Monetary Incentives for Tourism and Recreational Access

House Joint Resolution No. 15 Draft Study Summary

The Environmental Quality Council
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Overview

Through House Joint Resolution No. 15 (HJR 15) (Appendix A), the 2009 Legislature requested a study of the feasibility of and possible funding sources for a program that would provide monetary incentives to private landowners who provide public access to their properties for recreational and tourism-related activities.

The Legislative Council assigned HJR 15 to the Environmental Quality Council (EQC), which dedicated .03 FTE to this study. To complete HJR 15, the EQC requested that staff:

- review administrative rules (Appendix B) and statutes (Appendix C) related to the Department of Fish, Wildlife, and Parks' (FWP) existing Block Management Program, which compensates enrolled private landowners for public hunting access
- identify possible funding sources for a tourism/recreational access program
- request input from the Private Land Public/Wildlife Council (PL/PW), administered by FWP
- submit a brief written summary of the analysis

Background

In HJR 15, the 2009 Legislature stated that:

- recreational and tourism-related activities, including public access to private lands for camping, picnicking, canoeing, viewing wildlife and scenery, boating, hiking, bicycling, and four-wheeling, are of great benefit to all Montanans and the state economy;
- a respectful balance should be struck between the goals of providing public access and preserving private property rights;
- there's concern that public access to an increasing number of private acres is in jeopardy as private landowners utilize other income generators that preclude public access;
- providing monetary incentives for public access through the block management and hunting and fishing access enhancement programs has been an effective tool; and
- providing monetary incentives for recreational and tourism-related access to private land could also be an effective tool for enhancing public access opportunities while providing a less expensive alternative to efforts by state agencies to purchase property or easements to provide access.

HJR 15 directed the assigned interim committee, the EQC, to evaluate the feasibility of and possible funding sources for the creation of a program, similar in mission to FWP's Block Management and hunting and fishing access enhancement programs, that would provide monetary incentives on a per-user-day basis to private landowners who grant public access to their property for recreational and tourism-related activities.

Due to resource and time limitations, the EQC directed staff to seek input from the PL/PW. This governor-appointed citizen council represents the interests of hunters, landowners, and outfitters.

Private Land/Public Wildlife Council Input

The PL/PW advised the EQC that the focus of the HJR 15 study, providing recreational and tourism-related access, was outside the scope of its mission, which is geared toward optimizing hunting access, wildlife protection, landowner relations, and encouraging continuance of a viable outfitting industry. However, at a meeting on December 9, 2009, PL/PW members did review a list of possible funding and program options for the HJR 15 study and provided valuable feedback and additional suggestions.

PL/PW members discussed the pros and cons of the HJR 15 concept, as they see them.

Comments expressing concern about such a program included:

- a state-subsidized program is unnecessary as landowners can open their properties to the public to generate income through private enterprise;
- a state-subsidized program would conflict or compete with existing private enterprise;
- not enough public members would use the program to offset the costs of administering it;
- a lack of perceived need for such a program;
- the program could adversely affect the block management program either through funding or land use conflicts during hunting season;
- the program would compete with funds for other programs/services run by FWP;
- the proposed funding options seem "pie in the sky";
- this kind of program should be funded by an excise or bed tax generated by recreation and tourism-related commerce; and
- this kind of program should be run by the Department of Commerce, which handles tourism activities.

Comments supporting such a program included:

- revenue generated by all recreation and tourism-related activities is larger and has a greater impact on Montana's overall economy than revenue generated by hunting;
- providing more public access of any kind to private land is positive;
- landowners who haven't provided hunting access in the past might be more amenable to a recreational/tourism-related program and may in the future allow hunting access as well;
- providing public access for recreational and tourism-related activities through a state administered program rather than private enterprise restricts landowner liability under 70-16-302, MCA;
- the program would likely generate interest in access for fossil hunting in central and eastern Montana;
- depending on the program framework, kids living in more urban parts of Montana could be encouraged to experience more of the state and nature;
- if marketed properly, the program could attract more visitors and enhance visitors' experience of Montana; and
- the program could provide access on private land for off-road vehicles that are affected by access limitations on public land.

Funding Options

The following have been identified as possible funding sources for a tourism and recreational access program:

1) Reallocate or increase the motor vehicle registration fee collected under 61-3-321(18), MCA.[1] Currently, $3.50 of this $4 fee is dedicated to state parks, 25 cents goes to fishing access sites, and 25 cents is used for the operation of state-owned facilities in Virginia and Nevada Cities. Increasing this fee by $1 would generate approximately $800,000 in additional revenue.

2) Collect a day use fee at each access site. A collection box, like those found at state park campgrounds, could be set up at each access site. Camping fees typically range from $7 at fishing access sites to $15 at state parks. The state parks system does not charge a day use fee for residents, assuming they've paid the motor vehicle fee collected in 61-3-321(18). Parks that charge an entrance fee for nonresidents assess $5/vehicle/day. (Nonresidents may purchase an annual pass for $25.)

For another example of day use fees, the Bureau of Land Management charges $2/day/vehicle at day use sites like Clark's Bay northeast of Helena. A $25 seasonal day use pass is also available.

3) Collect an annual use fee. Currently, those recreating on state trust lands must buy a state lands recreation license at a cost of $10/year for residents and nonresidents alike. (This license is not purchased by hunters, anglers, and trappers, because access to trust lands is included in the purchase of a conservation license, which is a prerequisite for buying any hunting, fishing, or trapping license.) Youth aged 12-17 and those 60 and older pay $5 for the state lands recreation license. Families, up to five members living in the same household, pay $20.

This is the way in which New Mexico funds its recreational access program, known as "Gaining Access Into Nature (GAIN)." The annual pass costs $20/person and allows access to state-owned wildlife management areas for recreational purposes. Activities requiring GAIN permits include wildlife viewing and photography, hiking, bicycling, skiing, snowshoeing, and horseback riding. A list of participating properties and specific activities allowed on each property is available on the program's website.

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[1]61-3-321, MCA: (18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

4) Provide a tax credit to landowners who establish an "access easement" on their land. An access easement would be a voluntary agreement between the landowner and FWP allowing public access to private property. The parties must determine and agree upon the type of activities allowed under the access agreement and for what period of time; i.e., the agreement could be renewed annually or last for a period of years.

The monetary incentive for the easement could come in the form of a state income tax credit. A flat amount could be credited to the landowner or the credit could be dependent on the number of recreationists using the site; i.e., $5/hiker/day. An annual cap on the latter credit could be established. FWP and the Department of Revenue would need to coordinate records management to determine who is eligible to receive the credit and for how much.

5) Impose a state excise tax on the sale of recreational items; i.e, backpacking equipment. This idea was generated by PL/PW members.

6) Reallocate or increase the "bed tax". This idea was generated by PL/PW members, as it's assumed the "bed tax" generates income primarily from nonresident tourists who presumably would use and benefit from the access program. Currently, all lodging in Montana is assessed a 4% lodging facility use tax, more commonly known as the "bed tax". In FY 2008, this generated $18.2 million in revenue. However, the Department of Commerce reports that it's seeing a decline in revenue of 10% to 15% for the first two quarters of calendar year 2009.

Under 15-65-121, MCA, the first $400,000 generated by the lodging facility use tax goes to the Montana heritage preservation and development account. Another small portion generated by lodging paid by state employees traveling on state business is reimbursed to the state. The remainder is distributed as follows:

- 67.5% to the Department of Commerce for tourism promotion and promotion of the state as a location for motion pictures and television commercials;
- 22.5% to regional nonprofit tourism corporations;
- 6.5% to FWP for maintenance of state park facilities;
- 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and
- 1% to the Montana Historical Society to install and maintain roadside historical signs and historic sites.

A portion of the existing revenue could be reallocated to support a recreational and tourism access program. The lodging facility use tax could also be increased to make the amount of available revenue larger, and a portion of that could be designated for a recreational and tourism access program.

Program Options

The structure of a tourism and recreational access program could take a number of forms. Here are three examples.

1) Adapt existing Block Management Program (BMP) structure:

Option A: Use the existing BMP landowners and add recreational/tourism access as a payable event using the current payment method (a maximum of $11/person/day). Much like hunting, establish which type of recreational activity is allowed on each property and when. Lawmakers would have to decide whether an increase of the annual payment cap (currently $12,000/landowner) is warranted. According to FWP, only about 2% of participating landowners are reaching the annual cap. The current average payment to BMP participants is about $3,200/year.

Option B: Use the existing BMP structure and personnel, but enroll new, separate landowners for the tourism and recreational access portion of the program with the allotted funding source.

2) Create a new program that is separate from the Block Management Program.

3) Pilot project: Select one or two specific properties to which public access for tourism and recreational access is desired. A smaller pot of money could be used. The pilot project could gauge public use, looking specifically at type and amount of use.

Findings

In January 2010, EQC members reviewed the possible funding sources and program options generated by the HJR 15 analysis, as well as the comments of the PL/PW. In March 2010, the EQC determined that while it considers the aim of a program envisioned by HJR 15 laudable, the state's current financial situation makes the EQC's pursuit of developing such a program through legislation untenable at this time.

If a funding source becomes available, the EQC has determined that FWP already has the statutory authority to develop the kind of program HJR 15 envisions through rulemaking, just as FWP did to create the Block Management Program for hunting access. Under 87-1-303(1), MCA, the FWP Commission may adopt and enforce rules governing uses of lands that the agency operates under agreement with private owners for the purposes of outdoor recreation, as specified in 87-1-209(1)(e).

The EQC acknowledges that private landowners may currently provide access to their property for recreational and tourism-related activities without the creation of a state-supported program. However, the EQC recognizes that the restriction from liability provided in 70-16-302, MCA, to landowners who grant recreational access to their property is valid only if that access is granted free of charge to the user. If a landowner wanted to receive payment, whether directly from the user or through a state program supported by user fees, and still enjoy the protection from liability provided in 70-16-302, MCA, a legislative remedy would be required. (For instance, 87-1-266, MCA, extends the restriction on liability to landowners enrolled in and receiving benefits from the block management program.) Depending on the access provided, the definition of "recreational purposes" in 70-16-301, MCA, for which landowner liability is restricted, might need to be expanded. The definition currently includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions, as well as the private, noncommercial flying of aircraft.

Appendix A: House Joint Resolution No. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE THE FEASIBILITY OF AND FUNDING SOURCES FOR A MONETARY INCENTIVE PROGRAM TO ENCOURAGE AND COMPENSATE PRIVATE LANDOWNERS WHO GRANT PUBLIC ACCESS TO THEIR PROPERTY FOR RECREATIONAL AND TOURISM-RELATED ACTIVITIES.

WHEREAS, recreational and tourism-related activities, including access to public and private lands for camping, picnicking, canoeing, viewing wildlife and scenery, boating, hiking, bicycling, and four-wheeling, are of great benefit to all Montanans and the state economy; and

WHEREAS, a respectful balance should be struck between the goals of providing public access and preserving private property rights; and

WHEREAS, there is concern that public access to an increasing number of private acres is in jeopardy, as private landowners utilize other income generators on their property that preclude allowing public access for recreational and tourism-related activities; and

WHEREAS, providing monetary incentives to private landowners has proven an effective tool through the block management and hunting and fishing access enhancement programs of the Department of Fish, Wildlife, and Parks to secure public access for hunters and anglers; and

WHEREAS, providing monetary incentives to private landowners who grant public access for recreational and tourism-related activities could be an effective tool for enhancing these opportunities in the state, as well as a less expensive alternative to current state efforts to obtain public access by purchasing property or easements that allow public access to private property.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to evaluate the feasibility of and possible funding

sources for creating a program, similar in mission to the block management and hunting and fishing access enhancement programs of the Department of Fish, Wildlife, and Parks, that would provide monetary incentives on a per-user-day basis to private landowners who grant public access to their property for recreational and tourism-related activities.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

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Appendix B: Block Management Rules

12.4.201 OVERVIEW OF BLOCK MANAGEMENT RULES

(1) ARM 12.4.201 through 12.4.210 regulate the block management program administered by the department.

History: 87-1-301, 87-1-303 MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94.

12.4.202 ADMINISTRATION OF BLOCK MANAGEMENT PROGRAM

(1) Under 87-1-301(1) (c) , MCA, and 87-1-303, MCA, the fish, wildlife, and parks commission has authority to develop rules governing the use of lands controlled by the department or that it operates under agreement with federal, state or private landowners. These statutes are the basis for the block management program administered by the department. The hunter management program and the hunter enhancement program as described under 87-1-267, MCA, are similar in intent and differ only in terms of license benefits for non-resident landowners who are eligible for the program. Both programs are administered under these rules as block management areas.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.203 DEFINITIONS

Wherever used in ARM 12.4.201 through 12.4.210, unless a different meaning clearly appears from the context:

(1) "Accessible state lands" means those state lands under the jurisdiction of the Montana department of natural resources and conservation which are accessible as described in ARM 36.25.165.

(2) "BMA" means block management area. A BMA is a specified area on which, by cooperative agreement between the landowner, other resource management agencies and the department, public hunting is permitted with certain restrictions or use rules.

(3) "Block management tabloid" means the document printed annually which provides statewide information on the block management program and describes means through which hunters may get specific information on block management opportunities.

(4) "Commercial hunting activity" means any activities in which a consideration is required as a condition for hunting.

(5) "Department" means the Montana department of fish, wildlife, and parks.

(6) "Cooperator" means a private or public landowner or land management agency with which the department enters into an agreement for the purposes of the allowing hunting access on a BMA.

(7) "Director" means director of the Montana department of fish, wildlife, and parks.

(8) "DNRC" means Montana department of natural resources and conservation.

(9) "Hunter day" means one hunter who hunts on a cooperator's property during a calendar day.

(10) "Hunting season" means the time during which game birds and game animals may be legally taken as defined by the commission regulation under 87-1-304, MCA.

(11) "Livestock loss insurance" means a program which provides reimbursement to livestock owners whose animals are injured or killed as the direct result of allowing public hunting on their property.

(12) "Outfitting" means the act of providing hunting-related services for a consideration as defined in 37-47-101(5) , MCA.

(13) "Regional office" means the headquarters of a department administrative region.

(14) "Regional supervisor" means the supervisor of a regional office.

(15) "Use season" means the period of time during which a BMA is open and functioning, allowing public hunting.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.204 CRITERIA FOR PARTICIPATION

(1) A BMA may be established for any of the following reasons:

(a) the land is a high-priority resource and habitat area as defined by statewide and regional management objectives;

(b) a potential exists for a cooperative relationship between the department and private landowner or landowners for long-term management projects and programs;

(c) establishment of the BMA will result in sustained or increased hunter opportunity, access and hunter days on private lands;

(d) implementation of the BMA will open up access to inaccessible federal and state

lands; or

(e) implementation of a BMA will enhance regional management needs which may include but are not limited to:

(i) history of wildlife damage;

(ii) quality of hunting opportunities;

(iii) condition of wildlife habitat; and

(iv) availability of local hunting opportunities.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.205 USE OF BLOCK MANAGEMENT AREAS

(1) The following governs use of BMAs:

(a) Use restrictions for each BMA shall be established by negotiation between department personnel and the cooperator. Restrictions may include but may not be limited to:

(i) restrictions on vehicle use or off-road travel for access or downed game retrieval;

(ii) number of hunters or hunting parties utilizing a BMA per day;

(iii) times and places at which permission slips or other instructions are provided on-site to the public; and

(iv) duration of the use season.

(b) When lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion.

(c) On BMAs which restrict hunter numbers, a cooperator may allow additional hunters at his or her discretion.

(d) The cooperator and the department reserve the right to deny access to a BMA for cause, including but not limited to: intoxication, violation of BMA rules or previous misconduct on a BMA. Willful violation of BMA regulations on private property which set the terms for entrance on a cooperator's property can be grounds for terminating privileges on a BMA and a misdemeanor citation under 87-3-304, MCA, hunting without landowner permission. BMAs may also be temporarily closed by the cooperator in conjunction with the department due to weather, fire danger or other conditions or circumstances which would place public safety or resources in jeopardy.

(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals available in huntable numbers, with access provided by the cooperator concurrent with applicable fall hunting season dates. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.

(f) BMAs which impose daily hunter number limits will allow free, equitable opportunities for access to all hunters requesting use of the BMA based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department, where practical, or the cooperator, with department approval, will develop equitable methods of allocation such as telephone reservations or drawings.

(g) During periods when a BMA is not in operation and commission-established hunting seasons are in effect, access to private land is at the discretion of the landowner. These periods will be duly noted on enrollment forms as well as in information distributed to the public. During such non-block management periods, accessible federal and state lands will remain open to the public for recreation under rules and regulations adopted by the appropriate land management agency. Hunter days that occur when a BMA is not in operation and does not provide access to the general public will not be counted towards any compensation given the landowner to offset potential impacts of public hunting on the property.

(h) Enrollment in the block management program may be terminated by the department or the cooperator if the terms of the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DNRC may withdraw state lands from inclusion in a BMA under ARM 26.3.199C. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.

(i) Cooperators may enroll in or contract to participate in the block management program for up to 5 years at a time. However, this will be contingent on the annual availability of funds to operate the BMA.

(j) Reservations for hunting opportunities on BMAs which restrict hunter numbers may not be accepted by cooperators or department personnel operating a BMA on behalf of

a cooperator before September 1 preceding the opening of a use season.

(k) On BMAs which restrict hunter numbers or require reservations, a hunter cannot reserve permission on more than one BMA per day.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.206 COMPENSATION TO COOPERATORS

(1) Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:

(a) department oversight and supervision of hunting on a BMA including the development and implementation of a hunter reservation system administered by the department when practical. For cooperators who elect to have the department provide personnel whose primary duty it is to manage hunting on their property, a compensation value will be assigned to those services by the department, with that amount deducted from the total of any monetary compensation for which the cooperator is otherwise eligible under (1) (c) and (2) of this rule;

(b) supplying of permission books or other materials which document hunter use, signs or hunting-season related supplies; and

(c) monetary compensation to offset potential impacts associated with allowing public hunting access. These impacts include, but are not limited to, those identified in 87-1-267(5) , MCA, and time spent dealing with hunters. Payments to cooperators will be made following the close of the use season and the submission of hunter use documents (permission slips, etc.) to the department.

(2) Payments to cooperators will be set by the department, figured in the following manner and dependant on available funding:

(a) basic enrollment payment which will be provided to anyone enrolled in the program;

(b) basic impact payment which will be provided to all cooperators and computed at an amount per hunter day;

(c) length of season impact payment which will be available in addition to other impact payments to cooperators who place no restrictions on commission-established fall hunting seasons for any species legally available in huntable numbers on their property. This rate will be set at one-third of the base impact payment;

(d) species/gender impact payment which will be available in addition to other impact payments, to cooperators who place no restrictions on the species and gender available

in huntable numbers on their property. This rate will be set at one-third of the base impact payment;

(e) cooperators who provide access corridors to isolated state or federal lands, with no enrollment of deeded land permitting public hunting access, will be eligible for compensation at 50% of the base impact payment and, if no restrictions are placed on the length of seasons, 50% of the length of season impact payment, based on the number of hunters for which access is provided;

(f) in situations involving unique hunting opportunities or special management circumstances, compensation may be negotiated on a case-by-case basis at a rate not to exceed limits set in 87-1-267(7) , MCA. Compensation amounts in these situations will require written approval of the regional supervisor; and

(g) for those cooperators who elect to receive monetary compensation under this rule, a method of measuring hunter use on the property must be used to document hunter days. This may include, but is not limited to permission slips, daily use rosters or other methods which will accurately reflect the hunter use of a cooperator's property. For those areas with unrestricted access where rosters or permission slips may not be practical, standard department hunter use accounting methods will be used to calculate hunter days.

(3) Additional forms of compensation may also include:

(a) livestock loss insurance payable at full market value of any loss;

(b) the supplying of wildlife damage materials and supplies; and

(c) participation in other department cooperative programs.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.207 OUTFITTING AND COMMERCIAL HUNTING ACTIVITY

(1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access to recreational opportunities on private lands. Outfitting may not take place on a BMA unless public recreation and hunting opportunities are not restricted and the cooperator and regional supervisor approve the activity. This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the bureau of land management, forest service, DNRC or other resource management agency.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.208 INFORMATION DISSEMINATION

(1) Information concerning specific BMAs will be available at department regional offices in the region that the BMA operates. Information will be made available to the public upon request, either in person, by mail, telephone or fax. Each region will have available to the public on or before August 15 of each year:

(a) copies of the statewide block management tabloid; and

(b) a list of BMAs in that region for the current year. This list may be expanded if more BMAs are enrolled closer to the opening of the general hunting season.

(2) Block management information on specific areas available to the public will consist of printed materials which include at least the following:

(a) map of BMA showing location and clearly identifying the boundaries of the BMA. The map will be dated with the year it was produced;

(b) hunting opportunities available;

(c) use restrictions of the area;

(d) method of gaining access;

(e) dates BMA is in effect;

(f) telephone number of regional office for information; and

(g) indication of the location of any state lands in the BMA and notification of the requirement to possess a state lands recreational use license to hunt state lands administered by DNRC.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.209 INCLUSION OF STATE LANDS IN BLOCK MANAGEMENT AREAS

(1) State lands administered by DNRC may be included in BMAs. Whenever a proposed BMA includes accessible state lands, the procedures set forth in ARM 36.25.164 through 36.25.167 shall be followed.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94; AMD, 1996 MAR p. 1139, Eff. 4/26/96.

12.4.210 COMPLAINT RESOLUTION SYSTEM

(1) BMA cooperators or hunters may make complaints to the department of problems they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.

(a) Block management personnel are encouraged to work on-site to address problems before they reach the complaint stage.

(b) Formal complaints must be in writing, signed by the complainant and may be presented to any department employee. Complaints need to include information describing the events that transpired, the BMA involved, and the names, addresses and, if possible, phone numbers of all individuals involved.

(c) Complaints will be turned in immediately to the regional supervisor of the region in which the problem occurred and documented for tracking purposes.

(d) The regional supervisor is responsible for assessing complaints and initiating the appropriate level of investigation. If the complaint involves state lands or federal lands, the supervisor will involve the appropriate management agency in resolving the complaint.

(e) At the conclusion of the investigation, the regional supervisor will provide written notification to the complainant and the department field services administrator of the results of the investigation as well as any action taken as a result of the investigation. Other parties directly involved with the complaint (cooperator, land management agencies, etc.) will also be notified.

(f) A complainant may appeal the action taken by a regional supervisor to the director. The director will review the complaint and investigation and issue a written decision.

(g) Following the close of the hunting season, the field services division of the department will review and summarize all complaints lodged during the preceding hunting season. Each regional office will get a copy of this summary as well as identification of problem areas and suggested solutions.

(h) For BMAs with any complaints which remain unresolved on March 1 annually after having been investigated through this process, the complaints will be reviewed as set forth in ARM 36.25.167 to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.

History: 87-1-301, 87-1-303, MCA; IMP, 87-1-301, 87-1-303, MCA; NEW, 1994 MAR p. 1691, Eff. 6/24/94.

Appendix C: Statutes Related to the Block Management Program

87-1-265. Hunter management and hunting access enhancement programs created -- private landowner assistance to promote public hunting access -- rules. (1) The department may establish within the block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303 programs of landowner assistance that encourage public access to private and public lands for purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives provided under:

(a) a hunter management program as set out in 87-1-266, consisting of a cooperative agreement between a landowner and the department and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules; and

(b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for private landowners who allow public hunting access on their lands.

(2) The department may also develop similar efforts outside the scope of the block management program that are designed to promote public access to private lands for hunting purposes.

(3) Participation in a program established under this section is voluntary. A lease, acquisition, or other arrangement for public access across private property that is initiated through a program established under this part must be negotiated on a cooperative basis and may only be initiated with the voluntary participation of private landowners.

(4) Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners. The department may by rule limit the number of licenses that can be provided as incentives.

History: En. Sec. 1, Ch. 459, L. 1995; amd. Sec. 1, Ch. 216, L. 2001.

87-1-266. Hunter management program -- benefits for providing hunting access -- nonresident landowner limitation -- restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-1-268 and 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident. An employee rather than a family member may be designated to receive a license.

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (4), the term "employee" means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member or employee pursuant to this subsection (4) does not affect the limits established in 87-1-268 and 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.

History: En. Sec. 2, Ch. 459, L. 1995; amd. Sec. 2, Ch. 471, L. 2005; amd. Sec. 1, Ch. 114, L. 2009.

87-1-267. Hunting access enhancement program -- benefits for providing hunting access -- cooperative agreement -- factors for determining benefits earned -- restriction on landowner liability. (1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee

reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) hunting access management;

(b) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

(b) wildlife habitat provided;

(c) resident game populations;

(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than $12,000 a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both.

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program.

History: En. Sec. 3, Ch. 459, L. 1995; amd. Sec. 2, Ch. 216, L. 2001; amd. Sec. 3, Ch. 471, L. 2005.

87-1-268. Variable pricing of outfitter-sponsored Class B-10 and B-11 licenses. The commission shall annually set fees for outfitter-sponsored Class B-10 and Class B-11 licenses allowed under 87-2-505 and 87-2-510. The fees must be set at a market rate intended to sell as close to but not more than an average of 5,500 Class B-10 licenses and 2,300 Class B-11 licenses each year, calculated over a 5-year period. The sale period for the licenses must be established so that by the last date in the established period, those licenses that are unsold, up to 5,500 Class B-10 licenses and 2,300 Class B-11 licenses, may be reallocated by the commission for a drawing at a price set by the commission.

History: En. Sec. 6, Ch. 459, L. 1995.

87-1-269. Report required -- review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to each legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all hunting access enhancement program funding sources to the review committee for review and recommendations.

(b) The review committee shall report to the governor and to each legislature regarding the success of the fishing access enhancement program and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program.

History: En. Sec. 7, Ch. 459, L. 1995; amd. Sec. 2, Ch. 544, L. 1999; amd. Sec. 3, Ch. 196, L. 2001; amd. Sec. 1, Ch. 48, L. 2005; amd. Sec. 1, Ch. 235, L. 2005; amd. Sec. 4, Ch. 471, L. 2005.

87-1-270. Allocation of license fees to hunting access enhancement program. (1) Except as provided in 87-2-805(1)(b)(ii), the amount of $55 from the sale of each Class B-1 nonresident upland game bird license must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) The resident hunting access enhancement fee in 87-2-202(3)(c) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

History: En. Sec. 5, Ch. 544, L. 1999; amd. Sec. 3, Ch. 216, L. 2001; amd. Sec. 1, Ch. 304, L. 2009.

87-1-271. Annual lottery of hunting licenses -- proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

(a) deer;

(b) elk;

(c) shiras moose;

(d) mountain sheep;

(e) mountain goat;

(f) wild buffalo or bison;

(g) antelope; and

(h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

(a) the conduct of the lottery authorized in this section;

(b) the use of licenses issued through the lottery; and

(c) the price of lottery tickets.

(4) All proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement.

History: En. Sec. 1, Ch. 471, L. 2005; amd. Sec. 1, Ch. 63, L. 2007.

87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

History: En. 26-103.1 by Sec. 16, Ch. 417, L. 1977; R.C.M. 1947, 26-103.1; amd. Sec. 1, Ch. 22, L. 1991; amd. Sec. 1, Ch. 267, L. 1995; amd. Sec. 1, Ch. 355, L. 1997; amd. Sec. 1, Ch. 373, L. 1999; amd. Sec. 1, Ch. 533, L. 1999; amd. Sec. 1, Ch. 575, L. 2001; amd. Sec. 1, Ch. 127, L. 2003; amd. Sec. 7, Ch. 553, L. 2003; amd. Sec. 2, Ch. 430, L. 2005; amd. Sec. 2, Ch. 262, L. 2007.

87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975; R.C.M. 1947, 26-104.9; amd. Sec. 486, Ch. 418, L. 1995; amd. Sec. 560, Ch. 546, L. 1995; amd. Sec. 3, Ch. 569, L. 1999.

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