

## Glenda Wiles

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**Sent:** Wednesday, August 15, 2018 9:59 AM  
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**Subject:** New FWP Regulations for the Bitterroot  
**Attachments:** WFUB Regulations.pdf

To all concerned

My name is JC Howell. My wife and I are Ravalli County residents and have fished the West Fork and Upper Bitterroot Rivers for more than 20 years. Last fall, FWP passed regulations restricting the use of these river sections. I'm opposed to these regulations and feel they should be repealed for the following reasons, which are more fully detailed in the attached file.

There's no data that shows a need for regulation. The rules are biased and unfair, benefiting a small group of complainers and riverfront land owners at the expense of everyone else. They penalize local established outfitters by forcing some of their business to outfitters from outside Ravalli County. The regulations don't effectively address crowding on the river and in some cases make matters worse. They are unenforceable and will negatively impact the economy of Ravalli County.

In passing the rules, FWP mischaracterized public opinion. They ignored their own rule ARM 12.11.405 by imposing the most restrictive management intervention first. They violated Section 2-4-111 of the Montana Code which requires a small business impact analysis. FWP said this section doesn't apply, but it's impossible to pass a rule designed to limit outfitters' business and reduce the number of visiting anglers and not have it significantly and directly impact outfitters, hotels, restaurants and retailers. The elected officials of Ravalli County should've been informed of the potential economic impact of these regulations.

For these reasons and more that are outlined in the attached analysis, I oppose these rules. Thank you for your consideration.

JC Howell  
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Sent from [Mail](#) for Windows 10

## ANALYSIS OF THE NEW REGULATIONS

Most of the data presented here comes from the Environmental Assessment for Recreational Rules on the Upper Bitterroot River and West Fork Bitterroot Rivers (the “EA”) prepared by the Department of Fish Wildlife and Parks (“FWP”) in September 2017.

### **Background**

FWP received several letters and e-mails from people expressing concern over congestion on the West Fork and Upper Bitterroot Rivers (the “WFUB”). In 2014, FWP began conducting car counts at access points and surveyed river users about their experience. Page 13 of the EA states “A large majority of respondents did not indicate feeling crowded at the put-in or take-out.” When asked to rate the crowding on the river on a scale of 1 to 9, the results were “the average was 2.21 which is considered not crowded.”

Because none of the respondents were resident anglers, FWP decided to “research possible displacement of resident anglers.” They sent surveys to Ravalli County anglers. From the results, they identified 303 frequent anglers of the West Fork and 152 frequent anglers of the Upper Bitterroot. Of the frequent anglers, 210 of the West Fork and 113 of the Upper Bitterroot anglers reported crowding issues.

In 2017, a citizen advisory council (the “CAC”) was appointed to address the problem. They were not told to decide first if there was a problem. The regulations that FWP implemented came from recommendations from the CAC.

The goal of the regulations is to “address concerns about congestion on the river, and at access sites, and social conflicts between river users.” (Page 5 of the EA). Page 14 of the EA says that implementing the rules will also “bring local anglers back to the West Fork and upper river on non-commercial days.”

It’s important to note that the quality of the fishery is not in question. Page 12 of the EA states “fish population and creel surveys do not indicate that the high fishing pressure is affecting the health of the fish or the experience of the anglers at this time.”

FWP admits that this is a social issue, not a fishery issue. Throughout the process, it has been characterized as an issue between wade and float fisherman, and that resident anglers are wade fisherman while non-residents, even those from other parts of Montana, are float fishermen. Page 13 of the EA states that “Concerns were raised by many river users over total boat traffic, the amount of commercial use, local angler displacement, and conflicts between wade and float anglers.”

### **No Need for Regulation**

The whole process began with a few letters and e-mails from wade fishermen complaining about guided floats. Initial data collection by FWP as described above was not conclusive. It was based

on car counts, on-site interviews that confirmed the river wasn't crowded and 323 survey responses. However, this was enough for FWP to convene the CAC to address the problem.

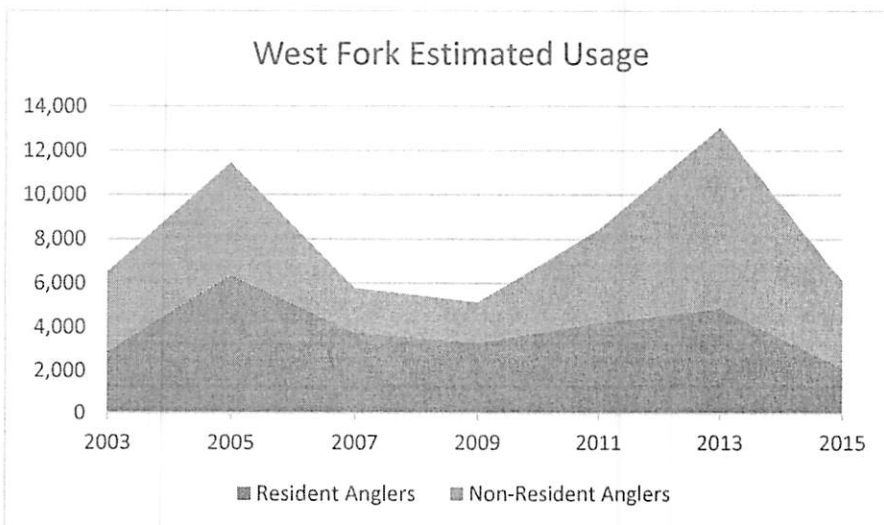
There is no hard, scientific data that counts the exact number of river users. So, FWP relies on estimates. The CAC was presented with numbers that FWP claimed showed an increase in total anglers since 2009 and a decrease in resident anglers.

Chrissy Oschell, FWP Region 2 River Recreation Manager, provided the source data to me. It seeks to estimate total angler-days without regard to contextual issues, such as the economy, total tourism, river flows in the region, smoke, fires, insect hatches, fishery health of area rivers, fish species and limits, water temperatures in the region, nearby river restrictions and angler pressure on other area rivers. All of these factors will have an impact on why an angler may choose to fish in one area as opposed to another.

Here is a table that shows the annual numbers from 2003 through 2015, estimated every other year by FWP. Note that the Upper Bitterroot for this purpose is much larger than the area from Hannon Memorial to Wally Crawford. I believe Ms. Oschell told me it extended from the confluence of the East and West Forks all the way down to Stevensville.

West Fork

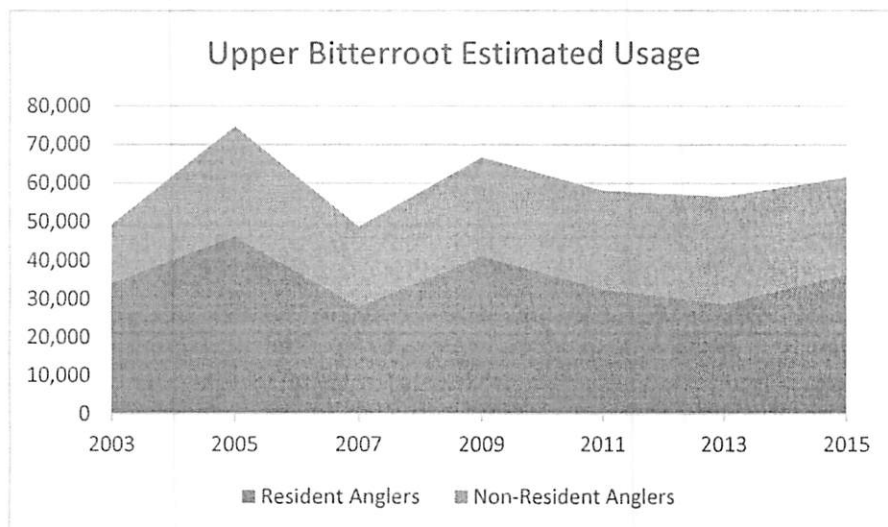
Year	Total Anglers	Resident	Non-Resident	% Non-Resident
2003	6,522	2,881	3,641	56%
2005	11,456	6,337	5,119	45%
2007	5,798	3,731	2,067	36%
2009	5,132	3,276	1,856	36%
2011	8,447	4,127	4,274	51%
2013	13,054	4,827	8,227	63%
2015	6,100	2,129	3,970	65%



As you can see the numbers vary greatly and don't show any significant trend. The estimates from 2003 are similar to those in 2015. Total number of resident anglers remained consistent over the period until 2015. That was a year of heavy smoke in the West Fork area due to wildfires. The percentage of non-resident anglers does appear to have increased in recent years, but they haven't completely displaced resident anglers.

Upper Bitterroot

Year	Total Anglers	Resident	Non-Resident	% Non-Resident
2003	49,395	34,093	15,302	31%
2005	74,618	46,248	28,370	38%
2007	48,861	27,874	20,978	43%
2009	66,644	41,070	25,574	38%
2011	58,025	32,536	25,489	44%
2013	56,545	28,674	27,871	49%
2015	61,551	36,303	25,248	41%



These numbers aren't very relevant because it's a different section of river than the one covered in the regulations. However, they were used by FWP to prove their points of over-crowding and displacement of local anglers. Resident anglers still make up a comfortable majority.

The numbers don't indicate a need for regulation. The impetus for enacting regulations was based on the perception of FWP staff that they got from a few letters and e-mails.

The section of river from Hannon Memorial to Wally Crawford, called the Upper Bitterroot by FWP for purposes of these regulations, shouldn't be included. There's no logical reason for it. The only data related to this specific stretch of river comes from 152 survey responses where 74% of resident anglers said they fish this section less than they did three years earlier. However, FWP's own estimates of Upper Bitterroot (a larger stretch of river than Hannon to Wally) angler-days from 2011 to 2015 shows an increase in resident anglers during that time.

The other reason the Upper Bitterroot shouldn't be included in the regulations is that there is limited public access for waders. There are three fishing access sites where anglers can enter the river, Hannon Memorial, Darby Bridge and Wally Crawford. The remaining river is surrounded almost exclusively by private land owners. Other popular access sites used by wade-fishermen are in fact private land. Those waders are trespassing and shouldn't be encouraged to continue.

While the West Fork has more public land to access the river, much of that is steep, rocky or heavily wooded terrain. Access is difficult in many areas, and private land borders much of the West Fork as well. Large stretches of the river are unreachable by the average wade-fisherman. On days when these sections have been designated as wade-only, valuable resources are going unused.

The regulations should never have been enacted. There's no evidence, other than complaints from a few fishermen, that suggests a problem exists, and there's limited access for wade-anglers, especially in the Upper Bitterroot section.

### **Arbitrary, Biased and Unfair**

Despite the lack of need for regulation, FWP enacted new rules. The process by which they did this was flawed in several ways. I've already commented on the faulty data used to justify the need.

The CAC was heavily biased toward wade fishing. This is evident in the notes on their decision-making process taken by FWP. When the group was asked to weigh the importance of objectives, the satisfaction of wade anglers was ranked higher than the satisfaction of float anglers. The resulting regulations reflect this bias by restricting floating on the river in favor of wade fishing. Floating does not just mean guided fishing. It includes unguiding fishing from a boat by residents, sight-seeing, tubing, kayaking, canoeing or any other river use that involves a type of watercraft. By making this restriction, FWP made a moral judgement that wade fishing is superior to than any other form of river recreation. I believe only wade fishermen share this view.

The CAC divided the WFUB into four sections and they restricted activity on certain days in each section from June 1 to September 15. There was no study to determine the appropriateness of these decisions. Water flows have a huge effect on the usability of the river for both wade and float anglers. Too much water is dangerous to wade. Not enough water makes floating difficult.

On July 22, 2018, the Ravalli Republic published an article titled, Bitterroot river is finally at a good point for wade fishermen. This means that for approximately half of the time that the river is restricted for floating this year, conditions weren't particularly good for wade anglers.

While the formulation of the rules was determined randomly, the greatest inequity is in how the use of the river was allocated to guides. Any outfitter who had at least one day of use on the WFUB during 2014, 2015 or 2016 could receive a permit. That permit allows the outfitter two floats per river section per day, for a total of eight floats (or six when floating is restricted on a section) per day.

An outfitter who floated a section of river once during a three-year period is allocated the same usage as one who has previously operated multiple floats on a daily basis over many years. A fair method of allocation would take into account the amount of historical use by an outfitter.

An outfitter who has demand from clients to fish the WFUB in excess of eight (or six) floats on a given day has limited options. They may tell clients that they are unable to accommodate them, which will result in them hiring another outfitter. They may take clients on an unrestricted section, which could anger the client and cause them to seek another outfitter. Or the outfitter may hire another outfitter to accommodate those clients for him.

In any case, the outfitter with high demand is losing business to one with less demand. Successful outfitters who may have spent years building a business and developing a large client base are penalized for their success. FWP is effectively transferring some of their business to other outfitters without justification or a logical explanation for doing so.

### **Public Opinion**

FWP received both positive and negative comments on the proposed regulations. They also held several public hearings across the state. They said they wanted to address concerns of local anglers, but they ignored a large number of them.

A petition was circulated online opposing these rules and recommending fairer and less restrictive rules. Approximately three hundred signatures were gathered. FWP said that because they couldn't verify the signatures they would count the petition as one person opposed to the rules.

In contrast, the head of the Bitterroot Chapter of Trout Unlimited, a self-described wade angler, supported the regulations. Although he personally wasn't able to appear at the public hearings to affirm this. FWP noted that Bitterroot TU represented hundreds of local fishermen. They weren't concerned that the leadership of Bitterroot TU didn't consult with its members or take any sort of vote on the matter. Many people that I know have since discontinued their membership with TU.

This was an unfair and uninformed assessment of public opinion on the proposed rules.

### **Ineffectiveness**

As stated earlier, there were several goals FWP was trying to achieve with these regulations. 1) Address concerns about congestion on the river. 2) Address concerns about congestion at access sites. 3) Address social conflicts between river users. 4) Bring local anglers back to the WFUB on non-commercial days. The rules fail to achieve these goals, and in some cases, may increase problems.

To address congestion on the river, FWP wanted to limit the number of guided boat trips. However, the regulations don't do this. They limit how many floats one outfitter may launch per day, but they say nothing about the total number of boats using the river. We've already seen outfitters with

high client demand hire additional outfitters to cover the excess. It's the same number of boats, just different outfitters launching them.

It's also possible that an outfitter who previously didn't use the WFUB on a regular basis could begin to launch eight floats per day, increasing the number of boats on the river. This scenario would be likely in the case where hoot-owl restrictions are in place on other rivers, and the WFUB has the only cold water in the region. I raised this point at the public hearing in Hamilton, and Ms. Oschell confirmed that it was possible under these rules that guide traffic could increase.

As far as easing congestion at access points, the rules have definitely had the opposite effect. The river has been divided into four sections. Crossing from one section to the next is considered one float on both sections. So, each guide must remain in the section where they began or be charged for two use-days. In order to maximize the clients' usage of the river, guides must put in at the beginning of the section and take out at the end, especially during higher flow levels. There used to be many places a guide could choose to launch, now there are four. Three on days when floating is restricted. It was also possible for a guide arriving at a crowded access site to choose to go someplace else to launch. Now they have no choice. Reducing the number of feasible access sites increases congestion at these sites.

The way FWP chose to address social conflicts between river users was to remove all river users except wade anglers on certain days. As children, we were taught to share and to respect the rights of others. It seems as adults, we have to put certain people in a time-out. This goes back to the moral judgement that wade fishing is superior to all other river use. In order to resolve conflict, no matter who might be causing it, every river user except wade anglers must be restricted.

FWP rule ARM 12.11.405 states, "Educating the public about river recreation issues can lead to modified behavior on rivers and the department can use education as a non-regulatory method to address social problems on rivers." It also states "if it becomes necessary to manage use on a river, the public prefers that less-restrictive management intervention be tried before proceeding to more-restrictive management intervention, and that rationing of use is the most restrictive form of management intervention." It appears that FWP did not follow its own rules in this matter.

The final goal was to bring back local anglers on non-commercial days. I have no idea at this point if the rules are helping in this regard. FWP assumed that local anglers are wade fishermen and non-residents were float fishermen. Up to this point, river flows have been too high for good wading conditions. Since FWP's estimates didn't show a significant reduction in resident anglers to begin with, I'm not sure how FWP intends to confirm if this goal is being met.

In order for any regulation to be effective, it must be enforced. There is no provision for enforcement, and FWP said at the public hearing in Hamilton that they would rely on river users to report violations.

### **Economic Impact**

The intention of the regulations is to reduce crowding while increasing the number of local anglers. This can only be achieved through a reduction in non-local anglers. Tourism dollars, directly or indirectly, are a major source of income for a large number of Ravalli County residents.

According to the Institute for Tourism and Recreation Research as quoted on page 15 of the EA, the second highest expenditure category for non-resident visitors to Ravalli County was for guides and outfitters. In 2015, visitors spent an estimated \$38,010,00 in Ravalli County, of which \$7,237,000 was spent on guides and outfitters. By displacing visitors wishing to come here to fish, there will be a corresponding decrease in tourism dollars.

Page 16 of the EA states that the regulations “will likely have no negative impact on the economic environment. There is a possibility for a positive impact if previously displaced anglers from both Ravalli County and statewide begin fishing these sections of the Bitterroot again.” This statement is based on conjecture by FWP staff who are not economists. It’s not based on any known facts. And it’s simply ludicrous.

Fewer visitors means less tourism revenue. Also, in every other aspect of the rule-making process, statewide anglers outside Ravalli County were included in the non-local group who were part of the problem. They are part of the group that’s being restricted, yet here they’re part of the solution.

When asked to explain this position at the public hearing in Hamilton, Ms. Oschell said that while tourist spending would decrease, increased spending by local anglers would offset it. Again, it was assumed that local anglers are wade fishermen so they aren’t hiring guides. They’re local so they aren’t staying in hotels. The simple fact that they’re fishing more often does not mean they’re eating out more often or spending more on retail items. The local angler would have to buy approximately 500 flies to equal the revenue a tourist spends on one float trip.

If these regulations result in fewer visiting anglers, it will have an adverse effect on the economy of Ravalli County.

Section 2-4-111 of the Montana Code states that if small businesses may be impacted by a rule then an impact analysis must be prepared. Using the argument above, FWP staff concluded that small business would not be significantly or directly impacted. It is impossible to enact a rule designed to restrict the business of outfitters and reduce the number of visiting anglers and not have small businesses impacted.

### **Conclusion**

There was no hard data that showed a clear need for regulation. FWP’s own estimates of river usage weren’t compelling. The process was biased and the resulting rules are arbitrary, unfair and unenforceable. The allocation of river usage to outfitters should have taken into consideration historical usage.

The rules don't reduce crowding on the river, and they increase crowding at the access sites by concentrating users. They arbitrarily favor wade anglers over other river users and restrict my ability to use the river simply because of the method I choose to access the it.

When faced with the inevitability that the regulations would be enforced, the public proposed less restrictive, fairer and more workable rules that FWP rejected. FWP's own rules require them to consider less restrictive measures before rationing river use.

If fewer non-resident anglers choose to come to Ravalli County to fish, it will have a negative effect on the economy.

The West Fork is most crowded during the salmonfly hatch when wading conditions are usually not optimal and when hoot-owl restrictions in the region displace anglers from other rivers. There are times, such as when low water levels make floating more difficult, when there are relatively few outfitters using the West Fork.

Access to the West Fork on Forest Service land by outfitters is already regulated by the Forest Service. When these regulations were proposed, the Forest Service was in the process of collecting usage data to determine the need for further restrictions. They should've been allowed to complete that process and propose their own regulations.

These new regulations are not necessary and do more harm than good. They should be revoked as quickly as possible. The Forest Service should be allowed to complete their analysis. If it's determined, based on facts not bias and conjecture, that additional regulation is necessary, do so in the fairest, least restrictive way that doesn't hurt established outfitters or the local economy.