

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

In the matter of the repeal of ARM) NOTICE OF REPEAL
12.2.306 pertaining to department)
liaisons)

TO: All Concerned Persons

1. On February 23, 2024, the Department of Fish, Wildlife and Parks (FWP) published MAR Notice No. 12-625 pertaining to the public hearing on the proposed repeal of the above-stated rule at page 304 of the 2024 Montana Administrative Register, Issue Number 3.

2. On March 22, 2024, a public hearing was held on the proposed repeal of the above-stated rule, via Zoom. Due to technical problems with Zoom, FWP was unable to receive testimony at the public hearing.

3. On April 2, 2024, FWP published a second notice of public hearing and extension of comment period due to the technical problems with the previous hearing, at page 666 of the 2024 Montana Administrative Register, Issue Number 7.

4. On May 3, 2024, a public hearing was held on the proposed repeal of the above-stated rule, via Zoom. FWP received both written and oral testimony comments by May 6, 2024.

5. FWP has repealed ARM 12.2.306 as proposed.

6. FWP has thoroughly considered the comments and testimony received. A summary of the comments received, and FWP's responses are as follows:

COMMENT 1: One commenter requested that the requirement that FWP liaison with various groups and organizations not be repealed so that there is a direct and required path for FWP to discuss issues with the public and organizations. The commenter suggested that keeping this path "will help maintain transparency of proposals your organization may advance that might otherwise be at risk of special interest groups furthering their agendas."

RESPONSE 1: Section 2-3-103, MCA, enacted in 1975, requires agencies to adopt procedures securing the constitutional right to a reasonable opportunity to participate in the operation of governmental agencies prior to a final agency decision. The liaison administrative rule, first adopted in 1976, set forth how FWP would comply with 2-3-103, MCA. Over time, and as technology has improved, FWP has developed new procedures to comply with Montana's public participation laws.

Approximately four weeks before a scheduled commission or board meeting, FWP posts the agenda along with the any proposals to its public website. The public can

participate in meetings via Zoom or by appearing in person at one of its seven regional offices on the meeting date.

FWP also maintains a mailing list of interested persons who can subscribe to and receive information on FWP news, public notices, public comment opportunities, hunting updates, education, closures, restrictions, and re-openings. Each general interest area has additional specific subtopics that can be selected. Users can adjust their personal notification preferences to receive notices immediately, daily, or weekly via email. Releases are also sent to a wider audience via Gov Delivery. FWP sends out a biweekly news release to interested parties, regional citizen action committees, and media lists, with a digest of current news and issues before the agency.

Organizations and members of the public can and do participate in these processes. Through these public outreach paths, FWP consistently provides transparency in proposals under consideration, and therefore rejects the commenter's suggestion that repealing the rule will decrease agency transparency.

COMMENT 2: One commenter supported the repeal of this rule stating it is archaic and no longer reflects how the commission or the department engages with the public, including citizen organizations, in decision-making processes.

RESPONSE 2: FWP appreciates the support and acknowledgment that this rule no longer reflects how public engagement occurs in the decision-making process.

COMMENT 3: One commenter strongly opposed the repeal of this rule stating: "[i]t may be true that it 'no longer reflects how the Commission or the Department engage with public, including citizen organizations, in decision making processes,' but if so, that is the fault of FWP and not a fault in the requirement. The process laid out in the rule should be how FWP engages with the public and citizen organizations." The commenter noted that Montana's long history of public engagement with state decision-making processes is how it should be. The commenter shared that this repeal is one more step to turning Montana into a playground for the privileged and powerful, where only they get to decide how the state's public resources should be managed.

RESPONSE 3: FWP appreciates the commenter's concern. However, modern technological capabilities have enabled FWP to improve its public engagement far beyond what the rule requires. Another example is reflected in the volume and accessibility of work groups and committees that contain a cross section of stakeholders and citizen membership. For these reasons, and those found in other responses in this notice, FWP rejects the commenter's suggestion that repealing the rule will exclude any public perspective or opinion.

COMMENT 4: One commenter was adamantly opposed to removing requirements to consider input and work with the public, stating: "having some bureaucrat[s]

dictate policy, rules, regulations based on their own personal opinion without public involvement is wrong."

RESPONSE 4: The repeal of this rule does not remove the requirement that the department consider input from the public. The comment period for proposals offers ample opportunity to provide either written or oral comments for the department's consideration in the decision-making processes. Public comments received at a meeting are incorporated into the official minutes of the meeting.

COMMENT 5: One commenter was concerned about the public's visibility into policy actions taken by FWP, stating that the ability to comment is an essential component of fair legislation, use of tax dollars, and equitable access. The commenter asked FWP to retain public access to information that affects everyone.

RESPONSE 5: The majority of FWP actions, except those categorically excluded under administrative rule or ministerial in nature, incorporate public participation. This is reflected in commission, board, and advisory group processes; Montana Environmental Policy Act documentation (environmental assessments, programmatic environmental assessments, and environmental impact statements); and other public participation opportunities provided across the state. Repealing this rule does not change that.

COMMENT 6: One commenter felt it was a bad idea to remove sportsmen's advocates in the management of sportsmen's dollars because they need an advocate to ensure that government is working in sportsmen's best interest with their dollars. The commenter added that advocates/liaisons are the best method to present the public's opinion.

RESPONSE 6: FWP incorporates stakeholder opinions and advocacy through FWP-established work groups and committees. FWP takes those considerations into the construction of species-specific wildlife management plans and some management proposals. Any advocate, whether a sportsperson or a non-consumptive user of public lands, is provided the same opportunity to participate in FWP decisions.

COMMENT 7: One commenter felt that a larger discussion is merited and rather than repealing the rule suggested the following changes to the language:

(1) In addition to all other requirements, the department and commission shall continue to maintain liaison with citizen, conservation and resource organizations active in areas concerning department responsibilities. This liaison will be on both formal and informal bases through attendance of and participation in their meetings ~~and through membership of department personnel in these organizations. Such organizations include but are not limited to: Montana Wildlife Federation, Montana Wilderness Association, Audubon Society, Ducks Unlimited, Trout Unlimited, Sierra Club, Environmental Information Center, Northern Rockies Action Group, various state and local outfitter and guide organizations, local unaffiliated rod and gun clubs,~~

or any other citizen, conservation or resource organization expressing an interest in wildlife, and outdoor recreation and the sustainable management of public wild resources of the state of Montana.

RESPONSE 7: FWP appreciates the submission of the suggested change in writing. However, FWP declines to adopt the proposed revisions for the reasons stated in the responses to all the comments received.

COMMENT 8: A comment from an association opposed the repeal of this long-standing administrative rule because it believes the repeal undermines FWP's and the commission's credibility as it minimizes public involvement in important decision-making processes. The commenter stated that they did not trust FWP leadership because of the lack of involvement of division and field staff in developing proposals.

RESPONSE 8: The repeal does not reflect a shift in approach of FWP's commitment to public engagement. The repeal was proposed for the purpose of aligning administrative rules with FWP's current long-standing public engagement and participation practices and procedures.

COMMENT 9: One commenter was concerned that revocation of the policy in place since 1976 to ensure transparency in FWP matters and the opportunity for citizens to be heard and the chance for FWP to respond will be lost.

RESPONSE 9: FWP's current practice for engaging the public and interest groups is reflected through commission processes, work groups, and other informal meetings. The rule does not reflect the current, nor the recent past structure for public engagement under multiple administrations. FWP will continue to meet with individuals and groups, and seek input, when and if relevant issues arise.

COMMENT 10: One commenter disagreed that the rule was archaic, sharing that meeting with department personnel and commission members is not "archaic," rather a necessary function of FWP to disseminate information, gather public input, and foster support for department and commission decisions. In addition, the commenter stated department and commission public meetings replaced by online or Zoom meetings are frequently marred by technical difficulties making an interchange with a person difficult and do not allow for people to exchange views and form relationships. The commenter stated that if FWP or the commission is unwilling to meet for some reason, the public can call on ARM 12.2.306 to ask for a meeting.

RESPONSE 10: The guarantee for public notice and participation is found in Montana's constitution, not administrative rule. FWP's current practice for engaging with the public on various topics has been discussed in the responses in this notice, and the examples provided are not a complete list of every opportunity.

The use of electronic communications has become an integral part of how FWP is able to provide opportunity to participate in agency decisions simultaneously with

citizens and organizations from across the state. FWP and the commission engage in discussions in real time, and in a fully transparent manner to citizens on all sides of an issue which is not reflected in the provisions of the liaison rule. Therefore, FWP is proceeding with the repeal of ARM 12.2.306.

/s/ Kevin Rechhoff
Kevin Rechhoff
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State July 16, 2024.