

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

DEPARTMENT OF COMMERCE, LABOR &  
ENVIRONMENTAL RESOURCES

AGENCY: DIVISION OF NATURAL RESOURCES TITLE NUMBER: 47

RULE TYPE: LEGISLATIVE; CITE AUTHORITY §20-2-23a

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: TITLE 182, SERIES 1

TITLE OF RULE BEING AMENDED: COMMERCIAL WHITEWATER COMMISSION

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:                     

NOTE: THIS RULE REPEALS TITLE 182, SERIES 1 AND IS BEING RE-ESTABLISHED AS TITLE 47, SERIES 27.

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON MARCH 3, 1994 AT 4:30 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

DIVISION OF NATURAL RESOURCES

LAW ENFORCEMENT SECTION

1900 KANAWHA BOULEVARD, EAST

CAPITOL COMPLEX, BUILDING 3

CHARLESTON, WEST VIRGINIA 25305-0668

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
CHARLES B. FELTON, JR.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

9.60



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY

State Capitol, Room M-146  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-0400  
Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

January 21, 1994

Charles B. Felton, Jr.  
Director  
Division of Natural Resources  
Building 3, Room 669  
State Capitol Complex  
Charleston, West Virginia 25305

Re: Title 47, Series 27 - Regulations Concerning  
Commercial Whitewater Outfitters (amended legislative  
rule)

Dear Director Felton:

Pursuant to West Virginia Code Section 5F-2-2(a) (12), I  
hereby consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the  
Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR:sbs  
Whitew,rul

PREAMBLE TO A LEGISLATIVE RULE  
CONCERNING  
COMMERCIAL WHITEWATER OUTFITTERS

**AGENCY:** Department of Commerce, Labor, and Environmental Resources; Division of Natural Resources

**REGULATION:** Title 47, Series 27, "Regulations Concerning Commercial Whitewater Outfitters"

**ACTION:** Filing of rule.

**SUMMARY:** This is a rule which repeals and replaces the current Regulations for Commercial Whitewater Outfitters. This rule establishes the procedures to be followed to obtain a certificate of compliance required by 20-2-23a. The rule will become effective upon filing.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: COMMERCIAL WHITEWATER OUTFITTERS

Type of Rule:  Legislative  Interpretive  Procedural

Agency DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

DIVISION OF NATURAL RESOURCES

Address LAW ENFORCEMENT SECTION

1900 KANAWHA BOULEVARD, EAST

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CHARLESTON, WEST VIRGINIA 25305-0668

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$ 0	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

IT IS ESTIMATED THAT FEES ESTABLISHED BY THESE RULES WILL PRODUCE \$105,000 EACH FISCAL YEAR BASED ON 50 CENTS PER CUSTOMER USING VARIOUS RIVERS.

$$(210,000 \times 50\text{¢} = \$105,000)$$

3. Objectives of these rules:

THESE RULES ESTABLISH SAFETY REQUIREMENTS, SETS USER LIMITS, ESTABLISH STUDY FEE AS REQUIRED BY 20-2-23a.

Rule Title: COMMERCIAL WHITEWATER OUTFITTERS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.  
THE INCOME PRODUCED BY THE FEES ON THIS RULE WILL BE USED FOR THE ADMINISTRATION, REGULATION, PROMOTION AND STUDY OF THE WHITEWATER INDUSTRY AS AUTHORIZED BY 20-2-23b.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

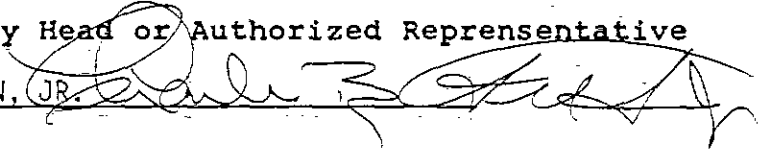
C. Economic Impact on Citizens/Public at Large.

NONE

Date: January 21, 1994

Signature of Agency Head or Authorized Representative

CHARLES B. FELTON, JR.



WHITEWATER COMMISSION  
Quarterly Meeting

MINUTES

A special meeting of the Whitewater Commission was held on Wednesday, November 17, 1993 in the Division of Natural Resources Conference Room #674, Charleston, West Virginia. Attending were:

WHITEWATER COMMISSION MEMBERS

Charles B. Felton, Jr., Director (Presiding)  
Turner Sharp  
Keith Spangler  
Frank Lukacs  
Imre Szilagyi  
Chester Thomspson  
Glenn Carlson  
Lorrie J. Sprague (Representing Supt. Joe Kennedy,  
National Park Service)  
D. G. "Moon" Mullins, (Representing Commissioner  
James Lawrence, Division of Tourism and Parks)

DIVISION OF NATURAL RESOURCES

Pamela B. Mullins, Director's Office  
(Recording Secretary)  
Harry Price, Executive Secretary  
Hoy Murphy, Public Information Officer  
Major Bill Daniel, Law Enforcement Section  
Liz Harless, Law Enforcement Section  
Bill Hill, Office of the Attorney General

PUBLIC

Terry Smith, Professional River Guides Association  
John Law, WV Professional River Outfitters  
Brian Campbell, The Rivermen  
Benjy Simpson, Passages to Adventure

Robin Moore, Professional River Guides Association  
Mark Lewis, Rivers  
Eddie Lilly, Adventurers, Inc.  
Mike McCarty, Mountain Streams  
David Arnold, Class VI  
Len Hanger, Songer Whitewater  
Tom Wagner, North American River Runners, Inc.  
Brian Campbell, The Riverman  
Ernie Kincaid, ACE Whitewater  
Marc Gaber, WV Professional River Guide Association  
Pam Ness, Expeditions, Inc.  
Alan K, Jennings, Appalachian Wildwater  
Diane Dinkins, American Whitewater Tours

#### **CALL TO ORDER**

The meeting was called to order by Director Charles Felton at approximately 10:00 a.m. and Director Felton immediately asked Glen Carlson to present his subcommittee report.

#### **COMMITTEE REPORTS**

Mr. Carlson explained that a series of meetings had been taking place with potential vendors. He also discussed meeting with the DNR Procurement Officer and Mr. Price for guidance in state purchasing procedures. He stated that he is hopeful that the Request for Proposal and the bid procedure will be completed by the first week in December. Discussion continued regarding the selection of a company or institution to do this study. Lorrie Sprague added that she agreed with Mr. Carlson that safety is the biggest area of concern. Director Felton stressed the necessity of strictly adhering to the state purchasing procedures when obtaining bidders for doing this study. Imre Szilagyi mentioned that since it is obvious that we can not meet the legislative deadline for completion of this study, will it be necessary to submit to the legislature a request for an extension of time for the completion of this study. Director Felton advised that when nearing the deadline, a request for an extension of time will be submitted to the legislature, providing them with a status report of our progress and the estimated completion time. Mr. Carlson then made a **MOTION** for the commission to accept the subcommittee's report focusing on the following objectives: environmental impact, quality, safety, flow rate, and economic impact; and also using the "LAC" or Limits of

Acceptable Changes, as the model for this study. Frank Lukacs seconded this motion and after discussion the motion passed.

Director Felton then asked Major Daniel to discuss the subcommittee's report on definitions. Major Daniel advised that the committee met at Glen Jean with all appointed members present. The subcommittee discussed the terms "whitewater expedition" and "whitewater zones" making recommendations for their clarification. Because of the concerns of outfitters, commission members and others with regard to innertubers on the Shenandoah River, Major Daniel felt this would be a good time to include them with the definitions. The subcommittee approved of include this in the regulations.

Also the subcommittee discussed the term "underway" and Major Daniel advised that he provided the definition as it appears in federal law. After brief discussion, Major Daniel asked for the commission's acceptance of the subcommittee's report.

Director Felton asked if the commission had reviewed the questions and recommended changes as submitted in the letter from Jeff Proctor of Class VI River Runners. Mr. Carlson stated that he had discussed these with Jeff Proctor and suggested that Dave Arnold address these changes on behalf of Jeff. However, prior to Mr. Arnold speaking, Director Felton asked the commission to address the subcommittee report as submitted by Major Daniel. Chester Thompson made a MOTION for the acceptance of the subcommittee report and the recommended changes in the definitions for the proposed regulations. Mr. Szilagyi seconded the motion and the motion passed.

#### **REVIEW OF PROPOSED WHITEWATER REGULATIONS WITH CHANGES ADOPTED AT LAST MEETING AND THE NEW DEFINITIONS AND SPECIAL STUDY ZONES DESIGNATIONS**

Mr. Arnold proceeded to outline the recommended changes as included in the letter submitted to commission members. (Letter Attached)

Mr. Carlson then made a MOTION that in Section 10.5.2 that the length requirement on the throw line be dropped leaving the other wording the same; "professional quality throw line". Discussion occurred regarding the length requirement for the throw line. Mr. Carlson, at this point, asked to withdraw his original motion and to restate the motion, striking "60 foot" and replacing with "not less than 50 foot". This was

seconded by Mr. Mullins. The motion carried with four affirmative votes and three negative votes.

Mr. Lukacs addressed Section 4.9.2 regarding CPR cards. He stated that he feels it is an unfair hardship on guide trainees to require them to have a valid CPR card. After discussion Mr. Lukacs made a **MOTION** to delete "guide trainee" in Section 4.9.2 and 4.8.5 and to make the appropriate corrections throughout the document with regard to the CPR cards. The motion was seconded by Mr. Szilagyi and the motion passed.

Mr. Lukacs then made a **MOTION** to change the dates in Section 4.7.1, 2, 3, 4 and 5 to the following Dates: 4.7.1 - April 15; 4.7.2 - Sept. 15; 4.7.3 - April 15; 4.7.4 - April 15; 4.7.5 - April 15. The motion was seconded by Mr. Mullins and the motion carried.

Mr. Keith Spangler addressed Section 11.2. He made a **MOTION** to clarify the language by stating that forms should be filed with the Director within 10 days. The motion was seconded by Mr. Carlson and the motion passed.

Mr. Szilagyi addressed section 12.2.3 and asked that the word "thorough" be stricken. After discussion Mr. Szilagyi asked that his motion be withdrawn and he submitted a new motion. Mr. Szilagyi made the **MOTION** that Section 12.2.3 be completely stricken. The motion was seconded by Spangler and after discussion the motion passed.

Mr. Spangler addressed Section 12.1. and made the **MOTION** that the word "all" appearing the second time in this section be deleted. This motion was seconded by Lukacs and was passed.

Mr. Spangler addressed Section 12.3.6 by stating his concerns with the wording, "floating in whitewater". Major Daniel commented that he feels this should be left in the regulations as floating in whitewater conditions is difference than floating in non-whitewater conditions. Mr. Bill Hill commented that he also felt it should remain in the regulations. After a lengthy discussion Mr. Spangler agreed to withdraw his motion.

Mr. Sharp addressed Section 9.7.1 and made a **MOTION** to change the wording to read, "the gauge located on the Albright bridge pier". This motion was seconded by Mr. Carlson and the motion passed.

Mr. Luckas addressed Section 9.7.2 and made a **MOTION** change this

language to read "between Mann's Creek and Teays landing" and also reading the same in Section 3.5.1. This motion was seconded by Mr. Spangler and was passed.

Mr. Lukacs then addressed Section 9.11 and made a **MOTION** to have language added exempting fishing trips from this requirement. Major Daniel stated that these regulations do not apply to fishing trips. Fishing trips are addressed in another set of regulations. Mr. Lukacs withdrew his motion.

Mr. Carlson commented on Sections 12.2.2 and 12.3.2 and asked Dave Arnold of Class VI River Runners, to clarify the recommendations made in the letter from Jeff Proctor. Much discussion occurred among commission members and outfitters after which the director asked if the commission wished to make a motion to change the language of this section. None was made.

Mr. Mullins then asked that Benjy Simpson be recognized to address the commission regarding Section 12.3.3. Mr. Simpson asked the commission to consider deleting the words "assume responsibility for passenger safety". After discussion Mr. Carlson made a **MOTION** that the wording in this section be changed to "supervise passenger safety". After continued discussion, the motion was seconded and passed.

Mr. Lukacs addressed Section 4.9.3 and made a **MOTION** that the language be changed to read, "it will be the responsibility of each guide to keep his or her CPR card current. The motion was seconded by Mr. Szilagyi and was passed.

Mr. Sharp discussed Section 3.1.6 and made a **MOTION** to delete Section 3.1.6, transferring this language to Section 47-27-2, creating a definition for "whitewater zone". This motion was seconded by Mr. Mullins and the motion passed.

Mr. Sharpe stated that in the code there is a definition of "commercial whitewater guide" and that he feels this definition should be included in our regulations also. He then made a **MOTION** to include the definition of "commercial whitewater guide" in the section on definitions. Major Daniel stated that it is not necessary to rewrite the law. If the definition appears in the code, it does not need to be repeated in the regulations; he referred to the language in the regulations stating, "all other terms as defined in WV Code 20-2-23".

Mr. Sharp then amended his motion to delete the definition in Section 2.1 for "commercial whitewater outfitter" from the present regulations.

Director Felton stated that he felt this definition should be left in the rules. Mr. Sharp's motion was seconded by Lukacs, however, the motion was defeated.

Mr. Carlson addressed Section 6.2, the temporary transfer of allocations from one outfitter to another by informing the Director and receiving his written approval. In past situations this approval has not been received in writing in a timely manner to allow this type of transaction, referring to the statement, "shall not be unduly withheld". After continued discussion, Director Felton advised that he could not foresee that receiving verbal approval to effect this transfer with an immediate follow up letter would be a problem with his office and assured outfitters that this would happen in a timely manner in the future.

Mr. Spangler made the MOTION that in Section 10.2 the language be changed to allow Type III personal floatation devices to be acceptable. Major Daniel advised that he felt customers should not be trained in something different than what they are going to wear and that Type III would be acceptable for the instructors.

Mr. Spangler amended his motion to read, "Type III or V personal floatation devices be permitted and acceptable for instructors". The motion was seconded by Mr. Sharp and the motion passed.

Director Felton added that the rules, after they are finalized, will be sent once again to the commission for proofreading. Commission members should return their comments as soon as possible. Each outfitter will receive a copy of these rules once the commission is satisfied with the draft.

#### 1994 AND 1995 FISCAL YEAR BUDGETS

Director Felton asked Harry Price to discuss the budgets for 1994 and 1995. Mr. Price explained that in order to expend funds collected, a budget document must be prepared. Handouts were given to the commission showing the budget for 1994 and 1995. After a lengthy discussion Mr. Carlson made a MOTION to accept both the 1994 and 1995 budgets as submitted by Mr. Price. Mr. Thompson seconded and the

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motion passed. (See attached documents)

#### REIMBURSEMENT AGREEMENT

Director Felton also asked Mr. Price to discuss with the commission a financial agreement requiring the signature of each commission member present. After discussing this document Mr. Lukacs made a **MOTION** to accept this financial agreement as submitted by Mr. Price and Mr. Spangler seconded this motion. The motion passed and document was given to each commissioner present for signature.  
(See attached document)

The meeting adjourned at 1:04 p.m.

FINANCIAL AGREEMENT

WEST VIRGINIA DIVISION OF NATURAL RESOURCES  
AND  
WEST VIRGINIA WHITEWATER COMMISSION  
JANUARY 1, 1994 THROUGH JUNE 30, 1994

THIS AGREEMENT, Made this 17th day of November 1993 by and between the WEST VIRGINIA DIVISION OF NATURAL RESOURCES, (hereinafter referred to as "DNR") and the WEST VIRGINIA WHITEWATER COMMISSION, (hereinafter referred to as "Commission").

WHEREAS, a whitewater commission has been created within the DNR under Chapter 20, Article 2, Section 23 of the West Virginia Code; and

WHEREAS, DNR has the responsibility to enforce the provisions and rules promulgated pursuant to Chapter 20, Article 2, Section 23; and

WHEREAS, DNR has the responsibility to promulgate rules pursuant to Chapter 29A of the West Virginia Code, with respect to commercial whitewater outfitters operating upon the waters of the state; and

WHEREAS, DNR has the delegated authority, from the Commission, to administer the day-to-day responsibilities of the Commission pursuant to Chapter 20, Article 2, Section 23; and

WHEREAS, DNR shall provide necessary staff and support services to the Commission to effectuate the purposes of Chapter 20, Article 2, Section 23.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

1. DNR will provide total administrative support for the Commission (i.e. budgeting, payment processing, contract negotiations, general accounting and reporting).
2. The Commission will reimburse DNR for all administrative support costs, overhead, and other direct expenses.
3. This reimbursement will be based upon a six percent (6%) rate applied to all expenditures by the Commission.
4. The Commission and DNR expenditures may include, but not limited to,
  - (a) DNR direct and indirect costs related to Commission services.
  - (b) Professional services (i.e. Attorney General legal services and associated travel costs).
  - (c) Direct Expenses to consultants for studies on designated rivers.

IN WITNESS WHEREOF, the parties hereto cause their names to be signed by the proper officials duly authorized.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

By *Paul B. Stetson* Title Director

WEST VIRGINIA WHITEWATER COMMISSION

By *Wally Mullis* Title Member

By *L. R. Carlson* Title Member

By *William Spang* Title member

By *Richard Spang* Title Member

By *[Signature]* Title Member

By *Charles B. Flanagan* Title Member

By \_\_\_\_\_ Title \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_