

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
Smith River from Camp Baker to) TEMPORARY EMERGENCY RULE
Eden Bridge)

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) On May 22, 2011, flow levels at Eden Bridge were recorded at 4,300 CFS and flow levels at Eagle Creek Gauge, near Camp Baker, were recorded at 2,320 CFS. These levels are dangerously high.

(b) Due to high run off in tributaries, large quantities of logs and uprooted trees are floating down the river. On May 21, two expert river rangers patrolling the river reported that a large log swept down on them from behind and created a hazardous condition by nearly pinning them against the cliff.

(c) Persons recreating on the river in these conditions would be subjected to:

(i) boating accidents resulting from collisions with logs, debris, and cliff walls;

(ii) becoming stranded and having to hike out of steep canyon areas;

(iii) immersion hypothermia; or

(iv) drowning.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions 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 2011 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 17, 2011, 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 23, 2011 when this rule notice is filed with the Secretary of State.

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

RULE I SMITH RIVER TEMPORARY EMERGENCY CLOSURE

- (1) The closed portion of the Smith River is located in Meagher and Cascade Counties.
- (2) The Smith River is closed to all floating on the river between Camp Baker and Eden Bridge.
- (3) This rule will remain in effect until the department determines the river is again safe for boating. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department) to determine when this portion of the river is again safe for floating of the water and to rescind the temporary emergency closure.

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 department determines the river is again safe for floating and the rule is repealed. This will depend on the extent and duration of the debris in the area and flow levels. Signs restricting use of the river will be removed when the rule is no longer effective. 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, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than June 20, 2011.
8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which 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 commission or 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/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State May 23, 2011.