MINUTES
Montana Fish, Wildlife & Parks UGBEPAC Meeting
Hampton Inn
Helena, MT

October 5 – 6, 2010 (Meeting 8)

Advisory Council members present: Representative Julie French, Jay Gore, Mike Jensen, Bernie Hart, Gordon Haugen, Bill Howell, Joe Perry, Craig Roberts, Senator Jim Shockley, and Dale Tribby.

Other staff present: Kurt Alt, Diane Boyd, John Ensign, Drew Henry, Jeff Herbert, Debbie Hohler, Quentin Kujala, Bob Lane, Ken McDonald, Ray Mulè, Rick Northrup, Brad Schmitz, Mark Sullivan, Graham Taylor, Mike Thompson, and Jim Williams.

Guests: Ed Smith

Tuesday, October 5.

1. **Opening.** Representative French called the meeting to order at 8:00 am. The first order of business was to allow Ed Smith (Dagmar) all the time he needed to address the Council. Representative French emphasized that the Council may respond to Ed after he completes his remarks and requested that all speakers will speak without any interruption.

2. **Highlights/Summary of Ed Smith's talk:**
   - Ed read several letters he wrote to various people, including: Rep. French, Director Maurier, Drew Henry, Debbie Hohler, and Governor Schweitzer. Ed also read his letters that documented his perspective on 2010 feeding, winter conditions, and numbers of pheasants released in 2010. Ed stated he would like an investigation on the evaluation of release sites, stating that he wondered if FWP was following the intent of the law addressing "suitable habitat."
   - Ed recited all statutes that pertain to the UGBEP and HB 499.
   - Ed reviewed the expenditures of the 2008-2009 legislative report and past expenditure reports.
   - Ed discussed his views on the recent Coffee Creek conservation easement acquisition; he does not support this purchase.

- Ed reviewed the statute on council development and emphasized that FWP must provide administrative support to the Council.
- Ed read several from federal laws regarding public comments to councils, for example: public hearings and public's right to know.
- Ed emphasized the importance of hunter numbers and the dollars they bring to the northeast communities. He discussed revenue generated in Sheridan County and referred to the data he collected on bird releases in South Dakota.
- Ed thanked the Council for allowing him to speak and also thanked them for their efforts. Ed concluded his talk at 9:25 am.

3. **Council's response to Ed Smith.**
   a) **Rep. Julie French:**
      - The Council is familiar with all rules and refers to them continually, acknowledging that the rules must always be carried out in practice.
      - The responsibility of the Council is <u>not</u> to be "law-keepers" on issues that have occurred in the past. The Council does have the responsibility to ensure that what happened in the past, does not continue forward.
      - Rep. French takes offense that the work of the Council has been referred to as a "merry-go-round." The Council has spent many long hours developing recommendations and has also visited various parts of the state to ensure the public had the opportunity to be engaged with the Council. Public hearings have occurred in 5 areas of the state. The Council meetings have been open to the public from Day 1.
      - The Council does not have the responsibility to resolve past issues. The role of the Council is to address a strategic plan that will address those issues.
      - Rep. French acknowledged that the Council is familiar with the revenue sheet that Ed described to the Council.
      - On behalf of the Council, there is no movement to remove any part of the UGBEP pheasant stocking or feeding program. If an individual member of the Council feels differently, it is their right to speak to their representative about their thoughts on this issue. Rep. French acknowledged that there are some members of this Council who do not support pheasant releasing and/or feeding; however there is no movement to remove these components from statute.
      - Rep. French thanked the Council for their patience and opened up the floor to the Council for any questions or comments.

b) Joe Perry:

- Joe assured Ed that each member of the Council is passionate and committed to attending the UGBEP Council meetings – these actions should not be underestimated.
- Rep. French has done an exemplary job as Chairwoman. Both Rep. French and Mike Jensen have represented northeast Montana and its needs with regard to the UGBEP admirably.
- Council clearly understands the statute and the Council's role.
- Although Council members are passionate, at times Council members can disagree. The strategic plan will reflect compromise.
- Joe advised Ed to let the Council develop this plan to the best of their ability, allowing it to evolve with sportsmen's values and conditions.

c) Craig Roberts:

- Craig is very disappointed that Ed is accusing him of violating contracts. Craig entered into contracts in good faith. This is not the forum to defend his contracts. Craig offered to meet with Ed personally to discuss these contracts. In particular, Craig is willing to discuss the value of these contracts; what has been done to comply with contracts; and what has been accomplished with the UGBEP funds.

d) Jay Gore:

- Council has worked diligently on developing recommendations to the strategic plan. Jay has been a fierce proponent of developing critical winter habitat to improve UGB habitat across the state. Jay acknowledged that he has also pushed to have greater expenditures to address this habitat need through program dollars.
- Jay appreciates Ed's continued interest in the program and stated that with the new biologists on the ground, there will improved measures to get key habitat on the ground.

e) Bill Howell:

- Bill recognized Ed's legislative efforts back in 1987 and reiterated other members' statements regarding Rep. French's and Mike Jensen's accomplishments representing the needs of northeast Montana. The Council's general agreement is to keep pheasant releases and

supplemental feeding in statute in order to help northeast Montana's economy.

f) Mike Jensen:

- Mike feels that it boils down to statute and rule violations – these apply to all sides. For example, projects need to be at least 100 acres. Some projects have been conducted on less than 100 acres, but the actual "Area of Influence" is usually 100 acres or more. Mike stated that Ed is looking at the "letter of the law" whereas some interpretation can be made to the "spirit of the law." Mike feels that these different interpretations have been the issue.

g) Dale Tribby:

- Dale reiterated that the Council is not here to right the past wrongs. The Council is here to improve program implementation paying heed to what has been reflected in the audit and issues brought up by Rep. French and Mike Jensen.
- Dale likes some of the recommendations that have come forth – in particular the recommendations for reporting and monitoring to increase accountability and creditability. It's a step in the right direction.
- Many council members question the validity of pheasant releases, but the Council recognize the economic importance of bird hunting in the northeast.
- Dale takes issue on Ed's presentation on lost pheasant numbers and lost revenue to Smith Farms as a result of less money coming in through the Block Management program. Dale was on the committee to formulate the Block Management program and emphasized that the Block Management program was not meant to be an income-generation process. It's meant to compensate landowners for "losses"- such as putting in parking areas, signing hunters up, and to offset other losses.

h) Bernie Hart

- Regarding public participation and Council meetings: there was a great turn-out in Plentywood, but not a single person showed up in Billings despite news announcements and advertizing. Bernie wanted

Ed to be aware that the Council meetings are always are open to public, but some areas reflect some apathy towards the program.

i) Gordon Haugen:

- Gordon fully supports what Jay Gore said about critical winter habitat. Gordon pointed out that this is key to get the program off the ground. It's important to recognize that farming practices have changed, from small farms to large farms, smaller fields with a lot of edge to larger farms with huge fields.
- Regarding Ed's comment on South Dakota pheasant releases. South Dakota does not stock pheasants. Rather, stocking occur on large commercial shooting preserves – much like hunting on a "chicken farm." Alberta, Canada did have a game bird farm where they stock birds a head of the gun.

j) Jay Gore:

- Jay followed Gordon's comment with additional insight and experience to changes in farming practices.

Representative French asked FWP if they had any responses.

k) Debbie Hohler:

- Debbie thanked Ed for making the long journey to Helena and will get him his information to him. Debbie stated she will continue to work with Ed on his requests regarding program information.

l) Ken McDonald:

- Ken offered a point of clarification: There have been some comments where FWP should have legal counsel at every member. While legal counsel was not present at every meeting, FWP would meet with legal counsel after meetings to review items requiring legal review to ensure FWP is moving forward in the right direction. For example, the Legal Unit, Sen. Shockley, and Mike Begley have been involved in contract revision.

m) Bob Lane:

- Bob stated he has had every opportunity to be involved with the strategic plan development when legal review has been required. Bob

is very satisfied with the Council's work, the process, and FWP. Bob expressed his approval with legal compliance and is impressed by the bulk of the work. Bob expressed great admiration for the Council's work, which has been key.

Representative French asked Ed Smith if he has any follow-up response.

n) **Ed Smith:**
- Ed appreciated and complimented the Council members for the work they have done but hoped that they will take his comments into consideration when the Council comes up with the final recommendations.
- Anytime public funds are spent, the agency must be accountable to the public.
- Notification of Council meetings: Ed said that the people he talked to didn't know anything about the meeting or didn't know what the meeting was about.
- Ed acknowledged that the work of the Council is advisory in nature.
- Ed pointed out that the law in HB 499 should use the word "shall" or "must" in the law, not use the word "may." Ed feels that FWP cannot be held accountable if the word "may" is used in the law.
- Ed stated that he has had perfect, good work from the local staff. The problem is with the bureaucracy in Helena.

o) **Bob Lane:**
- Bob replied to Ed Smith that yes, there has to be accountability to the law. Sometimes the law gives general direction to the agency and at times, the law gives direction for ARM development to administer the program.
- The strategic plan will make the program follows the law with reasonable interpretation. Laws sometimes don't have every detail.

p) **Ed Smith:**
- Ed responded that he wonders if he needs to go to court to get interpretation of the law – for example, with regards to Memoranda of Understanding (MOU).

Representative French asked Ed if he would write down everything that he wants FWP to address and formally mail it to FWP in 1 letter. Ed and his legal representative, Rep. French, Director Maurier, and FWP legal counsel will sit down to address these issues. Representative French asked Ed Smith if he was willing to do this and work on these issues. Ed Smith responded that he can't answer that question and that he needs to check on some things and to get legal advice. Ed wants his "eight questions" answered first. Rep. French asked Ed if he was willing to meet with FWP "face-to-face" to get answers to his questions. Rep. French offered to drive Ed Smith to Helena for the meeting. Ed will check with his legal counsel first before he offers an answer. Ed will let Rep. French know. Ed was given a copy of the draft strategic plan. Rep. French asked Debbie to compile a summary of the news releases, including date and the paper that published them.

This discussion with Ed Smith, the Council, and FWP began at 8:05 and concluded at 10:15 am.

Joe Perry brought up some problems with payments to pheasant raisers in his area. This will be brought up and discussed in that particular section of the strategic plan.

4. **Comments from Director Joe Maurier.** Joe thanked the Council for their efforts on recommendations to FWP for the UGBEP strategic plan and highlighted the next steps.

5. **Acceptance of May minutes:** Motion to approve. Bill Howell moves, Gordon Haugen seconds. Motion carries.

6. **Acceptance of July minutes:** Jay Gore moves to approve, Mike Jensen seconds. Motion carries.
   - Gordon Haugen wants the record to show that the lessee on the DNRC/Havre project has pulled out of the project.

7. **Staff presentation: Tracking projects – the UGBEP database.** (*Hohler*)
   - Debbie gave an overview of the UGBEP database. The Council viewed screenshots from the database while Debbie demonstrated how to add new contracts and the current processes for managing pheasant release contracts, habitat contracts, and amendments. Various utilities of the

database were reviewed, such as making payments, querying information, viewing project or contract payments to date, and organizing information to be exported to the annual access guide. Debbie informed the Council that review of the database and hardcopy files is at an approximate 15% completion level. Debbie explained how the accuracy checks are conducted and verified between the database and Helena files.

- Debbie provided clarification to Ed Smith's charge that the 2009 Legislative Audit documented 80% of the UGBEP contracts are incomplete. For the record, the 2009 Legislative Audit documented that 80% of Landowner Cost-Share fields located in the UGBEP database were incomplete (see 2009 Legislative Audit, page 20, Table 7). For contracts signed prior to the current (2001) ARM rules, the 1989 ARM Rules allowed FWP to pay up to 100% of the cost of a project (i.e., materials, labor, etc.). Therefore, these fields will be blank. Debbie pointed out to the Council that a note addressing this fact is added to the narrative field in the database for contracts signed prior to 2001 ARM rules. Furthermore, when contracts do reflect landowner/cooperator cost-share, and this information is added to the database during the accuracy check. Debbie concluded by stating that the accuracy check is still an ongoing priority.

8. **Review of Regional Strategic Plans:**
Rep. French asked the Regional Managers to introduce themselves. Council members were asked to write down questions during the managers' presentations so that they may be asked afterwards. The state-wide strategic plan will be reviewed tomorrow; the focus now is on the regional plans:

<u>Region 1 – Jim Williams</u>
Jim gave an overview of UGB harvest statistics. Most of Region 1 is forested, and Jim stated that research is needed to understand forest management as it relates to UGB. Most UGBHEP funds are spent at Ninepipe WMA, a popular area for UGB hunters. Ninepipe is intensively farmed for UGB. Pheasants and Hungarian partridge are the predominate UGB species. Region 1 doesn't use a lot of UGBEP funds because there is an active Pheasants Forever chapter and North American Wetlands Conservation Act (NAWCA) grant dollars are used. Ninepipe is jointly managed by USFWS, Confederated Salish-Kootenai Tribes, and FWP. Brood strips and food plots are the habitat projects conducted on Ninepipe WMA. Council discussion followed.

- Jay Gore asked if there are opportunities to use UGBEP dollars to expand food plots outside of Ninepipes? Jim answered "Yes." Jay also asked if there were any opportunities to release sharptails in Region 1. Jim feel there are some, but the better opportunity is in Region 2 in the upper Blackfoot. Jay requested that the Region 1 plan addresses these issues.
- Dale Tribby offered that the regional plan elaborate on why no UGBEP dollars are used on mountain grouse. Jim is hesitant to spend money without sound research detailing management options for mountain grouse. At this time, there are no plans to do research on mountain grouse and forest management. Rep. French stated if research is a need, this should be reflected in the regional plan.
- Gordon Haugen pointed out that most of the UGBEP funds were spent on public land. Jim responded that there is not a lot of private land within core UGB areas.
- Rep. French noticed that R1 mentioned equipment purchases will help implement the UGBEP program. According to statute, any equipment purchased with UGBEP dollars belongs to FWP. Equipment has been purchased for use throughout the state since the infancy of the program – FWP is reviewing the status and condition of the equipment given their intensive use.
- Gordon asked what quantifiable objectives Region 1 has for UGBEP. Jim is working with Steve Knapp to develop a management plan. These objectives will be identified in this plan.
- Dale added that this plan should be descriptive, not prescriptive. Dale points out that if plans are too prescriptive, opportunities may be lost – for example with NRCS – and may tie the hands of the biologists. Gordon feels there still may be objectives in the plans, such as 5 shelterbelts per year. FWP may report that the objective was not met because UGBEP took advantage of funding elsewhere, creating different opportunities. John Ensign pointed out that the UGB Biologists do have project goals written in their work plans. Ken McDonald also pointed out that the Council's continued presence can review project activities and gains semi-annually. Rep. French stated that work plans can provide a basis for quantifiable objectives; Jay suggested that a comment be added in the regional plans that reflects this need.

Rep. French left to meet with the code commissioner; Joe Perry will chair the meeting.

Region 2 – Mike Thompson

Region 2 focuses on mountain grouse – predominate land cover is forest/mountain and mostly rangeland, not agricultural land. A lot of public access has been lost to what has been traditionally turkey and pheasant habitat. Turkeys have become somewhat of a "pest."

Region 2 works with the Forest Service to hang on to Doug fir to recruit winter habitat. There are relatively low densities of ruffed grouse scattered throughout the region.

Mike reviewed Spotted Dog – newly acquired by FWP. Does not appear to be suitable habitat for mountain grouse, but time will tell. In total, there are 27,000 deeded acres and 10,000 acres of State Land lease. There are 2 small private in-holdings.

For UGBEP implementation, the region is looking to landscape scale efforts for mountain grouse.

Sharp-tailed grouse (STG) – were remnant populations at one time in the Missoula Valley. To restore STG to the Blackfoot Valley, Mike considers how the birds first faired, given the habitat conditions at the time. There will need to be a huge effort to restore viable, huntable populations of STG.

Region 3 – Kurt Alt

Blue grouse and sage grouse are the key species in region with regard to harvest opportunities. Most of the UGB species are found in Region 3, but they aren't at huntable levels. There are 3 biologists heavily involved with sage grouse management and they also are heavily engaged with BLM, the federation, and other partners. One impact affecting sage grouse is a huge power land going through core sage-grouse breeding habitat. The region has been looking at mitigation strategies.

Sharptails are found in the North Madison bench and in the Three Forks area. The challenge is finding access. The Region has been trying to garner cooperative agreements with landowners. Pheasants are found in Canyon Ferry and Poindexter Slough. The Gallatin Valley going up to Townsend has good pheasant habitat, but again, securing access is a challenge with changing

landownerships. Mountain grouse harvests are in a continued decline over the span of 30 years. The region is seeing a huge change in forest health – brought on by the beetle kill. The region needs more information through management-orientated research.

Franklin grouse remains an untapped hunting opportunity, but changes in forest health leaves management decisions uncertain. Turkeys are found (through transplants) on the Silver Star and the Jefferson. The region's goal is a connectivity of turkey habitat. The north Boulder may offer an opportunity for turkey transplants.

In Canyon Ferry – seeing a change in agricultural leases. One lease will expire soon. The region would like to look into brood strips for Canyon Ferry. Some sagebrush leases have been conducted in Region 3.

Initiation of discussions with MSU to look at insect abundance and livestock rotations on cropland. This research will be important to understand effects on UGB.

- Gordon asked if there have been any opportunities to work with landowners in the lower Gallatin Valley. Kurt responded that it has been a challenge. Some of the better habitat has been bought up and difficult to implement the program. There could be some opportunity to do work in the Shields.
- Ed Smith asked what impact coyotes have on UGB populations. Kurt doesn't think we have coyote numbers like those previously seen. In addition, wolves have likely impacted coyotes and people don't hunt coyotes like that used to. Jeff Herbert added that red fox are more predacious on ground-nesting birds than coyotes. Generally, with more coyotes, there will be fewer foxes.
- The main challenge limiting UGBEP implementation is when new landowners purchase lands with good or potentially good UGB habitat for recreational purposes. These lands are generally "locked up" to the general public.

Region 4 – Graham Taylor
Graham gave an overview of UGBEP implementation in R4 and described geographical features unique to the region. Council reviewed Region 4's draft strategic plan and made several edits/suggestions to the wording. FWP staff will incorporate these changes into the next revision. Other suggestions:

- Appendix should contain a list of acronyms and terms/definitions.
- Remove mourning doves from plan.

Region 5 – Ray Mule'
Ray described program implementation, discussing opportunities and challenges found within the region. Council reviewed Region 5's draft strategic plan and offered edits/suggestions to the wording. FWP staff will incorporate these changes into the next revision.

Region 6 – Mark Sullivan
Mark provided an overview of program implementation in Region 6. Council reviewed Region 6's draft strategic plan and made edits/suggestions to the wording. FWP staff will incorporate these changes into the next revision.

Region 7 – John Ensign
John described various aspects of program implementation in Region 7. Council reviewed Region 7's draft strategic plan and made edits/suggestions to the wording. FWP staff will incorporate these changes into the next revision.

Wednesday, October 6.

1. **Representative French called the meeting to order at 8:00 am.**

2. **The Council reviewed the draft strategic plan in great detail.** FWP staff took notes on Council's recommendations and will revise the draft to reflect the Council's comments and input from this meeting. Not all recommendations and/or edits are identified below in these minutes; however recommendations and edits will be reflected in the latest edition to be reviewed at the next Council meeting. Council reviewed and offered suggestions and edits in the following sections (highlighted below):
   a) Project Types: general edits/wording.

b) Program Delivery: incorporate MEPA compliance into this section, emphasize maximizing hunter-rays of recreation, reference statutory language as it pertains to pheasant releases.
c) Payments, Reimbursements, and Cost Share: Include strategy on "projects that include greater landowner participation should receive greater consideration for funding."
d) Contracts: Council offered several recommendations/edits to this section, to include: emphasis to rectify noncompliance through FWP field staff, program coordinator, and cooperator before legal efforts are attempted. A "loser pays" clause should be included as a strategic measure.
e) Statute and Project Definition: Council recommends including the strategy that, "Project expenditures run with the land, not the landowner." Council also recommended that maintenance of projects should be considered a separate expense to help clarify project definition.
f) Project Monitoring: Several additional strategies were recommended by the Council to incorporate into the next version of the plan. New strategies to be added to the next draft include developing a standard frequency to visit projects based on type of project; where needed, use contracted services to fulfill monitoring obligations, and to consider a variety of project components and other available information when evaluating project success.
g) Performance Measures: The Council provided more recommendations to this section to include: establish work plans for each UGBEP biologist that details specific measurable objectives for the upcoming fiscal year. Additionally, program biologists, coordinator, and wildlife managers should communicate regularly to identify upcoming opportunities, funding needs, and expectations for incorporating into annual work plans.

3. **Public comments. No other public in attendance.**

4. The next UGBEP Advisory Council meeting will be held in Helena on January 11 and 12, 2011. FWP staff and Council will conduct a final review of strategic plan and the proposed contract language.

5. **Representative French adjourned the meeting at 3:00 pm.**