

Agenda of: October 11, 2018

Staff: Noah R. Triplett

**STAFF REPORT –**

**APPLICATION FOR TRANSFER AND APPROVAL OF RIVER USE PERMIT #74**

**APPLICANTS:**

Bill Mashek, owner of Rubicon Whitewater Adventures, which holds River Use Permit #74 and Deric Rothe, president of Sierra Whitewater, Inc. which holds River Use Permit #19.

**REQUEST:**

Bill Mashek owner of Rubicon Whitewater Adventures and Deric Rothe request the transfer of River Use Permit #74 to Sierra Whitewater, Inc.

Deric Rothe additionally requests to retain River Use Permits #74 as a component permit in addition to River Use Permit #19.

Please refer to the attached letter of intent (Exhibit C).

**SUMMARY RECOMMENDATION:**

Staff recommends your Commission approve the request by Bill Mashek, and Deric Rothe for the transfer River Use Permit #74 to Sierra Whitewater, Inc.

Staff also recommends your Commission approve the request to retain River Use Permits #74 as a secondary (component) permit in addition to River Use Permit #19.

**BACKGROUND:**

River Use Permit transfers from one existing outfitter to another existing outfitter require one approval by your Commission. The approval is for the transfer of the permit to another existing outfitter. The consolidation of river use permits is desired by the County in order to simplify the County's accounting procedures and simply requires approval by your Commission. Mr. Rothe has requested that permit #74 not be consolidated. River Use Permit #74 is considered a "Flex" permit which allows smaller companies to flex their weekend use which is discussed in the permit allocation section. With the transfer of the permit to Sierra Whitewater, Inc. permit #74 will be treated as a traditional permit without the ability to flex its use. The El Dorado County River Management Plan (RMP) contains Element 6.2.1.4 (Exhibit A), describes the guidelines and procedures for the transfer and consolidation of River Use Permits. The discussion section will include a checklist of compliance with RMP Element 6.2.1.4 and a record of the River Use Permit user day allocations being transferred.

**River Use Permit Status**

Rubicon Whitewater Adventures and Sierra Whitewater, Inc. are in good standing and have no outstanding fees or unresolved violations.

**DISCUSSION:**

**Transfer Requirements**

The applicants for the transfer have complied with the requirements for a River Use Permit transfer found in River Management Plan Element 6.2.1.4.1:

- The owners have each signed a letter of intent.
- There has been no value assigned to the permit in the transaction.
- River equipment and other assets are included in the purchase/sale agreements.
- There are no outstanding debts or violations.
- Payment of a \$150 transfer fee has been paid.

**River Use Permit Allocation**

The existing user day allocations for River Use Permit #74 and River Use Permit #19 are displayed in the following tables:

<b>Rubicon Whitewater Adventures – Permit Pre Transfer</b>	
<b>River Use Permit</b>	<b>#74</b>
Weekend day user day allocation	8/27
Weekday user day allocation	25
Guest allowance (Weekend day)	1
Guest allowance (Weekday)	2
Memorial Day- Labor Day weekend allocation	n/a

<b>Sierra Whitewater, Inc. – Permit Pre Transfer</b>	
<b>River Use Permit</b>	<b>#19</b>
Weekend day user day allocation	87
Weekday user day allocation	74
Guest allowance (Weekend day)	7
Guest allowance (Weekday)	6
Memorial Day- Labor Day weekend allocation	n/a

The transfer of River Use Permits #74 to Sierra Whitewater, Inc. results in a single River Use Permit #19 with River Use Permits #74 as a component permit with the following user day allocations:

<b>Sierra Whitewater, Inc. – Permits Post Transfer</b>			
<b>River Use Permit Number</b>	<b>#19</b>	<b>#74</b>	<b>Total</b>
Weekend day user day allocation	87	8	95
Weekday user day allocation	74	25	99
Guest allowance (Weekend)			8
Guest allowance (Weekday)			8
Memorial Day- Labor Day weekend allocation			n/a

**\* Memorial Day to Labor Day Weekend Allocation**

Outfitters with a weekend allocation of 30 or less are able to "flex" their allocation. Outfitters are allowed a weekend day allocation equal to the number on the right (example: 14/27). However, the total number of passengers between the Memorial Day weekend and the Labor Day weekend may not exceed thirty times the number on the left (14 X 30 = 420).

Outfitter allocations were amended in 1988 (Resolution #99-88). Today, if an outfitter's total weekend allocation is less than 30, that outfitter is allowed to operate at either its pre-reallocation capacity (if less than 30), or up to a weekend day capacity of 30 (if before reallocation the outfitter's capacity was greater than 30). This allocation was seen as a means of giving smaller outfitters an opportunity to operate fewer but more profitable trips during the course of a summer.

**California Environmental Quality Act (CEQA)**

The transfer of an El Dorado County River Use Permit is CEQA exempt under Section 15061(b) (3). There is certainty that the transfer of a River Use Permit from one outfitter to another will not have a significant effect on the environment. A River Use Permit transfer does not change the allotted amount of river use allowed by the County's River Management Plan. A transfer will merely change the entity holding an existing River Use Permit.

**PROVISIONAL PERMIT DISCUSSION:**

**Environmental Document**

The environmental documents utilized for River Use Permit approvals are the February 28, 2002 initial evaluation by the General Services Department utilizing the El Dorado County Environmental Checklist Form and the Final Environmental Impact Report for the River Management Plan, State Clearinghouse number 1998092013, certified on March 27, 2001.

**Permit Issuance Procedure**

Ordinance Chapter 5.48.050 (Exhibit B) describes the County's procedure for issuing Commercial River Use Permits. Applicants must submit an application consisting of an application fee and a river use plan that conforms to the standards of Ordinance Chapter

5.48.070. County River Program staff reviews the applications for compliance with the standards for a river use plan and County business license requirements. This staff report contains staff's conclusions and recommendations on whether an application's river use plan meets the standards of Ordinance Chapter 5.48.070.

The revised ordinance continues the County policy of granting the Planning Commission the authority to issue Commercial River Use Permits. The ordinance states that the Planning Commission shall approve a Permit upon a finding that the application and river use plan meet the standards of Ordinance Chapter 5.48.070 and the RMP. The Planning Commission shall deny the permit upon a finding that the application and plan do not meet one or more river use plan or RMP standards.

### **California Environmental Quality Act (CEQA)**

The County has defined Commercial River Use Permits as discretionary permits in Ordinance Chapter 5.48.030.D. CEQA Guidelines §15357 requires that discretionary projects be subject to CEQA, requiring an analysis of the environmental factors that would be potentially affected by the approval of Permits. The initial evaluation by the Department of General Services sought to determine whether the program Environmental Impact Report (EIR) for the RMP could be used as the environmental document for the approval of Commercial River Use Permits. The initial evaluation's Discussion section described the analysis undertaken to determine that the potential environmental effects from the approval of Commercial River Use were within the scope of the project analyzed by the EIR. The analysis concluded that all potentially significant effects from the approval of Commercial River Use Permits were addressed by mitigation measures developed in the EIR for the RMP, with the exception of three potentially significant impacts for which the Board adopted a Statement of Overriding Considerations. The County has incorporated all applicable mitigation measures developed in the EIR into the approval of Commercial River Use Permits.

The General Services Department made the following findings in its initial evaluation pursuant to CEQA Guidelines §15162 and §15168 (c) (2):

1. The approval of Commercial River Use Permits is within the scope of the project described and analyzed in the EIR for the River Management Plan.
2. Although the approval of Commercial River Use Permits could have a significant effect on the environment, all potentially significant impacts have been avoided or mitigated pursuant to the EIR for the River Management Plan or have been determined through the Statement of Overriding Considerations to be acceptable because of economic, public safety and social considerations.
3. No new effects could occur from and no new mitigation measures would be required for the approval of Commercial River Use Permits.
4. No further environmental document is required.

## **River Use Permit Application Standards**

This section describes the elements and standards of staff's review of Permit applications as established by Ordinance Chapter 5.48, River Management Plan Element Six, and other applicable County ordinances. Sierra Whitewater, Inc. has fulfilled these requirements.

### Application Fee

An application fee sufficient to reimburse the County for administrative costs is required by RMP Element 6.2.6. The fee is currently \$200 per permit.

### Business License and Unsecured Property Tax

RMP Element 6.2.9 requires each applicant to maintain a current business license.

The Treasure/Tax Collector's Office requires payment of an annual unsecured property tax by each Permit holder in order to renew a business license.

### Chapter 5.48.070 River Use Plan Requirements:

A. *Names, mailing address, and location of place of business.*

The applicant must provide the business name and address for tax assessment, business license, and administrative purposes. The applicant also provides the name and address of the primary contact person for Permit violation notices.

The applicant must have a place of business in the County that provides a parking location for commercial vehicles, employee vehicles and customer vehicles. The property must have a Special Use Permit allowing commercial boating use or be zoned commercial. See item E below.

B. *If place of business is located outside County, the name of the local agent within the county who will be available in the event of emergencies or other problems.*

Staff reviews applications by outfitters whose primary place of business is located outside the County for this required information.

C. *Full description of activities proposed to be conducted under the permit.*

Staff reviews descriptions to ensure that applicants do not propose activities such as motorized trips or raft rentals that are prohibited by Ordinance. The form also requires information on type of craft so staff can know what types of craft or trips to expect to see on the water (i.e. rafts, inflatable kayaks, or kayak instruction classes).

- D. Land use requirements (locations of ingress, egress, rest stops, lunch stops, camping or other planned non-emergency stops). All private property locations must have a Special use Permits that allows commercial boating activity. Permits or authorization is required for the use of County, state or federal lands. Section F requires written authorization for use of all lands by an applicant.*

The applicant must list the location of all lands used to conduct river trips including ingresses or put-ins, lunch stops, rest stops, camping areas, and egresses or take-outs. The applicant must provide a letter of authorization for use of private lands from the private property owner. Most property owners provide a list of authorized outfitters to the County. Each private property parcel must have a Special Use Permit allowing commercial rafting use. The level of use allowed by an outfitter's river use allocation must not exceed the conditions and capacities of the Special Use Permit. Permits from California State Parks must be obtained that allow take-outs at Salmon Falls, in the Folsom Lake State Recreation Area, or lunch stops at Marshall Gold State Historic Park. Permits from the Bureau of Land Management must be obtained for use of public lands along the river. For use of Henningsen Lotus Park, the applicant must sign a use-authorization form, which stipulates the conditions for commercial use of the park.

The application form is constructed so that staff can ascertain whether the applicant has a complete plan for ingress into and egress out of the river. Applicants must have authorization for put-ins, take-outs and lunch stops on the upper and lower runs. The Planning Department has responsibility for monitoring compliance with Special Use Permit conditions.

- E. Parking facility requirements for employees, clients, guests and commercial vehicles. Section F requires written authorization for use of all lands by an applicant.*

The applicant must list customer and commercial vehicle parking locations. All parking locations must be on private property with a Special Use Permit allowing commercial boating use or on property that is zoned commercial. Ordinance Chapter 17.18.060, Schedule of Off-Street Vehicle Parking Requirements, defines the minimum parking requirements for campgrounds and River Use Permits: 1 parking space per every three day users plus one space per each designated camping space, or as otherwise determined by the approving authority as provided in Section 17.18.048D.

- G. Shuttle transportation requirements.*

The County requires outfitters to shuttle their customers from customer parking areas to the put-in and from the take-out back to the customer parking areas. Vehicles must meet all current California Vehicle Code regulations. Staff obtains copies of current Public Utility Commission certificates from outfitters that provide their own shuttle service.

The State of California provides regulatory oversight over the transportation activities of outfitters through the Public Utilities Commission. The California Public Utilities Code 5371.3 requires outfitters providing transportation services incidental to Commercial River rafting to have a Class C Certificate issued by the California Public Utilities Commission (PUC). The PUC, through various statutes, prescribes insurance requirements (including workers

compensation certificates), vehicle safety and maintenance standards and driver licensing standards. The California Highway Patrol performs inspections on both vehicles and outfitter records. The PUC requires an annual fee and collects road use taxes from each Certificate holder.

*H. County Health Permit requirements.*

Applicant must sign an agreement produced by the Environmental Health Division. The agreement requires applicant to: 1) obtain a food facility permit; 2) have one employee obtain a food handling certificate; 3) undergo an inspection of food handling operations; 4) abide by the Commercial Rafting Sanitation Guidelines. Staff reviews to ensure the applicant has signed the agreement. The Environmental Health Division administers the permits and inspections.

The outfitter food preparation, solid waste, sewage and sewage disposal and water supply policies found in the Commercial Rafting Sanitation Guidelines are standards consistent with the California Uniform Retail Food Facilities Law.

*I. Planned safety measures that meet the standards of Section 5.48.120.*

RMP Element 6.2.7 covers guide requirements. Staff will also present the goals of the safety and etiquette standards and the relationship of the standards to the RMP's carrying capacity elements each season at annual guide meetings. All river guides of each outfitter will be required to sign the safety and etiquette agreement. Section 5.48.140 provides penalties for violation of the safety equipment and standards required by Section 5.48.120.

Applicants must provide a copy of the water flow notice required by RMP Element 6.2.9.3.

*J. Proof of liability insurance.*

Resolution #033-2002 establishes the requirements for workers' compensation and commercial general liability insurance. Applicants are required to submit current certificates of insurance. Staff reviews the certificate for compliance with Resolution #033-2002.

*K. Boat logo or identification.*

Staff ensures each outfitter's logo is unique.

**FINDINGS:**

1. The application for the transfer of River Use Permit #74 from Rubicon Whitewater Adventures to Sierra Whitewater, Inc. meets the standards required by River Management Plan Element 6.2.1.4.

**RECOMMENDATION:**

1. Your Commission approves the transfer of River Use Permit #74 from Rubicon Whitewater Adventures to Sierra Whitewater, Inc.

**ATTACHMENTS**

- Exhibit A.....Element 6.2.1.4 from the El Dorado County River Management Plan
- Exhibit B.....Chapter 5.48, Streams and Rivers Commercial Boating Ordinance
- Exhibit C.....Signed Letter of intent to the County of El Dorado