Documents Submitted by Friends of Hell Creek

APPEALS PROCEDURE FAS AND PARK DEVELOPMENT

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Adopted by FWP Commission on October 13, 1995

I. <u>PURPOSE</u>

To establish procedures that: 1) provide an opportunity for the public to appeal decisions made by the department to improve or develop fishing access sites and state parks; 2) encourage the public to participate at the beginning of the decision making process; and 3) resolve appeals at the lowest administrative level possible.

II. DECISIONS SUBJECT TO APPEAL

The decision notice on a plan or project that results in a decision to improve or develop a fishing access site or state park is subject to appeal under these procedures, provided that the improvement or development significantly changes (as defined in 12.3.602, ARM) fishing access site or state park site features or use patterns. For the purpose of these procedures, a decision notice is a written finding made by the decisionmaker that explains the basis for the final decision and that responds to all public comments received. The department shall prepare a decision notice for any decision subject to the requirements of 23-1-110, MCA and distribute the decision making process.

III. <u>STANDING</u>

An appeal may be made by any person who has either commented in writing to the department on the proposed project, or who has registered or commented orally at a public meeting held by the department on the proposed project, or who can provide new evidence that would otherwise change the proposed plan.

IV. SUBMISSION OF AN APPEAL

An appeal must be submitted to the director in writing and must be postmarked or received within 30 days of a decision notice. An appeal may be made on any grounds or arguments made to the department during the department's original decision making process. The appeal must describe the basis for the appeal, how the appellant has previously commented to the department or participated in the decision making process, and how the department can provide relief.

In order to provide adequate opportunity for an appeal, the department may not commence construction until 30 days after the decision notice. If an appeal is made within 30 days following the decision notice, the department may not commence construction until the final resolution of the appeal.

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The director may dismise the appeal if the issues raised in the appeal are not relevant to the decision being made on the proposed development.

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V. DEPARTMENT RESPONSE TO AN APPEAL

The first level of review is the regional supervisor. If an appellant is not satisfied with the decision made by the regional supervisor, the appeal may be pursued to the director. The final level of review is the commission. However, the commission will not address an appeal before the director has made a decision on the appeal.

Within 10 days of receipt of an appeal, the department shall notify the appellant of receipt of the appeal.

The appeals process before the department should be nonadversarial and provide an additional opportunity for conflict resolution. Any appropriate means may be used to resolve an appeal, including but not limited to fact finding, site visits, hearings, meetings with the appellant and other parties, informal mediation and negotiations. The department shall address the appeal within 60 days of receipt, and shall notify the appellant in writing of its decision.

VI. DECISION CRITERIA

An appeal may be upheld in whole or part, denied in whole or part, or the proposed decision may be returned to the original decisionmaker for clarification or further consideration. An appeal must be upheld and the decision remanded back to the original decisionmaker for corrective action if:

- The department, in making its decision, failed to comply with any applicable law, administrative rule or department policy or procedure;
- 2. The department based its decision on invalid or incomplete information that would have substantially altered the decision; or
- 3. The decision made by the department was arbitrary and capricious.

VII. APPEAL TO COMMISSION

If an appellant has sought review of an appeal by the department and is not satisfied with the final decision of the director, the appellant may appeal the decision to the commission within 10 days of receiving notification of the director's decision. The commission will hear and address the appeal within 60 days.

To: Fish Wildlife and Parks Director Martha Williams 1420 East Sixth Avenue; P.O. Box 200701 Helena, MT 59620-0701

12 September 2017

I'm appealing the Notice of Decision dated 14 August 2017 signed by Douglas Habermann concerning Hell Creek State Park for the following reasons. I submitted comments with respect to FWP/MSP during the decision-making process. Those should be part of your records.

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1. Montana State Parks was out of compliance of Montana State notice requirements; Notice for the comment period in the affected area was provided by the Jordan paper on 23 Jun 2017 comment period ended 13 July 2017 total time 20 days! No other signs or notice were evident in the affected area or community. These proposed changes include waste water, sewage and potable water and fall under DEQ rules of notification and public awareness, as well, and can be far more restrictive than Montana State Parks requirements of notification. This is a general legal requirement affecting constitutional rights to notice and participate in Montana state government decisions so my comments, and this appeal, really could not anticipate such an occurrence. Nonetheless, I suggest the only way of rectifying this problem is to vacate the decision and begin anew with a process that comports to Montana law.

2. In the Montana State parks para 2, of notice of decision dated August 14, 2017, but posted and publicly available August 15, 2017, Doug Habermann states there is no preclusion in the contract between Montana State Parks to prevent any development by Montana State Parks on the Thomaes's 55-acre lease. In my assessment, there is no conclusion or verbiage that gives Montana State Parks the legal right to alter or remove any portions of the 55-acre lease in the contract to meet their current needs without a negotiated settlement! In addition, leases and landlord tenant agreements are also addressed in a multitude of other statutes in the Montana legal system, and Mr. Habermann has failed to take those statutes into consideration prior to rendering what amounts to his legal opinion and conclusion! Mr. Habermann is not an attorney, and any conclusions or interpretations of the contract should be made within the constraints of the Montana legal system. Because Mr. Habermann could not have reached such a decision, it lacked any legal review with respect to the controlling conclusions he reaches and are, at the very least, arbitrary in nature. Again, I did not comment on this, but I could not reasonably forese that Mr. Habermann would act in such a manner and form such conclusions. I suggest this also requires that the process be restarted, and that the state's liability be assessed.

3. On July 6, 2017, at Montana State Park Board's meeting in Helena, MT, Assistant State Parks Director, Tom Reilly, was asked by a member of the Montana State Park Board if Montana State Parks could make any improvements or changes on the 55-acre lease held by Clint and Deb Thomas without the Thomas's permission! Mr. Reilly testified that, no, they could not make any changes or improvement on the 55-acres controlled by the Thomases without the Thomas's approval! As of September 12, 2017, there has been no legal decision reversing that statement of fact by Mr. Reilly. Because Mr. Habermann's conclusion is in direct conflict with the opinion of his own agency supervisor his conclusion defies logic and law. A decision with consistency and legal foundation needs to be reached by someone competent to make it.

4. para 4, of the above-mentioned letter. It states these improvements would not infringe on the Thomas's source of income. This is not a true statement. It lacks foundation and is not supported by any evidence. The locations that have been designated for the changes sit directly on the Thomas's 55-acre lease and will be placed directly on the area approved for expansion provided for the Thomases in the current contract. Again, any changes or decisions concerning this contract must be negotiated prior to any changes or improvements on the Thomas's 55-acre lease. MSP should discuss expansion plans with the concessionaire and include the public before reaching

such any baseless arbitrary decision with such long-term impacts. MSP can also agree to mitigate negative economic impacts by replacing encumbered areas or through better park management to increase usage.

5. Montana State Parks failed to address the expenditures of significant financial resource on a State Park that they do not own and intend on closing in 2021. "Montana State Parks (stateparks.mt.gov) announced today that the Division will relinquish management of Hell Creek State Park when the site lease agreement with the U.S. Army Core of Engineers (USACE) expires in 2021. The decision was approved by the Montana State Parks & Recreation Board at their December 16th meeting." The Public has not been made aware that any changes have been made concerning this decision.

6. Para. 3 indicates the "Montana Fish, Wildlife & Parks (FWP)" decided this was the "preferred alternative." The Notice and the EA posted on the same day. The MSP Board meeting for August 15, 2017, was cancelled and the matter was not decided at the July 6, 2017 meeting. Mr. Habermann's Notice provides no information for when and how this decision was reached. Who reached the decision and when? What was their authority given the fact that both MSP and FWP have citizen comprised boards empowered to reach, or at least advise and participate in, these decisions? I suggest you halt further activity regarding this decision until the correct Board or Commission can discuss the merits of the conclusion which will also provide an opportunity for public comment. I would also request that the completed environmental impact statement with a certified completion date be added to the record. After reviewing the time frame and Governors action and minutes of Montana Park Board it is obvious that Montana Fish Wildlife and Parks (MTSP) personal had come to their conclusion which is a direct violation of Montana State law.

7. In conclusion, many of the findings in the Notice of Decision dated August 14, 2017 appear to be based on a legal interpretation of the Thomas's contract with the Montana Fish Wildlife and Parks. The author of the Notice of Decision dated 14, August 2017, to the best of my knowledge, does not hold a law degree and is not licensed to practice law in the State of Montana. Prior to these or any other changes moving forward that have such a significant impact on the said contract between Montana Fish Wildlife and Parks and the Thomases will need to be litigated to determine whose interpretation of the contract is correct.

James A. Gustafson Friends of Hell Creek President

Copy Provided; Governor Steve Bullock Attorney General, Tim Fox Milt Datsopoulos and Chris Gallus, Attorneys for Clint and Deb Thomas, HC Concessionaires



2300 Lake Elmo Drive Billings, MT 59105

NOTICE OF DECISION

February 29, 2016

Dear Interested Parties:

Background: The draft Hell Creek Master Site/Management Plan (MSMP) was presented to the Montana Parks and Recreation Board in October, 2015. The draft plan identified management issues such as facility and maintenance needs, site capacity issues, concession operation, and other factors directly related to Montana State Park's management of Hell Creek State Park including whether it would continue to be managed by Montana State Parks. The board chose to put the MSMP out for public review and specifically to ask for public comment on three management alternatives;

- Option 1: Continue to manage site and concession making priority and long range improvements
- **Option 2** : Manage with a modified State Park boundary and relinquish concession management to the US Army Corps of Engineers (USACE)
- **Option 3:** Allow the lease with the USACE to expire in 2021 with minimal improvements for health and safety

Public Involvement Process & Results: The plan was posted for a 32-day public comment period, closing on Friday, November 27, 2015. Email correspondence inviting public comment on the draft plan was sent to key stakeholders and visitors who made campsite reservations at the park over the last three years. Public notices were posted in the Billings Gazette and area newspapers in Jordan, Glendive, and Miles City. A total of 81 public comments were received. Comments were received from individuals and agency partners, and identified both support and opposition for the continued management of Hell Creek State Park and proposed priority improvements. Public comments for consideration by Montanan State Parks. Public comment received on the proposed options was:

- Support Option 1 41 comments: Continue to manage site and concession with priority improvements
- Support Option 2 2 comments: Manage modified site boundary, relinquish concession to the US Army Corps of Engineers (USACE)
- Support Option 3 23 comments: Return site to the USACE in 2021 with minimal improvements for health and safety

Corrections to Draft Master Site Plan

Some errors to the Draft Master Site Plan were noted and are corrected here. On page 9, section 2.1, the number of park users was over-estimated; it should be 800 on a busy weekend day, which includes marina guests and private cabin users. This figure should also be used on page 17, section 5.1. On page 15, the table of Concession Fees should read \$3915.86 for Concession fees paid in 2012. On that same page, the table of Outfitter infrastructure requirements should have "Fuel Storage" removed.

Rationale

As part of the Strategic Plan, the Division is implementing a new Classification Policy which reallocates staff and funding resources to the system's most significant sites in order to ensure those parks meet the Montana State Park brand promise. Montana State Parks recognizes the value of Hell Creek State Park for the region, the state, and within the state park system. However, the considerable management, facility condition, and health and safety challenges at the park identified by the draft plan cannot be adequately addressed with existing state park resources.

After considering the Hell Creek draft Master Site/Management Plan and public comment, the board has recommended that Montana State Parks proceed with Option #3 recommended in the draft plan while requiring a formal review in 2019 to evaluate if the Division has met conditions to improve management, fiscal solvency and fiscal partnerships. Additionally, they directed that the Division explore ways to keep Hell Creek Park consistent with Montana State Parks standards.

Decision

Montana State Parks will continue to manage Hell Creek State Park with minimal infrastructure improvements to meet health and public safety objectives through the end of the lease agreement which expires in April, 2021. At that time management of the site would return to the USACE. The Montana State Parks & Recreation Board will formally review this decision in 2019. In the meantime, the Division will continue to manage the site with minimal improvement to maintain public health and safety while working to build strategic partnerships and pursue for new funding sources for Hell Creek State Park.

This project is subject to appeal, which must be submitted to the FWP Director in writing, and postmarked within 30 days of the date on this decision notice. The appeal must specifically describe the basis for the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how the department might address the concerns in the appeal. If you have questions regarding this decision notice, please address them to me at dhabermann@mt.gov or call me at 247-2954.

Douglas Habermann

Douglas Habermann Regional Parks Manager



\TEPARKS.MT.GOV

THE **OUTSIDE** IS IN US ALL.

P.O. Box 200701 Helena, MT 59620-0701 406-444-3750 FAX: 406-444-4952 Ref: 092-18 August 30, 2018

James A. Gustafson 1245 Lariat Road Helena, MT 59602

Re: Appeal of Hell Creek State Park Decision Notice

Dear Mr. Gustafson:

We have received your appeal of the August 14, 2017 Decision Notice for the replacement of the potable water cistern and fish-cleaning station (FCS) septic system at Hell Creek State Park.

Before addressing the substance of your appeal, there are some noteworthy organizational changes that must be addressed. Your appeal is pursuant to a policy adopted by the Fish, Wildlife and Parks Commission in October of 1995 addressing the development of fishing access sites and state parks. Though the existing policy references the Fish, Wildlife, and Parks Commission, legislation was passed subsequently reorganizing that Commission and creating the Parks and Recreation Board ("Board"), which oversees matters related to Montana state parks. *See* Mont. Code Ann. §§ 2-15-3406 and 23-1-111. The Board now has the authority over this subject matter, and, accordingly, if you pursue an appeal, the final stage of review will be with the Board.

Similarly, the Department has also undergone several re-organizations since the policy was adopted. At the time of adoption, the respective regional supervisor oversaw park staff. That is no longer the case and, as a result, we have determined the regional supervisor in this instance is not an appropriate position to review this appeal. Nor is the regional park manager, Doug Habermann, the individual who drafted the Decision Notice, appropriate. Because of this, I am reviewing your appeal at the first level as the Montana State Parks Division Administrator.

Your appeal makes several contentions, which I will now address.

First, you argue that Montana State Parks did not comply with constitutional notice and participation requirements and ask that the process be restarted. I have consulted with FWP's legal counsel and do not agree that the public's rights of notice and participation were somehow violated here. As stated in the Decision Notice that you are appealing, the draft EA "was circulated for 30 days and legal notices were published in the Jordan Tribune, Billings Gazette, Helena Independent Record, Miles City Star, and the Lewistown News-Argus as well as posted on the Montana State Parks website." The process followed for this decision notice was consistent with FWP's practice for the dozens of EAs and Decision Notices issued each year. The project was initially presented to the Board as an agenda item October 15, 2014 prior to

the 2015 Legislative Session, where funding was sought via the Governor's proposed House Bill 5 capital budget. This project and Hell Creek State Park in general, has been discussed by the Board several times since the 2014 timeframe. The most recent time a funding decision for the current project was presented to the Board was as an agenda item February 16, 2017. At that meeting, the Board again approved the capital funding and proceeding with the project. Both times the Board approved the proposed project. Copies of the two agenda cover sheets for each of the respective Parks Board meetings, as well as the Board minutes from the February 16, 2017 meeting concerning the Hell Creek topic, are attached for your reference. FWP also sent out a press release announcing the public comment opportunity regarding the facility improvements project at Hell Creek State Park on June 13, 2017.

Your second, third, and fourth paragraphs are focused on the Thomases' lease ("the Lease"). You contend that by not gaining the Thomases' permission, Montana State Parks is in violation of the Lease and that Doug Habermann, Region 5 Parks Manager, made "legal conclusions" concerning the Lease. Second, you allege those conclusions were incorrect, and that they were contradicted by Tom Reilly, Acting Administrator for Montana State Parks, at the July 6, 2017, Board meeting. Though Montana State Parks frequently consults with our attorneys, I disagree with your contention that Mr. Habermann made "legal conclusions" in the Decision Notice. More importantly, after consulting with our legal staff, I disagree with you regarding the Lease terms. The Lease specifically recognizes the Department's right of access to the property "for the purpose of engaging in any activities deemed necessary for the construction, operation, and maintenance of the Reservoir, Hell Creek State Park, the concession, and all works and facilities appurtenant thereto or for any other purpose authorized or required by law." Paragraph 36 of the Lease provides the Lease may not be modified except in writing and by signature of the party, and Mr. Reilly's – or any other employee's ad-hoc statement during a Board informational agenda item cannot modify the contract.

Your fourth paragraph also contends that the Decision Notice is a "baseless arbitrary decision" with "longterm impacts." I disagree. Montana State Parks followed the standard procedure for this type of project, carefully considered a reasonable number of alternatives and public comment, and made a decision as the result of that process. The reasoning for the decision, including reasons involving public health and safety, is outlined in the Decision Notice. Both the septic system and water cistern have been identified by two separate private consulting firms (Peaks-To-Plains and Great West Engineering) as critical for public health and safety and which must be addressed. The detailed reports are available. The existing 8,000-gallon metal water cistern has reached the end of its useful life and was sized/installed prior to the much of the park infrastructure it supports being built over the past decade. The FCS is on the septic system which serves the staff housing and comfort station, which it was not designed for. Extending the usable life of the current systems simply is not feasible. Within the 1999 concession area, numerous future infrastructure site improvements are identified including park roads, the fish cleaning station, RV dump station, the water well and portions of the existing water and septic system within that area. The locations identified have been determined to be both the most feasible and economic locations and to have the least impact on the park visitors, including park visitors utilizing concession services.

The ACOE has approved the proposed locations of the 20,000-gallon potable water cistern and the septic system for the FCS. Please reference the attached August 11, 2017 memo from the ACOE to FWP that states, "Section 6 of lease DACW45-1-93-6035, ensures the Lessee (MTFWP) shall have the right to erect additional structures and to furnish additional services in accordance with approved development plan. Nothing in Hell Creek Marina's sublease agreement with MTFWP for acreage within Hell Creek State Park shall affect, waive, modify or interpret in any manner whatsoever the terms, covenants and conditions of the Department of the Army Lease."

In your fifth paragraph, you state that Montana State Parks intends to close Hell Creek State Park in 2021. This is not the case. Over the past several years, Montana State Parks, community members, and stakeholders, have noted the issues present at Hell Creek State Park and explored various management options for the park. You are correct that Hell Creek State Park is operated by Montana State Parks subject to a lease with the Army Corps of Engineers ("Corps). FWP has had numerous leases with the Corps dating back to the 1960's and the current lease expires in April, 2021. However, Montana State Parks has no plans to "close" Hell Creek State Park. There are two entire recreational seasons yet to occur before the current ACOE lease concludes.

Your sixth paragraph asks who was responsible for the decision notice and when. As I stated above, the project was initially presented to the Board as an agenda item October 15, 2014, and again as an agenda item February 16, 2017. Both times the Board approved the proposed project and associated capital funding commitments. As you are aware, the Decision Notice was issued on August 14, 2017.

Based upon the above, your appeal of the Department's Decision Notice for Hell Creek State Park is denied.

Sincerely,

Bell R. Elate.

Beth Shumate Administrator Montana State Parks

Attachments: Mont Code Ann. §§ 2-15-3406 and 23-1-111 Parks and Recreation Board October 15, 2014 Meeting Cover Sheet Parks and Recreation Board February 16, 2017 Meeting Cover Sheet Parks and Recreation Board February 16, 2017 Meeting Minutes Army Corps of Engineers August 11, 2017 Memo FWP.MT.GOV



THE OUTSIDE IS IN US ALL.

Director's Office PO Box 200701 Helena, MT 59620-0701 (406) 444-3186 Fax (406) 444-4952 Ref: D0007-19 January 8, 2019

James Carr Carr Law Firm 611 Pleasant Street Miles City, MT 59301

Dear Mr. Carr,

I am writing in response to your September 19, 2018 appeal regarding infrastructure improvements at Hell Creek State Park as outlined in the August 14, 2017 Decision Notice. The appeal process is limited to the proposed improvements and that is what I will discuss here.

First, I want to address your concerns about the timing of Ms. Shumate's decision. When Montana State Parks realized that there had been a paperwork error in this matter, we believed it was important to expedite a decision. I understand that you feel that there should have been additional meetings prior to that decision. Since that time, and prior to my decision today, we have reached out to you and to others involved in this issue in response to the concern you raised and have made every effort to meet regarding this issue.

I have reviewed your appeal and I agree with the reasoning outlined by Ms. Shumate in her previous decision to you. From my review of the file, it is clear to me that the appropriate public processes were followed and notice and opportunity for public participation was provided. Montana State Parks complied with appropriate legal requirements in reaching its decision discussed in the August 14, 2017 Decision Notice, and was consistent with its prior practices in so doing.

Your appeal next contends that Montana Fish, Wildlife & Parks should gain the Thomases' permission before proceeding with the proposed site infrastructure projects. I have reviewed the Thomases' "Agreement and Permit" ("the Agreement"), and believe that FWP is correctly following the terms of that Agreement. Under Section 28 (Right of Access) of the Agreement, Montana Fish, Wildlife & Parks retained a right of access to the property "for the purpose of engaging in any activities deemed necessary for the *construction (emphasis added)*, operation, and maintenance of the Reservoir, Hell Creek State Park, the concession, and all works and facilities appurtenant thereto or for any other purpose authorized or required by law." In fact, the Section begins with the clear language of "The Concessionaire recognizes the right of ingress and egress..." Additionally, Section 36 (Modification) of the Agreement provides that the Agreement may not be modified except in writing and by signature of the parties, which has not occurred.

Lastly, and most importantly, the challenged infrastructure improvements are proposed to address critical public health and safety issues and are for the benefit of all users of Hell Creek State Park. As noted by Ms. Shumate, both the fish cleaning station (FCS) septic system and replacement water cistern have been identified by two separate private consulting firms (Peaks-To-Plains and Great West Engineering) in recent years as critical infrastructure upgrades which are necessary for public health and safety. Extending the usable life of the current systems simply is not feasible, and our decision was not arbitrary.

Based upon the above, your appeal of the Department's Decision Notice for Hell Creek State Park is denied.

Sincerely,

- Marchel

Martha Williams Director

C: Aimee Hawkałuk, FWP Legal Counsel Beth Shumate, Parks Division Administrator Governor's Office

Join Facebook's group, Friends of Hell Creek Marina in our efforts to bring attention to this issue and show support of users of Hell Creek and Montana voters opinions. To contact the congressional deligation directly and explain the urgency of the situation the contact numbers are below:

US develop Steve Dedieren 1976-2017 ISte US Senator Jan Teater 297-224-2644, ISt House Review andre, Greg Giambriet 2026 27-52 ddyess, City, State & Zip Code om ill a fill y NNIS odge MT 406 ates \mathcal{B}_{I} 704 Ellito 1-145ham MI. 406-3412.53 HUSheren Mli 401 342-55 Georgetown Pr. Glondive MiT 406-317-3 313 enals Germann 313 Geocaetown Dr. Glendive, MT 406-German 250 761-46 omp mill in 10un sent Boylen melin TURIN 1571/11SPINO Handdonill helly KN. 25513 (17Utrau jautreau 406-266-Placer Bd. 21 Edstrow Tonggad Moul hT 360 580-719 1335 1813 55 1 AN WA 4066 1Box 7290 Edd N. I.d. dst 404-691nes rit 915 OUTLOOK BY 570 ~462 ۵ $\omega > N$ HARZIN MI 502 N Chotaci 406-629-0822 10A-0890 Hr Ourdan M 406-853xb/ Road) oldar 690 Harbard oldan 406-053-3987 307-240-141101 Benjahin Blue Bullings 90 59337 Haxbu 00 \mathbf{c} ord HDG-853-6417 Hash. Òdan 417 34559 20 Br JED 102 QUAL FOR Rel 406) 281 -1303 PO Box 539 Bridger Mr 59014 406 - 853 - 2981 Jordin MT POBOX 238 593 PO BOX 238 Dorolan MT O 852-3918 890 Haxbyrd Tordan MT 855-641 1915 Outlook D. B. IMARME 59105 4126-672-63 Mans 402-LA JOLI nartholeken I.M.

Mail completed forms to: Friends of Hell Creek Marina, 1245 Lariat Road, Helena, MT 59602

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US Senator Steve Dainer: 202-22-2651; US Senator Jon Tesser: 202-224-2644; US House Represent: rive, Greg. Glapforts : 202-222-214

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Mail completed forms to: Friends of Hell Creek Marina, 1243 Lariat Road, Helena, MT 59602

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US Senator Steve Daines: 202-224-2651; US Senator Jon Tester: 202-224-2644; US House Representative, Greg Gianforte: 202-225-3211

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Signature Frinted name: ddress, City, State Phone number: email address walkpekeverolo 42-0086 hotmail.com 109 AnteloDe Avenue RICHEU MT 406-979-9876 Cody Stohm [2] UMOR 1076 PPer Electuitloukel Cross Rease MT 400 991-C R.J. LIAGANTAV 59219 MS Tounc UpN M CVP illo tto Lewis OW 406853 Mer 2MT 9921 Stronkoury83 Billing MT Saloz SINK KERVER4864 l the ROBINION WAY Lunisdawn, mr 59457 Dauxbull 18/172532 Blown Gib & M. T. 14 593. 35 0 ARROW CR HE BALLANTING MO 400 84 Woffard heights ca 93205 MNVAmstrong 80 Gma. Y. (Gard MT 59635 Ishanle VONNSAU 406-598 (ct 4A 59201 ound M 406 28 15tak 400 au -2213 4007 COlvin W/inhut 2449 Cascade Ave Birnas' in 3365 Racquet Dr. Bullikia B/c nr 5805 722 490-96-99 PARC 22- Lanbrella Sla MT FOS GIZ-MEST

Mail completed forms to: Friends of Hell Creek Marina, 1245/Lariat Road, Helena, MT 59602

"Hell Creek State Park Master Site & Management Plan" (Draft Plan: October 16, 2015). I have enclosed a few of their findings! (Encl 4)

a, para 15.2 If Montana State Parks continues to manage the recreation area after 2021, consider amending the lease boundary to exclude the concessionaire's facilities. This will allow the ACOE to directly administer the concessionaire's contract, eliminating a layer of management. The revenues from the concessionaire to the State provide such little return on investment, it is logical to conclude that those revenues do not even cover the staff time to manage the contract.

b, Excerpt from Plains to Peaks Conclusion. While this is often challenging in a state agency environment, Hell Creek State Park also operates within the challenges of federal agencies and a private concessionaire. Operations that are commonplace for public entities do not operate the same for the free market.

c, Montana State Parks has a contractual arrangement with a private concessionaire, dated 1999 and expires in 2018. The concessionaire must not only comply with the contract parameters, but is also subject to ACOE inspections, regulations and standards. The entire presentation is on MTSP web page.

James A. Gustafson 1245 Lariat Rd Helena, MT 59602

16 March 2018

This is my sworn statement concerning a meeting I attended July 6, 2017. The meeting was titled "Montana State Parks & Recreation Board Agenda Montana WILD, Auditorium, Helena, MT, July 6, 2017!

My statement concerns the portion of the meeting concerning Hell Creek State Park and the 55-acre lease controlled by Clint and Deb Thomas, Hell Creek Marina.

During the meeting, I asked the following question. "Does Montana State Parks have the legal authority to develop any portion of the Thomas's 55-acre lease without the Thomas's permission? My question was directed to the Montana State Parks & Recreation Board and the acting Montana State Parks' Director, Tom Reilly. Mr. Reilly indicated that they do not. Tom Towe, the Montana State Parks & Recreation Board President, asked Mr. Reilly, if the issue with the Thomases can't be resolved, what would happen. Mr. Reilly's response was that they would have to move any developments outside the 55 acres. Mr. Towe informed Mr. Reilly that he had not answered my original question, and Mr. Towe again asked Mr. Reilly if they (MTSP) were legally obligated to allow him (Clint Thomas) to put something in the 55-acres if he chooses to. Mr. Reilly's response indicated he (Clint Thomas) could! Mr. Towe again asked Tom Reilly "does he (Clint Thomas) have full control or do we (MTSP)"? Mr. Reilly's response was "Mr. Chairman, I don't think we (MTSP) have the right to put anything in without his (Clint Thomas's) consent"! Mr. Reilly also stated "without some reasonableness prevailing, we will not have a project, and he would contact Mr. Thomas in an apparent attempt to gain Mr. Thomas's approval!

Juitas James A. Gustatsor

FILED

AUG 21 2018

Jennifer Crawford Clerk of District Court Garfield County

James Carr Carr Law Firm 611 Pleasant Street Miles City, MT 59301 Telephone: (406) 234-4569 Carrncarr@midrivers.com

Attorney for Petitioners

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MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, GARFIELD COUNTY

CREEK, Inc. a Montana non-profil 501(c)(3)) Petitioners,) VS.) DOUG HABERMAN, in his capacity as Region) Five Montana State Parks Administrator,) MONTANA STATE PARKS DIVISION) (Region 5) and MONTANA FISH WILDLIFE) and PARKS, DEPARTMENT) Respondent(s).) UNITED STATES GOVERNMENT,) DEPARTMENT OF THE ARMY, U.S. ARMY) CORP OF ENGINEERS, REAL ESTATE) DIVISION as an Interested Party)	JAMES GUSTAFSON, Individually, and as President and Director for FRIENDS OF HELL) Cause No.: DV-2018-11
Petitioners, Petitioners, N N N N Petitioners, AMENDED APPLICATION FOR PRELIMINARY INJUNCTION AND TEMPORARY NUNUTION AND TEMPORARY INJUNCTION AND TEMPORARY RESTRAINING ORDER RESTRAINING ORDER NONTANA STATE PARKS DIVISION (Region 5) and MONTANA FISH WILDLIFE and PARKS, DEPARTMENT Respondent(s). UNITED STATES GOVERNMENT, DEPARTMENT OF THE ARMY, U.S. ARMY CORP OF ENGINEERS, REAL ESTATE) Honorable Michael B. Hayworth,
vs.)APPLICATION FOR PRELIMINARY INJUNCTION AND TEMPORARY INJUNCTION AND TEMPORARY RESTRAINING ORDERDOUG HABERMAN, in his capacity as Region)Five Montana State Parks Administrator, NONTANA STATE PARKS DIVISION) (Region 5) and MONTANA FISH WILDLIFE) and PARKS, DEPARTMENT) Respondent(s).RESTRAINING ORDERUNITED STATES GOVERNMENT, DEPARTMENT OF THE ARMY, U.S. ARMY) CORP OF ENGINEERS, REAL ESTATE)APPLICATION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER	Petitioners,)
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DOUG HABERMAN, in his capacity as Region) Five Montana State Parks Administrator, MONTANA STATE PARKS DIVISION (Region 5) and MONTANA FISH WILDLIFE and PARKS, DEPARTMENT Respondent(s). UNITED STATES GOVERNMENT, DEPARTMENT OF THE ARMY, U.S. ARMY CORP OF ENGINEERS, REAL ESTATE	vs.	
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Petitioners, JAMES A. GUSTAFSON and FREINDS OF HELL CREEK INC. a Montana

nonprofit 501(c)(3), move for a Preliminary Injunction pursuant to Mont. Code Ann. § 27-19-

201 and a Temporary Restraining Order pursuant to Mont. Code Ann. § 27-19-314.

- The Petitioners have filed or arc in the process of filing a Complaint, a Brief in support of this Application, and support Affidavits attached to said Brief, all of which are made a part hereof by reference.
- 2. As explained in the Complaint and in the Petitioners' Brief in support of this Application:
 - a. This action concerns the right Petitioners to participate in, and appeal, agency decisions to develop state parks and fishing access sites, and to resolve disputes at the lowest administrative which Petitioners attempted to do.
 - b. Specifically, this action concerns Petitioners' objections to Respondent Regional Parks Manager Habermann's Notice of Agency Decision of August 14, 2017. (Exhibit 1, Respondent's Notice of Agency Decision).
 - Petitioners timely submitted an objection to Respondent Habermann's agency decision on September 12, 2017. (Exhibit 2, FHC's September 12, 2017 Letter).
 - d. Respondent Habermann, as Regional Manager (i.e. supervisor) is the first level of review. (See Exhibit 3, FWP "APPEALS PROCEDURE, FAS AND PARK DEVELOPMENTS, Adopted 10/13/1995, and see "V. DEPARTMENT RESPONSE TO AN APPEAL").
 - e. Despite the legal requirement that the Respondent shall [must] notify Petitioners of the receipt of appeal within 10 days, Respondent Habberman has failed to do so. Id. (ref. Exhibit 3 part "V").
 - C As a direct consequence of Respondent Habermann's legal failures, Petitioners were denied, and continue to be denied, their rights to have their objections [appeal] addressed in a non-adversarial manner and the additional opportunity to resolve the dispute. This denies, without any consideration whatsocver, the Petitioners opportunity to resolve the matter

through fact finding, a site visit, hearings or meetings which can include other parties, informal mediation or negotiations. (Id.).

- g. In addition to other objections contained in the Patitioners letter of September 12, 2017, Respondent Habermann's agency decision selects a location for the proposed placement of permanent encumbrances on property where he facks authority or control to do so, and, to the best of Petitioners' information and belief he has not obtained permission from the leaseholder. (Exhibit 4, FWP Sublease to Leaseholder).
- Consistent with Petitioners' asserted position, the Respondents immediate supervisor publicly testified to MSP Board that MSP required the teascholders' permission before MSP can locate the infrastructure within the 55-acre marina. (Exhibit 5, Petitioner JG notes as transcribed from his personal recording of July 6, 2017 MSP Board Meeting).
- i. Petitioner has a direct interest in the agency decision and location of the proposed infrastructure improvements because they; (1) formally objected during the public comment period, (2) use the park and (3) Petitioners proposal to operate the park met the statutory deadline and is currently accepted as submitted by the department (Exhibit 6, FHC Proposal to Operate HCRA/Park Milt Datsopoulos/James Gustafson).
- J. If Respondent is permitted to act outside the scope of his authority, and does not obtain permission to occupy the property as proposed, FHC as Respondent's legal successor may need to remove the encumbrances or otherwise compensate the burdened leaseholder.
- k. It is clear from a plain reading of the agreements that Respondent Habermann is operating outside the scope of his legal authority because his reservation is for access only. (See Exhibit 4, FWP Leasehold Agreement, para, 28).

- 1 Access is obtained only by ingress and egress, and only for specified activities, (ld.)
- m. While the activities include construction the title and plain language of the paragraph and the leasehold agreement taken entirely, clearly contemplate temporary use of the property via access while Respondent constructs infrastructure on its own property rather than permanent occupation of property within the leasehold. (Id. Paras 1, 28 and 36).
- n. Respondent Habermann, to the best of Petitioners' knowledge, has not modified the Leasehold Agreement or obtained the signature of the burdened party. (Id. at para, 36).
- o. In their objection. Petitioners assert Respondent provided inadequate notice and that more stringent notice was required due to the nature of the projects being proposed. Petitioners have no idea whether these assertions are correct if the Respondent does not even acknowledge the Petitioners filed an objection and appeal. (Exhibit 2, P's 9/12/2017 Letter).
- p. During the comment period, Petitioner, James Gustafson, personally appeared and testified at a State Parks board meeting where acquiring the leaseholders permission was discussed, and the testimony of the MSP administrator was that permission was a requirement yet five weeks later permission was somehow no longer a requirement. Again, without even a response from the Respondent, Petitioners have no information for why this occurred. Consequently, there is a lack of transparency which the administrative appeal is required, by law, to address. It has not. (See Exhibit 5, P JG's transcription of 7/6/2017 discussion).
- q. Petitioners use the service provided by the leaseholder because the leaseholder, as a condition of the marina leasehold agreement, is the only one providing- and in some cases the only able to provide---such services.

(Exhibit 4, FWP Leasehold Agreement). Consequently, Petitioners felt compelled to object to the obviously incorrect and illogical conclusion that less usable property within the marina area will not affect the leaseholders' business.

- r. Even though this matter continually evolves, the actual legal status adopted by the board following a separate administrative process is that MSP is leaving the park at the conclusion of the current lease (Exhibit 7, MSP Board Minutes 12/16/2015) yet MSP plans to spend over \$770,000 just prior to their departure. (Exhibit 8, MSP Board Meeting 2/16/2017). Without a response from the Respondent, and the ability to appeal his decision, Petitioners are denied information or acknowledgment of their assertions.
- s. New information is available following a legislative audit which was not available at the time the notice of the agency decision which could alter the decision. (Exhibit 9, Angus Maciver April 2018 Letter to MT Legislative Audit Committee Re performance audit of MSP). Without this Court's directive the affect of the new information on the decision will not even be considered.
- Respondent Habermann derives his authority by virtue of his position in Montana State Parks. Montana State Parks was granted authority to operate parks, but the FWP Commission retained all authority of fishing and water access sites so there is a legitimate legal question of who controls a marina because by definition a marina is a fishing access site. The conflict, or absence thereof, between Mont. Code Ann. §§ 23-1-111 and 87-1-301 will remain if the Respondent is allowed to ignore Petitioners' objection.

- Petitioners agree the agency decision involves urgent matters that should be resolved expediently, but this is all the more reason to locate the improvement on property where doing so is not in dispute or where permission is not required. (Exhibit 10, Declaration of Petitioner James Gustafson).
- v. The Respondents were aware of the disputed nature of the selected location, and had mixed views within their own division but issued the agency decision and are proceeding with construction in any event. Id.
- w. Construction or pre-construction activity is ongoing, and at least from the limited information provided to the Petitioners, may actually commence August 15, 2018, if it has not already commenced. See, Exhibit 11, MSP's Pre-Construction Conference Agenda).
- x. Petitioners, through their President, met with the Montana State Parks Director and an agency administrator to express Petitioners' concerns and demand information why construction is commencing prior to the Respondents processing their appeal or even acknowledging receipt of the objection and appeal. (Exhibit 10).
- y. Respondents did not provide a reason at the meeting, and have not provided information as of this filmg yet there is every indication that preplanning construction proceeds unabated.(Id.).
- 2. If construction commences Petitioner will be denied the right to appeal even though the Respondent's own rules, state law, and the Constitution of the State of Montana clearly provide that the Respondent may not commence construction until the final resolution of the appeal. (Exhibit 3).
- aa. The processing of the appeal involves not only the initial review by the respondent, but also an appeal to the FWP Director herself and either the Montana State Parks Board or the Fish Wildlife and Parks Commission—

depending on who this Court determines has ultimate authority with respect to the selected location given the fact that it is by designation a marina, Id.

- The Petitioners are likely to suffer irreparable harm and loss if the Respondents are allowed to commence construction.
- 4. The Respondents, by commencing construction prior to fully processing Petitioners objection and appeal are violating Petitioners rights to participate in the August 14, 2017, agency decision through to its conclusion and the results of Respondent's actions will thereby render any judgment wholly ineffectual.
- The Petitioners appear likely to succeed on their claims for permanent injunctive relief.
- 6. The Petitioners have no adequate remedy at law.
- Greater injury will be inflicted upon the Petitioners by the denial of a temporary restraining order and preliminary injunctive relief than would be inflicted upon the Respondents by granting such relief.
- Granting injunctive relief in these circumstances would promote the public interest.
- 9. The Petitioners certify, through undersigned counsel, that they gave or are in the process of giving notice of this Application to the Respondent by faxing or emailing copies PDF scans of the Application for Preliminary Injunction and Temporary Restraining Order, Brief in Support of Application for Preliminary Injunction and Temporary Restraining Order, and Complaint to the Respondent together with any Exhibits and any supporting information as well as to his superiors and the Attorney General by the most expeditious means. Petitioners are in the process of determining where the Interested Party, USACE, should receive all copies of these documents as well.

WREREFORL, Petitioners, respectfully request that this Court enter an Order granting relief as follows:

1. Immediately enjoining the Respondent and his region, division or department or agents, whether public or private, from commencing or continuing any construction activity which pertains to the August 14, 2017 Notice of Agency decision until final resolution of Petitioners appeal;

2. That the Order apply to the Respondent whether acting directly or indirectly, and whether acting alone or in concert with others, including any agents, superiors, servants, employees, attorneys, successors and assigns and those persons in active concert or participation with the Respondents;

3. That the Order remain in full force and effect until such time as this Court specifically orders otherwise:

4. That the Petitioners be granted leave to commence discovery immediately in aid of preliminary injunction proceedings before the Court; and

5. That the Respondents shall show cause before this Court on a date specified why a Preliminary Injunction should not be ordered according to the terms and conditions set forth above.

Dated this 21st day of August, 2018.

CARR LAW FIRM

By

Jaimes Carr Carr Law Firm 611 Pleasant Street Miles City, MT 59301 Telephone: (406) 234-4569 carrncarr@midrivers.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct conics of the foregoing Application for Temporary Restraining Order, the Brief in Support of Application for Preliminary Infunction and Temporary Restraining Order the Complaint for Declaratory Relief and Infunction as well as all Exhibits and any other supporting documents along with conies of the Court Summons, as appropriate, were provided by the most expeditions means either by email, fax, or hand delivery and that the Respondent and the Attorney General are being personally serviced on this 21st day of August, 2018, upon the following:

Doug Habermann Eastern Region Parks Manager 2300 Lake Elmo Drive, Billings MT 59105 <u>dhabermann@mt.gov</u>

Montana Attorney General Tim Fox Office of the Attorney General 215 N Sanders Street Helena, MT 59601 DOJ@mt.gov

Montana State Parks/FWP P.O. Box 200701 Helena, MT 59620-0701 fwp.mt.gov bshumatc@mt.gov

Interested Party

.....

U.S. Army Corp of Engineers Real Estate Division [DETERMIINING] 7

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, GARFIELD COUNTY

JAMES GUSTAFSON, Individually, and as President and Director for FRIENDS OF HELL.) Cause No.:
CREEK, Inc. a Montana non-profit 501(c)(3)	 Honorable Nickolas Murbion, District Judge
Petitioners.)
VS.	 APPLICATION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER
DOUG HABERMAN, in his capacity as Region)
Five Montana State Parks Administrator,) DECLARATION OF JAMES
MONTANA STATE PARKS DIVISION	GUSTAFSON
(Region 5) and MONTANA FISH WULDLIFE	i
and PARKS, DEPARTMENT	}
Respondent(s).)
	}
)
)

l, James Gustafson, the undersigned as a Petitioner, in the above entitled action, duly swear under oath that:

To the best of my knowledge, the material facts stated herein and within the complaint are true. Also, to the best of our knowledge the contents of exhibits and any other materials referenced or attached thereto, and within or references by this Declaration, were received by me, and/or Friends of Hell Creek, Inc., or by my attorney on our behalf and are written by the senders therein described and contain details relevant to the actions in question and affect or threaten similar acts upon Petitioners.

- a) I am over 18 years of age, being of sound mind and body, and have personal knowledge of the matters discussed herein.
- b) I am a Petitioner in the above captioned complaint, application for TRO and brief in support of the TRO application filed in Garfield County State District Court, Cause [TBD].

James Gustafson Declaration Supporting Motion

- c) The Complaint is a verified complaint requesting declaratory and injunctive relief, protective orders, damages and any other such relief the Court deems proper or equitable based upon the circumstances described within the Complaint.
- d) I have reviewed the Complaint and Application for TRO and the facts and materials therein contained together with the information contained in this Declaration and referenced in the Complaint, Application and Brief in Support of the Application as being ALL are true and correct.
- e) There is no other plain, speedy or adequate remedy in the ordinary course of law to address my claims, or the claims of my group the Friends of Hell Creek, and provide relief from present and future injury caused by the Respondent's and superiors and agents failure to abide by the laws, rules and procedures governing the operation of their offices which are held in public trust pursuant to and in operation of Montana law.
- f) The Respondent Doug Habermann and the Respondent's division and department have only the authority granted them by the Montana Constitution and the legislature, and they are obligated to follow all laws, procedures and administrative regulations in fulfilling their respective duties. Montana law requires them to adopt and follow administrative procedures or rules commonly known as the Montana Administrative Procedures Act or MAPA. MSP, by law has control over parks, but not marinas.
- g) I submitted an objection and appeal onbehalf of the Friends of Hell Creek as permitted by law and agency rules within the time period.
- h) I specifically objected to the Notice of Agency Decision of August 14, 2017 by mailing my letter making those objections to the agency director as instructed in agency materials available to the public.
- i) It is also my assertion that Montana State Parks' failure to honor the contract between MTSP and the leaseholder, concerning the RV/camping site, has limited my ability to get long term camping sites or a campsite that Montana State Parks cannot provide. This is due to an inadequate reservation system that does not work and a failure to relocate primitive sites built below the high-water mark to usable sites elsewhere on Montana State Parks' lease. Montana State Parks' failure to honor the contract limits the ability for Hell Creek Marina's leaseholder to provide overflow camping, as authorized in the Marina's leaseholder's contract. The proposed septic system contained in the agency decision places further limits on the 55-acre leasehold and reduces service options which the public will use.
- j) The current planned and contested construction will infringe on and limit the current dry dock facilities owned by Hell Creek Marina's leaseholder and will eliminate any future expansion of said dry docks. This, in turn, will affect my ability to store my RV and boat in the future.

James Gustafson Declaration Supporting Motion

Page 2 of 5

- k) If Montana State Parks is allowed to take the Hell Creek Marina business away from the leaseholder and assume ownership of Hell Creek Marina, it will limit or eliminate a large portion of the essential service currently provided by the leaseholder, due to Montana State's liability rules and regulations. As a private business, and in accordance with their contract, all leaseholders are authorized to provide these services. These services are critical to my continued use of the Hell Creek Recreation Area, and, if they cannot be provided, I will not be able to utilize the Hell Creek Area!
- To the best of my information and belief the 55-acres have been designated as a "marina" for more than 40 years.
- m) While attending a Montana State Parks & Recreation Board meeting titled "Montana State Parks & Recreation Board Agenda Montana WILD at the Auditorium, Helena, MT, July 6, 2017, I asked the following question. "Does Montana State Parks have the legal authority to develop any portion of the Thomases' 55-acre lease without the Thomases' permission? My question was directed to the Montana State Parks & Recreation Board and the acting Montana State Parks' Director, Tom Reilly. Mr. Reilly indicated that they do not. Tom Towe, the Montana State Parks & Recreation Board President, asked Mr. Reilly if the issue with the Thomases can't be resolved, what would happen. Mr. Reilly's response was that they would have to move any developments outside the 55 acres. Mr. Towe informed Mr. Reiliy that he had not answered my original question, and Mr. Towe again asked Mr. Reilly if they (MTSP) were legally obligated to allow him (Clint Thomas) to put something in the 55-acres if he chooses to. Mr. Reilly's response indicated he (Clint Thomas) could! Mr. Towe again asked Tom Reilly "does he (Clint Thomas) have full control or do we (MTSP)?" Mr. Reilly's response was "Mr. Chairman, I don't think we (MTSP) have the right to put anything in without his (Clint Thomas's) consent!" Mr. Reilly also stated "without some reasonableness prevailing, we will not have a project, and he (Mr. Reilly) would contact Mr. Thomas in an apparent attempt to gain Mr. Thomas's approval.
- n) I submitted a letter to the MSP Board at the July 6 meeting that was from the leaseholder. That letter was dated July 5, 2017, as I recall.
- o) I requested copies of the July 6, 2017 minutes but never received them. I did personally record and transcribe the part of the meeting concerning the proposed infrastructure going on the leasehold and whether permission from the leaseholder was required for it.
- p) After the statements made at the meeting and the discussion that followed I was completely surprised that Respondent Habermann directly contradicted the position of his superiors. He did so without much explanation and I am still baffled and in the dark about what would have transpired between July 6 and August 14 that would allow him to make such a dramatic switch.

James Gustafson Declaration Supporting Motion

- q) I also object to assertions and claims Mr. Haberman is using to validate some of his opinions and conclusions. Much of this data was based on information from Reserve America, a reservation system utilized for Hell Creek State Park, but the data fails to reflect the actual user and the user's observation that utilized the park. The reservation system did not honestly reflect the actual visitors. My personal observation is that on three separate occasions, twice in 2016 and once in 2017, I attempted to make reservations through the on-line reservation system, and all reservable sites were full. When I arrived at Hell Creek State Parks on all three occasions, less than half the sites were utilized during the same time frame I attempted to reserve. Therefore, based on my experience and the experiences of many other users, it indicates that the conclusions, based on Reservation America, are flawed.
- r) I was never contacted by Montana State Parks concerning my objection and my formal appeal dated 12 September 2018.
- s) Despite the foregoing, the Respondent has never processed my objection.
- t) In response to a decision letter by MTSP, drafted by Doug Haberman, dated 29 Feb 2016, MTSP, with the concurrence of MSMP and a public review and comment period, they announced the closure of Hell Creek State Park effective April 2002. MTSP also state, in their decision letter, that they have a formal review of this decision in 2019. Included in this decision letter was that MTSP parks would limit any improvements, and they would manage Hell Creek State Park with minimal improvement. After reviewing MTSP's decision letter concerning Hell Creek State Parks and the Legislative audit and the Legislative audit recommendations dated April 2018 pages 26 and 27 regarding Class 3 parks, Hell Creek State Parks is a class 3 park. The recommendation of legislative andit is for MTSP to find new partners or an alternate management team. Friends of Hell Creek, a non-profit organization, has submitted a proposal on June 29, 2018 to take over management of Hell Creek State Park and Hell Creek Marina through the Governor's office, in accordance to all known requirements. This request is currently under review and consideration. Any changes to the status of the Hell Creek Recreation area could have serious ramifications to the proposal set forth by Friends of Hell Creek and force Friends of Hell Creek to withdraw their proposal.
- u) I learned of the pre-construction meeting, while on vacation, from residents of the Hell Creek Recreational Area via a telephone conversation around 6 August 2018. As an individual who has been actively involved in the Hell Creek State Park and Marina situation since 2014, and as President of Friends of Hell Creek, I have a substantial interest in all current and future plans for Hell Creek State Park and Hell Creek Marina. After presenting a formal appeal to Montana State Parks' decision letter dated 14 August 2017, I felt I should have been kept apprised of all matters concerning any future development of the Hell Creek Recreation Area, until such time as the issue is addressed and resolved.

James Gustafson Declaration Supporting Motion

Page 4 of 5

v) Upon returning from vacation on 8 August 2014, I met with the MTSP Director. Beth Shumate, on 9 August 2018 to discuss my formal appeal of the decision letter dated 14 August 2017, signed by Doug Haberman, concerning Hell Creek State Park and the 55acres controlled by Hell Creek Marina, a private business, within the boundaries of Hell Creek State Park. My appeal letter was dated 12 September 2017 and was timely submitted in accordance to the directions provide by Montana State Parks. During the meeting I raised an objection regarding MTSP decision to proceed with the construction phase of the project and MTSP failure to respond to my formal objection! I asked Beth Shumate why MTSP failed to respond to my formal objection? Ms. Shumate did not know. Ms. Shumate asked if Tom Reilly could be present, Mr. Reilly was acting director at the time of my objections and appeal I agreed. Mr. Reilly was asked the same question regarding my appeal, Mr. Reilly response was he did not know! Ms. Shumate informed me that she would review the circumstance and get back to me as soon as possible! At this time, I asked when construction was going to begin Mr. Reilly response was probably by the end of next week I assumed that would be the next day or the next Monday August 13, 2018. I asked Ms. Shumate not to proceed with construction until my appeal was duly processed, Ms. Shumate did not respond to my request. I then asked to be notified prior to any construction begin again there has been no response. Ms. Shumate then thanked me for my concerns and said she would get back to me soon. As of the filing of this application there has been no response by MTSP to my objection.

This action is necessary to compel the Respondent to fulfill their constitutional and statutory duties under the law. They have failed to do so, and under the circumstances I believe I will be denied any meaningful remedy if the decision of the Respondent is not reversed so that, the construction is proceeding unabated.

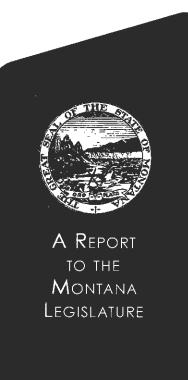
Based on my continuing inquiries through my attorney and others I have reason to believe the Respondents are commencing with construction despite not having started or completed my appeal.

Respondents are continuing to engage in activity to commence construction without ever addressing or resolving our appeal thereby denying FHC that remedy unless, as hereby respectfully requested, this Court issues a TRO or otherwise restrains the Respondents from continuing construction.

As of the date of this filing Respondent or his superiors have not even bothered to respond to my appeal, my attempts to meet and confer or to engage in any conversation with respect to the matter and are proceeding in an attempt to render the legal action I filed wholly moot.

FURTHER DECLARANT, UNDER PENALTY OF PERJURY (PURSUANT TO MONT. CODE ANN. § 1-6-105), SAYETH NOT.

James Gustafson	State of Montana County of <u>LAUUS</u> <u>F. JAYK</u> This instrument was signed or acknowledged before me or <u>CR/19/2018</u> by <u>Janner G. State</u> CA	
James Gustafson Declaration Silvorting	KRISTEN MCLAUGHLIN NCTARY PUBLIC for the State of Montana B My Contribusion Expires JUNE 01,2021	Page 5 of 5



Legislative Audit Division

17**P-01**

Performance Audit

Management of Montana's State Parks System

Department of Fish, Wildlife & Parks

April 2018

Legislative Audit Committee

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\$5-13-202(2), MCA

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Performance Audits

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are conducted at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

> Reports can be found in electronic format at: http://leg.mt.gov/audit

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LEGISLATIVE AUDIT DIVISION

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Deputy Legislative Auditors Cindy Jorgenson Joe Murray

April 2018

The Legislative Audit Committee of the Montana State Legislature:

This is our performance audit of Management of Montana's State Parks System, within the Department of Fish, Wildlife & Parks.

This report provides the Legislature information about the management and governance of Montana State Parks. This report includes recommendations for clarifying governance responsibilities; improving organizational culture within FWP; improving resource allocation and capital improvement planning; developing, maintaining, and using management information to better manage state parks; and increasing budget oversight of the Parks Division. Written responses from the Department of Fish, Wildlife & Parks and the Montana State Parks and Recreation Board are included at the end of the report.

We wish to express our appreciation to the Department of Fish, Wildlife & Parks personnel for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver Legislative Auditor

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APPOINTED AND ADMINISTRATIVE OFFICIALS

Term Expires

Montana State Parks & Recreation Board	Angie Grove, Chair	Helena	2021
& Recreation Doard	Scott Brown	Billings	2019
	Mary Sheehy Moe	Great Falls	2019
	Jeff Welch	Livingston	2021
	Betty Stone	Glasgow	2021

Department of Fish, Wildlife & Parks

Martha Williams, Director

Beth Shumate, Administrator, Parks Division

Tom Reilly, Assistant Administrator, Parks Division

PERFORMANCE AUDIT Management of Montana's State Parks System

Department of Fish, Wildlife & Parks

April 2018

17P-01

REPORT SUMMARY

Over the past decade, the Parks Division became increasingly isolated from the rest of FWP, which led to a cultural divide as well as a lack of financial oversight of the division. This contributed to the division amassing an \$11 million fund balance that could have been used to help maintain the division's 55 state parks. Additionally, state law does not clearly delineate the role in state parks activities of the State Parks and Recreation Board. The division also can improve how it allocates resources for capital improvements and day-to-day operations and maintenance at its 55 state parks.

Context

The Parks Division (division) of the Department of Fish, Wildlife & Parks (FWP) manages 55 state parks across Montana. Certain aspects of governance of the division are the responsibility of the State Parks and Recreation Board (board), which was formed in 2013. Audit work found the statute governing the board is vague, thus there is a lack of clarity regarding the roles and responsibilities of the board and the division. We also identified a number of internal changes within FWP over the past decade intended to promote autonomy for the Parks Division that instead isolated the division from the rest of the agency, both organizationally and culturally.

As part of our audit work, we visited 19 state parks and met with all five regional parks managers. While we found Montana's state parks are generally in good condition and receive high marks in visitor surveys, the division does not fully collect and use management information to prioritize the allocation of resources for capital projects and operational and maintenance needs across the parks system. The division identified a backlog of \$22 million in maintenance needs, but has not tracked progress in addressing these needs. The division spent \$97,000 on a software system to help with this effort, but to date the system has not been put to use in the field or in the Helena headquarters office.

Historically, the division has not planned for the ongoing operational and maintenance needs of new parks when considering whether to add parks to its inventory. Similarly, the division has not undertaken a system-wide analysis of its ability to operate and maintain its existing portfolio of parks given current resource levels. A policy to address land acquisitions and disposals is inconsistent in how it spells out conditions for and the intent to transfer state parks.

Finally, we determined that a lack of management oversight resulted in an \$11 million fund balance that was beyond what was acceptable to agency management and to the legislature. The division was not spending all funds that had been appropriated for capital improvements as well as routine operations and maintenance. This resulted in negative publicity for the department, both among the public and lawmakers, as well as a diversion of several million dollars in parks funding to other uses outside of FWP.

Results

Our report resulted in six recommendations to the agency. Our recommendations were in the following areas:

- Clarifying the duties and responsibilities of the State Parks and Recreation Board.
- Improving the culture of FWP and the relationship between the division and the rest of the agency.
- Developing a broad state-wide plan for the allocation of resources for capital projects as well as regular parks maintenance.
- Making use of management information to make better decisions on that allocation.
- Making internal changes and providing better oversight of division budgets.
- Strengthening policy to more actively assess the potential need to transfer state parks.

The agency and the board agreed with all of our recommendations.

Concur	6
Partially Concur	0
Do Not Concur	0

For a complete copy of the report (17P-01) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to **lad@mt.gov**; or check the web site at http://leg.mt.gov/audit Report Fraud, Waste, and Abuse to the Legislative Auditor's FRAUD HOTLINE Call toll-free 1-800-222-4446, or e-mail **lad@mt.gov**.

Chapter I – Introduction and Background

Introduction

Montana State Parks are managed by the Parks Division (division) of the Department of Fish, Wildlife & Parks (FWP). Section 23-1-101, MCA, charges the department and the State Parks and Recreation Board (board) with "conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state, providing for their use and enjoyment, and contributing to the cultural, recreational, and economic life of the people and their health."

The division currently oversees 55 state parks that offer a variety of recreational and educational opportunities across the state, from traditional outdoor pursuits like boating, camping, and hiking to activities less commonly associated with parks like historic preservation and interpretation. Some parks provide substantial visitor amenities and employ on-site managers, and some properties are small and undeveloped and are not staffed at all.

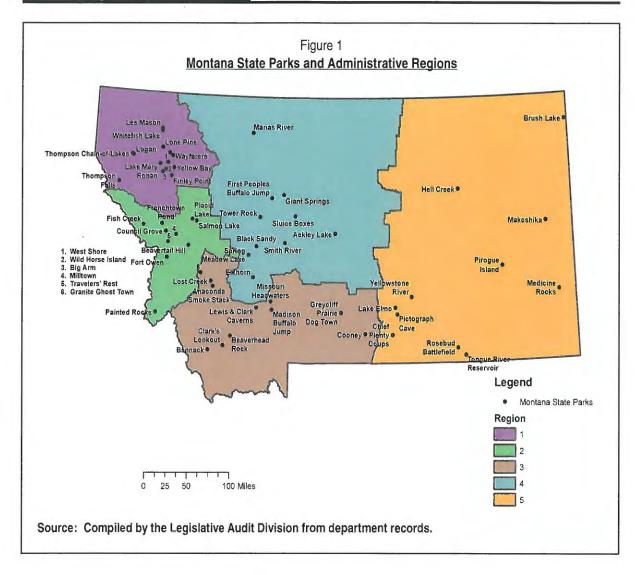
Based on ongoing legislative interest in the management of state parks, including questions about a significant fund balance in the Parks Division as well as questions about how parks fits under the broader FWP umbrella, the Legislative Audit Committee prioritized a performance audit of Montana State Parks.

Background

The Parks Division has approximately 83 FTE, including 14 in Helena. The Helena staff includes the division administrator and assistant administrator, chief of operations, marketing and communications, and leadership of various parks division programs, including grant management and heritage resource management.

The division is administratively divided into five regions across the state, with regional park managers in Kalispell, Missoula, Great Falls, Bozeman, and Billings. The parks are geographically more concentrated in the western half of the state, although Makoshika State Park, outside of Glendive, is one of the system's most popular and high-profile destinations.

The map in Figure 1 (see page 2) illustrates the location of all 55 state parks within the Parks Division's five administrative regions around Montana.

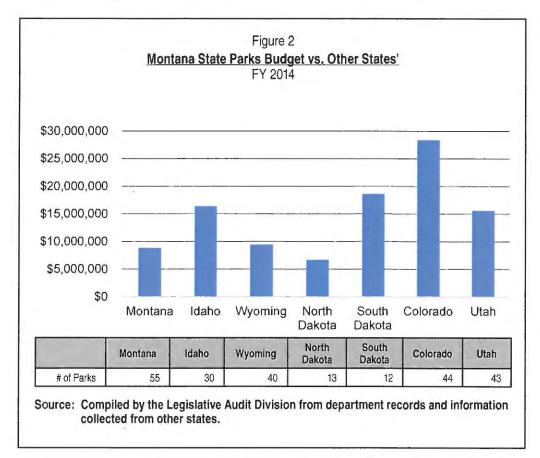


Parks Funding From Four Main Sources

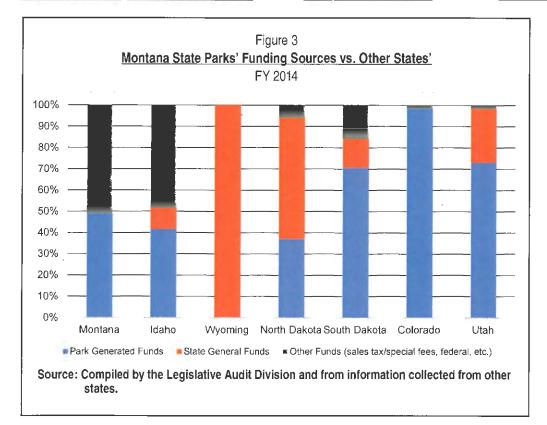
The division has an annual operating budget of a little over \$9 million. Montana is one of nine states in which state parks are not supported with state general fund dollars. Parks are funded primarily through four sources: a portion of the accommodations (bed) tax; a share of interest from the Coal Severance Tax Trust Fund; the motorboat fuel tax; and the Parks Miscellaneous Fund, which collects the opt-out fee on light vehicle registrations as well as money earned from camping and other on-site parks activities. Of the \$6 light vehicle registration fee, \$5.38 goes to parks. Department officials told us that around 80 percent of Montanans pay the fee when registering their light vehicles.

2

The following figure illustrates the annual budget for Montana's park system as well as those of several states surrounding Montana in Fiscal Year 2014, the most recent year from which complete information was available from all states surveyed. The table also indicates the number of parks in each state's system. As is shown, Montana has a small budget but a large number of parks, compared to other regional states.



As Figure 3 (see page 4) illustrates, there is no "typical" funding model for state park systems in the region. States employ a variety of funding models to support their state parks, with some relying heavily on general fund support while others receive little or no funding from the state's general fund. Again, the data shown is from fiscal year 2014.



Audit Scope

Given the relative newness and some uncertainty surrounding the exact role of the State Parks and Recreation Board, this aspect of the governance of state parks was included in the audit scope. Other areas of interest included the division's management structure and prioritization policies, and its funding sources, particularly as they relate to the number of parks for which the division is responsible. Generally, audit work addressed two main areas. The first was governance, which also included a review of a number of organizational changes at the department as well as the culture at FWP. The second area we addressed was management of resource allocation and the prioritization for these resources. Work was conducted in Helena at the Parks Division main office as well as at regional parks offices and a sample of parks of varying size and visitation around the state. The time period under review was largely from the inception of the State Parks and Recreation Board (2013) to the present, although for acquisition of new parks and for organizational changes within the department our review stretched back a decade. The following paragraphs provide additional detail on each of our primary scope areas.

Governance and Culture

We addressed the authority of the State Parks and Recreation Board. In particular, we examined the different roles and responsibilities of the division and the board as defined by statute, and whether these roles are being carried out correctly or not. We also examined concerns regarding the relationship between the division and the broader department, and the general organizational culture at FWP, including the effects of several structural and organizational changes to the department over the past decade.

Parks Resource Allocation

We also addressed the allocation of resources at Montana State Parks. In particular, we examined if the management and organizational changes within the division and FWP allow for the effective operation of state parks. There have been legislative concerns in this area, and assessment work indicated a lack of formal process for resource allocation. As part of our work, we examined how general maintenance of state parks is prioritized; how management information is collected and used; how parks are acquired or disposed of; whether state parks can be operated on lands not owned by the state, and how law enforcement duties are handled at state parks. We also assessed the budget and funding sources for Montana State Parks to determine the origins of the fund balance that surpassed \$11 million in late 2016, which has attracted much legislative and public interest since it was first publicized.

Audit Objectives and Methodologies

To address the risks we identified during assessment work, we developed the following two objectives to examine how state parks are managed and governed:

Objective 1: Does the governance structure for state parks provide for effective oversight of state parks, including a clear division of responsibilities between the department and the State Parks and Recreation Board?

Objective 2: Does the department have a process in place to identify opportunities for and prioritize the allocation and resources for maintenance and operations and capital projects at state parks, as well as plans for maintaining and improving newly acquired parks?

To address these objectives, we performed the following methodologies:

 Reviewed statute and administrative rules governing the Parks Division and Parks and Recreation Board to understand how authority between FWP and the board is delineated.

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- Reviewed State Parks and Recreation Board meeting agendas, minutes, and, when possible, recordings of all meetings dating back to the board's creation in 2013.
- Interviewed members of the board and division staff as well as department staff to gain perspectives on the role of the board and its effectiveness.
- Reviewed the 2015-2020 Montana State Parks and Recreation Strategic Plan, identified specific goals as indicated by the board, and measured which goals had been met at the halfway point of the plan's duration.
- Interviewed parks officials in other states to gauge best practices, how their park systems are governed, and how they deal with overall management and administration of the state park system.
- Examined, through interviews and file review, the culture both within the division and between the Parks Division and FWP as a whole.
- Researched statute and administrative rules for guidance on how the division prioritizes maintenance and operations and capital projects at existing parks.
- Determined what management information systems are in place at FWP regarding state parks, when and how such systems were acquired, and whether or not their capacity is fully used.
- Interviewed division and FWP leadership to assess the division's utilization of certain centralized services and functions available to the entire department, including activities like marketing, law enforcement, and Web site presence.
- Interviewed division leadership and FWP management and reviewed documentation regarding the division's recent \$11 million fund balance.
- Examined FWP customer feedback surveys submitted by parks users in 2016 and 2017. We discussed the survey process and results with staff to learn how this information is used by the division to guide its resource allocation.
- Visited a judgmental sample of 19 parks across Montana for visual inspection and comparison to the maintenance criteria spelled out in statute.
- Interviewed all five regional park managers as well as select managers of individual parks.
- Reviewed policies related to the acquisition of new park lands, with particular attention on planning prior to acquisition for the development and ongoing operations and maintenance of the new parks. We reviewed files for six recent parks acquisitions for evidence of the department's commitment to ongoing operations and maintenance funding.
- Determined what criteria exists for transferring state parks and reviewed records of acquisitions and transfers of real property.
- Reviewed records of past capital project priority rankings and funding requests, and determined which projects were eventually included in governor's budgets, and what funding sources were proposed.

Issue for Further Study

Our work with Montana State Parks and other divisions at FWP raised issues in another division of FWP in which further audit work may be warranted in the future.

We identified dissarisfaction with the current relationship between the Parks Division and the Law Enforcement Division, although there was disagreement about how to improve this aspect of public safety. Beyond simply providing enforcement service in parks, we heard questions about whether the current organizational structure of the Law Enforcement Division is appropriate. We also heard questions related to the current funding model and funding sources for Law Enforcement and potential limitations this places on law enforcement activities.

Report Contents

The remainder of this report contains two additional chapters.

- **Chapter II** addresses the governance authority of Montana State Parks, including the role of the State Parks and Recreation Board. This chapter also includes a recent history of organizational and cultural changes within FWP and the effect of these changes on the Parks Division, as well as subsequent impact on the division's finances.
- **Chapter III** addresses questions about how the department manages and allocates resources for state parks, as well as the extent to which any management information systems are used to help allocate resources. The chapter also looks at how the Parks Division plans for ongoing operational and maintenance needs at new park lands. This chapter also discusses whether a more system-wide view of resource availability is necessary to determine if park lands should be transferred to other ownership or management.

Chapter II – Governance and Culture of Montana State Parks

Introduction

As part of our first objective, we examined the statutory role of the State Parks and Recreation Board (board) and the division of authority between the board and the Department of Fish, Wildlife & Parks (department). We then reviewed several organizational changes within FWP over the past decade and the effect those changes had on the culture within the department as it related to the Parks Division (division). Finally, we examined the causes and effects of a significant division fund balance that continued to grow over several years.

This chapter discusses our findings related to the current governance of state parks and makes a recommendation to clarify the responsibilities of the board and the department. We also discuss organizational and cultural changes that have taken place within the department over the past decade, and make two recommendations related to organizational culture and oversight of division budget activity.

State Parks and Recreation Board Created in 2013

The Montana State Park Commission was established in 1939. Lewis and Clark Caverns near Three Forks was Montana's first state park, and remains one of the flagships of the system. State parks were under the control of this commission until 1953, when related powers and responsibilities for parks were transferred to the State Highway Commission. In 1965, the Fish and Game Department (renamed the Department of Fish, Wildlife & Parks in 1979) was assigned responsibility for the state parks system and its operation and maintenance. State parks have been part of this department for 53 years.

For much of its time under the FWP umbrella, the work of the Parks Division was overseen by the Fish, Wildlife & Parks Commission. In 2013, the Legislature passed House Bill 24, which removed the responsibility for parks from the commission and created the State Parks and Recreation Board, which today oversees certain activities of the division. This five-member board (one member from each of five districts in the state) is appointed by the governor. Its statutory duties (§23-1-111, MCA) include:

- Setting policies and providing direction to the department for the management, protection, conservation, and preservation of state park lands and waters.
- Coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites.

- Maintaining hunting and fishing opportunities at state parks.
- Establishing the rules of the department governing the use of state parks.
- Reviewing and approving all acquisitions or transfers of interest in state parks.
- Reviewing and approving the budget of the department for the administration of state parks prior to transmittal to the governor's budget office.
- Reviewing and approving construction projects costing more than \$5,000, and other duties.

The creation of the board was intended to provide a higher profile for state parks and a dedicated citizen oversight presence for the division. However, our audit work identified confusion over the role and authority of the board, including who bears responsibility for approving various recreational grants, whether the board has a role in approving fees set for parks activities, and who ultimately sets policy for the division.

<u>Statutory Clarification of the Board's</u> <u>Role and Responsibilities</u>

During assessment work we identified concerns that the board may be over-stepping its authority in certain areas, or that its authority was ill-defined or perhaps overlapped with the role of the department, so it was in these areas that we focused our work. We also heard concerns that the \$5,000 threshold for board approval of construction projects is unnecessarily low and may slow the completion of routine construction work.

Our work on the governance objective included interviews with department staff and with board members. We also conducted a full review of meeting agendas, minutes, and recordings (when available) for every meeting of the board since its formation in 2013. In reviewing board meetings we tracked every vote taken by the board, then tried to determine whether the vote was on a matter within the board's statutory authority.

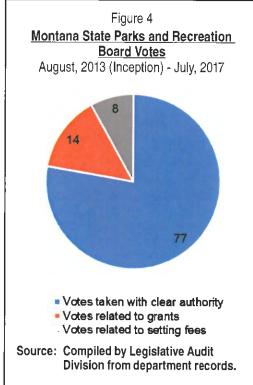
We determined the board does not have authority to approve grants. The division is in charge of administering a number of recreation-related grant programs, including programs for recreational trails, off-highway vehicles, snowmobiles, accessible playgrounds, and Land and Water Conservation Fund awards. There already exists a governor-appointed advisory body that approves recreation grants. We further determined that the approving of certain fees charged at state parks (for camping and other services) are the purview of the department and do not need board approval. Nowhere in §23-1-111, MCA, or the rest of Title 23 does it specifically state the board may approve grants. While this section of code addresses the board's role in "coordinating, integrating, promoting, and furthering" certain activities at state parks, it does not speak to the dispensing of grant funds to external organizations for these pursuits. Based on these interviews and our reading of statute, we determined the board is overstepping its powers regarding the approval of grants.

Staff also believed the board does not have the authority to approve fees established by the department for camping and other parks-related activities. In our review we noted that \$23-1-105, MCA, gives the department the power to "levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided." Nothing in this statute indicates the fees are to be approved by the board.

Our review of board meetings found that the board has routinely voted on these two items we determined to be outside of its authority. Figure 4 illustrates how many action items the board voted on since the board's creation in 2013. As the figure indicates, more than 20 percent of the board's votes were in areas where there are questions as to whether the board in fact has authority to be making those votes. This figure does not

include votes on approving board meeting minutes or board meeting expenses, neither of which are in question.

In addition to grant approvals and fee setting, our review of the board's powers also found some overlap in duties granted to the department in \$23-1-106, MCA, and duties granted to the board in §23-1-111, MCA, regarding which entity has authority to make rules for the governance of parks. In practice, the department has been proposing rules and the board has been approving rules. There is also authority for the board spelled out in \$23-1-102(c), MCA, that is not included in \$23-1-111, MCA-specifically, the ability to enter into contracts with concessionaires. Board duties are not limited to one section of statute.



Fish and Wildlife Commission Duties More Explicit

A recurring theme in our examination of the board statute was the inherent broadness of the statute, especially compared to the Montana Fish and Wildlife Commission (commission) statute (§87-1-301, MCA). The commission statute is much more detailed and prescriptive than the board's statute, and general powers of the commission are defined in much greater detail. Some examples of duties include establishing the hunting, fishing, and trapping rules of the department; approving acquisitions of land or water; managing elk, deer, and antelope populations; and establishing special licenses to promote hunting by Montana's youth and persons with disabilities; among many other duties.

The commission also has more action items to vote on at its meetings than the Parks and Recreation Board, possibly owing to its more defined powers and duties. According to department management, agendas of the board often do not have enough action items to justify calling a meeting with members traveling from around the state. They stated that the grant awards were added to board agendas in part so the board would have more to do.

We found statutory ambiguity regarding the role of the Montana State Parks and Recreation Board. Department and division leadership have expressed uncertainty over the role of the board and its authority versus the department's regarding certain activities of the division. This lack of certainty of the board's role results in less efficient parks operations and heightens future risk of disagreement between the board and the department.

Other States Report Few Oversight Issues

Of the other states sampled and other state officials interviewed, Montana is the only state with a parks and recreation oversight body which does not also oversee wildlife or other issues. Other states' officials indicated their parks and recreation oversight bodies generally function well in practice, and none indicated problems with statutory vagueness. Colorado merged its previous parks and recreation oversight board with its wildlife commission in 2011, when its parks and wildlife divisions merged together. Wyoming's commission operates in an advisory capacity with no legal authority, but it is consulted in many areas. North Dakota has no parks oversight body.

Montana's approach to governance of its state parks is obviously different from those in surrounding states, but this can be at least partly explained by an innovative legislative approach to state-specific concerns or issues. It should also be noted that the dual governance model adopted here is consistent with historical practice (oversight of state parks in Montana was provided by a separate governance entity for the first 14 years of the parks system's existence).

Board Statute Lacking Specificity

The State Parks and Recreation Board was created due to concerns regarding how much time the original FWP Commission could dedicate to state parks issues. In 2013, the Legislature created the board to oversee state parks activities, in place of the FWP Commission. The intent was to dedicate more time for public discussion of state parks and recreation issues. The Parks and Recreation Board is a relatively new entity with broad, undefined, and unclear statutory basis and direction. Statute that is too broad and lacking in specifics can lead to confusion and lead to challenges in authority. Taking action items to the board that are not within the board's statutory bailiwick can also slow the work of the department, which could find itself awaiting unnecessary board approval rather than moving ahead with the work of managing state parks.

RECOMMENDATION #1

We recommend the Department of Fish, Wildlife, & Parks work in consultation with the State Parks and Recreation Board to clarify and document the role, duties, and powers of the State Parks and Recreation Board to ensure a clear delineation of authority between the board and the department, seeking legislation if necessary to better define the board's authority.

The Evolving Structure of FWP

As part of our work on our governance objective, we also examined the organizational structure of FWP as it relates to the Parks Division and park lands, as well as the prevailing culture at the department. This included how the Parks Division fits with the mission and goals of the department.

The division is in many ways integrated with the rest of the department. Along with other FWP divisions, the division shares certain centralized functions like human resources, enforcement, and accounting. More broadly, several parks themselves are tied to FWP. This is because a number of properties that are today classified as state parks were acquired in part or wholly with sportsmen's license dollars, which legally binds these lands to the oversight of the state wildlife department, of which parks is an integral part.

We learned that over the years, division leadership has occasionally felt overlooked and under-supported in an department that deals with many high-profile outdoorsrelated issues. We further learned that over time, division officials became increasingly isolated within the department, creating a culture of mistrust between the division and department management. This section discusses this issue in more detail.

<u>Several Organizational Changes Widened the</u> <u>Gulf Between Parks and the Department</u>

Over the past decade, a number of steps, both organizationally and less formally, were taken that had the cumulative effect of distancing the Parks Division from the rest of the department. We examined these moves and determined the effect they had on Parks' place in FWP.

In studying these steps and the results thereof, we also explored less tangible but related topics like the morale of the division staff, and the broader culture and attitude toward Parks at FWP. We also examined the oft-heard sentiment that state parks are generally overshadowed and underserved by being part of a department that is focused primarily on fish and wildlife issues and only secondarily on parks and outdoor recreation.

We found little hard evidence within department records, files, and decisions that division leadership was incrementally severing ties with the rest of the department in a concerted or sustained effort to pave the way for the division to leave FWP. However, this theory was widespread and broadly aired in interviews across FWP: Several staff members indicated that division leadership spent much of the last decade laying the groundwork to leave FWP and either become a stand-alone entity or become part of another executive branch department. Several bills in the last four legislative sessions also suggested significant legislative interest in restructuring parks to either have more autonomy within the department or to relocate outside of FWP.

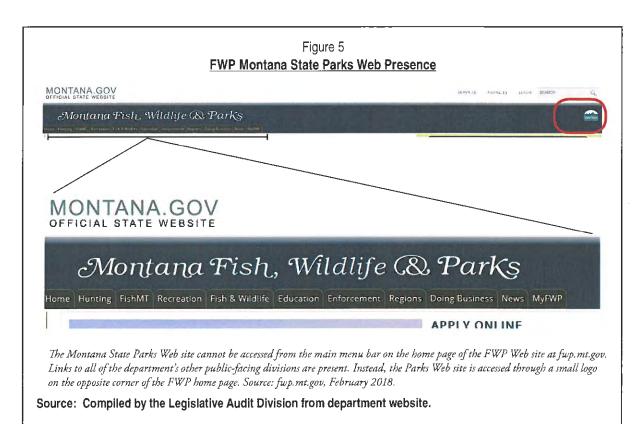
Among the organizational changes that have affected the division's standing and role within the department in the past decade:

• **Fishing access sites:** Management of the state's 332 fishing access sites was moved from the Parks Division to the Fisheries Division in 2011. We heard divided sentiments on this change. In some interviews we were told that fishing access site management is about managing people and the recreation experience and not expressly for managing fish populations. Thus, many staff believe the sites should be within the Parks Division, which has recreation management as a core function. These proponents further noted that a growing number (half or more) of fishing access site visitors are not anglers, but rather are recreational floaters, campers, or other users. Others told us that prior to the change, the maintenance demands for hundreds of fishing

access sites overwhelmed the Parks Division and took needed attention away from parks.

- Organizational structure: In 2009, the department was reorganized to have three major divisions, including Management and Finance; Parks; and Fish and Wildlife. According to department staff, this elevation of Parks to be a co-equal with a combined Fish and Wildlife division caused strife within the rest of the department, as FWP staff believed Parks was being favored beyond its size and importance relative to the rest of the department.
- Another reorganization: In 2013 the department was re-organized again, largely reverting back to the structure that was in place prior to the 2009 reorganization referenced above, with separate and equivalent divisions for Fish, Wildlife, and Parks.
- **Communications and Web presence:** In 2012, Parks became responsible for its own public relations and Web site maintenance, independent of the Communication Education Bureau, which had traditionally handled these functions for the entire department. As a result of this move, Parks no longer had a presence in Montana Outdoors, the official publication of FWP.

Also, as the following figure illustrates, the Parks Division Web site is separate and distinct from the Web site of the rest of the department, with no link to the State Parks site on the menu bar that provides links to the rest of FWP's divisions. Instead, the Montana State Parks Web site is accessed via and inconspicuous link (the Parks logo) on a separate part of the Web page.



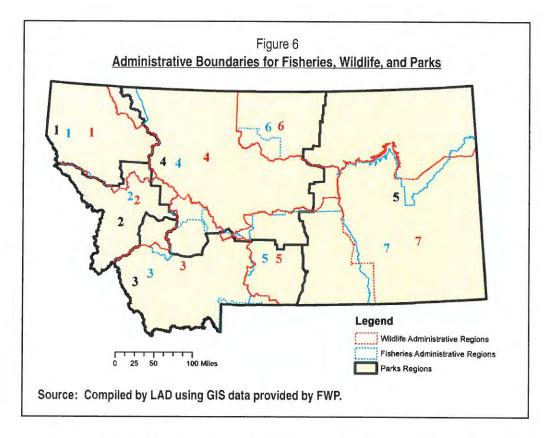
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• **Parks oversight:** In 2013, the legislature passed and the governot signed House Bill 24, which created the State Parks and Recreation Board, thus removing parks oversight from the Fish, Wildlife & Parks Commission, which was concurrently renamed the Fish and Wildlife Commission. Another expected benefit of a separate board for state parks would be a higher profile and better advocacy for the parks system within the larger department.

In interviews we heard that state parks generally suffer from a comparative lack of vocal public support. While all manner of hunting, fishing, and conservation groups will come to the Capitol to testify and/or contact legislators about fish and wildlife issues, state parks do not have the robust advocacy infrastructure enjoyed by the other divisions. Thus even while the parks themselves are hosting record numbers of visitors, the parks system is under-represented politically, we were told. Officials hoped that creating the board would help raise the profile of parks.

• **Regional structure:** In 2013 the Parks Division reorganized its regional structure and the reporting chain for regional parks managers. Previously, the division shared roughly the same seven regional boundaries as the rest of the department, and regional parks managers reported to regional FWP supervisors who were located in the same facilities. After the change, Parks was divided into only five regions, and the regional park managers reported directly to the division administration in Helena rather than the regional supervisors in their field locations. Regional managers of other divisions, meanwhile, continue to report to regional supervisors across the state.

Figure 6 (see page 17) illustrates the five administrative regions for state parks, as well as the seven regions apiece for fisheries and wildlife administration. Note that while fisheries and wildlife do not share identical boundaries, they are nearly the same, and are much more congruous than parks:



• Law enforcement: The Parks Division created its own law enforcement presence in 2009, with four wardens dedicated to covering state parks. According to staff, this created administrative challenges and fostered ill will between the Parks Division and the Enforcement Division. This structure was abandoned in 2013 and the four wardens who had been hired by parks were moved into the Enforcement Division.

Taken as a whole, these changes had the effect, both organizationally and culturally, of widening the divide within the department, as some employees were eager for the division to be distanced from FWP, while others believed FWP remained the most appropriate home for state parks. Over the years that these changes were taking place, the sentiment grew within the division that parks would be better served by moving outside of FWP.

Past Legislative Interest in Realigning Parks

While many of the aforementioned steps were being taken within the department, a number of bills were brought forward in the last several legislative sessions that would have either moved the division out of FWP, or given the division more statutory autonomy within the department. Multiple bills have proposed moving the division to the Department of Commerce. While none of these bills reached the governor's desk, they received substantial legislative support over multiple sessions. Also, the creation of

the State Parks and Recreation Board by the legislature in 2013 gave the division some autonomy from the rest of the department by removing parks issues from the purview of the Fish and Wildlife Commission. In 2017, a bill that would have given the board (as opposed to the FWP director) the authority to hire and oversee the Parks Division administrator passed the legislature but was vetoed by the governor.

Parks Are Often Aligned With Natural Resource Agencies

As a division of Fish, Wildlife & Parks, Montana State Parks has a relatively typical organizational location model compared to peer states in the region. While a few states have dedicated executive agencies for parks and recreation, the majority of states we reviewed house their respective state parks programs within a department also focusing on wildlife and/or related natural resource issues.

For example, Wyoming's state park program is a division of its Department of State Parks and Cultural Resources. South Dakota's is a division of its Department of Game, Fish & Parks, very similar to Montana's structure. Utah's is a division of its Department of Environmental & Natural Resources.

Colorado recently underwent an organizational change. In 2011 its parks program was moved from its own division under the Department of Natural Resources to join with the Wildlife Division under the same department. This move was done in an effort to save money and streamline services in what were viewed as functions with similar missions. It now functions as the Parks & Wildlife Division.

Despite Multiple Efforts to Move, Parks Remains Part of FWP

Effective organizations have a strong culture that features strength in multiple areas, which should include vision, values, practices, people, narrative, and place. A desire to achieve many of these strengths is evident in the FWP "Vision 2016-2026" document, which lays out the department's direction for the next decade. The document speaks equally to fish, wildlife, and state parks resources, and addresses outdoor recreation in the same breath as hunting, fishing, and trapping in the context of Montana's culture and conservation ethic. However, the cumulative effect of the steps taken to distance the Parks Division from the rest of the department have hindered FWP's ability to foster a strong department-wide culture based on these shared values.

Further, best practices in corporate culture indicate the strongest organizations are those in which employees are most open to collaboration and sharing knowledge and skills with others across the organization. Changes to the organizational and reporting structures at FWP generally and regarding the Parks Division in particular have limited the opportunities for such communication and thus further widened the cultural gap between the Parks Division and the rest of the department.

Despite the acrimony of the past decade, and numerous efforts to further separate state parks from FWP, the division today remains part of the department. In that context, the department should make every effort to build upon best organizational practices by improving internal communication and information sharing, and by implementing across all divisions the values outlined in its vision document for the coming decade.

Our audit identified certain circumstances within the department that do not readily lend themselves to audit recommendations, specifically the negative attitudes and strained relationships that grew over the past decade between the Parks Division and the rest of the department. However, giving the Parks Division equal standing with the other divisions on the department Web page and including parks content in the official publication of the department would be easy, public-facing steps FWP could take as part of a larger plan to better reintegrate parks into the department. Such a plan could include a number of tangible steps, including a periodic climate survey of employees across the department that could help identify issues and address the relationship between the Parks Division and the rest of FWP. This plan may even shed light on other problem areas before they rise to the level of animus seen over the last decade. As our work concluded, department management indicated a number of steps are underway to improve the culture at FWP.

Recommendation #2

We recommend the Department of Fish, Wildlife & Parks develop and implement a plan to organizationally and culturally reintegrate the Parks Division into the broader agency.

Parks Fund Balance Not Expended as Appropriated

Through audit work we determined that one lasting and tangible effect of the increasing isolation of the Parks Division in FWP was a lack of oversight of the parks budget. Unbeknownst to department management, the division built up a significant fund balance that came to light only when its size surpassed the annual parks budget.

At the end of Fiscal Year 2016, the Parks Division reported a positive fund balance of around \$11.3 million. Questions arose as to how this balance came into existence

at a time when Parks was publicizing a backlog of some \$22 million in deferred maintenance needs across the system.

There are several reasons a fund balance might exist, including a lack of available appropriation authority or a lack of cash. So, we analyzed the division's unspent budget authority, cash balances, and working capital. (Working capital is the amount of cash that would remain if all of the current assets were converted to cash and used to pay current liabilities.) The working capital we identified, which does not match the amount reported by state parks as an ending fund balance, represents the amount the division could have spent on operations, and includes our best estimate of the division's portion of certain department-wide funds. As summarized in Table 1 below, the division had both appropriation authority and cash available while its estimated working capital balance was growing.

rks Division Unspent Budget Authority and Estimated Working Capital and Cash Balance Fiscal Years 2014 through 2017				
Unspent Budget Authority	1,042,166	2,145,980	2,630,391	2,289,651
Estimated Working Capital Balance	7,314,999	8,389,581	9,568,253	10,079,164
Estimated Cash Balance	7,605,080	8,509,022	9,583,563	9,913,405

Through interviews as well as review of budget documents, capital expenditure requests, personnel files, and summary documents prepared by the department's budget staff, we learned of multiple causes of the growing fund balance over the last several years. We also determined that a lack of oversight by department management allowed the fund balance to grow to a sum that was viewed as excessive and unjustified.

Several factors contributed to the growth of the Parks fund balance, including:

• A move toward requesting general fund dollars or bonding authority to pay for capital projects, rather than using funds from the Parks accounts as had been historically the case. In fiscal years 2005 through 2011, Parks made \$10.5 million in capital requests from its own budget. For fiscal years 2012 through 2019, only \$2.5 million in capital requests were made of these funds, while there was simultaneously a shift in requests for general fund dollars. Prior to the 2017 Legislative Session, Parks submitted a list of projects totaling \$14.5 million to the governor's office seeking general fund dollars. These requests were denied, although three Parks Division projects totaling \$6 million were subsequently included in the governor's budget using division funding.

• For fiscal years 2015 and 2016, funds from the bed tax totaling around \$1.3 million were put into the bed tax account to be used for general maintenance in the budget for the Helena office, but it was never expended. Unlike other sources of Parks Division revenue, the bed tax dollars are statutorily appropriated and can be spent by the division without legislative approval.

Department Management Overlooked Growing Fund Balance

Questions arose throughout fieldwork as to how this balance grew unbeknownst to the director's office or other department officials. Many of the individuals who were in positions of oversight at the time are no longer with the department, but we nonetheless learned some reasons for how the fund balance was allowed to grow. Our audit work determined an ongoing lack of department oversight of the Parks Division budget resulted in the fund balance going unnoticed.

- Prior to the 2015 session, most of the department's attention was focused on the financial situation on the Fish and Wildlife side of the department, where fees had not been increased for close to a decade. Leadership within the Parks Division were long-tenured employees and were considered trusted and competent at running the division and its budget, so little attention was paid to this part of the department's overall budget picture. According to documentation provided by the department, the Parks Division had unspent appropriations totaling \$6.7 million for fiscal years 2016 and 2017, which makes up the lion's share of the fund balance.
- It was not unusual for Parks to have a substantial fund balance as the end of the fiscal year approached. Due to the seasonal usage of its facilities, Parks incurs significant expenses in July and August, so the fund balance is not expected to be low in the lead-up to the June 30 end of the fiscal year. Also, because Parks revenue could fluctuate with the economy, management endeavored to keep a balance of around \$3 million in the Parks account, to guard against an unanticipated shortfall in revenue in any of the four major parks funds or to pay for unanticipated repairs or other needs.
- Leadership made an assumption that divisions were spending their budgets, according to one member of management. It was apparent that the director's office had an expectation that appropriated funds were being expended, and there was a lack of oversight as the Parks fund balance grew over time.

Fund Balance Brought Bad Publicity and Negative Consequences to Parks

The emergence of the substantial fund balance had numerous negative consequences for the department, including:

• News stories and opinion pieces from around Montana questioned department management and the division's protestations that its budget was insufficient at a time it was sitting on a funding surplus.

- Significant questions arose from the legislature about department management and oversight, along with numerous theories abour the motivation from either the department or the division or both about why the money had not been spent.
- A negative effect on morale was felt across the Parks Division, particularly in regions and individual parks across the state. Multiple regional parks managers told us they found it inexplicable and demoralizing that they were making budget cuts to individual parks, and delaying necessary capital and maintenance expenditures, while the Parks Division balance was growing in Helena with money that could have been spent in the field.
- The legislature ultimately moved more than \$4 million to projects not related to state parks, including a county road project in Garfield County and to Virginia City and Nevada City. This hurt the division's ability to complete capital projects in the future, and potentially undermined public trust that the fee citizens voluntarily pay for parks when registering light vehicles will in fact be used to support state parks.

Steps Needed to Strengthen Financial Management

Managers should be able to delegate responsibilities to staff with reasonable assurance that what they expect to happen actually does. Part of this is being able to show that public funds are administered and expended in compliance with applicable laws and regulations, and as intended by the legislature. Funds that were appropriated and never spent led to a significant growth in the balance of division funds. A review of internal FWP documents indicated that the fund balance was a concern to department management once it was discovered, but a lack of oversight in the years leading up to that discovery allowed the balance to grow in the first place.

During our audit we learned of a pending reorganization of the budgeting function throughout FWP that would move various divisional budget staff into a centralized budget office and provide for more oversight of the finances of the Parks Division and other divisions. This reorganization, if completed, would be a good step toward preventing Parks Division budgetary issues from recurring in the future.

RECOMMENDATION #3

We recommend the Department of Fish, Wildlife & Parks increase centralized management oversight and implement changes to agency financial management to ensure appropriated and available funds are expended as intended.

Chapter III – Park Management and Resource Allocation

Introduction

As part of our second objective, we examined how the Parks Division (division) prioritizes and tracks the routine maintenance work and capital projects at its properties. The division has long publicized the significant number of parks it must operate and maintain on what it views as a limited budget. Thus, we wanted to learn how the division allocates the resources it receives, and whether parks are appropriately maintained. We looked at how resources are allocated for capital projects and regular operations and maintenance, and reviewed how resource availability factors into consideration of adding or removing parks from the system.

We learned that several tangible, positive steps have been taken by the division and the State Parks and Recreation Board (board) in recent years that have moved the division toward better allocation of maintenance and operations resources. However, the division falls short of employing a thorough or statewide strategy for allocating resources for maintaining existing parks and prioritizing capital projects.

This section reviews how the division prioritizes and tracks maintenance and operations activities and how management information is collected and employed by the department. It includes recommendations related to developing system-wide plans for resource allocation and making better use of available management information in prioritizing maintenance work across the system.

The Current State of Parks

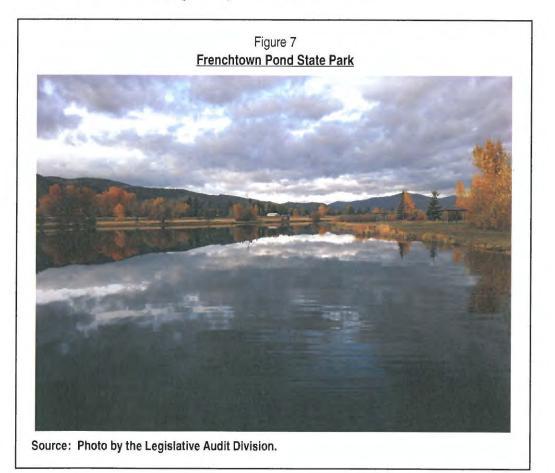
Our work on this objective also included visits to approximately one-third of all Montana State Parks. We selected a sample of parks to visit that included multiple parks in each of five Parks Regions in Montana, as well as a cross-section of parks from each of four classifications as identified by the State Parks and Recreation Board. (The board's classification exercise will be discussed below.)

Our visits included the following 19 parks, from June-October, 2017:

- Region 1: Big Arm, Lone Pine, Wayfarers, West Shore
- Region 2: Frenchtown Pond, Travelers' Rest, Milltown
- **Region 3:** Anaconda Smoke Stack, Greycliff Prairie Dog Town, Lewis & Clark Caverns, Lost Creek, Madison Buffalo Jump, Missouri Headwaters
- Region 4: Elkhorn, Giant Springs, Tower Rock
- Region 5: Chief Plenty Coups, Lake Elmo, Pictograph Cave

In observing the parks, we measured the prevailing conditions against the prescribed list of maintenance items spelled out in statute. Section 23-1-127, MCA, requires certain maintenance activities be prioritized ahead of additional development or improvements at existing parks. This list of maintenance activities includes clean and stocked restrooms; trash collection and removal; fence upkeep; weed control; upkeep of trails, roads, and docks; erosion control; stream bank stabilization; and other basic maintenance. Not all of the items on the list were applicable to every park (not all parks include stream banks, for example), but the list did provide general guidance for what the legislature views as maintenance priorities at existing parks before major projects are undertaken.

The following photograph shows Frenchtown Pond State Park in October, 2017. The park, formerly a gravel pit and now a popular swimming and recreation site west of Missoula, was found to be generally clean and well-maintained.

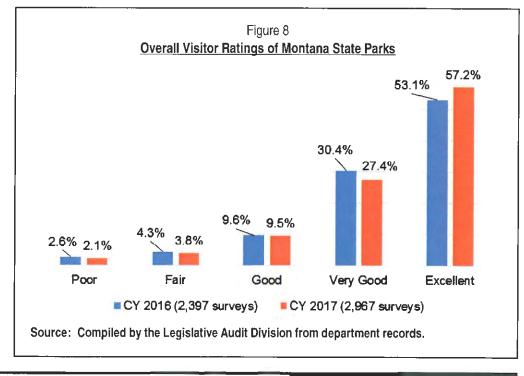


We found that generally, Montana's state parks are in good condition. Through observation we saw minimal noxious weeds, some structures in need of repair, some landscaping or arboreal issues, and the occasional piece of trash on the ground or in the water. But overall we determined the state parks we visited were clean and well-maintained. Signage was plentiful and in good condition, parking areas were obvious (striped or, if not paved, free of debris and well-graded), trails were generally groomed, and the grounds were neatly landscaped.

The Visiting Public Is Happy With State Parks

To determine how the public feels about the condition of state parks, we also reviewed 5,364 post-stay surveys from calendar years 2016-2017 for Montana's state parks. In particular, we focused on the visitors' overall ratings of the visits, the ratings of staff at the parks, cleanliness of restrooms, and the appearance/condition of the parks. In both years we reviewed, the number of positive ratings far outnumbered poor ratings. Positive ratings edged slightly higher in 2017 from an already high base in 2016. The few negative responses typically had common themes across the parks, such as complaints about expensive showers, poor website description of park amenities or campground sizes, bathroom cleanliness (even though as a whole feedback in this area was good), reservation complications or mix-ups, and other guests being loud, disruptive, or not obeying the rules. Some negative responses from out-of-state visitors in particular seemed to focus on amenities offered, such as small RV pad size and lack of electricity in campgrounds. However, as a whole, responses to the survey were overwhelmingly positive.

As Figure 9 notes, 83.5 percent of those surveyed rated their overall park experience as Excellent or Very Good in 2016, and that figure climbed to 84.6 percent in 2017.



While the visitor survey data does not include every park in the system, it is collected at most of the higher-profile and most popular parks where camping is available. This could provide both a baseline for year-over-year measurement of customer satisfaction as well as drawing attention to potential issues or persistent complaints at one or more parks. This data could be used to help drive resource allocation decisions. However, division staff told us they do not currently employ this information to assist with resource allocation or maintenance prioritization decisions.

Our own visits as well as visitor surveys from the past two years indicate Montana's state parks are generally in good condition. However, the Parks Division could use data collected from visitors to better identify areas of need and more efficiently allocate resources to provide for maintenance and upkeep of existing facilities.

<u>The Division Has Taken Steps Toward</u> <u>Resource Prioritization</u>

One of the first undertakings of the newly authorized State Parks and Recreation Board was the development of a strategic plan for Montana State Parks. This plan serves as a guiding framework for the management of the park system. One key outcome desired from the plan was to set priorities and allocate resources to the most significant sites in the system.

Shortly after the adoption of its 2015-2020 Montana State Parks and Recreation Strategic Plan, the Parks Division contracted with a private engineering firm to conduct a facilities condition inventory (FCI) at the majority of state parks, with particular focus on those with substantial infrastructure, such as Bannack State Park. A primary goal of the FCI was to help develop a comprehensive log of maintenance needs and projected costs across the system, in order to assist with prioritizing the allocation of resources and meeting the strategic plan's stated goal of addressing fiscal shortcomings while maintaining affordability for the public.

The several documents that make up the FCI identified \$22 million in maintenance needs, a figure that one administrator suggested might even grow if a more thorough look at each individual park and structure was conducted. Some of the needs identified were as simple as painting a fixture, while others were larger scale capital projects like roof replacements or other significant expenditures.

The strategic plan also called for a classification exercise to help guide resource allocation decisions. The division and the board undertook this classification, and categorized each park in one of four tiers based on several factors, including significance, relevance, and accessibility.

The classification exercise looked at a number of criteria across the parks system in dividing the parks into four classes, proposing the following management approaches for each:

- **Class 1A:** Prioritize funding and operations. Focus reallocation of resources to these sites first. Class 1B: Continued investment.
- **Class 2:** Growth and investment as opportunities arise. Improve relevance and accessibility. Focused planning and partnership efforts.
- **Class 3:** Evaluate funding and operations as appropriate. Maintain relevance and accessibility. Clarify long-term vision of sites. Seek partnerships or alternative management where appropriate.
- Class 4: Re-evaluate current management approaches. Seek partnerships or consider potential transfer to other public managers. Where possible, reallocate resources to more significant sites.

	na otale i alko neoduce p	Ilocation Classifications	(Region)
Class 1A	Class 2	Class 3	Class 4
Bannack (Reg. 3)	Fish Creek (Reg. 2)	Beavertail Hill (Reg. 2)	Ackley Lake (Reg. 4)
Flathead Lake* (Reg. 1)	Madison Buffalo Jump (Reg. 3)	Black Sandy (Reg. 4)	Anaconda Stack (Reg. 3)
Lewis & Clark Caverns (Reg. 3)	Medicine Rocks (Reg. 5)	Brush Lake (Reg. 5)	Beaverhead Rock (Reg. 3)
Makoshika (Reg. 5)	Milltown (Reg. 2)	Frenchtown Pond (Reg. 2)	Clark's Lookout (Reg. 3)
Class 1B	Rosebud Battlefield (Reg. 5)	Hell Creek (Reg. 5)	Council Grove (Reg. 2)
Chief Plenty Coups (Reg. 5)		Lake Elmo (Reg. 5)	Elkhorn (Reg. 4)
Cooney (Reg. 3)		Lake Mary Ronan (Reg. 1)	Fort Owen (Reg. 2)
First Peoples Buffalo Jump (Reg. 4)		Les Mason (Reg. 1)	Granite (Reg. 3)
Giant Springs (Reg. 4)		Lone Pine (Reg. 1)	Greycliff Prairie Dog Town (Reg. 3
Logan (Reg. 1)		Placid Lake (Reg. 2)	Lost Creek (Reg. 3)
Missouri Headwaters (Reg. 3)		Salmon Lake (Reg. 2)	Marias (Reg. 4)
Pictograph Cave (Reg. 5)		Sluice Boxes (Reg. 4)	North Shore (Reg. 1)
Smith River (Reg. 4)		Spring Meadow Lake (Reg. 4)	Painted Rocks (Reg. 2)
Thompson Chain of Lakes (Reg. 1)		Thompson Falls (Reg. 1)	Piroque Island (Reg. 5)
Tongue River Reservoir (Reg. 5)		Whitefish Lake (Reg. 1)	Tower Rock (Reg. 4)
Travelers' Rest (reg. 2)			Yellowstone (reg. 5)

The following table illustrates the results of the classification exercise.

Source: Compiled by the Legislative Audit Division from department records.

*Flathead Lake includes Big Arm, Finley Point, Wayfarers, West Shore, Wild Horse Island, and Yellow Bay state parks.

This exercise led to some resource allocation adjustments across the parks system, with additional resources funneled toward the parks in Class 1, and Class 2 parks

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seeing more funding "as available." However, efforts at continuing to move toward a comprehensive resource allocation strategy have stalled in the last 16 months, as significant turnover among division staff, department leadership, and the Parks and Recreation Board have contributed to this allocation initiative being put on hold for a period of time, in addition to the parks fund balance being used for other non-parks projects. Division management has acknowledged that the lack of such a holistic strategy is an urgent issue that needs to be addressed.

In developing a strategic plan, assessing facilities and maintenance needs across the system, and implementing a classification system for state parks, the division and the board have taken several positive steps toward better allocation of scarce resources. However, more work remains to be done, largely in developing a system-wide ability to track maintenance needs and accomplishments, and in further determining how to share resources among the four classes of parks.

Active But Inconsistent Maintenance Strategies

In our visits to the five regional parks managers across Montana, we reviewed how the information on maintenance needs from the FCI was being used to help prioritize resource allocation to areas of greatest need. While regional managers are actively addressing the needs identified in the reports, they are not doing so in a coordinated or uniform fashion.

We acquired and reviewed documentation from regional managers that indicated varying degrees of ongoing maintenance efforts at parks around the state. In some cases managers were tracking progress against needs identified in the FCI in spreadsheets, while others were using text documents. In some cases the maintenance tracking documents appeared to have been in use and continually updated as projects were completed over multiple years, while in other cases the documents appeared to have been developed in anticipation of our visit.

Similarly, while all parks regions are pursuing necessary maintenance projects, they are not doing so in a consistent manner. Some regions and individual park managers have created detailed lists and timelines for project completion, while others have taken a more random or opportunistic approach to completing projects as funds and/or partners become available.

Other States More Regularly Assess Maintenance Priorities

We interviewed officials from other state parks systems to learn how they approach maintenance prioritization and resource allocation. States contacted were Wyoming, North Dakota, South Dakota, Colorado, and Texas. Based on our interviews, we found these states all have more formalized strategies for prioritizing general maintenance and capital projects. Each state we talked to acknowledged the importance of prioritizing maintenance and capital needs in order to facilitate efficient allocation of limited resources.

Wyoming prioritizes its capital projects based on projected return on investment, and for general maintenance it uses a combination of a facility management program and visitor surveys to identify maintenance needs. North Dakota has a two year maintenance review cycle and a master plan for capital projects which are influenced by the lifespan of a project and public support. Use of a facility maintenance program for general maintenance has helped North Dakota to eliminate its backlog of deferred maintenance. South Dakota's capital projects are prioritized by a planning and development team which takes into account requests of field staff. General maintenance is determined by field staff, but a facility management system is in development.

Colorado's capital projects are determined in two year cycles based on input from field staff and department leadership. General maintenance work plans are being developed to incorporate into a strategic plan but have yet to be implemented. Texas capital projects are decided by a facilities management team within the parks division, which receives requests from regional managers. An infrastructure division in the department ensure the projects are completed. General maintenance is prioritized with the help of a facility management system.

Parks Has Not Fully Developed a System-Wide Strategy for Resource Allocation

The Parks Division does not have a consistent system-wide strategy in place for the prioritization of maintenance projects, and does not have a strategy for allocating resources across all parks regions for maintenance and capital projects. Without such a strategy in place, the division may not be making the most efficient use of its limited resources, and the ongoing maintenance needs of parks across the state may not be addressed in a timely fashion. Completing the facility condition inventory was a good start toward developing a strategy for allocating resources across the parks system for maintenance and operations as well as prioritizing capital needs, but without a system-wide consistent strategy for prioritizing these maintenance and capital needs, the Parks Division is not making optimal use of the resources it has. The FCI identified a backlog of some \$22 million in maintenance needs across the system in 2015 and 2016. However, when we asked for an update on how much of this \$22 million had been worked on since the FCI was completed, and whether any new work was added to the list, the division was unable to provide complete information. It was apparent that projects are being completed, but that a centralized, thorough, and timely tracking of the projects was not being maintained.

RECOMMENDATION #4

We recommend the Department of Fish, Wildlife & Parks develop and implement a system-wide plan for regularly ranking, reviewing, and documenting resource allocations for capital projects, and for maintenance and operations of state parks.

Parks Division Could Better Collect and Employ Management Information

We also wanted to know whether any information management systems are in place for the system-wide tracking of maintenance work and capital projects. We learned that the division has contracted and paid for a management information software system that it is not currently using. Therefore, the division does not sufficiently compile and employ management information to provide for efficient maintenance and operations and capital project prioritization at state parks.

In May 2016, the division contracted for a software system that is designed to provide a "fully functional asset management, job costing, and work order suite specifically designed for the maintenance operations of public agencies." The contract promised a system "that stores mission critical data and quickly and accurately produces information for decision-making." The \$97,000 cost included both the software and training, as well as data conversion to integrate data from the FCI and additional information related to parks vehicles, equipment, employees, vendors, tasks, and other information into the software system.

In addition to providing real-time information regarding maintenance work at state parks, there was an expectation among managers that the system could be used as a warehouse of "institutional knowledge" to track recurring (annual or seasonal) maintenance tasks, so that as maintenance supervisors or park managers retired or left their jobs, their replacements would have a reliable source of information on which tasks need to be done at which time of year, to help ensure work would be timely despite employee turnover.

Management Information System Not Employed on Schedule

The scope of work document for the project proposed a schedule for installation, data conversion, and training that would have the system in place and operational by fall

2016. However, almost two years later it was apparent the system is not operational and is not being used by administrators in Helena or by regional managers or park managers across the state. We were unable to review the system to determine whether ir is a suitable software application for the uses proposed: a regional manager was unable to access the system through his network, and repeated requests to view the system in Helena were not successful. In interviews, parks administrators and staff acknowledged the system has not been made operational as intended. They cited a lack of communication from the contractor as well as reluctance among field staff to learn new ways of tracking and updating maintenance work and progress reports as reasons the software is not yet in use. Department officials also indicated that a number of strategic initiatives, including implementation of this software system, were on hold for most of 2017 while the Parks Division was without a permanent administrator and chief of operations. We also learned FWP is considering alternative management systems that may be implemented department-wide and not just within the division.

Without the relevant management information in place, the Parks Division is not efficiently tracking the maintenance needs across the system. According to one regional parks manager, the parks system has a significant inventory of infrastructure that is at the end of its useful life, or past it, and collecting and managing information about parks' facilities and maintenance needs would be invaluable in categorizing needed maintenance and helping prioritize the infrastructure's upkeep or replacement. Collecting and maintaining management information can also provide a helpful bridge between old and new employees, cataloging information related to routine seasonal maintenance and other scheduled tasks so that as employee turnover naturally occurs, the new employees will have access to important scheduling and cost information without having to start from scratch. Further, the software package as it currently sits unused, represents a sunk cost of nearly \$100,000 to the department, with no tangible benefit yet realized.

RECOMMENDATION #5

We recommend the Department of Fish, Wildlife & Parks:

- A. Implement a system to compile and use management information to better manage the maintenance and resource prioritization at state parks, and
- B. Develop and implement a plan for gathering, maintaining, and employing management information as part of an overall strategy for managing parks' maintenance and capital improvement needs.

State Parks Property Acquisition and Transfer

The department has steadily added to its inventory of park lands over the years, acquiring a variety of lands across the state under many different circumstances. Some park lands have been proactively identified and acquired by the department from the private sector, while in other cases another public or private entity was searching for a public home for a property and the Parks Division stepped up when no other owner could be identified.

Acquisition of real property comes with costs and responsibilities that will place financial obligations on the division long after the land is purchased. A comprehensive plan for managing a real property portfolio recognizes that ownership of property comes with perpetual operational and maintenance costs. Audit work found that these costs have not always been thoroughly considered or accounted for when the department considers the acquisition of new lands for state parks. Rather, we found the department emphasized acquisitions first, with ongoing operations and maintenance funding something of an afterthought.

To determine the extent to which ongoing funding needs are considered by the department when acquiring new property, we reviewed a lands acquisition policy approved by the board. We also reviewed files related to several recent acquisitions of new state parks, made prior to the establishment of the State Parks and Recreation Board, to determine the extent to which ongoing funding needs informed acquisition decisions. Details on our work appear in the following sections.

Policy Addresses Need for Ongoing Funding

In 2015, the Parks and Recreation Board recognized the need for increased consideration of ongoing maintenance and operations costs when considering the acquisition of new park lands, and approved a policy governing the acquisition and transfer of interest of park lands. The policy noted that "historically, land acquisitions of all types within the park system has been inconsistent and without policy guidance. Sites have been acquired without the foresight for future development needs, the long-term maintenance and staffing costs, and similar considerations." To address this historical oversight, the 2015 policy mandates that proposed acquisitions meet conditions related to:

- **Site development funding:** A plan will be developed defining the necessary improvements, anticipated costs, and how they will be funded.
- **Operational and staffing costs:** A plan outlining the anticipated costs of managing a given parcel shall be required and considered prior to advancing any acquisition project.

Recent Acquisitions Do Not Show Evidence of Thorough Consideration of Ongoing Funding Needs

Audit work included a visit to the FWP Lands Office to review the six most recent land acquisitions for Montana State Parks. These included new lands at Travelers' Rest, Milltown, Marias River, Yellowstone River, Fish Creek, and North Shore state parks. Our review of acquisitions focused largely on the inherent need for operations and maintenance funding at new parks as they are brought into the system, and to what extent the Parks Division planned for and secured funding to maintain and operate its newly acquired park lands. Any FWP acquisitions exceeding 100 acres in size or \$100,000 in cost must be approved by the Board of Land Commissioners.

The division has acquired just one parcel of land since the policy was approved-the fourth and final piece of what is soon to become Milltown State Park at the confluence of the Clark Fork and Blackfoot rivers just east of Missoula. A review of files, hearings, and decisions related to that acquisition revealed little in the way of planning/securing operations and maintenance funding for the parcel beyond a five-year grant from the Natural Resource Damage Program (NRDP). However, the policy exempts from the above requirements the acquisition of in-holdings and adjacent park lands. While Milltown is not yet an official state park, the three other parcels that will make up the park had already been secured by the department prior to adoption of the policy, and this fourth parcel provided key access to what will become the main visitor area of the park. Nonetheless, it was apparent from our review that ongoing operations and maintenance funding for Milltown beyond the five years of grant support has yet to be identified.

Other acquisition files we reviewed were for transactions that took place prior to the policy being in place. Planning documents for these lands indicated various measures of consideration given to paying for development, operations, and maintenance, but little in the way of firm plans, and little follow-though by the department once park property was acquired. A decision notice for an earlier Milltown acquisition acknowledges that sources of operations and maintenance funding will need to be identified, but there is no evidence in the file or from subsequent interviews that such funding has been pursued with any success.

Similarly, we reviewed files for four future parks purchased in part with "Access Montana" funding about a decade ago. Access Montana was a program initiated around a decade ago to acquire additional public lands for hunting and recreation in Montana. In each case, these parks were to be carved from larger Wildlife Management Areas (WMA), with parks funding contributed as a percentage of the total purchase price for

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the larger parcel. In draft environmental assessments and management plans for these acquisitions, funding for park development as well as operations and maintenance were discussed to a limited and abstract extent, but little to no development has taken place as promised at these parks.

For example, at Marias River State Park (and WMA) in Toole and Pondera counties, acquired in 2008, the preliminary management plan called for securing funding for an on-site park manager within five years, and for the active pursuit of funding to provide site stewardship, administration, and visitor use management. A decade later, the park portion of the property remains completely undeveloped, and Marias River does not appear on the Montana State Parks Web site. As one official told us, Access Montana was a largely political exercise that had no operations money associated with it. This official noted that Marias River to date offers no services, no operations, and no staffing, and it would not be a major loss to the parks system if it were disposed of as a state park.

As a result of limited planning and inconsistent follow-through in the determination of how to fund the operation and maintenance of new state parks, the division finds itself with a number of properties that have been state parks in name for a decade or more but that have no development or amenities in place for public use, and no apparent plans to proceed with developing these properties.

CONCLUSION

Historically, the department has not routinely or thoroughly considered ongoing funding needs when acquiring new parks lands. However, the policy requiring such consideration was not put in place until after the acquisitions we reviewed had been completed. Without consideration of ongoing funding needs, the department will be increasingly challenged to maintain and operate a growing real property portfolio. It will be important for the department and the board to heed this policy when potential acquisition opportunities are presented in the future.

Other States Vary in Approach to Acquisitions and Transfers

We also conducted interviews with a sample of other states' parks systems administrators to learn how they approach the acquisition and transfer of park lands. Similar to Montana, we found that other states do not have a consistent practice for acquiring or transferring of parks properties. For example, neither North Dakota nor South Dakota has a formal policy for adding or subtracting state parks. Colorado has had policies and directives regarding adding park land in the past, but is looking to update these policies in light of recently moving to a new department. It is unclear what, if any, policies Colorado has regarding transfer of parks. Texas adds parks on a case-by-case basis, but there are screening criteria new land must meet and any acquisition must be approved by its oversight commission. Similarly, Texas sometimes transfers parks to local governments if the parks are not conducive to the division's mission or are unable to be developed. These transfers must also be approved by its oversight commission. While we found inconsistent practices for the acquiring or transferring of park properties, our work determined that it is important for the department to consider the recurring operational and maintenance costs, both of individual parks and of its portfolio of parks as a whole, as part of a comprehensive land management strategy.

Transfers in Montana are Rare, But Not Unprecedented

In addition to looking at how the division plans for the ongoing funding needs for new parks, we examined whether the division ever transfers parks. We also looked at whether the overall funding picture and ability to maintain and operate its entire portfolio of parks informs conversations about whether any parks should be transferred to other owners.

Montana State Parks has rarely transferred its ownership or interest in a property formally identified as a state park. In the past two decades only one park has been removed from the parks roster—a small "homestead" near Three Forks that was leased from private owners for 25 years, then not renewed. Our review of all Parks fee title transactions showed several instances of Parks divesting property, but in none of these instances did the sale or other divestiture consist of an entire state park. Rather, most transfers involved trading one piece of land for a more suitable parcel in the same area; clean-up of boundary inconsistencies; easements; or other administrative moves. (Several decades ago, the Parks Division did transfer state parks on lands owned by other public entities, including Canyon Ferry Lake near Helena and others.)

Policy Inconsistent in Addressing How and When to Reduce Number of Parks

The 2015 policy governing the acquisition or transfer of interest in property does acknowledge that there are instances where "the transfer of certain lands or interests in lands is appropriate," and lists a number of circumstances in which such transfer may occur. Among the criteria is "lands purchased as parks sites but currently undeveloped," which would explicitly include the Access Montana properties like Marias River.

However, the policy was subsequently amended in 2017 with language indicating that "In the management of state park lands, it shall be the policy and intent of the Board

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not to close any existing State Parks or recreational and historic areas." This addition to the policy is at odds with the previously established criteria for when transferring a park may be considered. The board policy for transferring parks also does not speak to assessing the current financial state of the Parks Division, and whether the division is in a position to operate and maintain all of its current inventory of parks.

In multiple interviews we were told that reducing the number of parks is an undertaking fraught with political peril, even if the proposed transfer were to remain as public land with another owner, or if the park is on land that is leased from another state or federal government entity. Officials and board members were reticent to broach the subject of transferring parks, lest area legislators or other interested parties mount campaigns against the proposal.

The Parks Division struggles to sufficiently fund maintenance, operations, and capital improvements at its wide array of parks. It is important that a comprehensive approach to management and resource allocation include the opportunity to consider whether the number of parks is too large for the department to support as currently funded.

Transfer of Parks Could Be a Valuable Management Tool

The board-approved lands policy identifies criteria for identifying park lands suitable for transfer. However, the policy of not closing any state parks removes a measure of flexibility to better align the division's existing resources with the number of parks for which it is responsible. The division and the board recognized the need for increased consideration of ongoing maintenance and operations costs when considering the acquisition of new park lands, and implemented a policy requiring resources be identified and secured before parks are acquired. However, the policy is conflicted in addressing the transfer of park lands out of the system, and the division and board have not sufficiently weighed current resources against the division's ability to maintain and operate its entire park inventory. Our work identified a need for the department and the board to more fully consider parks transfer as part of a comprehensive management strategy for the state park system.

RECOMMENDATION #6

We recommend the Department of Fish, Wildlife & Parks work with the State Parks and Recreation Board to strengthen the board's lands policy by:

- A. Including resource availability and the division's ability to staff and maintain state parks as criteria for when a park may be transferred; and
- B. Eliminating the conflict in the current policy between land transfer criteria and the assertion that the State Parks and Recreation Board will not close any parks.

Department Responses

Department of Fish, Wildlife & Parks



PO Box 200701 Helena, MT 59620-0701 406-444-3186 FAX: 406-444-4952 Ref: DO#101-18

April 6, 2018

Angus Maciver Legislative Audit Division, Room 160 Capitol Building Helena, MT 59601

RECEIVED

APR 0 9 2018 LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver:

FWP

Montana Fish, Wildlife and Parks (FWP) has received the Performance Audit Report for the Parks Division. The information in the report is indicative of the level of work expended by your staff to better understand the overall operation and management of the parks system as well as the responsibility and role of the Parks and Recreation Board. We welcome the recommendations and effectual evaluations to the many elements and activities involved with the Parks Division and the authority of the Parks and Recreation Board.

MONTANA

The Department's response to the recommendations follows:

Recommendation #1

We recommend the Department of Fish, Wildlife, & Parks work in consultation with the State Parks and Recreation Board to clarify and document the role, duties, and powers of the State Parks and Recreation Board to ensure a clear delineation of authority between the board and the department, seeking legislation if necessary to better define the board's authority.

Concur.

The Department agrees with recommendation #1 and is committed to working with the Board to clarify respective roles, responsibilities and authority. The Audit report provides a sound foundation for the department and board to revisit our statutory roles, the practices we follow in deciding what items to place on the Board's agenda and who makes which decisions.

Implementation of this recommendation will be made through administrative changes and, if necessary, proposed legislation.

<u>Timeline:</u> The Department will continue to ensure a clear delineation of authority between the board and the department by December 2019, seeking legislative adjustments if necessary.

Recommendation #2:

We recommend the Department of Fish, Wildlife & Parks develop and implement a plan to organizationally and culturally reintegrate the Parks Division into the broader agency.

Concur.

The status of the Parks Division in FWP has been in limbo since the 2011 Legislature considered a bill to move Parks to the Department of Commerce. Now that the issue of where Parks will be located in state government has been resolved, the Department agrees with the need to organizationally and culturally reintegrate the division into the broader agency, and is committed to doing so. The Governor's Executive Order establishing the Montana Parks in Focus Commission also tasks the Commission with assessing cultural challenges facing State Parks within FWP. In conjunction with the Montana Parks in Focus Commission, the department has already begun work on a climate survey of Parks Division employees. This work, insights from the Commission, and work internally within the department will all contribute to the development of a plan to implement this recommendation.

<u>Timeline:</u> December 2019.

Recommendation #3

We recommend the Department of Fish, Wildlife and Parks increase centralized management oversight and implement changes to agency financial management to ensure appropriated and available funds are expended as intended.

Concur.

The Department recognized the need for increased accountability and transparency in its business functions for all programs prior to the audit recommendations being released. In order to ensure robust management oversight and financial accountability for all FWP programs, budgeting functions in all divisions have been consolidated into a centralized unit that is part of the Administration Branch of the agency effective February 1, 2018. This change ensures that all financial monitoring and review occurs in a manner that is consistent, transparent, and in accordance with all statutes, rules, and policies the Department is subject to.

Additionally, processes have been put in-place to monitor not only the status of expended funds, but also the status of allocated funds. This includes oversight and compliance assistance on funds of all types utilized by the Parks Division. Examples include, Recreational Trails Program, Land and Water Conversation Fund, AmeriCorps, Federal Dingle-Johnson funds, as well as all state special revenue accounts funding Parks Division programs.

<u>Timeline</u>: All of these measures have been implemented and department plans to monitor effectiveness.

Recommendation #4

We recommend the Department of Fish, Wildlife and Parks develop and implement a system-wide plan for regularly ranking, reviewing and documenting resource allocations for capital projects and for maintenance and operations of state parks.

Concur.

We are pleased that the auditors found that the public is generally pleased with state parks and the maintenance and upkeep of those items listed as priorities in Section 23-1-127, MCA. The Audit also recognized the Facilities Condition Inventory (FCI) conducted by a private engineering firm in 2015 to assess the backlog of capital maintenance needs in Montana State Parks. The FCI identified \$22M in unmet capital needs within a portion of the State Park system. These capital needs cannot be addressed without additional funding and appropriations from the Montana Legislature.

The Parks Division is in the process of filling the vacant Chief of Operations position. One of the duties of this position will be to work with the Regional Park managers to develop a system-wide process for evaluating needs for both capital projects and maintenance, allocating resources to priority needs and documenting the results.

Timeline: December 2019.

Recommendation #5

We recommend the Department of Fish, Wildlife and Parks:

A. Implement a system to compile and use management information to better manage the maintenance and resource prioritization at state parks, and

B. Develop and implement a plan for gathering, maintaining and employing management information as part of an overall strategy for managing parks maintenance and capital improvement needs.

Recommendation #5A:

Each region has their own method of recording progress on the FCI and prioritizing daily, cyclical and annual maintenance activity based on management needs. Discussion has begun to address the need for systematic method of gathering information, identifying needs, allocating resources and documenting progress across regions. Management information system analysis is underway and we will determine additional changes that may be necessary.

Concur.

Recommendation #5B:

As vacant administrative staff positions are filled in both the Helena Headquarters and Regional level this effort will be re-initiated in order to continue to make significant progress to have a system fully functional by December of 2019.

Concur.

<u>Response to #5 A and B</u>: The Parks Division recognizes the need for a more data-driven management system. We are assessing whether the existing management information system under contract is the appropriate system that meets our needs. After this system-analysis is completed, we will determine if additional changes are needed.

<u>Timeline:</u> December 2019.

Recommendation #6

We recommend the Department of Fish, Wildlife & Parks work with the State Parks and Recreation Board to strengthen the board's lands policy by:

- A. Including resource availability and the division's ability to staff and maintain state parks as criteria for when a park may be transferred; and
- B. Eliminating the conflict in the current policy between land transfer criteria and the assertion that the State Parks and Recreation Board will not close any parks.

Concur.

The Department **concurs** with both parts of Recommendation #6. It is imperative for the Department to work in a synchronized fashion with the Parks and Recreation Board to establish clear and consistent criteria in all of the Board's policies. Resource considerations including the ability to operate and maintain newly acquired sites need to be a component of the decision-making effort of the Department in conjunction with the Board. The department agrees that improved guidance and possible changes to board policies are needed for land acquisitions and transfers.

The Department also agrees that the Board policies should not include conflicting language or criteria. Measures will be taken to assure more consistency is provided which may include reexamining existing Board policies, specifically the Acquisition and/or Transfer of Interests in Land. Land transfer (rather than land disposal) is outlined as a management tool in those instances where identified lands may be more appropriately managed by other government entities for public recreation.

The Department plans to take a coordinated effort to re-examine and strengthen these policies later this year and into 2019. It is anticipated these efforts will require multiple Board meetings to finalize potential changes and assure public involvement in any and all changes.

Timeline: December 2019.

The Department appreciates the opportunity to respond to these audit recommendations and looks forward to making the identified improvements in state park and recreation operations. We also aim to provide clear delineation of the authority of the Department versus the Parks and Recreation Board.

With the formation of the Montana Parks In Focus Commission and the recent changes in the Parks and Recreation Board members, it is anticipated full implementation of these recommendations may take over a year. The Parks In Focus Commission recommendations will be presented to the Parks and Recreation Board this fall (September 2018). If needed, proposed legislative changes would be addressed in the 2019 Legislature. Finalizing any legislative actions would then occur after the completion of the legislative session.

The Parks Division has had significant staff turnover in the past 18 months. We have filled three positions over the last few months but have other critical positions that remain to be filled, we realize that it will take some time to have effective implementation with all of our plans and implementation methods.

Sincerely,

Mathe Wille

Martha Williams Director



Montana State Parks and Recreation Board

PO Box 200701 Helena, MT 59620-0701 406-444-3186 FAX: 406-444-4952 Ref: #017-18

April 6, 2018 RECEIVED APR 0 9 2018

Angus Maciver, Legislative Auditor Legislative Audit Division Room 160, Capital Building Helena, Montana

Mr. Maciver:

On behalf of the State Parks and Recreation Board (the Board), I would like to take this opportunity to first thank your staff for their independent analysis of state park operations. The performance audit provides a good recap of the events and actions that have impacted state parks and board decisions. This report is providing timely input as we take steps to move forward and strengthen how we conduct business.

There are two recommendations directed at the Board. Other report recommendations are more appropriately directed at the Department of Fish, Wildlife, and Parks. We have not had the opportunity to discuss these recommendations as a board, but after informal discussions with board members, I feel confident in presenting our position on the audit recommendations as follows:

Recommendation #1

We recommend the Department of Fish, Wildlife, & Parks work in consultation with the State Parks and Recreation Board to clarify and document the role, duties, and powers of the State Parks and Recreation Board to ensure a clear delineation of authority between the board and the department, seeking legislation if necessary to better define the board's authority.

The Board **concurs** with Recommendation #1. As a newly established board, the roles, duties, and powers are still evolving and adjusting to accommodate legislatively assigned duties and address the operational needs across the state. As the report points out, the Board has take actions in the past that were assigned to the department. It is our intent to follow those duties that are clearly assigned to the Board and not take action on areas of responsibility for the department and/or other advisory boards and councils. In addition, there are additional areas of board authority where board duties and roles may need additional consideration. Although this audit report addresses areas primarily related to state park operations, the Board has also been assigned broad authority to provide direction and coordination

relating to outdoor recreation. The board role in these additional outdoor recreation areas are still being explored. As the Board collaborates with other recreational commissions, coalitions and advisors, additional changes in roles, duties and powers may be identified.

Implementation Date: December 2019

With the formation of the Parks In Focus Commission and the recent changes in the Board members, as well as department staffing changes, it is anticipated full implementation of this recommendation may take over a year. Parks In Focus Commission recommendations will be presented to the Board this fall (September/October 2018). If needed, proposed legislative changes would not be addressed until 2019. Finalizing any legislative actions would then occur after the completion of the legislative session.

Recommendation #6

We recommend the Department of Fish, Wildlife & Parks work with the State Parks and Recreation Board to strengthen the board's lands policy by:

- A. Including resource availability and the division's ability to staff and maintain state parks as criteria for when a park may be transferred; and
- B. Eliminating the conflict in the current policy between land transfer criteria and the assertion that the State Parks and Recreation Board will not close any parks.

The Board **concurs** with both parts of Recommendation #6. It is imperative for the Board to establish clear and consistent criteria in all their policies, including those directed at land acquisitions and transfers to assure clear guidance for statewide operations. Including resource considerations and the commitment of future resources will also be key for Board decision making. Changes to board policies will be made to assure those considerations are incorporated. The Board also agrees that their policies should not include conflicting language or criteria. Steps will be taken to assure more consistency is provided. It is important to note that the current Board policy is Acquisition and/or Transfer of Interests in Land. Land transfer (rather than land disposal) is outlined as a management tool in those instances where identified lands may be more appropriately managed by other government entities for public recreation. There are no criteria in the current policy for "land disposal". Therefore, any policy changes with the land transfer criteria will be weighed against the factors that prompted the addition to the policy in 2017. That policy addition was made to formalize the Board's long-term commitment to assuring continued public access to outdoor recreational opportunities across our state park system and on FWP recreational lands. Continuing that commitment to accessibility will be a clear requirement for any changes to Board policy.

Implementation Date: December 2019

As noted earlier, there are several efforts underway to identify needed changes and improvements to state parks and recreation responsibilities assigned to the Board. Several areas have been identified as potential policy changes, updates, or new policies. The Board plans to make a coordinated effort to reexamine and strengthen these policies later this year. It is anticipated these efforts will require multiple Board meetings to finalize these efforts and assure public involvement in any and all changes. The Board appreciates the opportunity to respond to these audit recommendations and looks forward to making the identified improvements in state park and recreation operations.

Singerely,

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Angle Grove, Chair State Parks and Recreation Board

2019

Friends of Hell Creek, Hell Creek State Park Business and Management Plan



Friends of Hell Creek State Park, 501c(3) 02/04/2019

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Executive summary

In December 2016, Montana State Parks (MSP) made the decision to return Hell Creek State Park to the U. S. Army Corp of Engineers (USACE) at the end of their contract in April 2021 pending review in 2019. (Appendix A). Further, they stated they would assist other entities interested in taking over the management of the park; thus, Friends of Hell Creek was formed with that goal in mind.

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Despite this official position, MSP staff continues to discuss acquiring Hell Creek for another 25 years. MSP will acquire property through a new contract with the USACE without the approval of the Montana Legislature or the Montana State Land Board as required by law. Montana Code Ann. 23-1-102(3) clearly requires MSP to seek a legislative appropriation or show what funds are otherwise available to operate the park for the specified term before they enter into a contract. Because Hell Creek exceeds 100 acres State Land Board approval is required. (Appendix B)

MSP is in no position to continue the management of Hell Creek State Park. Hell Creek represents 18% of the State's \$23 maintenance backlog problem, and MSP's own records show they lose \$180,000 a year because of the way they manage Hell Creek. In fact, MSP will commit Montana to spending in excess of \$17,000,000, without seeking legislative or land board approval. (see 23-1-102(3)/appendix B)

The recently concluded 2018 State Legislative Audit is extremely critical of state park system management as a whole, and it indicates the state should consider public/private partnerships as future park management alternatives.

Fortunately, the Friends of Hell Creek (FRIENDS) is proposing the following Business and Management Plan that will ensure the continuation of a state landmark, Hell Creek Recreation Area.

Introduction

Friends of Hell Creek (FRIENDS), a 501(c)(3) non-profit organization, is a diverse group of outdoor enthusiasts, hunters, fishermen, campers, hikers, water craft enthusiasts and cabin owners.

FRIENDS is dedicated to efficiently operating the 337-acre Hell Creek Recreation Area (HCRA), protecting public access and promoting this unique resource, which we all enjoy. Our



goal is protecting, maintaining and improving all aspects of the HCRA to improve service to current, potential and future users. Friends will work with federal, state and local governments, as well as other interested groups to enhance HCRA's economic benefits to the remote rural area. As demonstrated by this plan, FRIENDS can achieve operational efficiencies and save costs. FRIENDS will promote integrating campground and marina operations to maximize these efficiencies.

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With that in mind, we submitted a proposal to the Governor to have Montana acquire an interest in HCRA for the next 25 to 100 years or offer to purchase the HCRA property from the U.S. Army Corp of Engineers (USACE). The official position of the Montana State Parks Board is to abandon the park when a lease expires on April 30, 2021¹. FRIENDS believes Montana should acquire another, much longer lease or seek to buy the HCRA, rather than abandon it. As a condition of the renewed acquisition required under 23-1-102, MCA, FRIENDS is asking consideration pursuant to 23-1-108 that a condition of the acquisition be premised upon an agreement to allow FRIENDS to take over day-to-day park operations, rather than continue under the current failed management structure.

This FRIENDS' Master/Business and Development Plan shows how they can successfully operate the current park and maintain its facilities. Every commissioned study group, and the 2018 Montana Legislative Audit, concludes that Montana public/private partnerships are the best way to sustain, develop, and grow a viable Montana park system, to best serve the public demand for outdoor recreational opportunities. Despite continually reaching the same obvious conclusion, nobody has ever done it. Elected officials from the areas seem to universally agree that Hell Creek is not adequately managed and that users are dissatisfied with how the park currently operates.

¹ See, Appendix A Minutes from MSP Board Meeting December 2016 section 11.

Montana has 53 other State parks. Montana owns the land upon which these parks sit. **Despite its unique Eastern Montana location, Hell Creek is continuously ranked as a low priority by the Montana State Parks agency**. In the 2018 Legislative Audit and the 2015 Peaks to Plains Master Plan, Hell Creek is given a third-tier ranking (out of four), and both documents conclude that a public/private partnership, like the FRIENDS' proposal--is the only viable alternative for Hell Creek. The Parks in Focus Commission acknowledges the virtues of parks like Hell Creek but continues this view that Hell Creek is a sub-tier park.

The official position of the Governor's appointed Montana State Parks Board is that Montana will abandon Hell Creek just before the start of the 2021 season, which means it will only operate two more summers (2019 and 2020). Despite this official vote, the agency continues to invest millions in infrastructure and renegotiate the lease to commit Montana to another 25 years of operating and maintaining this facility. The agency shows no sign that it intends to involve the Montana Legislature or the State Land Board in its decision.

As estimated in 2015, Montana State Parks faces a \$23 million maintenance backlog. Hell Creek represents 18% of the backlog, despite ranking 31st in annual visitation among the other 54 Montana parks. Montana State Parks maintains 3.5 FTEs and two houses throughout the entire year, despite the fact that Hell Creek is a seasonable park.

Look at the FACTS.

Hell Creek is:

-

- 5th most expensive park to maintain;
- 18% of the \$23 million unfunded maintenance backlog;
- 31st in total visitation; and
- Loses \$180,000 per year.

Considering the annual losses from management expenditure, together with the current maintenance backlog and other identified necessary capital improvements, Montana will spend at least \$17,475,000 on a park it doesn't own, if it continues under MSP management.

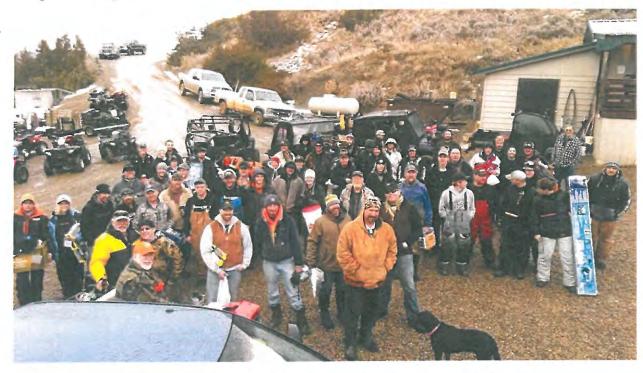
We think Hell Creek presents a unique opportunity to put a public/private partnership in place. The current lease is ending. Montana can acquire a new lease or not, and the time is at hand to set the terms of the new agreement. USACE allowed adjacent cabin owners to purchase their once-leased cabin properties, so a request is not totally out of the question. The federal government makes transfers to state and local governments on a regular basis, so Hell Creek can remain in public hands.

FRIENDS will enhance public service by improving infrastructure and facilities with a continued focus on public safety and health. We will increase accessibility to the park and enhance its operations significantly. We will generate sufficient operational income and will be able to leverage public and private money.

We do this by shifting away from a rigid government-only management structure overburdened with FTEs and mandates. We take a business-minded approach that focuses pon the park's

unique characteristics. We can eliminate costly FTEs and other mandates or absorb them into marina operations. The campground and marina can continue operating separately or act as one, but either way, they can share responsibilities and costs of operating and maintaining the HCRA.

We believe that our proposal will provide considerable savings in manpower and money to the state and federal government and the park while upgrades occur, and public access thrives. We can protect the public interest and health and safety, along with the environment.



We ask that the Governor and others look at our plan, acquire Hell Creek for another generation, and allow Friends of Hell Creek to enter into a management agreement with the State, as a condition of the new lease. Included is our proposed business plan, infrastructure and capital improvement plan, maintenance, operation, and management plan.

Park Description:

Hell Creek is a 337-acre intensive use recreation area located approximately 26 miles north of Jordan, Montana in Garfield County. Within its boundaries are sagebrush grasslands with evergreen forests dominated by Ponderosas and Rocky Mountain Juniper. Situated along the southern banks of Fort Peck Lake, Hell Creek State Park attracts over 30,000 annual visitors. Recognizing the importance of the HCRA to Montana and its v

isitors, the FRIENDS created this plan to look at doing things differently into the future. The process used to develop this Plan included, independent research and consultation by the FRIENDS, with industry experts, coupled with compiling and reviewing plans already prepared

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by or for the agency. We developed a recommendation to operate the HCRA, which addresses current needs and plans for future expansion to enhance the campground and marina management operations.



The FRIENDS' familiarity with this information ensures the development of a plan that is realistic, sensitive to current issues, and tailored to this unique park site. FRIENDS' members are the users that provided comments on the MSP plans and proposals. Generations of FRIENDS users live and recreate in the park and region. They have a distinct familiarity with the area that

cannot be acquired easily, their wisdom and knowledge of the area makes them the best candidates for the preservation and expansion of the park.

Hell Creek Marina sub-leases 55 acres that sit within the state park boundary. The current marina operator invested personal finances into the facilities. Unlike traditional concessionaire arrangements, the facilities utilized in the operations of the Hell Creek Marina operate under a leasehold where many facilities were financed and built without public funds. Many of the amenities were developed by park users or nonprofits.

Even though FRIENDS will compete for grants from federal and state governments to meet some objectives, the current plan from FRIENDS will provide the State considerable savings by eliminating unnecessary and duplicative management functions. This also successfully demonstrates the direct saving in manpower and financial resources to the state and the advantage of public/private management. By simply recognizing the cyclical nature of Hell Creek's seasonal usage, we can streamline operations and management to achieve significant cost savings. These cost savings make it possible to expand services, which the public is demanding.

Infrastructure related funds are necessary, as identified by MSP in some of its plans, but FRIENDS has already identified solutions that will lower the proposed costs substantially. The identified alternatives will last longer and promote land use planning.

During a recent public meeting conducted by the State Parks and Peaks to Plains design, participants recognized that the comfort station is in high demand and asked for expanded facilities and year-round use. Similarly, the fish cleaning station was requested for expansion and year-round use.

The marina and restaurant was destroyed by a fire over 13 years ago, and public comments indicate replacing it is still in high demand. The marina operates its store from a trailer since the fire and the public is demanding a new and expanded store.

FRIENDS has the flexibility to enter into the sort of long-term agreements that will make attracting finance for these expansions a reality.

Expanded campsites are desired, but the public comments indicated a



desire to have them in the control of the concessionaire or private entity, rather than State Parks. FRIENDS includes these improvements in our plan and recognizes the public's desire for local decision-making that still serves the typical users and is inviting to visitors from across the population who seek a similar experience. The public is voicing a lot of concern with how Montana State Parks operates Hell Creek. FRIENDS can drive a solution to help with that problem, while lessening the burden on limited MSP resources. A restaurant is desired by the public comments, noting that a rebuild of the grocery and marina store is needed.

Area Information Garfield County and Jordan, Montana Information:

Garfield County is located in eastern Montana and is approximately 160 miles northeast of Billings, 120 miles east of Lewistown, and 94 miles northwest of Miles City. The county covers



a land mass of approximately 4,850 square miles, making it the seventh largest county in the State. As of the last population census, Garfield County has a population of 1,206 and a population density of OJ people per square mile. The population has steadily declined since 1930 when the county had a population of 4,252; although, recent estimates suggest that the population has increased since the previous census. Approximately 47 percent of the population in Garfield County works in the industry classification of agriculture, forestry, fishing, hunting, and mining, which is the most dominant industry in the county,

with the next closest industry being retail trade at 14 percent (Census, 20 10). The county seat, the Town of Jordan, is also the most populous within the county.

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Camping information:

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According to the 2016 American Camper Report by the Coleman Company and the Outdoor Foundation. State Parks are the most common location for American campers. On average, campers travelled an average of 146 miles to get to their desired camping spot, which tended to be a state park campground.

Camping Venue: Campers, Ages 18+

"In which venue did you camp in the last 12 months?"

State park campground	42%
Local park campground	18%
National park campground	18%
Event (e.g. festivals or public events)	9%
Backyard	4%

The Coleman Company, The Outdoor Foundation

Forty-two percent of adult participants camped at state park campgrounds, making them by far the most popular venue.

Management and Upgrade Plan

Friends of Hell Creek (FRIENDS) Operation Plan Assumptions

FRIENDS will take over management of the Hell Creek Recreation Area, to include the Hell Creek Marina (HCM) and Hell Creek Campground (HCC).

FRIENDS will assume Montana will work to acquire the HCRA or a long-term lease.

FRIENDS will take over management of the HCC, in accordance with all USACE rules and regulations.

FRIENDS will assure that there will not be a lapse in services for the users and will contract the operations of the campground

The HCC marina operator will collect all fees for HCC and will keep a detailed account of all fees collected.

The HCC marina operator will be required to pay a fee quarterly to FRIENDS (proposed fee).

•	Electrical Sites	,	5% of the gross
•	Non-Electrical Sites		2% of the gross
•	Primitive Sites		1% of the gross

The HCC marina operator will be responsible for the day to day operations and maintenance of the campground (extent of maintenance to be negotiated and concession fees based on degree of maintenance).

HCC marina operator will be responsible for the adherence to all rules and regulations and will take all legal and appropriate actions to assure that HHC is run accordingly and safely for all users.

FRIENDS will establish a committee to supervise and manage the HCC and HCM contracts to assure that all conditions of the contract are in compliance.

FRIENDS will enter into an agreement with USACE and other parties.

FRIENDS will collect an annual or daily fee to offset any major repair and to finance future expansion or improvements.

Annual Pass single family	1000 passes @	\$30.00	\$30,000.00
Day pass	500 passes @	\$ 7.00 average 4 days	\$14,000.00

FRIENDS intends to expand the current campground, starting with the replacement of campsites below high-water mark, with an emphasis on aesthetics and environmental guidelines as our primary goal.

HCC will be a first come first served campground with the exceptions of designated handicap sites and future group sites.

Sanitary Sewer System:

The current sanitary sewer system utilized be the State Parks is in a state of failure and cannot handle current capacity. The FRIENDS' plan includes the installation of a modern advanced mechanized, MBR or FAST waste water treatment system from Bio-Microbics. There is a Montana distributor and service company of Bio-Microbics that makes this technology not only be best choice environmentally but also the most practical choice, in terms of local product availability, cost effectiveness, serviceability, and overall treatment capabilities.

The NRCS Soil Survey indicates that the predominant soils are silty-clay (nearest to the reservoir) and sandy loams - all of which are relatively well draining soil classes. However, the soils also prove problematic with the presence of expanding clay, causing instability resulting in

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severely damaged roads and infrastructure. The topography typically consists of moderate to steep slopes which contributes to the soils being classified as having "severe" erosion potential. Based on this information, the FRIENDS will utilize a direct discharge method to the reservoir water way via a US EPA NPDES Direct discharge permit.

The soils prove problematic with the presence of expanding clay, causing instability of the roadways and infrastructure, resulting in severe damage that requires constant maintenance and sometimes results in inaccessibility of roads and park amenities due to damage. The potential for erosion to affect infrastructure including roads, water and sewer lines, and building foundations is high. Improvements invested on or sub-surface have a tendency to move with the soil, causing increased maintenance costs to keep the improvements in working condition. This information lead FRIENDS to believe that a drain field application will be damaged and more costly compared to a direct discharge method.

Technology description:

FAST® is simply great technology, based on environmentally sound and simple scientific principles. The FAST® (Fixed Activated Sludge Treatment) process employs a unique hybrid combination of attached and suspended growth in an aerobic, packed bed bioreactor. This proven IFAS (Integrated Fixed-Film Activated Sludge) combination includes the stability of fully-submerged, fixed-film media and the effectiveness of activated sludge treatment, making the innovative, patented FAST® system technologically advanced and extraordinarily reliable.

The BioBarrier® HSMBR® (High Strength Membrane Bioreactor) Systems help meet the increasingly stringent needs of specialized applications. The membranes and processes used in this advanced system act as an impenetrable physical barrier for nearly all common pollutants found in wastewater today. The advanced technology offers the highest quality effluent possible on the market. The BioBarrier® MBR was the first system to be approved for water reuse (NSF/ANSI Std 350, class R) by the NSF (National Sanitation Foundation) International.

Designed specifically for high strength commercial water reuse applications, the BioBarrier® HSMBR® provides the highest quality effluent when needed most. Multiple BioBarrier® module sizes provide flexible, innovative recycling and reuse options to reach the next level of sustainable development. BioBarrier® is also designed specifically for the unique needs and characteristics of the onsite and decentralized wastewater industry, making it the most advanced system on the market.

The BioBarrier® HSMBR® helps to meet the increasingly stringent needs of these specialized applications. BioBarrier's low-foul, durable, flat-sheet membranes utilize micro-sized pores for physical separation of solids from the wastewater. The system's unique operation sequence requires no complicated backwash functionality and is completely automated using an advanced control strategy. The pre-engineered, modular MBR ships installation-ready and fits easily into both new and existing tank configurations. BioBarrier's high-quality effluent provides new opportunities for wastewater recycling techniques that will have dramatic, positive effects on water resources around the globe.

PROJECTED COST OF FRIENDS' PLAN: \$387,000.00

Water system:

The FRIENDS and current marina operator will utilize a surface water intake to obtain water for their operations in lieu of obtaining water from the current well system that is highly corrosive. Surface water from Fort Peck Reservoir will be utilized as the water source. A moveable surface water intake is currently located approximately 50 yards offshore and will be pumping the collected reservoir water through a filtering and disinfection system prior to distribution to the concession buildings and cabins. This system will be used to provide water to the store, rental cabins, and private residence. Currently, the water is not considered potable. The FRIENDS and current marina operator developed a plan to treat the surface water to potable standards and prevent violations of the Public Accommodation Administrative Rules for Montana Section 37.1 I 1.1 10 (4)(b).

The planned water treatment system will operate on a compliant potable water system that includes filtration, chlorination, and UV disinfection in order to bring the water system in conformance with state law.

The FRIENDS' plan includes hiring a surface water and waste water operator, as the Administrative Rules of Montana (ARM) 17.38.249, requires that the owner of a community or non-transient non-community system shall retain a certified operator, as defined in Title 37, chapter 42, MCA. A public water system must report any change in certified operator or designated contact person to the department within 30 days. FRIENDS and the marina operator have already identified and consulted with potential water and waster water operator who are certified with the MTDEQ.

PROJECTED COST OF FRIENDS' PLAN: \$423,000.00 PROJECTED COST OF STATE PLAN:\$540,000.00 SAVINGS: \$117,000.00

Hell Creek Road, Internal Roads, and Trails:

Visitors and marina operators complain about the stability and condition of Hell Creek Road, as well as the internal access roads. The soils prove problematic with the presence of expanding clay, causing instability of the roadways, resulting in severely damaged roads that require constant maintenance and sometimes results in inaccessibility due to damage. FRIENDS will expand internal access roads to 24-foot width and stabilize the roads to prevent expansion damage. To mitigate expansive soils, FRIENDS will use AGSS-ICS, a state-of-the-art lonic Clay Soil Stabilizer that has been developed to treat swelling clays. The product works two ways. It reduces the swell potential of the clay soil and, because it dramatically reduces the capillary action of the clay particles, minimizes the shrinkage potential. When treated with the AGSS-ICS chemical, an irreversible change occurs in the molecular structure of the clay particles, and they no longer attract or hold on to water as they did before treatment. Treatment

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of pre-construction sites as well as existing structures is available. For preconstruction sites, the chemical is mixed or injected into native soils. For remedial/post construction problems, the chemical is injected into the soil, beneath and around the existing structure through small injection probes. The process alleviates swell and can sometimes even relax existing heaving.

Similarly to the internal access roads chief complaint among park users, the concessionaire, and park staff is the stability and condition of Hell Creek Road within the park. Hell Creek Road within the State Park boundaries should be expanded to L.4-width and stabilized through the application of **AGSS-ICS**.

PROJECTED COST OF FRIENDS' PLAN: \$836,000.00

PROJECTED COST OF STATE PLAN:\$1,130,000.00

SAVINGS: \$294,000.00

Fish Cleaning station:

The FRIENDS have incorporated a plan to upgrade the Fish station to avoid the current contamination that is happening to the lake and surrounding property of the fish station. We are still requesting bids from local area contractors and are uncertain of the entire cost, as of the date of this proposal. Based on our preliminary findings we are confident that a new more efficient, "greener" and updated fish station that eliminates developed privately or with a private/public partnership will result in considerable cost savings and more efficient results.

PROJECTED COST OF FRIENDS' PLAN: \$00.00

PROJECTED COST OF STATE PLAN:\$00.00

SAVINGS: \$00.00

Boat Ramps, Docks, and Parking area:

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Stabilizing the existing primary boat ramp and truck/boat parking areas will be accomplished by using AGSS-ICS and adding a new gravel surface.

The FRIENDS will follow the recommendations of the Facilities Condition Inventory (2015) that noted signs of significant cracking and failure in the primary boat ramp. It was recommended that the existing boat ramp be removed and replaced. FRIENDS, with the help of the marina operator, will remove the existing primary boat ramp and replace it according to the recommended changes.

Hell Creek Recreation Area and Marina Forecasted Income Statement

Visitation Estimates	30,000	34,000	36,000	38,000	39,000
Year	1	2	3	4	5
Revenues:	в	2-	0	-	-
Camping fees	120,769	136,872	144,923	152,974	157,000
Annual pass	23,077	26,154	27,692	29.231	30,000
Day pass	10,769	12,205	12,923	13,641	14.000
RV dump fees	1,538	1,744	1,846	1,949	2.000
Fish cleaning station	3.846	4,359	4,615	4,872	5,000
Shower rooms	3,846	4,359	4,615	4.872	5,000
Restaurant	138,462	156,923	166,154	175.385	180,000
Groceries	115,385	130,769	138,462	146,154	150,000
Fuel	153,846	174,359	184.615	194.872	200.000
Wetdock	15,365	17.436	18,462	19,487	20.000
Dry dock	23,077	26,154	27,692	29,231	30,000
Pontoon rental	19.231	21,795	23,077	24,359	25,000
Motels	76,923	87,179	92,308	97,436	100,000
Outfitter rent	6,538	7,410	7,846	8,282	8,500
Totai Revenues	712,692	807,718	855,231	902,744	926,500
Cost of Goods Sold					
Purchases	203,846	231,026	244,615	258,205	265,000
Gross Profit	508,846	576,692	610,615	644,538	661,500
Expenses:					
Advertising	1,154	1.308	1,385	1.462	1,500
Wages	219.398	248,651	263,277	277,904	285,217
Depreciation	7.692	8,718	9,231	9.744	10,000
Insurance	20,000	20,000	20,000	20,000	20,000
Interest	2,000	2,000	2,000	2,000	2,000
Legal and Professional Fees	2,000	2.000	2,000	2.000	2,000
Office Expense	1,538	1.744	1,846	1,949	2,000
Repairs and Maintenance	23,077	26,154	27,692	29,231	30,000
Supplies	15,385	17,436	18,462	19,487	20,000
Taxes, licenses, and permits	20,000	20.000	20,000	20,000	20,000
Travel meals and lodging	2,692	3,051	3,231	3,410	3,500
Utilities	22,000	22,000	22,000	22,000	22,000
Water treatment plant	3,077	3,487	3,692	3,897	4,000
Dues and subscriptions	4,615	5,231	5,538	5,846	6,000
Gas/oil/propane	9,231	10,462	11,077	11 692	12,000
Credit card fees	11,538	13,077	13,846	14,615	15,000
Interest	46,760	61,019	79,723	81,720	79,261
Telephone	9,231	10,462	11,077	11,692	12,000
Total Expenses	421,388	476,798	516,077	538,650	546,478
Net Income	87,458	99,894	94,538	105,889	115,022
Principle	15,294	22,802	31,472	35,138	37,598
Cash Flows	71,163	77,092	63,066	70,751	77,425

Hell Creek Recreation Area and Marina Capital Improvement Schedule

Interest Rate	7.00%							
Term in Years	20							
Project	State Estimate	Year 1	Year 2	Revised Year 3	Estimate Year 4	Year 5	Total	comment
Inline Water Meters	10,200	-	-	-	-	~	-	Deemed Unnecessay
Water Treatment Upgrade Campgrounds	269,000	-	120,000	-	-	-	120,000	Quote from Contractor
Water Treatment Upgrade Marina	-	8,000					8,000	Project estimate
Water Storage Upgrade	271,000	-	-	40,000	-	-	40,000	Quote from Contractor
Campsite Hydrants	492,000	~	-	-	10,000	-	10,000	Project estimate
Enhanced Water Sewer Treatment	30,000	-	-	-	-	~	-	Deemed Unnecessay
Fish Cleaning Sewage System Upgrade	36,000	-	-	-	-	-	-	Deemed Unnecessay
ComprehensiveSewage Treatment Plant	-	330,000					330,000	Quote from Contractor
All Weather Fish Clearning Station	329,000	-	-	-	-	-	-	Deemed Unnecessay
Electric Transmission Line Upgrade	1,200,000	-	-	-	-	-	-	Cost to Utility
Primary Boat Ramp Stabilization	328,000	-	-	100,000	-	-	100,000	Project estimate
R&R Boat Ramp	370,000	-	-	-	~	-	-	Unidentified Project
Stabilize Internal Park Roads	470,850	-	100,000	-	-	-	100,000	Project estimate
New Marine Constructiom	-	330,000					330,000	Project estimate
Stabilize Lower Boat Ramp	240,500	-	-	-	50,000	-	50,000	Project estimate
Expand Lower Boat Ramp	150,000	-	-	150,000	-	-	150,000	Project estimate
Total Estimated Cost	4,196,550	668,000	220,000	290,000	60,000	-	1,238,000	

	D	ebt Servic	e		
Principle	1	2	3	4	5
668,000	16,294	17,435	18,656	19,961	21,359
220,000	-	5,366	5,742	6,144	6,574
290,000	-	-	7,074	7,569	8,099
60,000	-	-	-	1,464	1,566
	-		~		-
Total	16,294	22,802	31,472	35,138	37,598
Interest	1	2	3	4	5
668,000	46,760	45,619	44,399	43,093	41,696
220,000	-	15,400	15,024	14,622	14,192
290,000	-	-	20,300	19,805	19,275
60,000	-	-	-	4,200	4,098
-	_		-	-	-
Total	46,760	61,019	79,723	81,720	79,261

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Appendix A

11. Hell Creek State Park -Draft Master Site/Management Plan -Final

Doug Habermann, Regional Park Manager-Region 5, reported on the Hell Creek State Park-draft Master Site/Management Plan (MS/MP).

Background: The draft Hell Creek Master Site/Management Plan was presented to the board in October 2015. The draft Plan identifies management issues such as maintenance needs, site capacity issues, concession operation, and other factors directly related to Montana State Park's management of the site including whether the division continues to manage the area.

Public Involvement Process & Results: The plan was posted for a 32-day public comment period, closing on Friday, November 27, 2015. Email correspondence inviting public comment on the draft plan was sent to key stakeholders and visitors who made campsite reservations at the park over the last three years. Public notices were posted in the Billings Gazette and area newspapers in Jordan, Glendive, and Miles City. Media coverage about the draft plan was covered during the public comment period by the Billings Gazette. A total of 81 public comments were received with 66 taking a position on one of the alternatives. Comments were received from individuals and agency partners and identified both support and opposition for the continued management of Hell Creek State Park and proposed priority improvements. Public comments for consideration in the final. The final outcomes for support on the proposed options are:

- Support Option 1 41 comments: Continue to manage site and concession with priority improvements
- Support Option 2 2 comments: Manage modified site boundary, relinquish concession to the US Army Corps of Engineers (USACE)
- Support Option 3 23 comments: Return site to the USA CE in 2021 with minimal improvements for health and safety

Alternatives and Analysis:

Alt #1- approve the "Hell Creek Master Site/Management Plan" with Option l as the preferred option.

Alt #2 - do not approve the "Hell Creek Master Site/Management Plan" at this time Alt #3 - approve the "Hell Creek Master Site/Management Plan" with Option 3 as the preferred option while requiring a formal review in 2019 to evaluate if the division has met conditions to improve management, fiscal solvency, and fiscal partnerships based on concerns raised.

Agency Recommendation and Rationale: It is the agency recommendation that the "Hell Creek Master Site/Management Plan" be approved with Option 3 as the preferred option pending a

formal review in 2019. Additionally, the division must implement a regulatory change to remove commercial use from the campground to comply with ASACE regulations.

Montana State Parks recognizes the importance of Hell Creek State Park in the region, the state, and within the state park system. While the division would prefer to maintain operation of the park, the facility condition, considerable management, and public health and safety challenges at the park cannot be adequately addressed with existing division resources. Similar challenges exist throughout the Montana State Park system and the division is faced with making hard

decisions about how to best manage the entire system given competing priorities and limited resources.

To that end, the board is considering the "Classification and Prioritization of Parks Resources Policy." Assuming that policy is approved, it will guide how the division prioritizes investment across the system. Investment in anything other than immediate public health and safety at Hell Creek State Park will be minimal until parks in higher classifications meet funding and staffing standards.

The division acknowledges that we do not currently have the ability to manage Hell Creek State Park to the standard identified in the 2015-2020 Strategic Plan. Therefore, we will actively work with the USACE and USFWS to improve partnerships and secure funding to support the park operationally and through capital investment. We will also work to align the end of the concession contract at the site with the end of the division contract at the site and to avoid any loss of service to the customer.

The division requests the board formally review this decision in 2019 and allow MSP to enter into negotiations at that time for a new lease if management conditions, fiscal solvency, and agency partnerships have improved to a level that allows management of Hell Creek State Park to Montana State Park standards. If that standard is not met, the division recommends allowing the current lease with USACE to expire on April 30, 2021.

Public Comment:

Clint Thomas, Hell Creek Concessions, reported via Video Conference from the Miles City Office, he does not agree that he should have to pay for a portion of the new sewer system. We provide all our own sewer system, water systems, garage and everything for our own facility. The sewer system you are talking about is the campground sewer system. The only part of this that is used by our customers is the fish cleaning system. He said he would be willing to pay the day use fee for this but does not understand why he should pay for all of his sewer system and half of the Parks.

Chairman Towe reported the intent is to make sure we can work together. The purpose of the 20year authority on our contract is to see if we can improve the park through the work that the Concessionaires can perform in this contract. Vice Chair Sexton reported if the Corp is cooperative and discussions with the concessionaire go well, by 2019 we could simultaneously have a 20-year contract and have a long-term lease with the Corp.

We would need some type of interim renewal with the concessions contract time-wise to make the 2019 date.

The Corp can statutorily move up their lease termination date to 2019 rather than 2021, if the Corp is willing to do so.

We will leave in 2021 unless we make strides to improve, which would include a business planning activity, renegotiation of lease so we have alignment between the end of the Corp contract and the concessionaire contract, our ability to secure better partnerships with everyone.

Action:

Vice Chair Sexton moved to approve the draft Hell Creek Master Site Management Plan with Option 3 as the preferred option, while requiring a formal review in 2019 to evaluate that the Division has met conditions to improve management, fiscal solvency and fiscal partnerships. Additionally, she moved that the Division explore ways to keep Hell Creek Park consistent with Montana State Parks standards.

Motion Carries.

Appendix B

Montana Code Annotated 2017

TITLE 23. PARKS, RECREATION, SPORTS, AND GAMBLING

CHAPTER 1. PARKS

Part 1. State Parks

Powers and Duties of Department

23-1-102. Powers and duties of department. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historic sites;

(b) with the consent of the board, acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2);

(c) with the consent of the board, enter into a contract pursuant to 18-4-313(2)(e);

(d) accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state; and

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

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

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

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historic sites, state monuments, or any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1981; amd. Sec. 1, Ch. 418, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 30, Ch. 125, L. 2001; amd. Sec. 9, Ch. 235, L. 2013; amd. Sec. 2, Ch. 322, L. 2015.

Appendix C

Montana Code Annotated 2017

TITLE 23. PARKS. RECREATION, SPORTS, AND GAMBLING CHAPTER 1. PARKS Part 1. State Parks

Acquisition of Certain State Parks. Monuments. Or Historic Sites

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

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

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

History - En Sec 3. (h 653, 1, 1979, and Sec 2, Ch 218, E 1979, and Sec 1. Ch 637, L. 1985, and Sec 2, Ch 28, E 1991; and Sec 11, Ch 235, L 2013