle operation except on a site-specific basis. This should be an allowed use unless the department posts a closure sign. Many of these recreation sites are desirable for this type of use. Again, the department is moving to a "closed unless posted open" rather than "open unless posted closed".

Rule 19 (4) (b): Why should the public suffer because the department does not have capacity to manage an event or activity. Isn't FWP in the business of serving the public? Restricting an event or activity in a specific recreation area because of lack of capacity is not acceptable and should not be in Rule 19 or anywhere else in these rules.

New Rule 20 (2): Are you kidding me? A "public assembly" is defined as "**one or more individuals.**"

This rule is saying that I need a permit to even talk, as an individual, and use a public use site. This rule is unreasonable and should be amended.

New Rule 21(1): "Temporary" should be defined. It should have a time period when the temporary rule must be reviewed and if the department has taken steps to mitigate the dangerous condition.

Thank you,
Kerry White

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