

BEFORE THE DEPARTMENT OF MONTANA FISH, WILDLIFE AND PARKS OF THE  
STATE OF MONTANA

In the matter of the amendment of ARMs ) RULEMAKING PETITION  
12.11.610, 12.11.620 and New Rule(s) )  
pertaining to E-Assist Devices] )  
)

TO: All Concerned Persons

1. Petitioner's name and address is:

James v. Crews  
316 9<sup>th</sup> Street  
Stevensville, Montana, 59870.

2. The petitioner is affected by current rules ARM 12.11.610 and ARM 12.11.620 in that the use of motorboats on the Bitterroot and Clark Fork Rivers are severely restricted to specific dates coupled with horsepower restrictions and that the current adopted ARMs use the term “motorized watercraft” which is all encompassing to include any kayak or other watercraft that may utilize as a secondary means of propulsion, such as an electric motor or E-Assist Device that may be needed by any individual particularly those with a disability or other medical condition.

3. The current rules are overly restrictive on the Citizens of the State of Montana and recreational visitors.

- They prohibit the use of electrically augmented water craft on those rivers except during the specific time periods.
- The dates allotted do not allow for a reasonable expectation of enjoyable recreation on the river due to temperature and weather conditions.
- The Commission has specified that motorized watercraft may only be used on the Bitterroot River from 1 October to 31 January.
- The specified time frames are not conducive to quality recreational activities for young family members, nor those with physical disabilities or mobility issues.
- The Commission’s Rules do not accommodate anyone with a mobility issue and that the commission itself states that the rules were adopted to reduce speed and noise while providing fall hunting opportunities and access to lands which discriminates against all other River Users.

As an E-Assist or back up secondary electrical propulsive device on a kayak or paddle board:

- Generates no wake
- Provides for no more speed that one can safely propel a human powered watercraft
- Generates extremely low noise levels
- Creates no danger due to excessive speed
- Noise levels transmitted to the water river bottom due to vehicles traveling over the bridges are probably more harmful than anything that might be generated by an E-Assist kayak.
- E-Assist kayaks produce less noise than fishermen yelling at each other on the river or loading and unloading operations with a diesel-powered pickup.
- E-Assist kayaks produce no noises that can compare to a shotgun, rifle or handgun that are frequently heard on or around the river from 10-1 thru 1-31.
- E-Assist kayaks produce significantly less noise than those persons living near the river using ATVs, Side by Side vehicles, Diesel Pickup Trucks, Lawn Mowers, Gas Powered Weed Trimmers, Tractors, Motor Cycles on surrounding roads and neighborhoods
- The current dates assigned may put recreational boaters in confrontational situations with other seasonal River Users conducting specific types of activities.

With these facts in mind, in accordance with ARM 12.4.105 the Commission should process this petition and alter the motorized watercraft rules for the Bitterroot River and Clark Fork River and its tributaries to restore the rights of all Citizens the use of electrical propulsion for kayaks and similar watercraft on the two affected rivers and tributaries.

The proposed changes in the rule will make river recreation safer for all utilizing the rivers via kayaks and like modes of recreation.

As much of the technology and equipment was in existence at the time of the creation of the current rules and has significantly improved over the past two decades there is no reason to continue to disrupt the public's recreational use of these two rivers. [ARM 12.4.105 (4)]

Considering the advancements in technology regarding E-Assist and secondary electrical propulsive devices and their supporting technology, the Commission should also alter every ARM regarding motorized watercraft restrictions on every body of water or river so as to improve access for senior citizens, and those with mobility issues in order to create a safer recreational environment.

The current rules were written to create discriminatory conditions against all other River Users specifying safety concerns and specific hunting reasons which included:

- Speed restrictions to protect swimmers, fishermen and other boaters obtained via horsepower limitations.
- To address noise level issues for those river users and residents along the river.
- To support hunting access from the river for deer and wild fowl hunters who are allowed to use a motorboat powered by a 20 hp or less motor from 10-1 thru 1-31.
- The current rules were specifically written to eliminate all motorized boating with the exception of those for hunting purposes.
- Montana Fish, Wildlife and Parks Commission has made absolutely no provisions for Senior Citizens to recreate using E-Assist devices and has made no ramp access provisions for those with mobility issues.
- Many senior citizens use E-Assist devices on their bicycles, recumbent trikes and other modes of transportation for recreational and health reasons, which can be adapted to water recreational activities.

The Commission has not addressed the needs of the Senior Citizen community or mobility impaired Citizens regarding water related recreational activities. No provisions for recreational activities other than fishing and hunting have been implemented by the Commission thus denying those Citizens who do not fish the equal right to enjoy recreation on the affected rivers in a manner of their choosing.

E-Assist devices are prescribed by the medical community in order to make recreational activities safer and these prescriptions can carry over from land to water recreational activities. In fact, Montana Fish, Wildlife and Parks authorizes a Permit to Hunt From a Vehicle for those with mobility issues and should also extend the use of E-Assist devices and electric propulsion to all those choosing to recreate on these rivers and other waterbodies.

4. The petitioner believes that the commission has an obligation and duty to protect the Constitutional Rights of the Citizens of the State of Montana and visiting Citizens from other states by providing equal opportunities for water recreational activities as specified in rules ARM 12.11.405 (2), (3) and that the State Legislature must exercise appropriate oversight to prevent the abridgement of any rights of the Citizens of this country and state.

**ADOPTION:**

The rule[s] as proposed to be amended/adopted would provide[s] as follows:

Amend ARM 12.11.610 and ARM 12.11.620 respectively to add the following rules:

ARM 12.11.610 (1) (a) E-assist or electrically powered watercraft with temporary or permanently installed electric propulsion may be used on the Bitterroot River.

ARM 12.11.620 (2) E-assist or electrically powered watercraft with temporary or permanently installed electric propulsion may be used on the Clark Fork River and its tributaries.

Petitioner has knowledge of Citizens who may have a particular interest in the proposed agency action.

Petitioner requests a hearing presentation for expression of petitioner's and other interested persons' views.

**WHEREFORE**, petitioner requests the Montana Fish, Wildlife and Parks Commission to modify ARM 12.11.610 and ARM 12.11.620 to include the following rule changes:

ARM 12.11.610 (1) (a) E-assist or electrically powered watercraft with temporary or permanently installed electric propulsion may be used on the Bitterroot River.

ARM 12.11.620 (1) (d) E-assist or electrically powered watercraft with temporary or permanently installed electric propulsion may be used on the Clark Fork River and its tributaries.



James V. Crews

Date 1-27-2023