

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of) NOTICE OF ADOPTION AND
ARM 12.9.901 and 12.9.908 and the) REPEAL
repeal of ARM 12.9.902, 12.9.905,)
and 12.9.911 pertaining to contractual)
elk hunting access agreements)

TO: All Concerned Persons

1. On November 3, 2023, the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-618 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rule at page 1449 of the Montana Administrative Register, Issue Number 21.

2. On December 1, 2023, a public hearing was held on the proposed amendment and repeal of the above-stated rule, via Zoom. FWP and the commission received both written and oral testimony comments by December 4, 2023.

3. FWP and the commission have repealed ARM 12.9.902, 12.9.905, and 12.9.911 as proposed, and adopted ARM 12.9.901 and 12.9.908 as proposed in the adoption notice.

4. FWP and the commission have thoroughly considered the comments and testimony received. A summary of the comments received, and FWP's and the commission's responses are as follows:

COMMENT 1: One commenter requested that FWP further define "full-time employee" and provide definitions for "occupied elk habitat" and "successful public hunting."

RESPONSE 1: FWP and the commission do not agree that this change is needed. House Bill 596 already provides a definition for an "employee." There it states that an "[e]mployee" means a person who works full time for the landowner as part of an active farm or ranch operation enrolled in the program. Moreover, although House Bill 596 does not provide definitions for "occupied elk habitat" and/or "successful public hunting," FWP and the commission find that defining those terms will act as an impediment rather than a benefit to the elk hunting access program. Determining whether a proposed property has elk presence and will allow public hunter opportunity is a multi-faceted approach that considers a multitude of variables. Those variables include the landscape of the proposed property, the elk's access to food or ability to forage, neighboring landowner pressure/acceptance, etc. If FWP and the commission were to define those terms, FWP staff would lose that much-

needed flexibility, and many proposed properties would be disqualified based on failing to meet the stated criteria.

COMMENT 2: One commenter requested that FWP modify some of the reporting statistics used for the annual program status report that is then provided to the Commission.

RESPONSE 2: Although outside the scope of the proposed rules, FWP will examine how best to improve annual reporting of the successes of the program to include other statistics that may be gathered for the program.

COMMENT 3: A few commenters suggested that ARM 12.9.905 and 12.9.911, or portions thereof, should remain in administrative rule.

RESPONSE 3: FWP and the commission disagree. ARM 12.9.905 addresses the contractual public elk hunting access agreements. The language included in ARM 12.9.905 will be included in the elk hunting access agreement application, as well as the contractual agreement, thus, contractually binding the landowner to those terms. Any concern that FWP loses its enforcement capabilities is unwarranted. Moreover, ARM 12.9.911 identifies FWP's process for selecting permit holders. There is no enforcement component required for this ARM, and the language is better suited in a program operating procedure document.

COMMENT 4: One commenter requested more time to review rule changes.

RESPONSE 4: This comment does not require acceptance or rejection by FWP or the commission. The proposed changes followed the Montana Administrative Procedures Act and were presented to commission in compliance with Montana's open meeting laws.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Montana Fish, Wildlife and Parks

Certified to the Secretary of State _____, 2024.