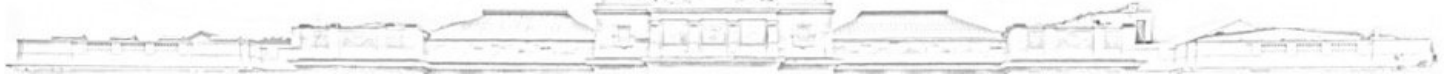




ADMINISTRATIVE RULES OF MONTANA



12.4.106 SPECIAL DESIGNATIONS OF CLASS II STREAMS

- (1) Any person may petition the commission for an order to identify class II streams which are not capable of recreational use or are capable of limited recreational use, and to restrict the recreational use to the actual capacity of the stream.
- (2) A petition under this section must meet the requirements of ARM 12.4.103(2) and must include allegations and supporting data and documentation that the class II stream is incapable of or is capable in a limited fashion of supporting one or more of the following recreational uses: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft or craft propelled by oar or paddle.
- (3) The commission shall process the petition in accordance with ARM 12.4.103(3) through (9) .
- (4) In its determination, the commission shall consider, among others, the following factors for each kind of use:
 - (a) with respect to fishing, the department's stream evaluation data for that particular stream, any fish population data for the stream, and the suitability of the stream habitat for gamefish;
 - (b) with respect to hunting, the likelihood that a hunter will be able to confine his hunting, including retrieval of downed game, to the area within the ordinary high-water marks, and the suitability of the habitat for game species;
 - (c) with respect to swimming, the danger and difficulty associated with swimming the waters and the availability on the stream of waters deep enough to swim;
 - (d) with respect to floating or use of watercraft, instream flow data describing the minimum flow necessary to support various watercraft and the actual suitability of the water to the use of watercraft as evidenced by historical use or other data; and
 - (e) with respect to other water related pleasure activities, any other relevant factors.
- (5) The commission shall process the petition in accordance with ARM 12.4.103(3) through (9) , and may order any restriction it finds necessary to limit recreational use to the actual capacity of the stream, including absolute prohibition of recreational use, provided it confines its action to that which is least disruptive to public recreational use and still provides the necessary protection.
- (6) Nothing in this rule shall obligate the petitioner to conduct formal studies to provide relevant data or to bear the expense of such studies. If the commission requires additional studies to reach an informed decision the department shall bear the cost of the additional studies.

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

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

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