

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Vigilante Kids' Fishing Pond and) TEMPORARY EMERGENCY RULE
picnic area in Madison County)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) A state engineer inspected a dam on Alder Creek upstream of the Vigilante Kids' Fishing Pond and picnic area on May 21, 2009 and determined that the dam is in a "state of imminent failure".

(b) A combination of factors including runoff from above average snow pack, a small stream flooding advisory that is in effect, and the lack of an existing spill way around the dam could make water levels rise rapidly and make the area below the dam unsafe for public use.

(c) Vigilante Kids' Fishing Pond is designated as a children's fishing water and is open only to anglers 14 years of age and younger. Due to the flood danger, possible rapid increase of the water level and the age of the anglers allowed to fish in the pond, this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 11 of the 2009 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov.

3. The temporary emergency rule is effective May 27, 2009 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I VIGILANTE KIDS' FISHING POND AND PICNIC AREA
TEMPORARY EMERGENCY CLOSURE (1) The Vigilante Kids' Fishing Pond and picnic area closure is located in Madison County.

(2) Vigilante Kids' Fishing Pond and picnic area is closed to all boating, floating, and swimming and any other public occupation of the pond and picnic area.

(3) This rule is effective as long as the dam upstream from Vigilante Kids' Fishing Pond and picnic area is in a state of imminent failure.

AUTH: 2-4-303, 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the commission determines the pond and picnic area is again safe for boating, floating, fishing, swimming and any other occupation of the pond and picnic area. This will depend on the extent and duration of necessary repairs to the dam. Signs restricting use of the area will be removed when the rule is no longer in effect. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Fitzpatrick, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than July 6, 2009.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Joe Maurier

Joe Maurier, Secretary

Fish, Wildlife and Parks Commission

/s/ Bill Schenk

Bill Schenk

Rule Reviewer

Certified to the Secretary of State May 27, 2009.