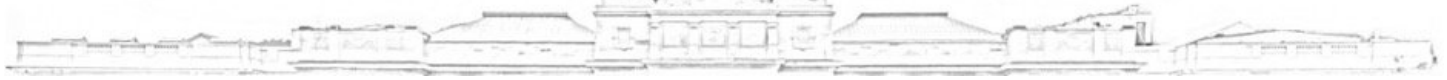




ADMINISTRATIVE RULES OF MONTANA



12.4.103 PETITIONS

- (1) Any person may petition the commission:
 - (a) to limit, restrict, or prohibit the type, incidence, or extent of recreational use of a surface water as provided in this section; or
 - (b) to alter limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission as provided in ARM 12.4.104; or
 - (c) with respect to class II waters, to identify streams capable of no recreational use or of limited recreational use, and to restrict the recreational use to the actual capacity of the water, as provided in ARM 12.4.106.
- (2) Petitions to the commission under this subchapter must:
 - (a) be in writing and signed by the petitioner or his authorized agent;
 - (b) state the name and location of the river or stream that is the subject of the petition;
 - (c) state the remedy that the commission is being requested to grant;
 - (d) allege one or more of the facts set forth in ARM 12.4.104(2) , 12.4.105(2) or 12.4.106(2) accompanied by specific data or documentation in support thereof; and
 - (e) describe the historical recreational use of the river or stream that is the subject of the petition, if known.
- (3) Upon receipt of a petition, the commission chairman shall order the department to conduct an investigation of the facts alleged, and may order a physical inspection of the area described in the petition.
- (4) The department shall publish a notice of the request for action in at least one daily newspaper in the area of the requested action and in at least 4 other major daily newspapers within the state. The notice shall solicit public comment on the proposal and shall provide at least 30 days for public comment from the time of the notice. The department shall provide notice of the petition to any groups or individuals who have expressed interest in the issue.
- (5) Within 45 days of the publication of the notice described in ARM 12.4.103(4) , the commission may upon its own motion or upon request of an interested party order a public hearing within the county in which the petition requests commission action.
- (6) The department shall submit a report and recommendation to the commission within 45 days after the commission directs an investigation. The department shall send a copy of its report and recommendation to the petitioner and to any other party who has requested them at the same

time it submits its report to the commission. When circumstances warrant, the commission may extend the time within which a report is due.

- (7) The department's report shall address every allegation in the petition requesting commission action.
- (8) Upon receipt of the department's report the commission shall, within 30 days, issue a decision granting, denying or granting with modifications the petitioned relief. The decision shall be supported by written findings which specifically describe the factual basis for the decision.
- (9) The commission may summarily dismiss a petition with a brief statement of the reasons for dismissal if the petition:
 - (a) is unsupported by specific substantial factual allegations, data or documentation;
 - (b) requests relief substantially similar to that requested by another petition which has been acted upon within the preceding 365 days; or
 - (c) requests relief which is not permitted or is unnecessary under 23-2-302, MCA.
- (10) Notwithstanding (1) through (9) of this rule, the commission may, upon request of an affected landowner, who has filed a petition with the commission under (1) through (9) of this rule, temporarily close or restrict recreation use on a stream or on any part of a stream if the failure to do so would result in irreparable damage to property, irreparable disruption or alteration of the natural areas or biotic communities, or irreparable degradation of the waterbody. The commission may act under this subsection through the chairman and the commissioner in the affected region after consultation with the director. Any closure or restriction under this subsection may remain in effect only until the commission acts upon the petition filed pursuant to (1) through (9) of this rule.

Authorizing statute(s): 87-1-303, MCA

Implementing statute(s): 23-2-302, MCA

History: NEW, 1985 MAR p. 917, Eff. 7/12/85.