

**REVISED
BICE / HIRSCH RANCHES
DRAFT ENVIRONMENTAL ASSESSMENT**

RECEIVED

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LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

**Montana Fish, Wildlife & Parks
January 30, 2002**



Montana Fish, Wildlife & Parks

P.O. Box 1630
Miles City, MT 59301
January 30, 2002

TO WHOM IT MAY CONCERN:

Based upon public comments received, Montana Fish, Wildlife & Parks has prepared the following **REVISED DRAFT ENVIRONMENTAL ASSESSMENT** for the Bice / Hirsch Conservation Easement Proposal.

Revisions of the original Environmental Assessment, public comment and Department responses to those comments are indicated in **bolded text**.

The public comment period for the Revised Draft Environmental Assessment will be open through Friday March 1, 2002.

Please send written comments to the following address:

Bice/Hirsch Ranches Conservation Easement
C/o Montana Fish, Wildlife & Parks
P.O. Box 1630
Miles City, MT 59301

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Hyypa". The signature is somewhat stylized and slightly faded.

Don Hyypa
Regional Supervisor

MAILING LIST

**REVISED
BICE / HIRSCH RANCHES
DRAFT ENVIRONMENTAL ASSESSMENT**

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REVISED ENVIRONMENTAL ASSESSMENT

**REVISED DRAFT ENVIRONMENTAL ASSESSMENT
BICE/HIRSCH RANCHES CONSERVATION EASEMENT PROPOSAL
January 2002**

PART 1. DESCRIPTION OF PROPOSED ACTION

I. PROPOSED ACTION

Montana Fish, Wildlife and Parks (FWP) proposes to purchase a conservation easement on 12,694 acres of land owned by the Bice Ranch L.L.C. and 2,680 acres owned by Les and Donna Hirsch. The property is located approximately 30 miles south of Miles City (Figures 1 & 2). The property has approximately 14 miles of Tongue River frontage. All acreage is located in Custer County and accessed by Highway 332 south of Miles City and Road 201 (Moon Creek Road).

The property is within:

T2N, R45E:

All or portions of Sections 1,2,3,10,11,12 (Bice)

As of this revision, Section 15 is no longer part of the easement consideration

T3N, R45E:

All or portions of Sections 1,2 (Hirsch)

All or portions of Sections 1,12,21,23,25,27,28,

33,35,36 (Bice)

As of this revision, Section 29 is no longer part of the easement consideration

T3N, R46E:

All or portions of Sections 6,7,8,16,17,18,19,20,

29,30,31 (Bice)

Portions of Section 15 (Hirsch)

T4N, R45E:

Sections 25, 35 (Hirsch)

T4N, R46E:

Portions of Section 30 (Hirsch)

Section 31 (Bice)

Comment : One individual commented that there are three owners listed for the Bice Ranch Conservation easement.

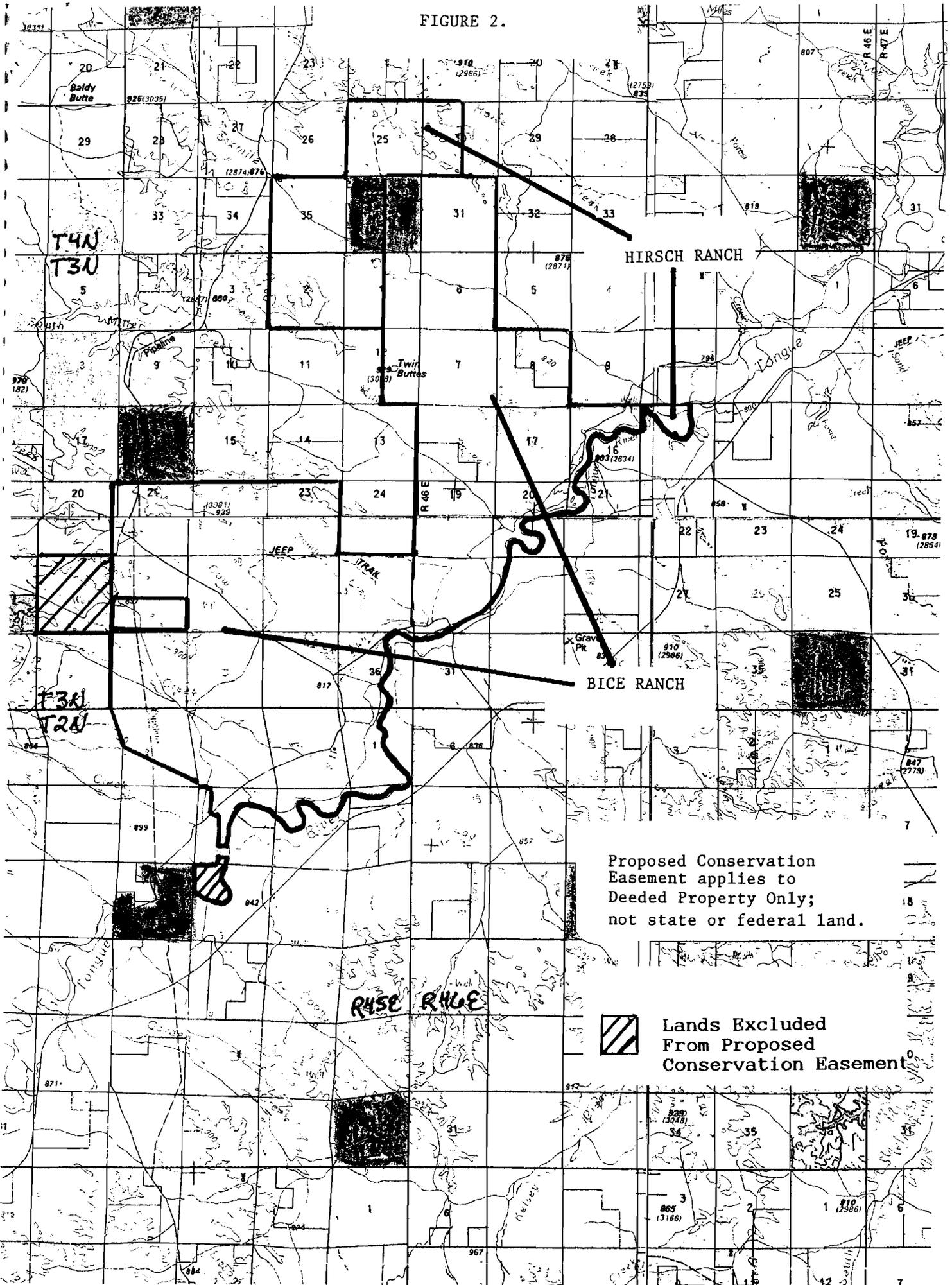
Response: *FWP will acquire the conservation easement from the owners of the land. It will obtain the signatures of all the owners, including those that hold a contract for deed on the Land. Because the deed conservation easement is recorded in county records and runs with the land in perpetuity, it binds any subsequent buyers to the terms of the easement*

Three of the six statewide habitats identified in Habitat Montana; riparian, shrub grassland and plains forest constitute the property. From a statewide and eco-region perspective, riparian and shrub grassland habitats are two that are threatened and/or highly productive and in need of enhancement and protection. Easement terms would require FWP participation in development of the properties to enhance and conserve these habitats for wild and domestic animals.

The easement provides perpetual provisions to: protect native rangelands and riparian areas while allowing production of crops to benefit wildlife and livestock; annually plant no more than 50% of the existing irrigated fields to crops other than wheat, barley, oats, corn or alfalfa; cultivation can only occur on areas specifically designated in the easement document; prohibit additional sodbusting of native range; and maintain the existing management system for public hunting. Additionally the landowners and Fish, Wildlife and Parks will develop rest-rotation grazing systems that will accommodate yearlong grazing by livestock.

The department is proposing to pay \$1,352,000 for the easements.

FIGURE 2.



The Landowner's rights, the Department rights and restrictions on Landowner's activities contained in the Conservation Easement are summarized below:

Landowners Rights

- The right to raise, pasture and graze livestock
- The right to regulate public use of the Land at all times, subject to hunting access described in Department's Rights
- The right to develop and maintain water resources on the Land necessary for grazing, wildlife, agricultural, and domestic purposes
- The right to repair, renovate, or replace existing nonresidential improvements, residential structures, roads and fences.
- The right to place or construct, two additional single family residences
- The right to cultivate existing irrigated and dryland hay and grain fields
- The right to use agrichemicals for control of noxious weeds, rodents, insects
- The right to use motor vehicles and agricultural equipment in the ordinary course of Landowners' business

Department's Rights

- The right to identify, preserve, and protect in perpetuity the wildlife habitat
- The right, upon prior notice to the Landowner, to enter the Land to monitor compliance and to enforce the restrictions on the Landowners' activities granted by the Easement
- The right to prevent any activity on, or use of the Land that is inconsistent with the Easement and to require restoration of the Land that may be damaged by inconsistent activity or use
- The right, on behalf of the general public, of access for the purpose of recreational hunting on the Land in accordance with the following terms and conditions:

The public will have motor vehicle access over roads designated for that purpose. The Landowners may temporarily close a designated road.

When such public demand exists, the Landowners will allow 650 hunters on the Land during for the full duration of all hunting seasons set by the state of Montana. The public access for hunting must be managed on a non-preferential and nondiscriminatory basis.

The Landowners have the right to manage the distribution of hunters on the Land. Landowners may deny access to anyone who is not conducting, or has in the past not conducted, herself or himself in a prudent, responsible, and safe manner.

Restrictions on Landowners Activities

Any activity on or use of the Land that is inconsistent with the purposes of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

- The control or manipulation of sagebrush by any means is prohibited
- The draining or reclamation of any wetland/riparian area.
- The legal or de facto subdivision of the Land for any purpose is prohibited, except that the sale, gift, devise, lease, exchange, or other conveyance of a unit of land solely for agricultural purposes, is not considered a legal or de facto subdivision, provided that such transfer is

effected with an express provision reflecting that the Land is subject to the terms and conditions of the Easement.

- Landowners will use their best efforts to assure the retention of any and all water rights and will not transfer, encumber, sell, lease, or otherwise separate such rights from the Land or allow them to be lost or abandoned due to nonuse or for any other reason. ✓

- The removal of trees by any means is prohibited, except for the gathering of firewood or milling of trees for the Landowners' personal use on the Land, or as incidental removal approved by the Department

- The control, removal, or manipulation of any riparian vegetation is prohibited in the wetland, except as needed for the ordinary course of maintaining fences and ditches

- The renting or leasing of, or sale of access to the Land to others for hunting, fishing, or other recreational purposes is prohibited. ✓

- Landowner will maintain viable prairie dog colonies on at least 230 acres of the Land. The Landowners may control prairie dog populations when the size of the cumulative colonies exceeds 230 acres.

- The installation of utility structures, including natural gas pipe lines or utility lines upon or under the Land requires the prior written approval of the Department.

- The exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials by any surface mining method is prohibited, except that Landowners may remove or excavate gravel for use on the Land. The exploration for or development and extraction by the surface landowner of minerals, coal, bentonite, hydrocarbons, soils, or other materials below the surface of the Land by any method that would significantly impair or interfere with the conservation values of the Land is prohibited..

- The establishment of a new feed lot is prohibited. The existing feedlot may not expand in physical size, but may be relocated

- The use of the Land as or in connection with an alternative livestock ranch, game bird farm, shooting preserve, fur farm, zoo or menagerie is prohibited. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of native wildlife species on the Land by the Department with the consent of the Landowners.

Landowners have the right to deny any consent, including but not limited to species that may be categorized as predators or rodents

- Any commercial or industrial use of or activity on the Land is prohibited other than those permitted by the Easement.

- The processing, dumping, storage, or other disposal of wastes, refuse, and debris on the Land is prohibited, except for nonhazardous and nontoxic materials generated by activities permitted on the Land.

Comment : One individual commented that no formal appraisal was completed on the property by a disinterested party to arrive at land values. The individual further stated that although values used were not excessive \$1000/acre for irrigated land assumes that the land is laser leveled which it is not.

Response : *In determining the land value for a conservation easement the Department bases its offer to the grantor of the easement on recent sales of similar land in the area. If both the Department and grantor can mutually agree on values these are then used as the basis for the easement. If parties cannot agree then a formal appraisal is undertaken.*

As a result of these comments the Department reassessed the types and amounts of irrigated land in the proposed easement, and based upon information received from land appraisers, appraisal reports and real estate agents the Department reevaluated and adjusted values for all land types in this proposed acquisition. Land values from these sources ranged from \$150-\$170 /acre for native pasture; \$225-\$275/acres for dry cropland; and \$850-\$1,500 per acre for irrigated land.

Comment : One individual commented that advertisements listing the property for sale use the conservation easement as a selling point. Sportsman's dollars should not be used as an incentive for private land sales.

Response : *The Department has no control over what appears in private land sales promotions and advertisements. Because the easement is not consummated sportsman's dollars are not being used as an incentive for private land sales. The conservation easement is not in place until it is recorded in the county and then runs with the land in perpetuity. If the Department acquires a conservation easement on the land, the Landowner is required to inform any subsequent purchasers of any covenants or restrictions placed on the land. The Landowner may point out the features / benefits of the conservation easement.*

II. AUTHORITIES/DIRECTION

FWP has the authority under law (87-1-201) to protect, improve and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed HB526 which earmarked specific FWP license revenues to secure wildlife habitat through lease, conservation easement or fee title acquisition (87-1-241 and 242).

III. PURPOSES AND BENEFITS OF PROPOSED ACTION

The primary purpose of this easement is to: protect threatened habitats, particularly the riparian and sagebrush grassland habitats. A secondary purpose is to develop a partnership between the landowner and hunters to improve and maintain the productivity and quality of the land, water and vegetation to meet the needs of wild and domestic animals, the landowners and hunters. This land stewardship project is designed to improve conditions for livestock and wildlife production by developing and limiting the amount of land farmed and implementing rest-rotation grazing. Three of the six statewide habitats, the riparian, shrub grassland and plains forest will be benefited.

Easement terms will provide the additional benefits, in perpetuity of: keeping and maintaining the land for traditional agricultural purposes; guaranteeing annual hunting opportunities; and providing public access to fourteen miles of the Tongue River.

Resident and migrating wildlife will benefit from the improved condition of the shrub grassland, riparian and plains forest habitats comprising the ranches. Specifically, the pronghorn antelope, mule deer, whitetail deer and sage grouse winter ranges will improve; sharp-tailed grouse, sage grouse, and wild turkey nesting, brood-rearing and winter areas will improve; summer habitat for the aforementioned species, plus many species of non-game birds, and mammals will be enhanced.

The placement of conservation easements on these lands will increase the scope and effect of easements already in place on adjacent lands. Cumulatively, the existing and proposed easements will allow for consistent and effective management over an area three times the size of existing easements.

IV. DESCRIPTION AND ANALYSIS OF REASONABLE ALTERNATIVES

A. No Action Alternative

If this proposal is unsuccessful, FWP could lose a significant opportunity to use its limited resources to improve and conserve critical wildlife habitat and maintain public recreational opportunity. The opportunity to secure public hunting in perpetuity, while keeping the land in private ownership would be lost. Likewise, the opportunity by willing landowners to use legislatively earmarked hunting license revenues to improve the land's productivity would be lost. The opportunity to protect the land from other uses that negatively impact wildlife habitats, i.e., sod-busting, subdivision and timbering would also be lost.

B. Proposed Alternative

FWP proposes to purchase a conservation easement on the Bice Ranch and additional portions of the Hirsch Ranch. The primary provisions of the easement will include implementation of a combination of management actions to protect and enhance all habitat types. The condition and productivity of the riparian, sagebrush grassland and plains forest habitats will be improved and protected. Rest rotation grazing and prohibitions of tree removal and sagebrush control will benefit livestock and wildlife. All three of the habitats will be improved by implementation of rest rotation grazing.

At a minimum, the current level of livestock grazing over the entire property will be maintained year round. The landowners and the department have agreed to share equally in the cost of implementing the rest-rotation grazing systems. The Tongue River riparian area will be managed to maintain and improve, in perpetuity, the existing cottonwood bottom/irrigated farmland complex. The amounts and kinds of irrigated crops produced will be grown to increase and maintain agricultural and wildlife benefits. The existing management system for public hunting will be maintained. A minimum of 650 hunters will be accommodated each year, providing approximately 2,000 hunter days. The hunting management system will provide the flexibility to accommodate hunting and hunters under various environmental conditions. The easement will also prohibit commercial hunting, additional sod-busting, subdivisions, and other commercial uses such as game farms or landfills.

Comment: Four individuals questioned whether this project is a good project for sportsmen's money and whether the money would be better spent on the Block Management Program or to hire more people to manage resources.

Response: The Habitat Montana Program, of which conservation easements are a tool, and the Block Management Program are two separate, legislatively authorized programs, each with their own specifically earmarked funding and each with specific purposes. Conservation easements are perpetual contracts for the purpose of habitat conservation. Block Management is typically an annual contract for the purpose of managing recreational access and its impacts.

The intent of Habitat Montana is "provide a means for the Department of Fish, Wildlife & Parks to acquire an interest in land for the purpose of protecting and enhancing wildlife habitat"

Goals a) conservation of Montana's wildlife populations and natural communities via management strategies that keep them intact and viable
b) conserve Montana's land and water resources

c) implement habitat management systems that are compatible with and minimize conflicts between wildlife values and traditional agricultural, economic and cultural values

Benefits

- a) conserve and enhance land, water, wildlife*
- b) contribute to hunting opportunities*
- c) provide incentives for habitat conservation private land*
- d) contribute to non hunting recreation*
- e) protect open space and scenic areas*
- f) promote habitat friendly agriculture*
- g) maintain local tax base*

These benefits will accrue while demonstrating that productive wildlife habitat is compatible with agriculture and other land uses.

The intent of the Block Management Program is " to maintain Montana's hunting heritage and traditions by providing landowners with tangible benefits to encourage public hunting access to private land, promote partnerships... and help manage wildlife resources and the impacts of hunting. "

The enabling legislation for Habitat Montana specifies the money " ... must be used exclusively by the commission to secure develop and maintain wildlife habitat" The legislation does not provide funding to hire more people to manage resources. Other programs can and are being used for this purpose.

V. SUMMARY OF PROPOSED ACTION/BENEFITS AND PURPOSE

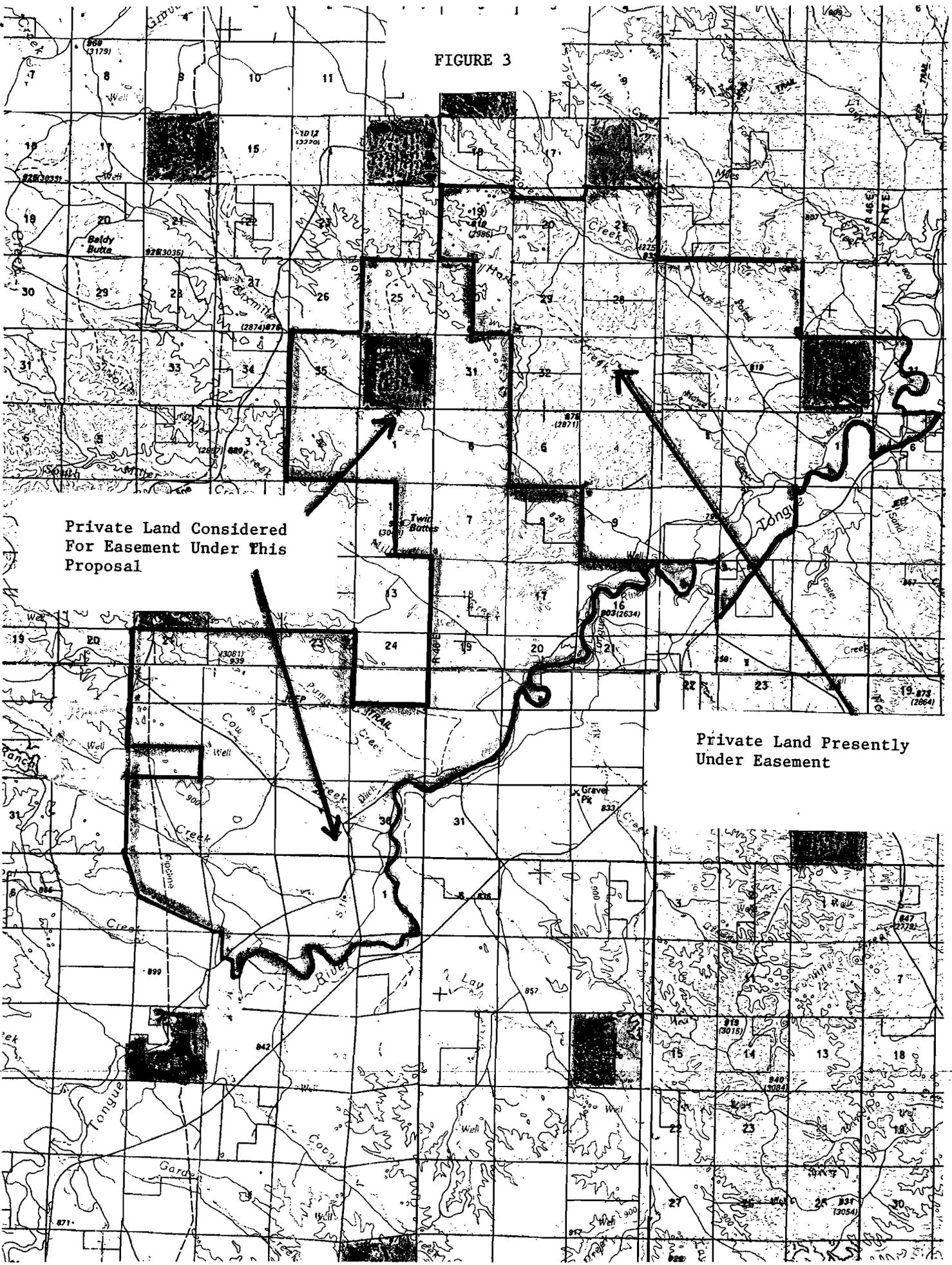
This project is part of a statewide habitat development and conservation plan administered by the Wildlife Division and overseen by the FWP Commission. The purpose of the Bice and Hirsch Ranches conservation easements is to protect threatened habitat. These conservation easements are a partnership project designed to affect positive changes regarding land management and hunter use. The partnerships are dynamic and individualized to meet the needs described. The overriding benefit of the action is that a public trust, wildlife, is being benefited by private landowners, whose agricultural operations in turn are being benefitted by those who pay to use wildlife.

A. Anticipated Outcomes

practices will be mutually beneficial to the land, The project will contribute to statewide and regional land, water and wildlife conservation and benefit the people of the state of Montana and the local communities in a variety of ways including:

- * conserving land, water and wildlife on approximately 15,000 acres; bringing the total private land under conservation management in this area to 26,000 acres (Figure 3) while providing incentives for habitat conservation on private land. Grazing, riparian and hunter management systems will be developed/expanded to benefit the land, water, wildlife, livestock, the livestock operators and hunters.
- * contribute to hunting opportunities and non-hunting recreation. The property would provide an estimated 2000 hunting recreation days annually based on results obtained from an existing block management activities. Non-hunting recreation days are difficult to estimate but are potentially substantial.

FIGURE 3



Private Land Considered For Easement Under This Proposal

Private Land Presently Under Easement

- * provide incentives for habitat conservation on private land while demonstrating that productive wildlife habitat is compatible and improved by other land uses including agriculture. Vegetation management will include developing livestock water resources; managing riparian areas; and improving the productivity of existing plant communities comprising the sagebrush grassland/plains forest habitats. Instituting these management water, wildlife and livestock and maintain traditional ranching activities.
- Protect open space and scenic values by enhancing and protecting riparian river habitat and preventing land subdivision into ranchettes, vacation home sites, and private hunting clubs

Comment One individual commented that the area is not threatened by development, sod busting or logging.

Response Currently, there are 2 subdivisions located adjacent to the property to the northwest. Currently sod busting and logging are not immediate threats but potentially could become threats in the future.

- Provide viable prairie dog colonies for observation particularly prairie dogs with young during summer.

Comment One individual commented that prairie dogs could spread onto adjacent land making it hard to control them.

Response To strike a balance between maintaining viable prairie dog colonies on the Land and to address Landowner needs to manage prairie dogs, the conservation easement terms allow the Landowner to control prairie dogs when the prairie dog colonies on the deeded land exceed 230 acres.

- Historic use of the ranches, as working, income producing, livestock operations will be maintained. As a result of this easement and previous easements consummated on adjacent property more than 42 sections of land will be under similar management for the benefit of the land, the wildlife, livestock, sportsman and agriculturalist.

Comment : Two individuals commented that there is no assurance that a subsequent buyer will grant reasonable access or implement project goals or that a new owner will have the resources to maintain/develop irrigation.

Response : The conservation easement is perpetual and is a recorded document that runs with the land. This means that it binds future owners to the terms of the conservation easement. Therefore, the conservation easement does assure that a subsequent buyer must grant the access that is contained in the provisions of the easement. Further, any subsequent buyer must adhere to the project goals as they are stated in the deed of conservation easement. If a subsequent landowner does not comply with the terms of the easement, the Department has the right and obligation to enforce the terms of the easement against any subsequent landowner.

B. Habitat/Population Condition

Over 87% of the property is native range, the majority of which is presently in good condition, but will improve with the institution of management actions designed to protect and improve existing habitat condition. Improved range condition will result in wildlife population increases over time until a balance is reached as a result of the grazing, vegetation and hunter management systems. As a result of these established management systems the balance will be reached sooner as plant succession is speeded up and the physiological needs of the vegetative community are met and protected. A healthy vegetative community will result in increased sustainable yields of wildlife. This will be most significant when adverse environmental conditions occur.

The adjacent location and combination of riparian, shrub grassland and plains forest habitats on the properties make it highly productive wildlife habitat. Currently, the area supports healthy populations of mule deer, antelope, whitetail deer, pheasant and prairie grouse.

Wildlife species occurring on the Bice and Hirsch Ranches include:

1. Primary game species: mule deer, whitetail deer, antelope, sharptail grouse, pheasant, waterfowl and mourning doves.
2. Secondary game species: sage grouse, turkey and Hungarian partridge.
3. Non-game species include: ferruginous hawk, red-tailed hawk, bald eagle, golden eagle, burrowing owl, great blue heron, vesper sparrow, field sparrow and Brewer's sparrow, upland sandpiper, woodpeckers, warblers and other passerines, black-tailed prairie dog and numerous small mammals, prairie rattlesnake, painted and snapping turtles. Furbearers and predators; coyote, red fox, badger, raccoon, skunk, bobcat, beaver, muskrat and mink.

Species of concern associated with this area include: ferruginous hawk, red-tailed hawk, golden eagle, bald eagle, burrowing owl and upland sandpiper.

Several black-tailed prairie dog towns exist on the property. These towns serve as habitat for species such as burrowing owls and ferruginous hawks.

Riparian/riverine habitats seasonally support bald eagle, osprey, heron, and waterfowl; especially wood ducks, mallards and Canada geese. The riparian habitat also serves as migratory and seasonal habitat for various species of passerines.

Twenty percent (20%) of the entire property, roughly 5 sections, is Tongue River riparian habitat and includes approximately 13 miles of Tongue River frontage. Sixty percent (60%) of this riparian habitat is native vegetation dominated by a native plains cottonwood overstory and typical food plain vegetation understory. The remaining 40% is devoted to irrigated alfalfa and small grain production.

Across the State, riparian habitats such as this are 1 of the 3 habitats considered to be the most threatened and/or highly productive and in need of protection, conservation and enhancement. The status of this habitat is reason enough to protect it with a conservation easement. Additionally, Tongue River riparian is the most productive habitat on the property. The presence and interspersions of irrigated alfalfa and small grain cropland in juxtaposition with native riparian areas, tremendously increases the riparian area's inherent wildlife productivity and value. Wildlife surveys in eastern Montana indicate that areas with alfalfa and small grain components interspersed amongst native habitats typically support mule deer densities 5 times higher than strictly native habitats. White-tailed deer densities in areas with irrigated agriculture interspersed amongst native habitats are 10 times those habitats that have no irrigated agriculture. The potential for pheasants, as a result of the combination of irrigated agriculture interspersed amongst native riparian habitat along the Tongue River, is regionally rivaled only by the Yellowstone River below Glendive and around Hysham.

The proximity of irrigated alfalfa bottoms to sagebrush grasslands on the property are vital to sage grouse and sharptailed grouse populations as brood rearing habitat

Irrigated bottomlands are an integral part of the wildlife habitat on the property. Without the presence of irrigated agriculture, wildlife abundance, productivity and diversity would be significantly reduced. The relationship of sage brush grasslands, native riparian and irrigated bottoms and the critical necessity to manage and protect all habitats together make it imperative that riparian habitats including irrigated lands be included under this conservation easement.

Comment : Two individuals commented that for the proposed project, the Department did not meet the criteria of HB 526. These individuals interpret HB 526 as requiring the Department to conduct a comprehensive analysis to determine wildlife populations and use.

Response : *Section 87-1-241, MCA, sets out requirements for the acquisition of wildlife habitat. It requires that the Commission establish by rule a policy for making acquisitions. The Commission adopted these rules as §§ 12.9.508-512, Administrative Rules of Montana 1994. § 87-1-241, MCA, also requires that for specific acquisitions, the policy promulgated in the administrative rules must provide for a comprehensive analysis of a number of issues, including the wildlife populations, the potential value of the land, management goals, potential impacts to adjacent land from the proposed management goals, etc.*

The administrative rules governing wildlife habitat acquisition are the Commission's statement of policy for wildlife habitat acquisition. These rules set out the goals, benefits, application, and implementation of Habitat Montana. In § 12.9.512, ARM, the Commission directs the Department to complete a comprehensive statewide habitat plan. The plan recognizes the "need to move ahead with the land program while data bases were being compiled and updated. The wildlife division mapped habitats across the state that were facing potential change which would negatively impact the habitat. This information was utilized to establish the present direction of the program." Therefore, in 1993, the wildlife division administrator, together with wildlife managers, set the direction for the wildlife land program as focusing on specific habitat types such as intermountain grassland, shrub grassland, and riparian ecosystems. Further, in § 12.9.512(e), ARM, the Commission directs the Department to conduct an environmental assessment that analyzes the requirements listed in § 87-1-241, MCA.

The environmental assessment for the Bice/Hirsch Ranches Conservation Easement project contains an analysis of habitat population conditions. (See Section V.B.,) Specifically, it states that "[t]he adjacent location and combination of riparian, shrub, grassland, and plains forest habitats on the properties make it highly productive wildlife habitat. Currently, the area supports healthy populations of mule deer, antelope, whitetail deer, and prairie grouse." The Environmental assessment goes on to list the species occurring on the Bice and Hirsch ranches.

A comprehensive analysis of wildlife populations was conducted prior to and included in the SH Ranch / Bice Ranch Project Proposal submitted to FWP Commission in March of 2000. Pertinent excerpts of the proposal are included

as ATTACHMENT A. Species known to be present were listed; current, high and low population densities stated; current and potential harvests listed; habitat availability and attributes for species listed. The project proposal for this specific project contains a section that addresses the criteria for individual projects. It states that the primary game species and estimated densities include: "Mule deer (5-10 per sq. mi.), antelope (4-6 per sq. mi.), sharptail grouse, ringneck pheasant, waterfowl and mourning doves." The proposal lists the secondary game species, the nongame species, and the furbearers and predators associated with the specific project.

PART II. ENVIRONMENTAL REVIEW

I. EVALUATION OF THE IMPACTS OF THE PROPOSED ACTION ON THE PHYSICAL ENVIRONMENT

A. Land Resources

Impact of Proposed Action: No impacts to unique geological or physical features, but positive changes in decreased erosion and siltation and increased soil fertility and production. These positive impacts will result from the increased vegetation produced by protecting native plant growth, growing agricultural crops in selected areas to benefit and protect the land, and changing the practice of "continuous grazing" (same time, same place each year).

No Action Alternative: Should this project not be completed the lands potential may not be realized both from its agricultural and wildlife capabilities. The potential to make the land produce increased but sustainable crops of wild and domestic animals is attainable because of a shared vision between the landowner and FWP. Rejection of the project would mean continuation of a land stewardship ethic that supports status quo. The opportunity to guarantee protection of the land from the impacts of sod busting, timbering, commercial uses, and subdivision would also be lost.

B. Air Resources

Impact of Proposed Action: Human activities would be limited to dispersed recreational pursuits which would not impact air quality.

No Action Alternative: If FWP is not able to purchase the conservation easements, ranch activities would continue with no impact to air quality.

C. Water Resources

Impact of the Proposed Action: Significant positive impacts should be realized in surface and ground water as a result of better water distribution and improvements in soil condition and reduction of erosion by developing rest rotation grazing systems and protecting riparian areas. Limitations on size and location of feedlots may improve water quality.

No Action Alternative: Negative impacts could result to the existing water resources, including the Tongue River, if livestock utilize the ranch under a traditional continuous grazing system.

Comment : One individual commented that the feed lot is in the 100 year flood plain With the potential for flooding during ice jams dumping tons of manure into Tongue and Yellowstone Rivers. The feed lot has a gravel bottom allowing polluted ground water to seep into the Tongue. Before easement goes forward something should be in works to assure this doesn't happen and feed lot brought up to specifications.

Response: *While feedlot remediation is under the auspices of regulatory agencies such as the Department of Environmental Quality and is outside the scope of the easement, the Department has assured that the Landowner has been and is actively pursuing remediation of the feedlot and potential problems associated with the feedlot. Since January 2000 he has been working with the County Extension and USDA-NRCS in attempts to find solutions (see ATTACHMENT B, letters from Randy Pierce NRCS Civil Engineer to Terry Heck NRCS District Conservationist) . Ultimately, moving the feedlot may be the best solution. Language is contained in the Conservation Easement (II.D.12) that allows Bice to relocate the existing feedlot. The location must have Department approval and must meet or exceed minimal regulatory requirements.*

D. Vegetation Resources

Impact of Proposed Action: No significant impacts will occur with respect to; adverse effects on plant species, reduction in agricultural land, establishment or spread of noxious weeds. Positive impacts will occur in the form of an improved vigor of the native plant community and increased diversity, productivity and abundance of plant species.

The proposed action will provide grazing management on these lands. This management will provide necessary rest for native plants that are traditionally grazed off during the growing season. This gives plants that livestock prefer an opportunity to go to seed and propagate. Without this system, plants would be continually grazed until death and new, less desirable plant species, including noxious weed, could invade. Improved water distribution will lessen the negative impacts presently occurring on shrubs such as buffaloberry, willow, skunkbrush sumac, chokecherry, silver and big sage, rabbit brushes and snowberry. These shrubs are currently found in numerous mesic coulees intersecting this ranch. Negative impacts from livestock (trampling, rubbing) on these shrubs will decrease with improved water distribution and rest from grazing during the growing season.

Farming, like grazing, will be done to protect the land area while producing crops to benefit livestock and wildlife.

No Action Alternative: As stated under "water resources", if the Ranches are grazed under a continuous grazing system (same pastures, same time each year), adverse effects on desirable plant species abundance and distribution will occur. Less desirable tap-rooted plants and possibly noxious weeds will replace the desirable forage plants. Plants are not only destroyed by grazing, but by the action of significant numbers of livestock congregated in the same place year after year. Increased farming activities in the riparian areas could also sacrifice the existing native vegetation.

Comment : One individual stated that the property has the worst infestation of spotted knapweed in Custer County. The individual expressed concern because wildlife, dogs, people, and cars carry weeds back and forth across the river.

Response : *Kent Williams, Custer County Extension Agent, in a letter dated August 20, 2001 and included as ATTACHMENT C stated "...we have found Don Bice and many of his neighbors to be sincerely interested and involved in*

controlling their spotted knapweed. ” The letter further states that Bice and the previous owner, Hensler 95 Trust have contracted with the Custer County Weed District each year since 1998 to assist with knapweed control. In the past 3 years the Weed District has helped treat 70 acres of knapweed at a cost of \$10,058. Mr. Williams further stated that the landowners have bought additional chemical and sprayed knapweed on their own.

E. Fish/Wildlife Resources

Impact of Proposed Action: No significant impacts will occur with respect to: deterioration of wildlife habitat, introduction of a new species, wildlife migrations, adverse effects on wildlife species or increased conditions that stress wildlife. Positive impacts will occur in wildlife species abundance, productivity and diversity.

Development and protection of the riparian areas through controlled grazing and planting of crops beneficial to wildlife will enhance the habitat. Prohibition of tree removal and protection of existing native vegetation will also improve the habitat for wildlife.

Ground nesting non game and game bird species will realize significant benefits through the rest-rotation grazing system.

Use by livestock under this system enhances the vegetation needed by wildlife for growth and maintenance. This system also maximizes residual cover in a portion of the system each year. Residual vegetation will provide improved nesting, brood rearing and winter cover. Increased residual cover, along with revitalized stands of chokecherry, sage brush, buffaloberry and snowberry resulting from grazing by livestock provide excellent wintering areas for mule deer, whitetail deer, antelope and resident bird species.

The proposed action would not only enhance the habitat for wildlife but, will do so in perpetuity.

No Action Alternative: If FWP is unable to purchase the conservation easement the probability that vegetation will be managed with a concern for wildlife is less likely, even though Bice and Hirsch have a profound interest in wildlife. Grazing by livestock, unless practiced under a system that considers plant physiology and needs, will not enhance wildlife habitat to its fullest.

Comment : One individual commented that the conservation easement emphasizes cattle and ranching interests more than wildlife needs. Specifically, the money could be better spent on establishing shelterbelts, food plots, nesting areas for birds, and fenced off from cattle. The individual also stated that rest rotation grazing benefits cattle and cattelman, not wildlife because cattle disperse wildlife, wildlife graze areas that are supposed to be rested, and that rest rotation grazing does nothing to give priority to specific areas that wildlife need for welfare and reproduction.

Response: *The grazing system is based upon “Principles of rest rotation grazing and multiple use land management.” 1970 by A.L. Hormay and “Managing the range with livestock.” 2000 by J. Egan. Hormay’s publication states “ Rest rotation livestock grazing is a powerful tool available to the range manager for increasing land productivity. The prime force in this tool is resting. Under rest rotation grazing management, all plants – forbs, grasses, shrubs and trees are provided opportunity*

to grow and reproduce. So wildlife, recreation, watershed and timber as well as livestock interests are served.” (emphasis added).

Under the proposed action the property will be divided into 3, 3-pasture summer systems and 1, 2 pasture winter system. Each year two of three pastures in each summer system are rested from livestock grazing from mid-October to early-August the following year. The acreage rested is available as wildlife habitat without the presence of cattle each year. In a given year one winter pasture is utilized and the other is rested. A third of the acreage in the summer systems and ½ of the winter system acreage is completely rested and available as wildlife habitat without the presence of cattle for the entire year. The combination of rest and controlling the timing of grazing will:

- *improve the kinds and quality of vegetation on the land, including the herbaceous understory, shrub components and woody species.*
- *provide residual herbaceous and perennial woody vegetation for wildlife hiding, resting and nesting cover.*
- *allowing vegetation to complete its lifecycle of growth from sprouting through maturation of its root system to producing and setting seed.*

The proposed grazing management reflects a balance that will improve wildlife habitat, while meeting the needs of the landowner and his operation and maintaining and improving soils and vegetation. Since the late 1980's Fish Wildlife & Parks has implemented or helped develop 95 similar rest rotation grazing systems covering 553,000 acres of primarily private land across the State. The existence and continuance of these projects shows that the system works for and benefits everything that depends upon the health of the land including wildlife and livestock.

Comment : *One individual questioned how money for fencing and water development will be spent on a ranch that is already well watered and cross fenced into small pastures.*

Response : *The costs associated with the implementation of the grazing system include:*

- *additional cross fencing to divide pastures into equal capacities to assure that pastures have similar types and quantities of vegetation,*
- *water development to insure pastures are adequately watered, especially during drought times*
- *fencing previously unfenced boundary.*

Costs of grazing system development will be split equally between the landowner and Fish, Wildlife & Parks

Comment One individual commented about introduction of new species .

Response *Easement terms only allow the introduction, transplant or release of native species by the Department with the consent of the Landowners. No introduction is contemplated and if introduction was contemplated landowner consent along with a minimum of a publically reviewed environmental assessment would be required.*

F. Summary

Significant impacts resulting from the action will be minimal or nonexistent. Except for limited and short duration disturbances resulting from fence construction and pipeline installation impacts on the physical environment will be positive.

II. EVALUATION OF THE IMPACTS OF THE PROPOSED ACTION ON THE HUMAN ENVIRONMENT

A. Noise/Electrical Effects

Impact of Proposed Action: No change from the current situation. The easement will be used to manage, protect and enhance the property to benefit a diversity of plants and animals.

No Action Alternative: No change from current situation.

B. Land Use

Impact of Proposed Action: No significant impacts will occur with respect to: changes in geologic substructure, destruction or modification of any physical features, or exposure of people to natural hazards. Minor negative impacts will occur in the form of soil disruption through installation of water pipelines and fences. The soil disruption will be minimal and the impacts nonexistent in 1-3 years.

Maintenance of existing farming practices and implementation of a grazing system will have significant positive impacts on soil stability and changes in siltation, disposition and erosion patterns. These positive impacts will result from the increased vegetation that will occur through the combination of farming and grazing.

There could be some limitations on public use during specified critical times of the year, but no more than currently experienced. Existing human uses of the properties under easement will increase.

No Action Alternative: The natural resource productivity and potential of the area could be diminished. If the landowners are limited to utilization as is the land's productiveness, both from an agricultural as well as a wildlife standpoint, would be limited. The opportunity to protect the land from sod busting, certain commercial uses, and subdivision would also be lost.

Comment: Three individuals commented that at about year 2002 there could be 800-900 acres of irrigated land that will not have delivery system because of the SH canal closure. These individuals asked what will assure that irrigated acres stay irrigated? One individual recommends that before the Department disperses any funds to the Landowners, the Department must have assurance that the land will stay irrigated. Additional comments were made that if the land cannot

be irrigated FWP would be paying for an easement using irrigated land value for land could be worth only rangeland value. One individual was also concerned that converting to center pivots would require that trees be cut down.

Response : An agreement entered between the Bice Ranch, Hensler Trust and DNRC gives the "owners" until December 31, 2002 to "cease to divert directly by gravity, flows from the Tongue river into the SH canal and to modify the headgate so that it is no longer operable by December 31, 2002." The agreement does not prevent the owners from locating and having approved other points of diversion from which they can pump out of the Tongue River directly into the canal and continue irrigating; see ATTACHMENT D. The owners have made application for 8 other points of diversion. Therefore, the Department may not assume that the canal will be closed and that the land will not be irrigated; see ATTACHMENT E. Moreover, the Department may not in its conservation easement require that a landowner continue to irrigate. A conservation easement is by definition a negative document. It may restrict what a landowner may do, but it may not require the landowner to continue specific land use practices. FWP is acquiring a conservation easement at the present fair market value. It may not surmise that the Landowner will not fulfill their obligations to another entity and offer a value that may or may not be applicable at some point in the future. The Landowner and Department have reviewed sites to be converted to center pivot and developed designs to minimize habitat disturbance. Prior to installation, the Landowner and Department will again review and inspect final locations and sites to insure a minimum of habitat disturbance.

C. Risk/Health Hazards

No significant impacts will occur with respect to; risk of any potential human hazards and emergency response plans.

D. Community Impacts

Impacts of Proposed Action: No appreciable impact from the existing condition. During development on the property, regulated public use will be available. Continued levels of use by recreationists, particularly hunters, will occur. No significant impacts will occur with respect to: changes in the human population, community social structure, industrial activity or increased transportation problems. No known impacts will occur to adjacent private land resulting from the proposed action. The number and distribution of hunters will continue as practiced the past via block management contracts.

Some positive impacts will occur through income to local contractors. Funds will be spent on installing improvements necessary for implementation of the rest-rotation grazing systems. Long-term productivity of this ranch will be increased through these systems and associated land improvements.

A thorough analysis of impacts to the community as a result of the proposed action is presented in the "Socio-Economic" section of this EA.

No Action Alternative: No change in existing conditions are expected if the easement is not purchased. The ranch will be operated as a cattle ranch under grazing and farming systems as now practiced. Income to local contractors and merchants from development of the grazing system and expenditures by additional hunters would not occur.

Comment : Do mineral rights remain with landowners or does FWP gain mineral rights? What effect does the easement have on mineral rights that are separate from surface rights? How will the easement effect the value of these separated mineral rights?

Response : *In this project, the Department did not acquire any mineral rights; however, the conservation easement prohibits surface mining of minerals, coal, bentonite, hydrocarbons, soils, or other materials. The easement allows the exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials below the surface of the Land only if it does not significantly impact the conservation values. Prior to engaging in any exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, gravels, soils, or other materials not prohibited by the conservation easement the Landowners must seek prior approval from the Department and submit a plan for the Department's review and approval that provides for minimizing adverse impacts on the conservation values of the Land. The easement does not and cannot prevent owners of separate mineral rights from exploring for or developing their subsurface minerals. Mineral value is dictated by the market. If it is determined that merchantable minerals are present and it is economically feasible to develop those resources the presence or absence of an easement on the surface will have little if any bearing on the value of the resource.*

Comment : Two individuals commented that for the proposed project, the Department did not meet the criteria of HB 526. These individuals interpret HB 526 as requiring the Department to conduct a comprehensive analysis to determine if there are any "potential" impacts to adjacent private land resulting from management goals and plans to address such impacts. They commented that an independent study should be done on the impact the easement will have on adjacent landowners. They commented that FWP says no impact on taxes to the county. Conservation easement devalues land which in turn reduces value of neighboring ranches and thus reducing state and county taxes. Appraisers say that conservation easements reduce ranch value by at least 50%. If devaluation spills over onto adjacent land this could be construed to be an unconstitutional "taking" of private property .

Response: *In 1989, John Duffield with the University of Montana compiled "Brewer property acquisition social and economic impact assessment"; excerpts of which are included as ATTACHMENT F. This report by an independent entity took an objective look at the social and economic impact of this easement. The findings therein are applicable to the currently proposed project even though monetary amounts are different. With the exception of access provisions, which will be addressed in the hunting, trespass, access section below, all of the key terms of the easement are oriented towards habitat protection with limits set on cultivation, commercial use, subdivision, building sites, logging and sagebrush control to name several which have little or no impact on adjacent landowners.*

The dominant use of the land has been and will continue to be livestock production under the easement. No unfavorable changes are expected in taxable value or tax revenue to local county government as a result of this easement.

As a result of comments made that easements devalue land and reduce the value of neighboring ranches the Department contacted local land appraisers and real estate agents. Based upon information received from them and information from appraisal reports from "American Society of Farm Managers and Rural Appraisers" the Department concluded that placing an easement on land results in little if any difference in land values on adjacent land.

The original easement on the Hirsch Ranch was completed in 1996 and amended in 1999 to include additional land. Table 1. presents results of appraisal reports from "American Society of Farm Managers and Rural Appraisers" for 3 properties within 10 miles of the Hirsch Ranch (2 adjacent to Hirsch) and 3 properties more than 30 miles distant from Hirsch that sold between 1997 to 2000. Comparisons indicate no difference in the sale value of property adjacent to the easement and those properties distant from the easement property.

Table 1. Land sale price comparisons from "American Society of Farm Managers and Rural Appraisers" appraisal reports. Properties sold between 1997 and 2000.

	<i>Sale price Adjacent to Hirsch</i>	<i>Sale price North of Ashland</i>
<i>Dry Crop</i>	<i>\$300-330</i>	<i>\$300-325</i>
<i>Rangeland</i>	<i>\$100-145</i>	<i>\$130-150</i>
<i>Irrigated Crop</i>	<i>\$1000-1250</i>	<i>\$1020-1200</i>

Comment: Two individuals commented that with the hunter numbers proposed, hunters will not return taking with them the profits that surrounding area businesses have come accustomed to and rely on. Are license fees going to increase to accommodate this easement and won't that effect hunting revenues statewide loss of revenue to us and state. Commercial hunting operation threatened by the property being surrounded by easement property, block management areas and the Tongue River Road.

One individual commented about losing rights as a landowner to control access to 14 miles of Tongue River as a result of the easement. The easement and access provisions contained therein will tremendously damage their commercial outfitting business that supports 20-24 guests a year and generated \$76,000 for landowners, outfitters and guides

last year. The easement and access provisions will seriously effect how they choose to use wildlife resources.

Response: In 2000 212 nonresident and 471 resident hunters hunted for no charge or fee on the Bice, Hirsch and Shaw properties (26,000 acres) Based on hunter expenditure figures derived from extensive bioeconomic studies of hunters in the state these hunters brought \$123,902 into the local economy buying gas, groceries, motel rooms, restaurant meals exclusive of license costs.

An analysis, completed in 2000 by FWP, BLM and DNRC, of the hunting access status of private land in Custer County indicated that 33% of the land was open to general public hunting while the remaining 67% was either outfitted, leased, severely restricted or closed to public hunting. The question is not the **potential** loss of revenue that a private individual derives from a public resource but the loss and lack of public access to a public resource

Access provisions contained in the easement do not infringe on adjacent landowner's rights to control access to their property. Access laws still apply irrespective of the easement. The Tongue River represents one of the best natural property boundaries.

E. Aesthetics/Recreation

Impact of Proposed Action: In the long term, measurable change from existing conditions should occur. If the easements are acquired by FWP, the ranches will be developed to improve and protect (in perpetuity), the existing habitats for use by wild and domestic animals. Positive impacts will likely occur with respect to: changes in the aesthetic character of the area and changes in the quality and quantity of wildlife for recreational use. Additionally, the overall aesthetic value of improvements in the quality of soils and vegetation will be apparent. Some restricted recreational use could occur during critical periods to protect the livestock operation. Management of the ranch as articulated in the "Deed of Conservation Easement" will provide for public use while protecting the landowner's rights.

No Action Alternative: There could be significant impacts to both aesthetic and recreation opportunities if the proposed land stewardship project does not become reality. The scenic vista of three habitats (riparian, shrub grassland and plains forest) could be impacted. Hunting opportunity could be reduced or curtailed completely.

Comment : Six individuals commented that the hunter numbers and hunter days stated in the easement are unrealistic; that the amount of hunters places too much pressure demand on resource and neighboring property, and will result in little hunting experience that is of a quality of any kind. That amount of hunting will wipe out populations, trophies wiped out Spike bucks and does left 2-3 years the game the hunters come for, trophy big bucks, are the most sought after and first to go, leaving no desirable stock to repopulate. How can you justify that with hunter # proposed in a few years even does and fawns will leave.

Response: The draft easement document states "when such demand exists the Landowner will allow 650 hunters on the land for the full duration of all hunting seasons...". 650 hunters includes all hunters, archery, upland bird, antelope, waterfowl hunters, not just deer hunters. Wildlife populations naturally rise and fall and hunter numbers on the property will rise and fall, mirroring wildlife

populations. Past experience shows deer populations can rise and fall dramatically in a short period of time. During typical years 250-350 hunters are expected to use the property. Based on hunter histories from similar adjacent properties, dating back to 1994, the primary species sought by 30% of these hunters will be upland bird hunters, 10% antelope and 60% deer hunters. Typically big game hunters also sign up for bird hunting. Hunter numbers are set at the 650 level to allow the ability and flexibility, should it be deemed necessary and desirable by the Department and the Landowner, to allow adequate public hunting access to control game damage and prevent wildlife destruction of native and introduced vegetation. Deer densities can and have exceeded 50 deer per square mile in the types of habitats found on the property. The annually reviewed and revised Management Plan for the property provides "... for the uniform distribution of hunters in time and place over the ranch to effect good game management practice. The plan will also provide the needed flexibility to accommodate change in the number of hunters, hunter days and travel to alleviate game damage to native vegetation and crops."

Currently, "demand" on the property, based on the 2000 hunting season, is 247 Hunters of which 25% were upland bird hunters, 19% antelope hunters and 57% deer hunters. 50 of the 247 hunters were nonresident hunters; 39 of the 50 were deer hunters. Forty deer were harvested; 15 were bucks. The property supported 482 days of hunter recreation. Adjacent similar properties where records go back to 1994 show similar hunter numbers on 25% less property. Although no formal surveys (aerial flights) are conducted on these areas informal surveys (site inspections, visits with landowner, hunter checks and feedback) indicate wildlife populations on these properties have been and are healthy and productive with excellent compliments of mature bucks, yearling bucks, does and fawns. These properties sustain healthy, balanced harvests of male and female deer with does generally composing 25-50% of the overall deer harvest. Feedback from hunters using the property indicate satisfaction with hunter and harvest management on the properties.

For 2001 the number of hunting parties per day is limited to 4 irrespective of what they are hunting. If all 4 parties were deer hunters each party would have approximately 6 sections to hunt. Typically, only during weekends and opening and closing days will this daily limit be potentially reached. And typically 1-3 of these parties will be deer hunters; other parties being bird hunters. During mid week there is typically no one hunting or one has the property to him/herself.

If asked, the majority of deer hunters would like to shoot a trophy buck. What they say and what they do are different. During the 2000 hunting season harvest statistics indicate 14,832 mule deer were harvested by hunters in southeastern Montana. Of this total 36% were antlerless deer; half of those were harvested on an A license. Many hunters purchase both an A license and antlerless tags. Antlerless licenses are used to "fill the freezer" and the A license is saved to pursue buck deer

F. Cultural/Historical Resources

Impact of Proposed Action: No significant impacts will occur with respect to: alteration of any known cultural, religious, historic, prehistoric or paleontological sites or uses of these sites.

No Action Alternative: Potential damage to as yet unidentified cultural sites could occur if the ranch was developed.

III. SUMMARY EVALUATION OF SIGNIFICANCE

Collectively, there could be significant impacts to the existing human and physical environment in the Tongue River drainage if the proposed action is not completed. These impacts include:

- A. The lost opportunity of protecting threatened habitats, particularly the sagebrush grasslands and riparian areas.
- B. The lost opportunity to develop a partnership between landowners, the recreating public and a government agency to enhance sizeable private landholdings to mutually benefit the landowners and the recreational opportunity that they provide to hunters. The loss of opportunity to clearly demonstrate that, not only are livestock and wildlife compatible, but that livestock grazing and farming can and should be beneficial to wildlife.
- C. Lost opportunity to maintain, in perpetuity, traditional agricultural operations on the land for the benefit of all that depend upon the land for their survival and well being.
- D. Productive well-managed habitats under private ownership that provide public access to hunters is a realistic objective to maintaining Montana's wildlife and hunting heritage.

Comment : Two individuals commented that the exact language in the recorded deeds should be made public so that adjacent landowners can make sure that the terms of the conservation easement are in keeping with their land rights. These individuals have heard that the recorded easements differ from the easements printed in the environmental assessment.

Response: *The environmental assessment is an explanation of the Department's proposed action; it is a synopsis of the conservation easements. The environmental assessment puts the action out for public comment and therefore is subject to change to address public comment or new information. The conservation easements are not yet final. However, if in its decision document, the Department decides to acquire the proposed conservation easements, the final drafts may be viewed by the public. Moreover, any recorded document is a public document that may be viewed at the county court house*

IV. COORDINATION AND CONSULTATION

Don Hyyppa	DFWP	Regional Supervisor
Darlene Edge	DFWP	Land Agent
Don Childress	DFWP	Administrator Wildlife Division
Martha Williams	DFWP	Legal Counsel
Steve Knapp	DFWP	Habitat Bureau Chief
John Ensign	DFWP	Regional Wildlife Manager
Bernie Hildebrand	DFWP	Wildlife Biologist

MANAGEMENT PLAN

**DRAFT MANAGEMENT PLAN
BICE HIRSCH RANCHES CONSERVATION EASEMENT**

I INTRODUCTION

The people of the State of Montana recognize that certain native plant communities and wildlife habitat are worthy of perpetual conservation and have directed the Department (FWP) to acquire interests in such areas by voluntary cooperative means.

The primary purpose of the Bice/Hirsch Ranch easements is to: protect threatened habitats. A secondary purpose is to develop a partnership between the landowners and hunters to improve and maintain the productivity and quality of the land, water and vegetation to meet the needs of wild and domestic animals, the landowners and hunters. This land stewardship project will be designed to improve the lands productive capabilities for agriculture and wildlife by: developing the amount of land farmed while producing crops beneficial for wildlife and livestock and implementing rest-rotation grazing. Three of the six statewide habitats, the riparian, shrub grassland and plains forest will be benefitted.

Easement terms will provide the additional benefits of: keeping in perpetuity lands for agricultural purposes; guaranteeing in perpetuity annual hunting opportunities; and providing access to fourteen miles of the Tongue River.

For specific site information on the Bice and Hirsch Ranches, refer to the respective "Deed of Conservation Easement".

This management plan will have input and concurrence from BLM and DNRC.

II. DESCRIPTION OF THE AREA

The Bice/Hirsch Ranches are located about 30 miles south of Miles City, in the Tongue River drainage. The Bice Ranch L.L.C. encompasses 12,694 acres of private land, 2,920 acres of BLM and 320 acres of state school trust land. The portion of the Hirsch Ranch under consideration in this easement encompasses 2,680 acres of private land and 320 acres of state school trust land. The Tongue River forms the ranches east boundary. The ranches extend 5-7 miles to the west and northwest of Tongue River. Topography of the area is variable and ranges from the riparian and sagebrush, grassland, hills to rough timbered breaks. In addition to numerous ravines, 5 intermittent creeks traverse the ranches; flowing from northwest to southeast with their mouths at the Tongue River.

The properties include roughly 5 sections of riparian river bottom. This habitat is the most productive and diverse on the property. Riparian habitats on the property are composed of plains cottonwood, green ash, and box elder forest with a willow, chokecherry, buckbrush, and buffaloberry understory. Idle bottomland has typical flood plain vegetation. Less than half of the riparian bottom is devoted to irrigated alfalfa hay meadows and grain fields. A feed lot operation is also located in the bottoms.

The property encompasses 15 sections of native shrub grassland. Dominant shrubs include silver sage in the bottoms and big sage in the uplands. Greasewood, skunkbush, and yucca are locally common where soil types are conducive to their presence. Typical native grasses include: western wheatgrass, little bluestem, needle and thread grass, bluebunch wheatgrass.

Five sections of plains forest habitat exist on the property. This habitat consists of ponderosa pine and Rocky Mountain juniper groves interspersed with native grass parks. Skunkbush, sagebrush and creeping juniper are major understory components. Larger draws contain cottonwood and green ash stands.

The juxtaposition of riparian, shrub grassland and plains forest habitats on the property make it a highly productive wildlife area. Of particular significance to wildlife are the irrigated alfalfa hay meadows interspersed throughout the riparian habitat of the Powder River. The potential conservation benefits and enrichment of the overall quality of life for people of the state of Montana make this an ideal Habitat Montana project.

Within the project vicinity several other ranches also participate in FWP's Block Management program, and as such provide hunting opportunity. There is excellent future potential on these properties to develop conservation projects. A large block of Custer National Forest lies to the southwest.

At present, antelope, mule deer and whitetail deer use the property yearlong, utilizing the shrubby vegetation and alfalfa fields during all seasons. Whitetail deer live yearlong primarily in the riparian/riverine habitat. Antelope are confined to the sagebrush grasslands, and alfalfa bottomlands. Mule deer occur over the entire ranch, but frequenting the alfalfa and crop fields as long as plants remain palatable.

Several species of upland game birds occur year round on the property, including sage grouse, sharptail grouse, turkeys, pheasant, mourning doves, and grey partridge. Sharptails and pheasants are abundant. Sharptails occur across the property. Pheasants and turkeys live yearlong in the riparian/riverine habitat. Sage grouse are closely tied to the sagebrush grassland vegetation, but also use the alfalfa fields during summer. The riparian/riverine habitat seasonally supports a diversity of waterfowl species in varying densities. Mallards and Canada geese are common.

The ranch provides year round habitat for fur species including mink, weasels, beaver, badger, bobcat, and raccoon. Species including bald eagle, golden eagle, prairie falcon, ferruginous hawks, northern goshawk, kestrel, sharp shinned hawk, Coopers hawk, red-tailed hawk, rough legged hawk, osprey, great horned owl and burrowing owl use the area seasonally or year round. A myriad of song birds, small mammals, and reptiles and amphibians occur on the ranch because of the habitat diversity. Currently, fishing for channel catfish, and to a lesser extent, sauger and walleye is pursued.

The three major habitats with their various components provide a broad array of hunting opportunity. Hunting for mule deer, whitetail deer, prairie grouse, turkey, waterfowl, and doves is currently good.

The opportunity for nonconsumptive uses, particularly hiking and wildlife viewing is presently unlimited. Likewise, the opportunity to use the ranch for educational purposes by resource managers, livestock operators and the local school districts is boundless. These opportunities are not a part of the conservation easement and exist strictly at the landowner's discretion.

III. GOAL

IMPROVE AND CONSERVE THE RIPARIAN, SHRUB GRASSLAND AND PLAINS FOREST HABITATS OF THE BICE/HIRSCH RANCHES FOR PERPETUAL USE BY WILDLIFE AND DOMESTIC LIVESTOCK, TO BENEFIT ALL USER GROUPS WITH EMPHASIS ON AGRICULTURALISTS AND HUNTERS.

OBJECTIVE I IRRIGATED FARMLAND MANAGEMENT

To maintain the acres of irrigated acreage adjacent to the Tongue River. The significance of these lands on the Ranches as a source of food and cover for wildlife is unquestionable. Likewise the significance of these lands for agricultural purposes is unquestionable.

All irrigated fields will be subject to the limitation and restriction that no more than 50% of the land may be planted in crops other than wheat, barley, oats, corn or alfalfa.

Future potential exists to convert presently flood irrigated fields to pivot irrigation. This conversion is encouraged as it will conserve water in the Tongue River, reduce the occurrence of saline seep and dissolved solids entering the River, plus produce idle areas for wildlife use.

The landowner will continue to allow existing levels of wildlife use, particularly by big game. Should levels of use by big game in fact become detrimental, as determined by both FWP and the landowner, the Department will take remedial action. FWP will provide all materials for stackyards to eliminate use of harvested hay by big game.

OBJECTIVE II DRYLAND FARM MANAGEMENT

Maintain current dryland crop acres in small grain production and /or convert dryland crop into pastureland consisting of a mixture of grass species and alfalfa. Maintenance as cropland or conversion to pasture will benefit wildlife species by either providing a source of food or providing nesting, roosting and hiding cover. Cropland converted to pasture will be seeded with either a mixture of several species of either native or introduced grasses and alfalfa. USDA-NRCS input will be sought and guidelines followed in determining seeding mixtures, rates and management. Introduced grass pastures will occasionally require renovation consisting of returning to dryland crop followed by reseeding.

OBJECTIVE III GRAZING MANAGEMENT

Manage the sagebrush grassland, plains forest and riparian vegetation to maintain and improve these plant communities for the benefit of wildlife and livestock. At a minimum, the current year round level of livestock grazing will be maintained. This objective will be met through the establishment of year round rest-rotation grazing. This grazing system is based upon "Principles of Rest Rotation Grazing and Multiple Use Land Management." 1970, by A.L. Hormay, Range Management Specialist USDI-BLM; and "Managing the Range with Livestock." 2000, by J. Egan.

Establishment of this system will increase the vigor and productivity of the riparian, shrub grassland, and plains forest habitats overtime. Levels of livestock grazing sustained by the vegetation provided through this system should also increase.

A. Grazing Procedure and Treatments

FWP will share equally in developing the rest-rotation grazing systems. Grazing treatments will be as follows:

1. Treatment "I" -early grazing-Spring to Seed ripe (approximately August 1)
2. Treatment "II" -late grazing -Seed ripe to November
3. Treatment "III" -winter grazing-November to Spring
4. Treatment "IV" -rest from livestock grazing for the entire year

Seed ripe time will be based upon the phenology of western wheatgrass (Agropyron smithii)

Constraints and Flexibility

- 1) The plan will be reviewed annually by FWP and the landowners (refer to "Management Plan", of the "Deed of Conservation and Access Easement"). Results of the annual review will be made available to BLM and DNRC.
- 2) Modifications to the specific grazing formula and pasture treatments, as a result of emergency circumstances such as fire, flood or earthquake, within a given year must have prior written approval by the Region 7 Wildlife Manager. Terms in the easement document regarding the grazing system take precedence over the Management Plan.
- 3) On all lands within the grazing systems administered by either the BLM or DNRC the following when appropriate will apply:
 - a) All livestock will be moved within 7 days of stated treatment dates. Livestock that have not freely moved will be moved, at which time all gates will be closed between pastures.
 - b) Trailing of livestock through pastures not scheduled for use at the time of trailing, will be completed within a 3 day period.
 - c) Salt, mineral, protein or other supplemental blocks or feeders and artificial rubs will require approval by BLM before placement on public land.

- 4) Changes in herd composition can be made from cow/calf to yearling or visa versa as long as the grazing plan is followed.

B. Evaluation and Monitoring

Vegetation

Vegetation response to rest-rotation grazing may be monitored by the use of vegetation transects, enclosures, and photo plots. The amount and types of monitoring is subject to the availability of funds and personnel.

Transects may be established in areas representative of the three major habitat types. These transects will be evaluated at five year intervals.

Exclosures may be constructed to evaluate vegetation. Transects will be established inside and outside the exclosures. These transects may also be evaluated at five year intervals.

General aspect photo plots will be established, in association with the transects to monitor gross changes in the vegetation community.

Livestock Use

Compliance will be monitored by pasture, annually.

OBJECTIVE IV HUNTING MANAGEMENT

Allow a minimum throughout the hunting season of 650 hunters for 2000 hunters days.

Provide free regulated public access through the entire hunting season for big game and game birds to include: mule deer, whitetail deer, antelope, turkeys, sharptail grouse, sage grouse, gray partridge, pheasants, mourning doves, geese, and ducks. Hunters will be allowed to hunt animals of all age and sex classes as specified by annual hunting regulations. Hunter management will follow procedures developed for "Block Management". The plan will provide for the uniform distribution of hunters in time and place over the ranch to effect good game management practice. The plan will also provide needed flexibility to accommodate a change in the number of hunters, hunter days, and travel to alleviate game damage to native vegetation and crops.

Comment : One individual commented that EA should be more in line with What people are being told. On page 17 of the EA, Objective 4. IV., Hunting Management, allows a minimum of 650 hunters and 2000 Hunter Days. Heard at the hearing that these figures were maximums. Which is going to be actual practice?

Response : *The figures cited are in the Management Plan, which is separate from the Conservation Easement document. The Management Plan is the annually reviewed plan which implements the conservation easement. Adjustments can be made in the Management Plan. The plan does state the above figures as a minimum. As stated further in Objective IV "The plan will provide for the uniform distribution of hunters in time and place over the ranch to effect good game management practice. The plan will also provide the needed flexibility to accommodate change in the number of hunters, hunter days and travel to alleviate game damage to native vegetation and crops." 650 hunters and 2000 hunter days will be accommodated when wildlife populations are present to support that level of harvest and the hunter demand exists.*

Comment Seven individuals commented there is always a problem with trespass hunters and with the number and type of hunters the easement would bring this will get radically worse. Hunter go exactly where they want, interfere with other peoples lands and privacy is lost. Lack of Department manpower and resources to police/patrol the area and address trespass and game complaints/ violations in a timely manner. Cost of signs and time to post every gate cost of patrolling prohibitive to private landowners from trespass. Lack of proper Conservation Easement property identification – causes illegal hunting in many cases- signs should be placed at all gates to easement properties. Can't see any control any boundaries placed on the easement that are already out there. 2000 HD's = killing zone – hunters will jealously look across to Hamilton's and shoot, kill, trespass on our carefully managed game population

Response For the 2001 hunting season FWP has hired additional personnel to assist landowners with patrolling the area, signing of easement/block management properties and managing hunters. Trespass and violation complaints received by the Department will be investigated within 24 hours.

Comment Three individuals commented that hunting pressure will move deer onto adjacent property owners causing damage to hay bottoms & stacks. FWP will aid in fencing hay stacks on Bice and Hirsch but what about neighboring landowners? No mention of offering help to neighbors.

Response: Game damage assistance is available from the Department to any landowner that allows reasonable free access for public hunting.

OBJECTIVE V FISHING AND NONCONSUMPTIVE USE MANAGEMENT

A significant outcome expected from the proposed project is the reduction of conflict between diverse user groups. The results of this planned system of management will identify user conflicts, develop strategies for solution and actuate those solutions on the ground. Consequently, the resources of the Bice/Hirsch Ranches may be available at the landowner's discretion for uses other than hunting.

A. FISHING

Fishing opportunity for several warm water species such as sauger, and channel catfish exists. Fishing pressure is light. Permission to fish is required by the landowner.

B. Wildlife Viewing, Photography and Hiking

Since these nonconsumptive uses are currently infrequent to rare, regulation will be limited to:

1. Obtaining permission for access
2. Requiring motorized travel be restricted to roadways designated for hunter use.

C. Educational

The entire ranch may be used as an educational tool. All use will require landowner approval.

Comment : One individual commented that FWP performance audit #98P-11 states Department does not have system in place for monitoring compliance w/all types of habitat projects/contracts. How can you spend sportsman's dollars and do not have a system of compliance to insure the game will be there for them to hunt.

Response : *The above referenced report (#98P-11) produced in March of 2000 states the Department implemented a system for monitoring conservation easements in 1998. The Report refers to the fact that the Department did not have a system in place for monitoring Upland Game Bird Program contracts, not Habitat Montana projects. The Department now has a system in place for monitoring Upland Game Bird Program contracts. All conservation easements are annually monitored for compliance with easement terms by an independent contractor. When noncompliance is noted the landowner is given a set period of time to rectify noncompliance. If the situation is not rectified, further steps will be taken. Ultimately, the landowner can be taken to court to force compliance.*

Comment: One individual commented that easement property needs a good, well marked fence and Bice does not have legal access to Section 15 how can you justify buying it with out legal access.

Response: *Included in the costs to develop the grazing system is fencing of previously unfenced boundary. The remaining boundary fence is intact and serviceable. Repair and maintenance costs of existing boundary fence are born equally by the adjoining neighbors. Section 15 has been sold by the landowner and is no longer part of the land considered under this easement proposal.*

Comment : One individual commented that the South 1/2 sec 28 is landlocked by property considered in the easement proposal and is not fenced out seperately. Feels Bice/Hirsch & FWP should provide and build a 4 wire boundary fence, well marked and furnish a right of way easement to it to insure no trespass. We also need a legal right of way to the buildings in Section 20. A trade of land of equal value would be considered

Response: *Section 29, to the west of section 28, has been sold and is no longer part of the land considered under this easement proposal. With section 29 being withdrawn, section 28 is no longer landlocked by lands considered in this easement proposal. Bice is currently negotiating with landowner for outright purchase or trade of this 1/2 section for land of equal value and rights of way. Construction, repair and maintenance costs of boundary fence are born equally by the adjoining neighbors.*

ATTACHMENT A

SH Ranch / Bice Ranch
CONSERVATION EASEMENT PROJECT PROPOSAL
REGION 7

Bice Ranch L.L.C.
Don Bice
HC 32 Box 4495
Miles City, MT 59301

Les & Donna Hirsch
HC 32 Box 4311
Miles City, MT 59301

LEVEL III CRITERIA FOR INDIVIDUAL PROJECTS

The project would contribute to statewide and ecoregion land, water, and wildlife conservation and benefit the people of the state of Montana and the local communities in a variety of important ways including:

- 1) Conserving and enhancing land, water, and wildlife on approximately 19,460 acres (30.5 sections) and provide incentives for habitat conservation on private land. Rest rotation grazing, riparian and hunter management systems will be developed to benefit the land, water, wildlife, livestock and the livestock operator. Wildlife conserved by this project include three species of big game, five species of upland birds, geese and waterfowl, four species of raptor, ten species of furbearers and predators, numerous small mammals, passerines, other bird species, reptiles and amphibians.
- 2) Contribute to hunting and fishing opportunities and non-hunting recreation by using a block management type approach for all recreational access. Properties could provide an estimated 1,000 –1,500 hunting recreation days annually (based on similar properties participating in the block management program). Fishing and non-hunting recreation days are difficult to estimate but are potentially substantial. Non-hunting recreation opportunities would include bird watching, photography, hiking, river floating and on-site opportunity to observe an ecological system operating to it's fullest potential.
- 3) Provide incentives for habitat conservation on private land while demonstrating that productive wildlife habitat is compatible with other land uses including agriculture. Vegetation management will include developing a rest rotation grazing system on the entire property; developing water resources; developing a haylands and adjacent idle lands management system to benefit pheasants; developing a feedlot management plan to maintain a viable operation while ameliorating negative impacts to the adjacent riparian and riverine systems and, at the same time, providing a reliable winter food source for wildlife, especially pheasants. Instituting these management practices will be mutually beneficial to the land, water, wildlife and livestock and maintain traditional ranching activities.
- 4) Protect open space and scenic values by enhancing and protecting riparian river habitat and preventing further land subdivision into ranchettes, vacation home sites, and private hunting clubs.
- 5) Maintain local tax base: The private landowners will continue to pay assessed taxes on the properties. The Project has the potential to increase the county tax base (ie more livestock); and the potential to increase the economic return for the landowner (more and heavier livestock) and the county as a whole (more livestock and more hunters).

6) The type of acquisition proposed is a conservation easement. The project will, in perpetuity, protect and improve the condition of three existing habitat types; maintain and enhance a traditional ranching/farming operation; maintain hunting and fishing opportunities; protect open space and scenic values of the Tongue River and adjoining uplands.

7) Over 85% of the property is native range. The majority of which is presently in good condition and expected to improve with the institution of proposed vegetation management strategies for the property.

8) Primary game species and current estimated densities include: Mule deer (5-10 per sq.mi.), antelope (4- 6 per sq.mi.) , sharptail grouse, ringneck pheasant, waterfowl and mourning doves.

Secondary game species include: whitetail deer, sage grouse, turkey, and Hungarian partridge.

Non-game species include: Ferruginous hawk, red-tailed hawk, bald eagle, golden eagle, burrowing owl, great blue heron, vesper sparrow, field sparrow, and Brewer's sparrow, upland sandpiper, woodpeckers, warblers and other passerines, black-tailed prairie dog and numerous small mammals, prairie rattlesnake, painted and snapping turtles.

Furbearers and predators: coyote, red fox, badger, raccoon, skunk, bobcat, mountain lion, beaver, muskrat, mink.

9) Potential population density and time frame for reaching: Anticipate population increases over time until a balance is reached as a result of the grazing, vegetation and hunter management systems that will be put in place. When that balance will be reached and at what level the balance will occur is unknown but it will occur. As a result of these established management systems, the balance will be reached sooner as plant succession is speeded up and physiological needs of the vegetative community are met and protected. The status of the vegetative community dictates the well-being of the wildlife populations that are dependent on the health of the vegetative community. A healthy vegetative community will result in increased sustainable yields of wildlife.

The adjacent location and combination of riparian, shrub grassland and plains forest habitats on this properties make it highly productive wildlife habitat. Currently, the area supports good populations of mule deer and pheasant.. Potential for pheasants in this area is regionally exceeded only by the Lower Yellowstone Valley.

While the increase in harvest is important, the significance of this proposed easement will be the enhancement and maintenance of a harvest as a result of the vegetation and harvest management schemes. This will be the most significant when adverse environmental conditions occur.

10) Current opportunities include deer, antelope, upland bird and waterfowl hunting. Through management, these and the non-hunting recreation could be increased.

Provide species list and population data.

1. Primary game species: Mule deer, antelope, sharptail grouse, ringneck pheasant, waterfowl and mourning doves.
2. Secondary Game Species: Whitetail deer, turkey, and Hungarian partridge.
3. Non-game species include: Ferruginous hawk, red-tailed hawk, bald eagle, golden eagle, burrowing owl, great blue heron, vesper sparrow, field sparrow, and Brewer's sparrow, upland sandpiper, woodpeckers, warblers and other passerines, black-tailed prairie dog and numerous small mammals, prairie rattlesnake, painted and snapping turtles. Furbearers and predators: coyote, red fox, badger, raccoon, skunk, bobcat, mountain lion, beaver, muskrat, mink.
4. Habitat proposed for primary species: year round for sharptail, mule deer, antelope and pheasant. Migratory, nesting and brood rearing habitat for waterfowl and doves.
5. Estimate of (per square mile):

Species	Population Density	Past High Density	Past Low Density
Mule Deer	5-10 ¹	10-15	02-05
Antelope	04-06	06-10	01-03
Sharptail*			
Pheasant#			
Waterfowl**	20-30	20-30	01-02

* Difficult to estimate.

no formal survey conducted but based upon inherent habitat potential population numbers are high

** Listed numbers = nesting pairs of Canada Geese.

Potential population density and time frame for reaching:

Anticipate population increases over time until a balance is reached as a result of the grazing,

vegetation and hunter management systems that will be put in place. When that balance will be reached and at what level the balance will occur is unknown but it will occur. As a result of these established management systems, the balance will be reached sooner as plant succession is speeded up and physiological needs of the vegetative community are met and protected. The status of the vegetative community dictates the well-being of the wildlife populations that are dependent on the health of the vegetative community. A healthy vegetative community will result in increased sustainable yields of wildlife.

The adjacent location and combination of riparian, shrub grassland and plains forest habitats on this properties make it highly productive wildlife habitat. Currently, the area supports good populations of mule deer and pheasant.. Potential for pheasants in this area is regionally exceeded only by the Lower Yellowstone Valley.

Current and potential harvest densities.

Species	Current	Potential as a Result of Management System
Mule Deer	15	>50
Antelope	10	>30
Pheasant	30	>200
Sharptail	50	200
WT Deer	<5	10
Turkeys	<5	10
Waterfowl	25	75

While the increase in harvest is important, the significance of this proposed easement will be the enhancement and maintenance of a harvest as a result of the vegetation and harvest management schemes. This will be the most significant when adverse environmental conditions occur.

Similar estimates for other species:

Responses of other wildlife species will be similar to those cited in "6.d.6." above and for the same reasons.

Is project needed for reaching regional objectives for primary species?

Yes. Reference the 1986 SCORP document and 1993 Harvest Statistics:

	1990 R-7 Target	1993 R-7 Actual Harvest
Mule Deer	31,000	20,358
Antelope	20,000	15,535

ATTACHMENT B



United States
Department of
Agriculture

Natural Resources
Conservation
Service

Miles City F.O.
3120 Valley Drive E.
Miles City, Montana
59301-5500

To: Terry Heck
District Conservationist
NRCS - Miles City, Mt.

Subject: Trip report Don Bice's Feed lot

This is a trip report for the field visit that Gary Clark (Technician) and I made at Don's request to look at a feed lot operation on the date of January 12, 2000. The request was made to address the prevention of water quality problems that may exist. As we drove around the feed lot there was discussion on keeping the upper canal cleaned out and diverting all the upper runoff from entering the feed lot. We discussed possibly re-routing an existing drainage away from entering the feed lot and diverting it directly to the Tongue River. We also discussed diverting all the runoff from within the feed lot to a waste storage pond.

In order to determine the extend of water quality problems a detailed topographic survey is needed to determine the feed lot boundaries, the "clean and dirty" water drainage patterns, and total acreage involved. There will need to be soils investigations to determine feasibility of location for the waste storage pond.

Don stated that he is running 1500 yearlings now and would like to increase to 3000 yearlings. He is also interested in the EQIP to fund any problems that need to be addressed.

A handwritten signature in cursive script that reads "Randy Pierce".

Randy Pierce
NRCS Civil Engineer
Miles City, Mt.

Cc Don Bice
HC 32 Box 4495
Miles City, Mt.

ATTACHMENT C



Custer County Office

1010 Main, Courthouse
Miles City, Montana 59301
Telephone (406) 233-3370
FAX (406) 233-3452
Internet cusextn@mcn.net

August 20, 2001

To Whom It May Concern:

I have been contacted by Don Bice to write this letter discussing the steps that he and his neighbors have taken to control spotted knapweed along the Tongue River. The Custer County Weed District began working on the problem in 1998 with some spraying on the Essex Place, which at that time was severely infested with knapweed. In 1999 this property was owned by the Hensler 95 Trust and leased to Don Bice. With the financial help of a grant from the Tongue River Basin Weed Control Trust Fund serious work began in the area in 1999. A map is included with this letter showing where we have sprayed.

The following table shows the acres treated and the dollars spent by some of the neighbors on knapweed control. All work was performed by the Custer County Weed District. This does not include all knapweed control on these lands. All of the landowners have purchased additional chemical from the county and sprayed knapweed on their own.

	1999	2000	2001
Les Hirsch	\$163.00 1.36 acres	\$365.00 3.72 acres	
Kyle Shaw	\$262.00 4 acres		\$98.00 1.5 acres
Hensler 95 Trust	\$4232 70 acres		
Don Bice		\$4016.00 68 acres	\$1810.00 20 acres

During this time we have found Don Bice and many of his neighbors to be sincerely interested and involved in controlling their spotted knapweed. They have contracted with the weed district each year to help them spray the weeds and with their diligent efforts, we hope the knapweed problem along the Tongue River will continue to shrink in size.

Don has also explored what he needs to do to permit his feedlot. He has attended meetings on the subject and contacted the Natural Resources Conservation Service for assistance

in project design for any necessary earth work.

Please feel free to contact me at 233-3370 if you have any questions.

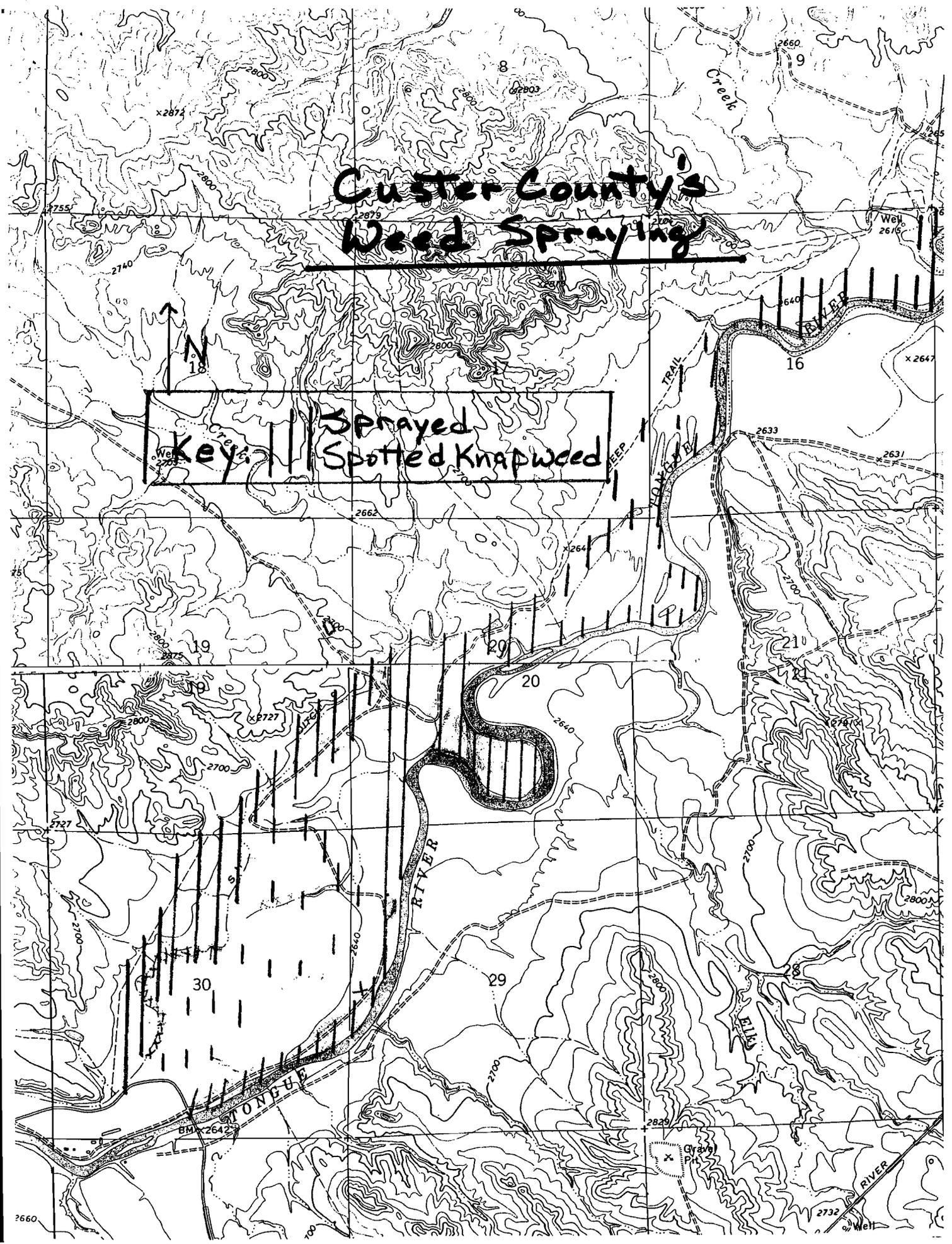
Sincerely,

A handwritten signature in black ink that reads "Kent Williams". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kent Williams
Custer County Agent

Custer County's Weed Spraying

Key: || Sprayed
|| Spotted Knapweed



ATTACHMENT D

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION



JUDY MARTZ
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918

48 NORTH LAST CHANCE GULCH
PO BOX 201601
HELENA, MONTANA 59620-1601

December 21, 2001

Mr. Steve Knapp - Chief
Habitat Bureau- FWP
P.O. Box 200701
Helena, MT 59620

Dear Steve,

I am writing to clarify the Department of Natural Resources and Conservation's (Department) position regarding the SH Canal Agreement (Agreement). The Agreement was executed in January 2000 as part of fisheries mitigation efforts associated with rehabilitation and enlargement of the Tongue River Dam.

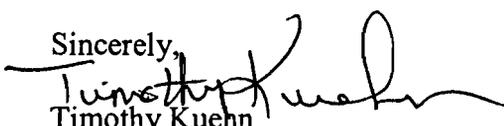
In an attempt to alleviate fish mortality, the Department paid the SH canal users \$115,000 to permanently cease using the direct gravity flow means of diversion. The SH canal users are to modify the headgate so that it is no longer operable and backfill the canal area immediately behind the headgate. These measures are to be concluded by December 31, 2002.

The Agreement does not preclude the canal users from utilizing a different method of diversion and/or continued use of the remaining part of canal.

The Department expects the SH canal users to comply with section 5, Owners Obligations, of the Agreement. A site visit will be conducted by Department staff in January, 2003 to ensure the terms of the Agreement are met.

If you have any further questions, please feel free to call me at 444-6655.

Sincerely,


Timothy Kuehn

Project Management Specialist

c: Don Hyypa
John Ensign
Martha Williams
Darlene Edge
Anne Yates

ATTACHMENT E

RECEIVED

DEC 26 2001

FISH, WILDLIFE & PARKS
DIRECTOR'S OFFICE

HC 32 Box 4495
Miles City, MT 59301
December 20, 2001

M. Jeff Hagener, Director
Montana Fish, Wildlife & Parks
1420 East 6th Ave
Helena, MT 59620

Dear Mr. Hagener:

My name is Don Bice. Currently I am in the process of consummating a Conservation Easement with Fish, Wildlife & Parks on my property on the Tongue River south of Miles City. Questions have arisen in relation to irrigated land on the property and whether it will continue to be irrigated or not. I am providing this letter in hopes of clarifying this issue.

Currently, I irrigate out of the Tongue River from the SH diversion. An agreement I signed in 1999 with Montana Department of Natural Resources and Conservation requires that by December 31, 2002 I cease to divert directly by gravity flows through the SH diversion; I make the headgate inoperable and construct a cofferdam on the downstream side of the headgate to prevent water from entering the canal by December 31, 2002. I fully intend to comply with this agreement. I can still use the canal downstream from the diversion, in fact I own the canal.

In the course of public hearings on the Easement questions arose as to how I would continue to irrigate land with the SH diversion being closed. Individuals further stated that if the land cannot be irrigated then Fish, Wildlife & Parks would be paying for an easement based on irrigated land value that is only worth rangeland value. I fully intend to continue irrigating.

For the 2002 season I will continue to irrigate as I have from the SH diversion. In the fall of 2002 I will make the headgate inoperable and build the cofferdam. I have made application to DNRC for a total of 8 points of diversion along the Tongue River from which I will pump, see the attached topographic map. For the 2003 season I will pump from pump site #7 into the canal and continue to flood irrigate. Over the course of the next several years my intent is to convert from flood irrigation to center pivot and wheel line, using the 8 points of diversion and moveable pumps. Total conversion to pivot and wheel line will take several years during which I will employ a combination of flood, center pivot and wheel line irrigation.

The attached aerial photo map shows the planned pivot and wheel line locations. The pivot and wheel lines highlighted in pink are already in place.

Hopefully this letter clears up any misconception and innuendo as to my intents.

Thank you for your time and consideration of this matter.

Sincerely,
Donald Bice
for Bice Ranch LLC
Don Bice for Bice Ranch L.L.C.

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ATTACHMENT F

**Report for Montana Department
of Fish, Wildlife and Parks**

**BREWER PROPERTY ACQUISITION
SOCIAL AND ECONOMIC IMPACT ASSESSMENT**

**John Duffield
June 1989**

MAJOR FINDINGS

- **No unfavorable changes in taxable valuation or tax revenues to local county governments**
- **Annual expenditures resulting from DFWP plan estimated at \$223,000 versus \$40,000 for no purchase alternative**
- **Total annual economic impact on the state of Montana is \$527,500 for the DFWP plan and \$99,000 for the no purchase alternative**
- **Present value of net social benefits associated with the DFWP plan are estimated at \$2.3 to \$3.2 million compared to the DFWP cost of \$1.2 million**
- **Proposed purchase by DFWP appears to be in the public interest**

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EXECUTIVE SUMMARY

The Montana Department of Fish, Wildlife and Parks (DFWP) has proposed to purchase the 34,342 acre Brewer Ranch near Broadus for purposes of protecting and enhancing wildlife habitat. DFWP intends to place a conservation easement on this property to ensure protection of the sagebrush-grassland habitat and to provide open access to hunters. The easement encumbered property will be traded back into private ownership for conservation easements on adjoining property. The likely final project size will be on the order of 90,000 acres. This report provides a social and economic impact assessment of the purchase as required by HB 720 (1989 Montana State Legislature).

On financial grounds and from the viewpoint of DFWP, the cost of the proposed Brewer property purchase is around \$1.2 million. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation. During the interim period of DFWP ownership, the Montana code (sec.87-1-603) is unambiguous as to DFWP's obligation to make payments to counties in lieu of taxes.

The likely alternative to the DFWP plan is sale of the Brewer ranch on the open market to a private party. It is conceivable that a new owner-operator of the Brewer property would purchase haying equipment subject to county tax. However, this possibility holds equally for an owner-operator who gains control of the property through an exchange for conservation easements. The dominant use of the ranch will continue to be as a livestock operation; this use is unchanged across management alternatives.

Except for the open access provision, all of the key terms in the conservation easement are oriented to protect habitat: no sodbusting, limit sagebrush control, no commercial development, institution of a rest rotation grazing system and range monitoring. With regard to habitat protection, the difference between the DFWP plan and the no purchase alternative (except for rest rotation) is one of degree. The easement protects the habitat with virtual certainty for perpetuity. The alternative of no purchase entails a possibility of habitat degradation: sod-busting, sagebrush control, and possibly overgrazing. The likelihood and extent of this degradation is difficult to quantify. A major clear difference in the two alternatives with regard to habitat protection has to do with the rest-rotation system. It appears that this should be regarded as a promising experiment as far as presently quantifiable differences for this specific habitat and species mix.

There are no obvious direct use changes associated with preservation of the wildlife habitat per se, though the implications for indirect benefits are significant, as developed below. The main immediate difference between the DFWP plan and the no purchase alternative has to do with the management of hunting on the land. Following the Widdoss appraisal of the highest and best use of the land, it is assumed that "no purchase" by DFWP will lead to fee hunting on the property. This seems reasonable since land currently leased for hunting adjoins the Brewer property.

Annual hunter expenditures associated with the DFWP plan amount to \$223,000 compared to \$40,000 for the no purchase alternative (Table A). The majority of these expenditures for both alternatives are by nonresidents, amounting to \$211,000 per year and \$39,600 per year respectively. The total economic impact on the State of Montana is \$527,500 for the DFWP plan and \$99,000 under the no purchase alternative. The significantly higher expenditures (and associated economic impacts) for the DFWP plan are somewhat surprising and are explained by two factors. The first is that current use on the Brewer property, which appears to be typical of block management in Region 7, is at a fairly high hunter density of 3.78 hunters per square mile over the big game season. This is almost four times as high as the historic average density (deer and antelope hunters combined) for Region 7 (Table B). By contrast, guided hunting (particularly for exceptional trophy animals) is very land intensive; the largest outfitter in the Broadus area averages .128 guided hunters per square mile. This is about one eighth the regional average and about 25 times as low a density as on block management units. A total of 203 hunters used the Brewer property under the 1988 block management program. At a guided hunter density of .15, this 53 square mile ranch would support 8 guided hunters. In short, the expenditure difference in part reflects the very differing number of hunters under a hunting lease arrangement compared to block management.