

SAVING GRACE ALTERNATIVE LIVESTOCK FACILITY DECISION DOCUMENT

June 16, 2000

Alternative Livestock Application and MEPA Review.

Montana Fish, Wildlife and Parks (FWP) received an application for an alternative livestock license from Jay and Tina Stetson on February 9, 2000, to construct a 40-acre elk facility in Flathead County, Montana. This application was accepted on February 16, 2000, initiating a 120-day review process. The proposed Saving Grace Alternative Livestock Facility would be located approximately 5 miles southeast of Kila, Montana.

The purposes of the facility would be for breeding stock, meat and antler production, trophy sales, and other activities such as photography. The proposal does not include fee shooting of alternative livestock at the facility. Phase I would be completed during 2000 and consist of placing up to 25 elk on 15 acres. Phase II would be completed during 2001 and would add 25 acres and 35 additional elk to the operation. The total alternative livestock operation would consist of up to 60 elk on 40 acres. The applicant would live adjacent to the facility year-round.

FWP and the Montana Department of Livestock (DoL) prepared a draft Environmental Assessment (EA) pursuant to the Montana Environmental Policy Act (MEPA) and Alternative Livestock statutes. This document was distributed for public review and comment on May 8, 2000, with comments accepted through June 1, 2000. A public hearing regarding this proposed facility was conducted at Kila School in Kila, Montana, on June 1, 2000. Approximately 67 people attended the hearing.

FWP received approximately 43 written public and agency comment submittals during the comment period. Issues raised included risk of disease (especially Chronic Wasting Disease); effects on water quality, wetlands, soil erosion, and water rights; ethics; agricultural and hunting traditions; clarification of the MEPA process; enforcement of Best Management Practices and recommended mitigation measures; monitoring; and private property rights. These comments were collected and sorted by Maxim Technologies, Inc., Helena, MT, with responses to specific issues prepared by Maxim, FWP, and DoL. A summary of the specific issues raised and resulting responses are included in the Final EA.

Upon completion of the EA, it was determined that a full Environmental Impact Statement would not be required. No significant impacts from the proposed action were identified that could not be mitigated. A copy of the Final EA is attached.

Proposed Decision:

Based upon our review of the EA, the license application file, and the information noted below, FWP has determined that a license to operate the alternative livestock facility in question will be issued. The issuance of this license is contingent upon approval of all fence construction, Department of Livestock approval of quarantine and handling facilities or plans, and the Licensee's adherence to the stipulations listed below. The Licensee will have 3 years from the date of this approval to complete all fence construction as submitted in his application. Changes from the application must be approved by FWP prior to implementation of modifications.

The Licensee must be in compliance with all Alternative Livestock statutes, rules and regulations of Montana Fish, Wildlife and Parks and Department of Livestock. Current regulations are attached for the applicant's information, but it is the Licensee's responsibility to keep up with any changes in the laws or regulations. The Licensee must also comply with the stipulation listed below.

With most alternative livestock facilities, there is a concern of disease transmission to wild populations and also genetic 'pollution', should wild and captive animals interbreed. Wild animals, such as native elk, black bears, mountain lions, and coyotes, can be attracted to elk facilities due to the availability of food and potential breeding opportunities. Responsible management and adherence to FWP stipulations and regulations will reduce the risk of contact between wild game and captive elk to an acceptable level. The EA recommends additional measures, which should assist in that effort.

The proposed facility will exclude wildlife from using approximately 40 acres of habitat if all phases of the facility are constructed. Given the total size of the enclosure, the impact from the loss of habitat was not considered significant.

Any potential impacts on water quality not addressed herein can be mitigated by the applicant's compliance with the state's water quality standards and requirements. Point source discharges, which include operations qualifying as concentrated animal feeding operations, are regulated under Title 75, Chapter 5, Part 6, MCA and ARM 16.20.1301, et. seq., and may require permits, especially if animal numbers result in significant loss of vegetation. Nonpoint source discharges are regulated under the prohibitions against the pollution and nondegradation of state waters (Title 75, Chapter 5, Parts 3 and 6, MCA and ARM 16.20.701 et. seq.). Nonpoint sources of pollution are considered non-significant sources of degradation where reasonable land, soil, and water conservation practices are applied and existing, and anticipated beneficial uses will be fully protected (ARM 16.20.713). The Department of Environmental Quality has the authority to determine whether an activity satisfies these standards (ARM 16.20.709).

The accumulation of packed snow, windthrow, and other factors increase the risk of ingress and egress associated with most alternative livestock facilities. FWP requires

the immediate notification of the ingress or egress of any wild or captive ungulate in order to assess the adequacy of fencing requirements. This should help to address problems early and may result in additional modifications to fence design.

The Department has the duty under the Montana Environmental Policy Act to conduct an additional environmental review if the action approved by the agency changes, subsequent to the agency's original approval, in a manner which has impacts substantially different from those which were reviewed in the original MEPA review (Ravalli County Fish and Game Association v. Montana Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995)). For that reason, the Department provides notice that the MEPA review performed for this license application reviewed the impacts of an alternative livestock facility with up to 60 elk. To the extent that the applicant hereafter increases the number of species of animals or makes other significant changes to the operation, a supplemental MEPA review must be conducted.

License Stipulations:

The following requirements, which have been agreed to by the applicant, are imposed by FWP for the Saving Grace Elk Ranch and are designed to ensure that the fence enclosure is maintained in game-proof condition:

- (1) Licensee shall inspect the perimeter fence on a regular basis and immediately after or during events that have a greater probability of damaging the fence (e.g., high streamflow/flooding periods; spring ice break-up) to ensure fence integrity with respect to stream debris, erosional stream flows, ice jams, burrowing animals, predators, and other game animals. If it appears that fence integrity may be compromised because of high streamflow, flooding, and/or ice conditions in the Bales Creek drainage, the licensee shall immediately remove all elk from the stream bottomland pasture(s). If repairs are required of the perimeter fence at one or both of the stream crossing sites, no elk shall be placed back into these pastures until the fence is inspected for game-proof condition by an FWP representative. Should ingress or egress become a problem during winter due to areas of snow accumulation, areas prone to snow drifting shall be identified and the fence height raised sufficiently to prevent ingress/egress. Additional remedial actions may be required by FWP if the measures discussed above do not adequately prevent ingress/egress, including possible installation of an interior fence to separate Bales Creek from the remainder of the elk ranch.
- (2) The licensee shall submit a written fence-monitoring plan to FWP for approval prior to issuance of the license. The fence-monitoring plan shall include information on how elk would be removed from the bottom areas within 24 hours if necessary; how the stream crossing sites would be monitored during the

period that high flows typically can occur (March - July); and how the fence would be maintained in a game-proof condition at the stream crossing sites.

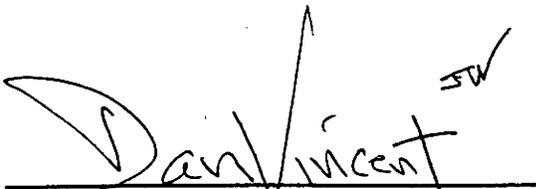
These two requirements are imposed to mitigate a potential risk to fence integrity and the resulting potential for ingress/egress of domestic elk and wildlife. Without these requirements, risk to livestock and wildlife from contact with domestic animals would have the potential to be significant, due to the site being located in an area currently utilized by wild game and because of two fenced crossings of Bales Creek. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that potential fence integrity problems can be detected promptly.

Recommended Mitigation Measures:

The following list of recommended mitigation measures have been agreed to by the applicant and will be incorporated into the license requirements. They address minor impacts identified in the Saving Grace Elk Ranch alternative livestock EA; for a complete list of all mitigation measures, see the check-list portion of the Draft EA:

- Maintain a reasonable stocking rate in the proposed facility to mitigate potential impacts from erosion and fecal matter.
- Maintain a reasonable stocking rate on wet areas within the elk ranch enclosures to minimize changes in soil structure and potential increases in runoff and erosion to Bales Creek from disturbed ground. A "reasonable stocking rate" in this case would include rotational grazing strategies that limit periods of time that elk would be using any one pasture in order to reduce potential for devegetation and erosion.
- Create interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts to vegetation on bottomland and forested pastures.
- Provide supplemental food and minerals to the elk on a year-round basis to reduce excessive grazing on preferred pasture plants.
- Monitor the ranch site for invasion of noxious weeds and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.
- Employ Best Management Practices to reduce odor problems if they occur by (1) quickly incorporating accumulated waste into soil by plowing or disking as appropriate, (2) spread waste during cool weather or in morning hours, and (3) properly dispose of animal carcasses according to county solid waste regulations. Carcasses and fecal matter should not be disposed of in, or adjacent to, water bodies, roads, or ditches.

- Control surface water discharges from the proposed site, if they occur, by employing Best Management Practices where runoff might enter Bales Creek. The BMPs may include earthen berms, vegetation (willow plantings), buffer zones, straw bale dikes, or silt fences during portions of the year. The booklet "Common Sense and Water Quality, a Handbook for Livestock Producers" (Montana Department of Health and Environmental Sciences, 1994) is recommended for further mitigation measures.
- Stop work in the area of any observed archaeological artifacts. Report discovery of historical objects to the Montana Historical Society; Historic Preservation Office, (406) 444-7715. If work stoppage in the area containing observed artifacts is not possible, record the location and position of each object, take pictures, and preserve the artifact(s).


 Daniel P. Vincent
 Regional Supervisor

6/16/00
 Date

 Jay Stetson
 License Applicant

 Date

 Tina Stetson
 License Applicant

 Date

Please sign the document and return the original to FWP to indicate your concurrence with the license stipulations and recommended mitigation measures listed above. A copy of the signed decision will be provided to you for your records.

Mail to: Nancy Ivy, MFWP Region One, 490 North Meridian Rd., Kalispell, MT 59901

FINAL ENVIRONMENTAL ASSESSMENT SAVING GRACE ELK RANCH ALTERNATIVE LIVESTOCK OPERATION

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PROCESS

Montana Fish, Wildlife & Parks (FWP) is required to perform an environmental analysis in accordance with the Montana Environmental Policy Act (MEPA) for "each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment" (Administrative Rules of Montana [ARM] 12.2.430). FWP prepares an environmental assessment (EA) to determine whether a project would have a significant effect on the environment.

The people of Montana, through our legislature, have determined that the alternative livestock industry is appropriate in Montana. It is understood that this carries with it some risk that cannot be reduced to zero. The level of risk that a particular project may introduce must be evaluated by FWP (through the MEPA process) using legislative intent, the negotiated rules and standards therein, as well as established practices that have been demonstrated to be sufficiently effective measures for similar conditions elsewhere.

If, using the above parameters, FWP determines that a project would have a significant impact that cannot be mitigated to a minor impact, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a proposed project will not have a significant impact, or that the impact can be mitigated to minor or none, the agency may make its licensing decision based upon results of the EA and criteria established under Montana alternative livestock statute, Montana Code Annotated (MCA) Title 87, Chapter 4, Part 4.

Mitigation measures may be considered in FWP's analysis as a means to reduce impact(s) of an alternative livestock ranch to a level below significance. FWP may also recommend mitigation measures to reduce impacts that are considered minor. FWP prepared a Draft EA for the proposed Saving Grace Elk Ranch Alternative Livestock Operation, which identified no significant impacts from the Proposed Action that could not be mitigated. The Draft EA was released for public review and comment May 7, 2000. Public comments were accepted through June 1, 2000. A public meeting was conducted on June 1, 2000, in Kila, Montana.

The Draft EA also provided an analysis of impacts to private property by proposed stipulations in the EA as required under 75-1-201, MCA, and the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The analysis provided in the Draft EA was conducted in accordance with implementation guidance issued by the Montana Legislative Services Division (EQC 1996).

The Draft EA, as modified herein, and this Final EA are hereby approved as the Final EA. This Final EA for the proposed Saving Grace Elk Ranch Alternative Livestock Operation contains summaries of the Proposed Action, affected environment, and potential consequences of the Proposed Action, all of which are described in additional detail in the Draft EA, which is adopted in this Final EA. This document also describes mitigation measures and requirements, includes a summary of substantive public comments and agency responses to those comments, and provides the conclusion of the EA. The preferred alternative is the Proposed Action with two requirements and several recommended mitigation measures.

PROPOSED ACTION

FWP received an initial application on February 9, 2000, from Jay and Tina Stetson for an alternative livestock operation license in Flathead County, Montana. FWP accepted the application as complete in a letter to the Stetsons dated February 16, 2000. The proposed Saving Grace alternative livestock facility would be located approximately 5 miles southeast of Kila, Montana. The property is located on Bales Creek, about ½ mile upstream from Truman Creek, a tributary to Ashley Creek. The first phase of the elk ranch would consist of placing up to 25 elk on 15 acres. Phase 1 would be completed during 2000. Phase 2 would be completed during 2001 and would add 25 acres and 35 additional elk to the operation. If the proposed facility were approved, the total alternative livestock operation would consist of up to 60 elk on 40 acres. The applicant would live adjacent to the facility year-round.

The purposes of the Saving Grace Elk Ranch would be for breeding stock, meat and antler production, trophy sales, and other activities such as photography. Elk to be released into the proposed facility are already owned by the applicants and are being temporarily boarded at another approved facility in Montana. The proposal does not include fee shooting of alternative livestock at the facility.

Fence construction would be completed in accordance with requirements of FWP under ARM 12.6.1531. Elk ranch fencing would consist of 8-foot high, high-tensile, Tightlock steel fencing. The fence bottoms would be installed to provide not more than 3 inches of ground clearance. A handling and quarantine facility will be located within the elk ranch site for purposes of handling and testing the elk. This facility will be constructed according to DoL standards and would be utilized for the proposed elk ranch operations.

The fence gates for the facility would remain latched or locked, except for when animals are moved into or out of the enclosure, at which time the gates would be monitored to prevent ingress/egress. Several internal gates would connect the proposed pasture areas of the enclosure. As proposed, the applicants would incorporate Best Management Practices for grazing on the facility, including cross fencing of the meadow portion and seasonal use of areas where saturated soil conditions are prevalent.

ALTERNATIVES

One alternative (No Action Alternative) is evaluated in this EA. Under the No Action Alternative, FWP would not issue a license for the proposed Saving Grace Elk Ranch Alternative Livestock Operation. Therefore, no alternative livestock would be placed in the proposed fenced enclosure. Implementation of the No Action Alternative would not preclude other activities allowed under local, state, and federal laws to take place at the proposed alternative livestock site.

AFFECTED ENVIRONMENT

The proposed Saving Grace Elk Ranch is located on 40 acres and is situated within and adjacent to the Bales Creek bottomlands. About 10 acres of the proposed enclosure are located on a flat, sub-irrigated, grassy meadow that is bisected by Bales Creek. The remaining 30 acres consists of moderate to steep, sloping forested uplands located south of the creek. This area was historically used to pasture cattle, produce pasture forage, and for timber production. Soil in the meadow area consists primarily of silty till that is susceptible to compaction during saturated conditions. Soils throughout the site have moderate erosion potential where vegetative cover is reduced or eliminated (bare ground exposed).

The majority of the proposed facility is forested, as is the surrounding area. While all noticeable trees susceptible to wind-throw have been or will be removed from the fence perimeter, many trees will remain that could strike and damage the fence during periods of high winds or major rain and snow events. Typically, winter snow depths in this area are less than 16 inches. However, blowing and drifting snow could be a concern during some winters.

Portions of the exterior fence will bisect slopes of moderate (20-40%) steepness. The applicant has agreed to construct fences at least 10' high in those areas. Areas in need of higher fences will be determined on site by FWP personnel. Under normal conditions, this additional fence height will help to prevent ingress or egress. Should blowing and drifting snow become an immediate concern, snow removal along steeper portions of the exterior fence will not be possible.

The proposed facility is located in the Bales Creek drainage, a relatively small perennial channel with a low (2 percent) gradient in this reach. The site is located approximately ½ mile upstream of the Bales Creek confluence with Truman Creek. A ¼-mile-long segment of Bales Creek flows through the meadow portion of the site and a small (1/10 acre) man-made pond is located north of the creek. A spring is located south of the creek on a flat, timbered slope. Surface water from the proposed facility flows west in Bales Creek to Truman Creek and then to Ashley Creek approximately 2 miles north west of the site. Surface saturation of the meadow portion of the facility appears likely during runoff periods under normal conditions, and there is potential that spring runoff from the proposed facility would reach Bales Creek and possibly Truman Creek during most years.

The proposed elk ranch site and surrounding land is used by white-tailed deer, elk, moose, and mule deer during all or part of the year. Winter range for white-tailed deer has been delineated adjacent and to the north and west of the property. Elk use the area during some winters, and known elk and mule deer winter range is located just south of the property on grassy and shrub habitats found on the western and southern exposures of Wild Horse Mountain. Moose likely are transient in the area during part of the year. Other wildlife species known or expected to use the area, at least on a transient basis, include black bear, mountain lion, coyote, and fox.

Most land immediately surrounding the proposed elk ranch is public and private timberland, pasture grazed by livestock, and residential homesites. Land in the general area has historically been used by local farmers and ranchers, though recent ingress of residents on smaller subdivided parcels has occurred. The two nearest permanent residences are located approximately ¼ mile north and west of the proposed elk farm site. Local residents in the vicinity of the proposed facility appreciate their private space and outdoor activities provided by the natural environment of the area.

There is a potential for elk to carry or become infected with contagious diseases or parasites that are transmissible to other animals. Domestic livestock are currently pastured on the proposed facility. In order for disease transmission to occur, the organism causing the disease needs to be present. Any alternative livestock introduced to this proposed facility would be tested disease-free for tuberculosis and brucellosis, and would be in compliance with DoL regulations relative to chronic wasting disease prior to movement into the facility.

CONSEQUENCES OF THE PROPOSED ACTION

Only primary resources with the potential to be adversely impacted the Proposed Action are summarized

in this section. A more detailed discussion of environmental consequences is contained in *Part II* of the Draft EA.

Impacts to Land, Water, and Vegetation Resources

Environmental impacts associated with raising up to 60 elk on the 40-acre site are directly related to the stocking rate, season, and duration of use in each pasture. The portion of the proposed facility where moderately steep slopes are present will produce erosion if an adequate vegetative ground cover is not maintained. The flat, creek-bottom portions could potentially become compacted and devegetated if overstocking and intense use during the wet season occurs. Maintaining vegetative cover through a reasonable stocking rate should effectively avoid potential erosion problems.

The seasonally wet soils and wetland areas in the valley bottom along Bales Creek present a risk of compaction and disruption if prolonged heavy use by elk occurs, especially during the wet periods of the year. This could result in increased sedimentation to the creek. Potential overuse could be avoided by cross-fencing or other means to direct use for water access and to allow for flexibility in the control of grazing use.

The exterior enclosure fence would cross Bales Creek in two locations. The fence design at these locations would be approved by FWP as gameproof. Soil erosion during periods of high flow or collection of debris (wood and/or ice) on the fence may affect the stability of the fence structure at these stream crossings.

Domestic elk fecal matter and nutrient-enriched water may have an effect on the quality of groundwater and surface water in the vicinity of the ranch (dependent upon elk density and waste management practices), primarily during periods of snow-melt, major precipitation events, and during flood conditions. Nutrients in runoff from the site likely would enter Bales Creek at the elk ranch and Truman Creek farther downstream. Proper use of livestock management methods according to Best Management Practices have been agreed to by the operator and will minimize nutrient loading, and therefore impact, on Bales Creek. In addition, future monitoring of Bales Creek during annual inspections by FWP will ensure that appropriate actions are taken if impacts do begin to appear.

The occupancy period for alternative livestock would be on a yearlong basis. The proposed site would supply only about one-third of forage needs if fully stocked at 60 adult elk. The maximum stocking rate of about 1½ elk per acre is considered high and could contribute to the long-term decline of vegetation resources, both in terms of plant species composition and productivity of the site. Supplemental feed would be needed to sustain the elk during the nongrowing season, and some feed would be provided during the growing season to help reduce elk use on the native vegetation.

Noxious weeds are possible at this site and, under an intensive elk grazing regime, would be expected to invade and subsequently increase in abundance. Weeds would likely spread quickly to disturbed areas around any site that elk are fed or handled. Weed seeds could potentially be imported into the area with elk feed and with traffic along the Bales Creek Road.

Impacts to Wildlife Resources

The exclusion of wild game from 40 acres would displace a few resident deer, elk, and moose from

moderate to good quality habitat in the Bales Creek drainage. Game moving up or down the drainage would be forced to travel minimal distance to get to the same point(s) along the travel routes. Mountain lions would likely pass through this area and may be attracted to the ranch elk.

There is potential for transmission of water-borne disease pathogens, if present, to be transported into and out of the elk ranch, primarily via Bales Creek. This is expected to be a minor risk because of current animal disease testing requirements, lack of stagnant water in the drainage, and because downstream surface water from the creek is not expected to be used for human consumption. The route of chronic wasting disease (CWD) transmission at this time is unknown; therefore, the potential for transmission by soil, water, or other media cannot be determined, nor impacts disclosed.

Domestic livestock currently use adjacent rangeland, and there would be potential for impacts if contact between domestic livestock and elk resulted in the transfer of disease. There is also potential for significant impacts if alternative livestock carry or become infected with a contagious wildlife disease or parasite such as tuberculosis, and then come in contact (through-the-fence, nose-to-nose, nose-to-soil, or through ingress/egress) with wild deer, elk, or other wildlife. Potential for disease transmission between domestic elk, cattle, and wildlife is partially mitigated through DoL disease testing and FWP fencing requirements. The release of a contagious disease in the wild could significantly impact more than neighboring deer or elk since they are capable of moving considerable distances on a seasonal basis. It is also possible diseases and parasites carried by wild deer or elk could be introduced to the alternative livestock.

If tuberculosis or brucellosis were present and subsequently transmitted from domestic to wild elk, hunters field dressing wild elk would be subject to risk of infection. Veterinarians and meat cutters working with diseased alternative livestock are at risk of becoming infected with brucellosis or tuberculosis. Risk to human health from diseased animals could be significant, but routine brucellosis and tuberculosis testing requirements for alternative livestock offer a measure of surveillance that minimizes that risk. Failure to comply with these requirements may present grounds for license revocation.

Impacts to Land Use, Recreation, and Safety

The proposed elk ranch would be compatible with its existing agricultural land use. The ranch would result in the loss of about 10-15 acres of meadow to be used for pasturing elk. With respect to land use, no significant conflicts should result between operation of the ranch and the agricultural or residential areas. Additional homes could be constructed in the vicinity of the facility on private land. Potential effects of the elk ranch on adjacent property values is difficult to evaluate because some nearby property owners (or prospective owners) may like the idea of an elk ranch, whereas others might not.

Cumulative Effects

The Proposed Action would result in potential impacts that are individually minor, and not cumulatively significant. Due to the sparsely populated area in the vicinity of the proposed alternative livestock site, no cumulative impacts to wildlife or habitat are expected. Cumulative effects are also described for each resource in Part II (Environmental Review) of the Draft EA.

REQUIRED STIPULATIONS

The following requirements, which have been agreed to by the applicant, are imposed by FWP for the Saving Grace Elk Ranch and are designed to ensure that the fence enclosure is maintained in game-proof condition:

- (1) Licensee shall inspect the perimeter fence on a regular basis and immediately after or during events that have a greater probability of damaging the fence (e.g., high streamflow/flooding periods; spring ice break-up) to ensure fence integrity with respect to stream debris, erosional stream flows, ice jams, burrowing animals, predators, and other game animals. If it appears that fence integrity may be compromised because of high streamflow, flooding, and/or ice conditions in the Bales Creek drainage, the licensee shall immediately remove all elk from the stream bottomland pasture(s). If repairs are required of the perimeter fence at one or both of the stream crossing sites, no elk shall be placed back into these pastures until the fence is inspected for game-proof condition by an FWP representative. Should ingress or egress become a problem during winter due to areas of snow accumulation, areas prone to snow drifting shall be identified and the fence height raised sufficiently to prevent ingress/egress. Additional remedial actions may be required by FWP if the measures discussed above do not adequately prevent ingress/egress, including possible installation of an interior fence to separate Bales Creek from the remainder of the elk ranch.
- (2) The licensee shall submit a written fence-monitoring plan to FWP for approval prior to issuance of the license. The fence-monitoring plan shall include information on how elk would be removed from the bottom areas within 24 hours if necessary; how the stream crossing sites would be monitored during the period that high flows typically can occur (March - July); and how the fence would be maintained in a game-proof condition at the stream crossing sites.

These two requirements are imposed to mitigate a potential risk to fence integrity and the resulting potential for ingress/egress of domestic elk and wildlife. Without these requirements, risk to livestock and wildlife from contact with domestic animals would have the potential to be significant, due to the site being located in an area currently utilized by wild game and because of two fenced crossings of Bales Creek. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that potential fence integrity problems can be detected promptly.

RECOMMENDED MITIGATION MEASURES

The following list of recommended mitigation measures have been agreed to by the applicant and will be incorporated into the license requirements. They address minor impacts identified in the Saving Grace Elk Ranch alternative livestock EA; for a complete list of all mitigation measures, see the check-list portion of the Draft EA:

- Maintain a reasonable stocking rate in the proposed facility to mitigate potential impacts from erosion and fecal matter.
- Maintain a reasonable stocking rate on wet areas within the elk ranch enclosures to minimize changes in soil structure and potential increases in runoff and erosion to Bales Creek from disturbed ground. A "reasonable stocking rate" in this case would include rotational grazing strategies that limit periods of time that elk would be using any one pasture in order to reduce potential for devegetation

and erosion.

- Create interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts to vegetation on bottomland and forested pastures.
- Provide supplemental food and minerals to the elk on a year-round basis to reduce excessive grazing on preferred pasture plants.
- Monitor the ranch site for invasion of noxious weeds and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.
- Employ Best Management Practices to reduce odor problems if they occur by (1) quickly incorporating accumulated waste into soil by plowing or disking as appropriate, (2) spread waste during cool weather or in morning hours, and (3) properly dispose of animal carcasses according to county solid waste regulations. Carcasses and fecal matter should not be disposed of in, or adjacent to, water bodies, roads, or ditches.
- Control surface water discharges from the proposed site, if they occur, by employing Best Management Practices where runoff might enter Bales Creek. The BMPs may include earthen berms, vegetation (willow plantings), buffer zones, straw bale dikes, or silt fences during portions of the year. The booklet "Common Sense and Water Quality, a Handbook for Livestock Producers" (Montana Department of Health and Environmental Sciences, 1994) is recommended for further mitigation measures.

SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Saving Grace alternative livestock operation draft environmental assessment (EA) were accepted from May 8, through June 1, 2000. FWP received approximately 43 written public and agency comment submittals during the comment period, including those submitted during the public meeting held in Kila on June 1, 2000. Substantive issues and questions raised during the comment period are summarized below, along with FWP and DoL responses. Public comments are considered substantive if they relate to inadequacies or inaccuracies in the analysis or methodologies used in the Draft EA, or identify new impacts or recommend reasonable new alternatives or mitigation measures, or involve disagreements or interpretations of impact significance. Comments, which express personal preferences or opinions on the proposal rather than on the evaluation itself, are not specifically addressed.

Category 1 – Disease and Risk

Issue 1: There is potential for alternative livestock to contract and carry diseases, including CWD, tuberculosis, brucellosis, and cryptosporidiosis. Native ungulates and domestic livestock are threatened. The risk to Montana's lucrative hunting industry for the sake of the alternative livestock industry is too great. We don't know enough about transmission and incubation of CWD to determine risk, and until we do, we should be conservative and not allow new alternative livestock operations. Because we do not know enough about CWD and the state has instituted a moratorium on new alternative livestock facilities until such a time as there is a live animal test for CWD, we should not go forward with permitting the Saving Grace facility.

Response 1: Comment noted. Potential for impacts due to disease transmission are described on pages 9 and 32-34 of the Draft EA and page 5 of this Final EA. The potential for disease transmission is addressed by DoL's disease testing and surveillance requirements, by

maintaining the integrity of the facility's exterior fencing, and by implementing the stipulations, requirements, and mitigation measures in the EA. Both FWP and DoL are concerned about the possible spread of disease among animals and will require additional monitoring if there is reason to suspect its presence. Currently, no CWD has been detected on alternative livestock facilities in the state of Montana other than on the Kesler facility, where all animals were killed and tested. FWP and DoL periodically inspect alternative livestock operations to ensure continued compliance with the license and regulations. It is true that the transmission mechanism of CWD is unknown. Disease testing and surveillance requirements by DoL minimize the potential for disease at an alternative livestock site (see ARM 32.4.1301-1320 for surveillance requirements and importation restrictions on alternative livestock with respect to CWD). It might also be mentioned that the same potential for transmission of disease exists from wildlife and domestic livestock to alternative livestock.

The law (SB 0007) setting a moratorium on new alternative livestock facilities was signed on May 11, 2000. In the law there is specific language (Savings Clause) that exempts facilities that were in the process of being analyzed, or had submitted applications for licensure prior to that date. The Saving Grace facility was applied for prior to that date, and therefore, by law, FWP must process the application and proceed with this analysis and potential licensing.

Issue 2: The state should get its own prevention program in order (for wild animal ingress into the state, etc.) and not only focus on elk breeders with respect to disease issues.

Response 2: Comment noted.

Category 2 – Ethical Traditions/Traditional Practices

Issue 1: Elk ranching is a way to keep Montana lands in production and to keep Montanans on the land. It follows the state's agricultural/rural tradition.

Response 1: Comment noted.

Issue 2: Elk are wild animals and to fence them in is not ethically right and is not in tradition with Montana's wildlife heritage.

Response 2: Comment noted.

Issue 3: Elk on ranches are domestic animals that are privately owned. They are not penned up wild animals. Free enterprise on private land should be allowed as long as the rules are followed.

Response 3: Comment noted.

Category 3 – Impacts/Analysis

Issue 1: Potential impacts to water quality should be more serious than just "minor". There is serious potential for erosion, weed invasion, and pollution downstream due to fecal matter and soil runoff.

Response 1: As discussed on pages 4 and 17 of the Draft EA, soils in the meadow are susceptible to compaction, which can cause an increase in runoff and erosion if vegetative cover is significantly reduced or eliminated. It is doubtful, however, that an increase in nitrogen from the specific area would be detectable in Ashley Creek, given the other agricultural land use occurring in the watershed. The recommended mitigation measures and requirements section found on page 6 of this Final EA and page 10 of the Draft EA includes measures which have

been agreed to by the operator that should reduce or eliminate potential impacts relating to soil disturbance, weed infestation, and ground disturbance. These include: supplemental feeding, weed control, rotational grazing, and seasonal use of the meadow pasture.

Issue 2: Although the EA acknowledges the existence of wetlands within the meadow portion of the enclosure, no stipulations were made to ensure the integrity of this wetland (e.g., exclusion of animals from the wetland). There are many references to Best Management Practices throughout the EA, which would mean excluding the animals from the wetland, yet this stipulation was not made. Allowing the stocking levels proposed without stipulations likely will deeply impact this wetland.

Response 2: Pages 11 and 12 of the Draft EA contain recommended mitigation measures (BMPs) that would: minimize changes in soil structure, mitigate potential impacts from runoff and fecal matter, reduce excessive grazing on preferred pasture plants, and reduce adverse impacts to vegetation on bottomland and forested pastures (which would include wetland areas). Under the Montana Environmental Policy Act (MEPA) the use of stipulations is reserved for actions that are required to reduce significant impacts. The potential impact to soil and vegetation on the bottomland pasture (which would include the wetland) is considered minor given the applicant's agreement to the referenced mitigation measures. If the landowner ignored the BMPs and recommended mitigation measures, and significant impacts to the water quality of Bales Creek occurred, DEQ could be notified by adjoining landowners, FWP, or others to investigate issues related to water quality. DEQ has regulatory authority for Confined Area Feeding Operations.

Issue 3: The map on page 6 of the draft does not contain a symbol in the legend to indicate what the land-use designation is in Section 28.

Response 3: The symbol in the legend on Figure 2 was meant to be cross-hatched vertically and horizontally. On some copies of the draft EA, the horizontal hatching did not copy well. The legend should have indicated that the land-use designation in Section 28 is Crop/Pasture.

Issue 4: The Truman Creek Basin was closed to new surface water rights applications in 1995. According to Department of Natural Resources & Conservation (DNRC) Water Rights Listing, the Stetsons do not have water rights to Bales Creek.

Response 4: Comment noted. The issue of water rights for the Stetson Property is between the property owners and the DNRC. Please refer to the Kalispell Water Resources Regional Office of the DNRC for issues related to water rights in Bales Creek. Stipulations relative to water use would fall under the jurisdiction of DNRC.

Issue 5: The logging that has taken place on the property since the site visit has made the EA inaccurate. The potential for soil erosion from these logged areas is more serious than the EA discusses, and the impacts from elk grazing on these slopes should be more than that disclosed in the EA. The allowable stocking rate should be reduced until the revegetation on the logged areas can be assessed.

Response 5: Page 18 of the Draft EA states that the moderately steep (forested) slopes will produce erosion if adequate vegetative cover is not maintained. This statement referred to vegetative cover in the context of ground cover as related to soil exposure. During the earlier site visit, an assessment of the logging operation was conducted to determine its potential effects to ground cover. A visual inspection of the property was conducted by FWP personnel on June 1, 2000, to determine the extent of logging and the impacts to ground vegetation on the slopes. Both of these inspections determined that the logging operation was maintaining adequate ground vegetation and cover (organic material from logging operations), and as long as the site recovers prior to extensive grazing and the landowner implements BMPs, the site

should not exhibit increased erosion from the slope.

Issue 6: The stocking rate for this proposed elk ranch seem too high. Is it going to become a Confined Area Feeding Operation (CAFO)?

Response 6: The Department of Environmental Quality has the authority to regulate livestock operations (including alternative livestock operations) which require a CAFO permit. During the environmental analysis process for an alternative livestock proposal, DEQ reviews the proposed operation to assess the potential for CAFO permitting of the facility. If the Department determines that the proposed facility would qualify as a CAFO, the proper steps are then initiated. Additionally, at any future date, the DEQ can be contacted by members of the public, agency, individual livestock producers, or FWP to review any operation for CAFO designation and permitting. The DEQ did not determine that the Saving Grace Elk Ranch qualified as a potential CAFO. It is not within the scope of this EA to determine whether or not the proposed Saving Grace facility would require a CAFO permit.

Category 4 – MEPA Process

Issue 1: The EA does not adequately determine the extent of many impacts of this proposal, especially with respect to the potential for water quality impacts to Bales Creek and further downstream.

Response 1: The Draft EA discloses projected and potential impacts based on the best information available. The level of impacts has to be determined by assuming that the mitigation measures, requirements, and BMPs will be implemented and will be effective. If post implementation monitoring indicates that the measures are not effective at reducing potential impacts, additional measures may be required or additional agencies consulted.

Category 5 – Mitigation/Monitoring

Issue 1: Mitigation measures should be further clarified as to whether they are mandatory and enforceable or simply recommendations. This would give the reader a measure of the likelihood of a measure being implemented or carried out. (Examples include type of supplemental feed, fence monitoring, weed monitoring, removal of excess fecal matter).

Response 1: Required stipulations are those measures or activities that are required so as to reduce or eliminate the potential for significant impacts as determined by the analysis. Where impacts have been determined to be minor or minimal, recommended mitigation measures can be included in the EA that, if implemented, could further reduce the extent of the minor impact. There is no statutory authority to require implementation of mitigation measures to impacts that are not significant. In this case, we have included "requirements" that are measures or actions that the applicants have agreed in writing to implement as part of the proposal. The applicant has also agreed in writing to incorporate some of the recommended mitigation measures into the license requirements. The weed monitoring and control plan as discussed is an effort of the applicants to comply with current state and Flathead County regulations relative to noxious weeds. The Flathead County Weed Control Board serves an advisory and a regulatory function relative to noxious weeds in the county, and will be consulted by the applicants during the formulation and implementation of a weed control and monitoring strategy on the property.

Issue 2: How will monitoring for compliance be carried out?

Response 2: Monitoring will occur in a variety of ways, including: during annual inspections by FWP and Department of Livestock personnel, submission of required reports and forms (death,

sale, removal of an animal(s), etc. Statutes and regulations are in place and being implemented statewide with respect to monitoring of alternative livestock facilities and activities. Additional monitoring or inspections by other state agencies may occur as needed or requested by individuals, agencies, or the applicant, to assess compliance with requirements (e.g., surface water quality).

Issue 3: Fencing requirements should be such that the risk of escape (or ingress) is zero. This should include double fencing.

Response 3: To obtain "zero risk" in any situation is difficult. New fencing requirements formulated under the Negotiated Rulemaking Process for alternative livestock facilities, which went into effect in January of 1999, are intended to decrease probability of ingress/egress issues at alternative livestock facilities.

Issue 4: The potential for nose-to-nose contact between domestic elk and wild ungulates is not eliminated with any mitigation. If nose-to-nose contact is truly a risk, then it should be addressed appropriately.

Response 4: As discussed in section 10 of the Draft EA, nose-to-nose contact is a known transmission pathway for tuberculosis. It is not currently known if nose-to-nose contact is a transmission pathway for CWD. Tuberculosis testing is currently a requirement for all domestic elk in Montana. All elk would be tested negative to tuberculosis prior to movement into this facility.

Issue 5: Mitigation measures should be documented as to their anticipated effectiveness.

Response 5: Each mitigation measure or stipulation is presented as a means to reduce the potential or occurrence of environmental impacts. Each is anticipated to be effective as there is no basis by which to assume that they will not be if implemented correctly.

Category 6 – Private Property Rights

Issue 1: Private property rights dictate that landowners can raise alternative livestock in accordance with statutory requirements and administrative rules. When assessing an application, FWP and DoL must confine themselves to areas of authority set forth in statutes, rules, and the Montana Environmental Policy Act.

Response 1: Comment noted.

CONCLUSION OF THE EA

The Draft EA, as modified herein, and this Final EA are approved as the Final EA for the Stetson Saving Grace alternative livestock operation. The preferred alternative is the Proposed Action, modified with the requirements listed in this Final EA. Based on this review, it is determined that the Proposed Action with the requirements and agreed upon mitigation measures would not have a significant impact on the environment and that an EIS will not be required.

ANALYSIS OF IMPACT ON PRIVATE PROPERTY

Montana alternative livestock statutes (87-4-476, MCA) require that licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of alternative livestock, and to prevent a significant threat to the safety of the general public and surrounding landowners by the shooting of

alternative livestock animals. MEPA requires FWP to identify and analyze environmental impacts of the Proposed Action and potential mitigation measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as denial of a permit or establishment of permit conditions (75-1-201, MCA). The Environmental Quality Council (EQC) has established procedural guidelines to implement these requirements. The analysis provided in the Draft EA was prepared in accordance with implementation guidance issued by the EQC.

In addition, the Private Property Assessment Act (2-10-101, MCA, et seq.) requires agencies to determine whether proposed actions by the State of Montana have "taking or damaging implications", such as to constitute a deprivation of private property in violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives, and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist agencies in identifying and evaluating actions with taking or damaging implications.

The Draft EA contains FWP's completed checklist with respect to the stipulations recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

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