

Madison River Negotiated Rulemaking Report

Spring 2019

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Convening of the committee and Structured Decision Making within Negotiated Rule Making:

I would like to give a bit of background on my view of how we were convened and then proceeded through the NRC process. I believe it created avoidable problems from the start. In part, two things may have contributed to the issues we had. First, due to the government shutdown our facilitator was unable to be present at our first two meetings. Second, negotiated rule making had only been used once prior to our committees' efforts. The make-up of and problem concerning the previous group was much different and perhaps not as complicated as ours.

1. We did not receive our informational binder before our first meeting as promised. This would have allowed me to be more prepared.
2. We did not have a convener that helped us create an environment of equality among the members by establishing a code of conduct or rules of the road. The main problem resulting from this was we didn't have balanced input on where we were to start. We were told by legal it was up to us but then we were presented with the April 19, 2018 Madison recreation plan (that failed to pass the commissioners) as a place to start because FWP thought that was easiest. The rest of our first day and part of second was FWP presentations of FWP surveys and FWP reports. There were quite a few points I would have liked to discuss with my fellow committee members about the presented info but without a convener we did not have that organized group time.
3. I had believed that the facilitator that we were using was supposed to be our convener but he couldn't participate initially due to the government shutdown. When he was able to join us he stated that wasn't his job.
4. Other than not having structured time to initially work together we also had a vote to add a committee member. The facilitator had us do a secret ballot and the casting of one no vote decided the outcome. I was not in agreement of how voting would occur and we really hadn't thoroughly discussed it.
5. Our last meeting, we voted to continue or not and with **one no vote** we were done. Several of us were interested in continuing but without adequate discussion on how we all wanted voting to proceed, we kept to the one person can control the outcome of 9 others.

6. We were told by legal that under Negotiated Rule Making our group could determine where to start, how to begin and how **voting** should proceed. It wasn't until the 5th meeting that I was able to introduce a document from the Yellowstone River Task Force that outlined their decision-making processes and policies. The task force established rules about how they would conduct business in order to function equitably, efficiently and effectively as a group. I believed, at the 5th meeting, it was already too late but we in theory agreed to some modicum of behavior and process.
7. Another important issue that I believe hobbled our outcome was that we were told Structured Decision Making, SDM, was a good tool that had been used by the agency. After repeatedly asking how SDM allowed the Negotiated Rulemaking process to work the answer was "Trust the Process". In the end I believe Structured Decision Making anchored the committee members in their respective issues, took time away from committee discussion/research, and ultimately showed twice that no change was either the highest ranked outcomes on the second chart in the top few.
8. Our timeline was very short. In reading the past commission meeting transcripts it was identified that getting something done soon was important. It was also mentioned numerous times in both the April 19, 2018 commission meeting and the subsequent June 14, 2018 meeting that doing the process correctly was more important than doing it quickly. In Montana Law Review Vol. 60 Issue 2 Summer 1999 "Negotiated Rulemaking: Involving Citizens in Public Decisions it states that "The stakeholders may have to spend more time and resources with the agency before, during and after the public comment period." Other Montana Departments have chosen not to use negotiated rulemaking due to "...appears to be overly cumbersome and expensive".
9. Finally, from the above document- "When consensus-building processes are hastily put together, without adequate assessment or systemic consideration of the forum design, participants feel "burned," "used," or that their time has been wasted."

Going Forward:

The following is my abbreviated compilation of information based on many hours of NRC meetings this Spring, additional countless hours of individual research and reading, interested party meetings/phone calls/emails, 25 plus years guiding the Madison, a lifetime of fishing, years of fisheries technician work with IF&G and a degree in Ecology.

The Madison River deserves a well-designed and thought out recreation plan. Clear goals based on technically sound data is the way to ensure a healthy future for the Madison River. The task of reducing crowding is complicated. Crowding in one respect is self-regulating where people choose to go elsewhere. Currently, people increasingly choose to continue to enjoy the Madison experience. The fact of the matter is this isn't 1994 when I started guiding or whatever year you want to compare today to.

The FWP survey used to support overcrowding issues shows dissatisfaction based on percentages of percentages. This was a glaring problem in the use of numbers/math for me that I identified when I read through last year's FWP April 19, 2018 Madison Recreation Plan proposal.

What can we do that is fair and will **maintain a quality** experience on the Madison? A start would be:

- 1-Increase fishing from floatable craft above Lyons Bridge maybe add Pine Butte.
- 2-Establish biological management objectives for the Madison River fishery.
- 3-Increased access in some areas that are land locked by private land.
- 4-Develop signage at access areas that educates river users on important topics that affect the wade areas, have FWP person at certain FAS to convey etiquette info

While Montana law preserves the right to both navigate the river as well as fish, fishing must be conducted from outside of the vessel in the walk wade sections of the Madison. Education of some sort for all concerned about the following:

- 1-Floaters should give the right of way to wading anglers and should pull in below or above a wading angler well beyond casting range
- 2-Wading anglers should give the right of way to a floater if they are occupying the primary navigable channel
- 3-The Montana Stream Access law grants all users full access to recreate along the river below the high water mark. River users should respect private land and avoid trespassing above the high water mark.
- 4-Work to proactively educate local land owners and HOA's along the river of Montana laws related to the Montana Stream Access Law and rights of the general public related to navigable rivers

The ideas proposed to alleviate crowding in the April 19, 2018 FWP plan and during the Madison NRC committee meetings that are the **most alarming** to me are:

- Rest and rotation for guided fishing
- Limiting launches
- Any delineation of residents and nonresidents

Some of the problems created by the above are:

- 1-It concentrates large numbers of users into a smaller spatial setting
- 2-The economy of the Upper Madison Valley relies upon nonresident visitors
- 3-It concentrates users into specific reaches
- 4-It also “clusters” users by essentially synchronizing floating behavior (example lots of people all putting in at the same location and taking out at the same location).
- 5-Safety would be compromised. At some water levels reaches from Lyons to Palisades are not safe as high flows make crossing under bridges treacherous. On windy days the middle reaches of the river which is very exposed can be dangerous to float.
- 6-Nonresident restriction not only hurts commerce but is in conflict with the efforts of the Montana Outdoor Recreation office.
- 7-Limiting launches per site or day for an outfitter causes commercial harm to lodges, local businesses and the outfitters themselves. Several ways to implement these limits have consequences that cause harm without resulting in much of change in numbers.

These are the most glaring of negative outcomes.

As the above are implemented I, as an outfitter, am willing to be an example for other user groups of how to responsibly regulate use regardless of the fact guided fishing comprises less than 15% of total use. It also should be acknowledged that some forms of regulation that have been proposed could cripple the guide/outfitting community and subsequently associated businesses while providing very little on the ground results. However, I would be interested in exploring the following:

- 1- A carrying capacity for the number of guided trips needs to be defined as a management target.
- 2- Utilize the input of guides and outfitters to successfully maintain the carrying capacity.
- 3- Do no harm to existing businesses for ex. use historical use data