

Decision Notice
Teton Spring Creek Bird Preserve Boundary Adjustment
Environmental Assessment

Montana Fish, Wildlife and Parks
Region 4
4600 Giant Springs Road
Great Falls MT 59405

December 3, 2003

INTRODUCTION

This EA addressed the formal Petition of two landowners in the Teton Spring Creek Bird Preserve (Preserve) to have their specified properties withdrawn from the Preserve. Those landowners are: Pat Saylor, P.O. Box 1235, Choteau, MT 59422 and Bernice Van Setten Wilt, P.O. Box 66, Choteau, MT 59422. It is not the purpose of this EA to render a final decision on Preserve modification. That decision, by statute (87-5-402MCA), falls to the Montana Fish Wildlife and Parks Commission. They will consider public comment and pertinent facts generated in a Rule making process initiated July 21, 2003 at the December 11, 2003 Commission meeting in Helena.

This EA addresses the impact of withdrawing property from a Preserve, and the impact of various deer management alternatives on the "environment".

Outside of the public comment period, substantial discussions were held with individuals and organizations to address the Petitions. The issue has received considerable public disclosure in area newspapers (Great Falls, Choteau) and over the airwaves of local TV and radio stations. The EA was made available to the public on the Department's web site.

PUBLIC COMMENT

A period for public comment was established for the EA from September 26, 2003 through October 27, 2003. All comments received remain on file at the Great Falls FWP office and are available for public review. Public comment addressed omissions and statements needing clarification in addition to strong, privately held convictions and beliefs. Consideration and evaluation of public comment is distilled in the attached Public Comment and Issues Addendum to the EA.

Written comment amounted to 6 individual responses and 1 organization response. All were received in a timely fashion and were included in the analysis. Of these responses, three (3) directly addressed the first element of the EA, removing land from

and redefining the boundaries of the Preserve. Four (4) comments were silent on the issue, one (1) favored Preserve change and two (2) opposed Preserve change.

To the issue of hunting regulations (more specifically – weapons use), if the Preserve boundaries were to be changed, 5 of 7 responses specified a preference. One (1) favored creation of a Special Weapons Restriction Area and four (4) favored an archery only or archery/crossbow regulation type. Two other responses did not specify a hunting regulations (weapons) choice.

Specific written statements offered comment on: future public safety related to use of firearms on those lands petitioned to be removed from the Preserve; current public safety on roadways related to deer/vehicle collisions; deer population excesses; access for public hunting on private lands so removed from Preserve; weapons ballistics; demand for an Environmental Impact Statement; request for a firearm-free corridor; and specific suggestions for various harvest quotas and deer hunting season types.

Commenters also addressed omissions and statements needing clarification. Response to those is included in a Public Comment and Issues Addendum attached to this Decision Notice.

DECISION

Based on the information offered, I find the EA in compliance with and supplementary to the Rule making process initiated in July 21, 2003 in response to landowners Petitions.

By this decision, the Rule making process addressing landowners Petitions and subsequent redefinition of the Teton Spring Creek Bird Preserve boundary could and should proceed.

The Preserve will remain in its present management status until Rule making and a Decision is forthcoming from the Montana Fish Wildlife and Parks Commission.

RATIONALE FOR THE DECISION

1. In the public comment, no one advanced a single biological reason to continue the Preserve.
2. Since 1935 the Montana Fish, Wildlife & Parks Commission (formerly called the Fish & Game Commission) reduced the number of Preserves in Montana from 46 to 6. The decline was due, in large part, to new views and ideas concerning game management. In many cases the Preserves were no longer necessary. In some cases the Preserves did not work well. No new State Preserves were created after 1940.

In the case of the Teton-Spring Creek Bird Preserve, the original objective of expanding the ring-necked pheasant population was achieved.

3. Very strong views were expressed about the danger of using firearms. Fish, Wildlife & Parks (FWP) concedes that there is a risk associated with handling any hunting instrument. The majority of our Hunter Education Program is focused on this fact.

FWP also agrees with Bill McRae's contention that technological advances in sporting arms is occurring and it has altered the performance of these instruments. FWP has addressed these changes by refining our definition of "traditional sporting arms" and in some cases regulating or even eliminating some of these technological advances in the taking of game.

4. The issue of weapon use and deer management in subdivided areas is over 30 years old. Our FWP Commission has developed a "special weapons restriction area" program that, to date has been safe and effective.

FWP now has these restrictions in 23 different areas and they are clearly defined in our current big game regulations. I am familiar with about fourteen of these areas and some of the discussions that led to the establishment of these regulations.

No evidence was advanced to show that where these regulations have been in place there is a safety problem.

Looking at the relationship of the small to large properties in the Preserve, there is no evidence to indicate that the Teton-Spring Creek Valley is substantially different from other developed areas where restricted hunting occurs.

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis in the EA and consideration of public comment addressed in the Addendum, FWP finds in favor of accommodating the two initial Petitions and subsequent requests for Preserve boundary modification. This decision is in the best interest of the public, wildlife and wildlife habitat resources. The decision is consistent with current management practices throughout the State of Montana, and is in compliance with a parallel Rule making process required by statute to ultimately address landowners Petitions.

FWP has reviewed the EA and applicable laws, regulations and policies and has determined that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement will not be necessary.

CONCLUSION

By this Decision Notice, the draft EA is hereby made the final EA. The finding of selection for alternative D: Modify Preserve Boundary – Special Weapons Restriction Area-out, Archery Only-in is the product of this Decision Notice.

Mike Aderhold
Regional Supervisor

Date

MONTANA FISH, WILDLIFE & PARKS

Teton Spring Creek Bird Preserve Boundary Adjustment Environmental Assessment

Public Comment and Issues Addendum

Public comment was solicited on the draft Environmental Assessment “Teton Spring Creek Bird Preserve Boundary Adjustment” from September 26, 2003 through October 27, 2003. A total of 7 comments were received. Analysis of those comments was as follows:

- All were received in a timely fashion;
- 1 favored, 2 opposed and 4 were silent on the issue of the Petition basis, that is, removing private land from within the Preserve boundary;
- 5 of 7 responses spoke to the issue of weapons choice, if favorable action on Petitions was taken. Three spoke to continuation of archery or archery/crossbow only weapons choices and 1 favored creation of a Special Weapons Restriction Area. Two others were silent on the issue.
- Two favored Alternative A (No Action); one favored Alternative C (accept Petition action and impose Archery-only weapon restrictions); one favored Alternative D (accept Petition action and creation of a Special Weapons Restriction Area) and two writers offered no Alternative choice.

Public comment addressed omissions and statements needing clarification. Issues raised and clarifications requested by public comment are addressed below in a Comment/Response format.

Issues and Comment

Comments: “...the real issue is ACCESS (or more correctly the lack of access)”. Restricted bowhunter access has been documented on the Petitioning landowner’s properties.

The issue of public hunting access to private lands, either within or outside of the Preserve in its present or possible future form, is beyond the scope of this EA. In Montana, a private landowner has complete and ultimate control of access to his/her property as a matter of a private property right.

Comments: “Weapons choices will create unsafe conditions for the many human residents of the Preserve ... including modern slug firing shotguns, muzzle-loaders and handguns.” “Special Weapons Restriction Area”;

An option used by the Montana Fish Wildlife and Parks Commission throughout the State of Montana to address the close proximity of people and traditional hunting practices is the use of a Special Weapons Restriction Area. Such an Area includes a prohibition on the use of center-fire, high-caliber hunting rifles. Instead, it addresses weapons choices that are legitimate and effective hunting tools, yet minimize exposure of the public to risks associated with hunting. At present, 23 Special Weapons Restriction Areas are utilized by the Commission in locations where people and

traditional hunting practices form a tight interface. Such Weapons Areas are constructed in a fashion so as to mitigate safety concerns yet permit cultural and traditional hunting practices to continue.

A Special Weapons Restriction Area includes the following weaponry: archery, crossbow, muzzleloader, traditional handgun and shotgun. Specific definition for each weapon included in the Area Restriction exist. Those definitions are listed below:

Archery:

- Bow: energy derived from bending and recovery of two limbs; hand drawn by a single and direct uninterrupted pulling action of the shooter; must be hand-held; no shorter than 28 inches; nominal let-off shall be a maximum of 80 percent;
- Arrow – shall be a projectile at least 20 inches in overall length. The length of the arrow shall be measured from the rearward point of the nock to the tip of the broadhead; fletching attached to shaft end; shall weigh no less than 300 grains with broadhead attached; must have at least 2 cutting edges and at least 7/8 inches at the widest point and weigh no less than 70 grains.
- Prohibited: any chemical or explosive device attached to an arrow to aid in the taking of wildlife;
- Prohibited: electronic or battery-powered devices attached to a hunting bow;
- Prohibited: a bow sight or arrow which uses artificial light, luminous chemicals such as tritium or electronics;
- Prohibited: any device intended to hold the bowstring at partial or full draw.

Crossbow:

- May be used during the General rifle season and in weapons restricted areas during the General rifle season. They are prohibited during the Archery Season – ArchEquip only season.

Muzzleloader:

- It must not be capable of being loaded from the breech of the barrel;
- It may not be loaded with any prepared paper or metallic cartridges;
- It must be charged with black powder, pyrodex, or an equivalent; It must be ignited by a percussion, flintlock, matchlock, or wheellock mechanism;
- It must be a minimum of .45 caliber;
- It may have no more than 2 barrels; It must use lead projectiles only, no sabots.

Traditional Handgun:

- Is not capable of being shoulder mounted;
- Has a barrel of less than 10.5 inches;
- Chambers only a straight wall cartridge, not originally developed for rifles.

Shotgun:

- Hunters are prohibited from shooting deer or elk with shotguns, except with lead loads of 0-buck or larger, or rifled slugs.

Comment: Increase bowhunter opportunity by changing hunting season regulations.

Establishing specific harvest quotas or limits or season dates and types is beyond the scope of this EA. Those decisions fall to the Montana Fish Wildlife and Parks

Commission on an annual basis. It is anticipated that the Commission will embark on its annual 'season setting process' according to timeframes used in the previous few years. Specifically, the Commission will adopt 2004 tentative season regulations (to include dates, season types, harvest quotas and limits, etc.) at its December 2003 monthly meeting. Hunting regulations for license year 2004 will be adopted in final form at the Commissions' February monthly meeting. In the intervening period (principally the month of January, 2004), the Commission and the Fish Wildlife and Parks Department will solicit public testimony and comment and suggested changes to the regulations. That process typically involves substantial opportunity for individual members of the public to interact with and provide comment to the Commission and Department. In 2003, a similar process included in excess of 40 public meetings statewide and abundant opportunities otherwise to comment.

Comment: Why were public testimony and petitions provided at the August 21 public meeting held in Choteau not included in the EA?

The Montana Fish Wildlife and Parks Commission is the ultimate decision making authority in consideration of the Saylor and Van Setten Petitions to remove their lands from the Preserve. At their behest, MFWP initiated a Rule making process, required by statute, to consider the Petitions. That process has included significant public comment and analysis. The August 21 public hearing in Choteau was a part of that Rule making process. It is likely that the Commission will consider the findings of fact through that Rule making process at its December 2003 Commission meeting. The analysis provided in this EA fulfills a supporting role to the Rule making process and will supplement the information gathered as a result. This Environmental Assessment cannot render a decision on the final disposition of the Preserve or its attendant hunting and weapons use regulations.