

June 4th, 2023

To: Montana Legislative Audit Committee  
Montana State Legislature  
Helena, MT

RECEIVED

June 8, 2023

LEGISLATIVE AUDIT DIV.

From: Tim Griffiths  
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RE: Focus Performance Audit, Analyzing Bonus Point Accuracy- Public Comments

Montana Legislative Committee members,

Thank you for the opportunity to provide you with comments today. I am submitting these on behalf of myself as a concerned resident of more than 2 decades and an avid Montana sportsman. I care deeply about Montana's natural resources, our wildlife and our ability to pursue our outdoor hunting heritage. I am highly concerned about the current affairs at FWP licensing and feel that we have reached a point where the Agency has demonstrated an inability to perform important functions relating to fair and equitable distribution of publicly owned resources. Elevating to our elected leaders now in hopes that you can bring oversight and develop a suitable path forward.

To put in succinctly, hunting in Montana is a big deal. Twenty one percent of our residents hunt, a statistic that places us #3 in the nation for a State with the most registered hunters. Montana is also a top tier destination for nonresidents and hunting related activities are a primary driver of Montana's local economies. The demand for available hunting permits far outstrips supply making them a highly coveted limited commodity. We entrust the Montana Fish, Wildlife and Parks (FWP) with the important responsibility of distributing these limited permits in a fair and equitable manner to public applicants.

Because of the limited nature of the permits, many are extremely valuable. For example, a single chance to hunt the famed bighorn sheep of the Missouri breaks typically fetches several hundred thousand dollars at auction, even having sold as high as \$440,000. But for most of us, buying one of these permits is not a possibility and we instead rely on the public draw conducted annually by the FWP as our primary means to secure a permit. In this pursuit we are extremely passionate, highly dedicated and careful study of the rules and regulations, and we invest copious amounts of time and money developing and implementing well thought out

draw strategies each year. Each spring, we anxiously await the draw results, perhaps more so than we do results during a Presidential election. Like I said, hunting in Montana is a Big Deal.

And just like an election, this system of distributing limited hunting permits requires the public's complete trust. Above all else, we must have rock solid faith that the system is fair and equitable and that the Agency in charge exudes integrity. This is the context under which the Montana Legislature has conducted a focused performance audit of the FWP's use of bonus points and the subject of today's hearing.

The top line audit conclusion states that, " FWP accurately calculates and consistently applies bonus points as required by rule and law." Although that technically may be true for the limited scope of this audit, that conclusion is not reflective of the way FWP has actually used bonus points in recent draws and that there are systemic issues at FWP that must be addressed to restore public trust and confidence. I've reached out repeatedly to FWP in an attempt to help highlight the problems and seek solutions, each time receiving more misinformation and experiencing continued inaction. Outlined below are several examples to illustrate my concerns. The observations I've experienced are likely not unique and I suspect that an extensive audit of the topic is likely to uncover even broader issues.

### **What happened?**

In 2023, Montana FWP conducted the drawings for special deer, elk, bighorn sheep, mountain goat and moose limited entry permits in a manner that was different than is advertised in the published regulations and different that they explained in online tutorials.

- The [2023 Montana Deer/Elk/Antelope regulations](#) (page 17) and the [2023 Moose/Goat/Sheep regulations](#) (page 11) both detail the process for awarding and using bonus points. The regulations, the official rules hunters must abide by, clearly spell out that bonus points are only awarded after an applicant is unsuccessful in their first-choice draw and are available to use the following year.
- FWP's online tutorials for both [residents](#) and [non residents](#) explain to the public in video format the details associated with their draw process and how bonus points will be applied/used in the drawing. See yourself at 22:00 of the Montana resident video their explicit explanation of how bonus points are used to gain additional advantage in the draws. Note their description in these videos matches exactly the way it is detailed in

the regulations and is consistent with the way FWP has conducted these draws in the past.

- Although both FWP's regulations and tutorials clearly show that bonus points purchased in one year are only available for use in the following year upon unsuccessful draw, FWP quietly conducted the 2023 draw using current year points.
- Clear evidence of this can be found by analyzing their [detailed draw statistics](#) published online.
  - First, look at the permit bonus point drawing statistics reports through time for any of the mentioned species. Notice that each year there are 3 groups of applicants. The first is a pool of people with 0 points, folks that opted to participate in the bonus point system and had no existing points. A second contains people that opted to participate in the system and had varying amounts of existing points going into the draw and the last includes people that opted not to pay the extra fee and did not participate in the bonus point system.
  - The draw reports display all three applicant pools alongside their corresponding point totals. Note that the max point pool grows each year by a total of 1. Logical given that all participants that are unsuccessful in the draw are awarded 1 bonus point to be used the following year. This pattern continues all the way through 2022 without exception for all deer, elk, moose, sheep and mountain goat draws.
  - Second, notice the change in 2023, something different happened in this year's draw. The 0 point pool of people participating in the bonus point system was eliminated and the max pool this time jumps by 2, instead of 1. For example, applicants for deer and elk should have only been able to have 20 bonus points going into the 2023 draw but you will see they now have 21.
  - This outcome is the result of FWP silently changing the drawing process in 2023. In direct contrast to the method stated in their regulations and contained in the online tutorials, this year FWP granted use of bonus points purchased in 2023 to gain additional advantage in the 2023 draw. The only way the public would know they did this is to carefully analyze their detailed draw results and notice the change.

## Why does this matter?

First off, it is simply unconscionable for a public agency to advertise one way they will conduct official business yet go on to implement another. This action is not only outright unfair to all the applicants, it also creates illegitimate results and completely undermines public faith in the system and Agency in charge. Can you imagine the public outrage if this situation were applied to an election? Secondly, it's problematic when the change negatively impacts people and even more so when it disproportionately impacts a select group of people. In this case, those that chose not to pay FWP extra fees for bonus point participation were significantly put at a disadvantage.

- The purpose of bonus points is to give participating applicants increased chances of being successful in the drawings for limited entry permits. The amount of additional chances an applicant has is dependent on the number of bonus points held and a formula dictated by law (MCA-87-2-117). The number of chances in the drawing is based on the formula  $1+(\text{bonus points})^2$ .
- Because of the way bonus points are squared, the net result of the change FWP implemented had significant impacts to applicants as 'extra chances' were awarded disproportionately. For example, take an applicant that had 3 bonus points going into the 2023 draw. They should have been awarded 10 chances in the drawing ( $1+(3 \times 3)$ ), instead they were given 17 or 7 bonus chances ( $1+4 \times 4$ ). Compare that to an applicant that had 20 points going in the draw. This person should have had 401 chances ( $1+(20 \times 20)$ ) but were instead given 442, or 41 additional chances ( $1+21 \times 21$ ). The advantage given to this applicant is almost 6X higher than that given to the previous person and 41X higher than given to those who chose not to pay FWP the extra fee for participation as they were not given any additional chances and entered the drawing with a single ticket.
- To illustrate this point, here is an actual example for a highly coveted elk youth hunt for 282-10 from the detailed drawing report. This year there were 174 people that applied for this unit as a first choice. 62 (1pt), 27(2pt), 37(3pt), 14(4pt), 10(5pt), 3(6pt), 4(7pt) and 10 who chose not to participate in the bonus point system. If the extra bonus point was not given prior to the draw, there should have only been 847 total tickets in the drawing. However, since FWP changed the method and gave bonus point participants an extra point, there was actually 1,439 total tickets that went into the drawing for a single tag. The 10 kids that didn't opt to participate in the bonus points were entered into the drawing with a single point, only now there odds of drawing were reduced by

nearly half, going from a 1:847 chance to a 1:1,439 chance. The same pattern holds true to varying degrees for all point holders, with the lone exception of the highest point holders who were the primary beneficiary of the change.

- Given the impacts the change in draw methods had, I suspect that many people would have likely changed their applications or made different decisions on whether or not to participate in the bonus point system had they known in advance.

### **What does FWP have to say about this?**

I have reached out to FWP repeatedly to alert them of this problem and to suggest steps they could take to avoid the potential impacts. Each time they have responded with additional misinformation and continually downplay their missteps, unwilling to ever admit any negative impacts to applicants or take corrective action. **Most concerning to me is their propensity to continually and knowingly distribute misinformation to the public without pause.**

- On April 6<sup>th</sup>, 2023 I called Helena licensing division and alerted their staff that an 'extra' bonus point was showing up on my deer and elk application receipts. I was told that there was a change this year and they decided to show 'proof of point purchase' on the receipts, but was then assured that the extra point would not be used in this year's drawing.
- After the deer/elk draw was conducted I viewed the detailed draw odds and noticed that the information provided to me by FWP was not correct and that they indeed used the 'extra point' in the deer/elk draw. I reached back out on April 27<sup>th</sup> and ended up having direct communications with Joy Ross, Acting Licensing Bureau Chief on the 28<sup>th</sup>. Although she admitted to conducting the draw this year in a manner that was different than was spelled out in the regulations and tutorials, she insisted the change did not negatively impact applicants. She further stated that FWP would not be taking any corrective action to either remedy the situation for the already impacted deer/elk applicants nor would they be willing to notify the public of this change and grant applicants an opportunity to make changes to the still not yet completed moose/goat/sheep draw. She simply said 'sorry' and assured me that they would issue regulations in 2024 that contained accurate information on how they would conduct future draws.

- Billings Gazette reporter Brett French subsequently reached out to FWP for official comments related to this matter. In a completely ironic exchange, FWP official spokesperson Greg Lemon responded to the allegations that FWP was spreading misinformation, with a statement that contained yet even more misinformation. He told the reporter that FWP had conducted deer and elk special drawings using bonus points purchased in the same year beginning in 2022. A statement that highly confused the resulting article and further muddied the understanding of the situation for the public. However this statement is easily refuted by again looking at their own draw reports that clearly show the change was made in 2023. If they had done as suggested by Mr Lemon, the elimination of the 0 point pool would have occurred in 2022 results, and the max point pool for 2023 would have increased by 1 instead of 2.
- Interestingly, and as an aside, in preparing these comments I did notice that FWP has quietly removed their online tutorials from their website. Previously these highly popular resources were prominently displayed on the Buy and Apply page and had been viewed more than 18,500 times.

Thank you once again for the opportunity to submit comments and please let me know if you have any questions or need additional information.

Sincerely,

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