EXHIBIT 2
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HB 541

House Bill 541
February 17, 2011
Presented by Art Noonan
House Agriculture Committee

Mr. Chairman and committee members, I am Art Noonan, Deputy Director of Montana Department of Fish, Wildlife & Parks (FWP). I am here in opposition to House Bill 541.

FWP is not opposed to trailing of livestock across Wildlife Management Area (WMA) lands, as long as it is done in a manner that is consistent with not only statutes and administrative rules, but also with resource goals and objectives for the individual WMA. For livestock trailing, HB541 bypasses some of the requirements in statute and rule, such as the Montana Environmental Policy Act and commercial use rules. It is compliance with these statutes and rules that helps FWP determine whether livestock trailing is an appropriate activity for a particular WMA.

There are many instances where livestock trailing can be compatible with resource goals and objectives on a WMA. In fact, though not administered under commercial use, many WMAs are leased for grazing pursuant to a management plan that actually calls for livestock grazing.

Like livestock grazing, all commercial permits require monetary compensation to the Department. But more importantly, the commercial use permit allows FWP to manage the activity for proper land stewardship and to minimize impacts to wildlife habitat. For trailing, this may include where trailing can occur, when it can occur, how long the trailing might occur, and where bed grounds are located. Unlike leasing FWP lands for long-term grazing, sheep trailing would not actually have to benefit the resource, but like a permit for a new power line or guided tours, the permit could be issued as long as the activity does no harm.

It should also be noted that when livestock is trailed on FWP land over an existing, permanent easement, it does not require a commercial use permit. Like an easement for a road, an easement for trailing that is acknowledge by deed or recorded, is a property right that cannot be diminished through a permitting process.

Under HB541, FWP still has the authority to determine whether to allow livestock trailing across its land and under what conditions just like FWP does when it leases land for livestock grazing, farming, haying fencing or timber harvest. However, if there is not already a perfected, existing, permanent easement for livestock trailing this bill cannot constitutionally grant an easement for livestock trailing over FWP property because the constitution requires that FWP receive full market value for any interest in land it disposes of. Art. C, Sec. 11(2), Mont. Const. Further, in some cases livestock trailing, if not properly conditioned, will conflict with the purpose for which the land was acquired and will violate the terms of the funding source for the property.

FWP supports a healthy livestock industry and will work collaboratively with livestock producers to facilitate moving livestock across FWP lands if necessary to access grazing allotments or other pastures, as long as that trailing is not harmful to the resource that FWP is charged with protecting. Because this bill allows an unregulated use of WMAs, FWP opposes HB541.