

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

In the matter of the amendment of a)
temporary emergency rule closing the) NOTICE OF AMENDMENT OF A
Yellowstone River from Carters) TEMPORARY EMERGENCY RULE
Bridge to Highway 89 North Bridge)

TO: All Concerned Persons

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

(a) The emergency situation that created a safety hazard to any persons using the Yellowstone River at or below the 9th Street Bridge in Livingston, Montana has abated in part primarily as a result of much lower flows in the Yellowstone River. As a consequence, the commissioner in the region, Dan Vermillion, in consultation with regional staff and the director of the Department of Fish, Wildlife and Parks (department), and Park County officials have determined that debris that accumulated on the old bridge pillars now only poses a danger to persons swimming, boating, or floating in the west channel of the Yellowstone River that is crossed by the old 9th Street Island Bridge. The debris, including large trees, captured by the old bridge pillars are a significant safety threat to anyone attempting to boat, float, or swim in the west channel. Park County is no longer able to remove debris as they have in the past because the old bridge is unusable and the new temporary bridge is not strong enough to support debris removal. Also, even with lower flows, the old bridge may collapse which would be a safety hazard for anyone in the river in the immediate vicinity of the bridge.

(b) Therefore, as 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 amended temporary emergency rule. The amended 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.

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 August 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov.

3. The amended temporary emergency rule is effective July 10, 2008 when this rule notice is filed with the Secretary of State.

4. The text of the amended temporary emergency rule provides as follows, new matter underlined, stricken matter interlined:

RULE I YELLOWSTONE RIVER TEMPORARY EMERGENCY CLOSURE

(1) The closed portion of the Yellowstone River is located in Park County.

(2) The west channel of the Yellowstone River is closed to ~~all recreational use~~ boating, floating, and swimming of the river between ~~Carters Bridge~~ Siebeck Island and ~~Highway 89 North Bridge~~ the confluence of the east and west channels of the Yellowstone River near the civic center in Livingston, Montana.

(3) ~~This rule is effective as long as the 9th Street Island Bridge is in danger of collapsing or until such time as debris from such collapse does not pose any danger.~~ This rule is in effect as long as accumulated debris and the potential collapse of the 9th Street Bridge are a danger to the public. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when this portion of the river is again safe for boating, floating, and swimming and to rescind the amended 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 commission determines the west channel of the Yellowstone River is again safe for boating, floating, and swimming. 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 Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov. Any comments must be received no later than August 18, 2008.

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 notice requirements of 2-4-302, MCA, do not apply.

/s/ Susan W. Daly

Susan W. Daly,

Acting Secretary

Fish, Wildlife and Parks Commission

/s/ Robert N. Lane

Robert N. Lane

Rule Reviewer

Certified to the Secretary of State July 10, 2008.