



# Montana Fish, Wildlife & Parks

Wildlife Bureau  
PO Box 200701  
Helena MT 59620-0701  
May 13, 2013

Dear Interested Person:

Montana Fish, Wildlife & Parks is requesting public comment on the proposed Marias River Wildlife Management Area (WMA) Access Settlement, 2013 Nongame Check-off Work Plan, 2013 House Bill 454 Hunting Access Agreement, 2013 Fall Upland Game Bird Quotas and Limits, HD 304 Bighorn Sheep Hunt Closure and the 2013 Wolf Season. Additional information is below including deadlines for public comment.

## **Marias River WMA Access Settlement - Proposed**

The Marias River WMA is nine miles southwest of Shelby along the Marias River in Toole and Pondera counties. It consists of 7,540 deeded acres, 492 leased DNRC acres, and 833 leased BLM acres. The Marias River runs the entire 14-mile length of the property from west to east with wide riparian habitats and associated river breaks, all composed primarily of native habitat. Existing public access is on the north side of the WMA at the McCormick road to a parking area; and on the north-central area at the Zel access. Both access points are to the WMA boundary and do not provide vehicle access to the river bottom.

After FWP acquired the property for \$7.6 million in 2008 it was determined an implied easement was established historically by Charlie Lincoln in 1951 for public hunting to the east via the Lincoln Road. Wanken Farms, however, disputed this as a public road and open access and blocked the road before the property line between Wanken and the WMA. Good faith negotiations in 2010 and 2011 could not resolve the differences between Wanken Farms and FWP.

A lawsuit was filed in 2012 by FWP against Wanken Farms asking for a declaratory judgment identifying public and administrative access on the east of the WMA. Wanken Farms counterclaimed for trespass and abuse of process. A court ordered mediation was held on April 15, 2013. An agreement was negotiated: in return for a transfer of the 360 eastern most acres, Wanken would grant perpetual unlimited administrative access and limited public access across Wanken property. This will provide a southeastern access to the river bottom during hunting season and provide six parking spots, three for overnight. Administrative access on the Lincoln Road is also included with administrative access on the two-track bench roads that traverse the property.

The settlement is contingent upon approval by the Commission and State Land Board. The settlement agreement and map are attached as Appendices I and II.

## **2013 Nongame Check-off Work Plan - Proposed**

Under the provisions of 87-5-122, MCA, "the FWP Commission shall review and annually approve the nongame wildlife program's projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process." While final 2012 tax year donations are unknown at this time, the average received by FWP from the 2004-2011 tax years was \$27,000/year. (As of March 31, 2013 nearly \$18,000 had been donated for tax year 2012, which is average for this time of year.)

FWP is proposing the following work in FY14 with this anticipated funding:

- \$ 12,000 Inventory, monitoring and conservation work on Montana Species of Concern and species in need of inventory as determined through a formal ranking process.
- \$ 5,000 Prioritize habitat for conservation including: 1) identifying the most critical habitat needs for nongame, threatened or endangered species, 2) identifying and monitoring threats to these critical habitats.
- \$ 5,000 Competitive student stipend for nongame research.
- \$ 3,000 Contribution to ongoing Sylvatic Plague Vaccine research in Montana for black-footed ferret recovery.
- \$ 2,000 Education and outreach efforts to promote nongame wildlife appreciation and conservation.

### **2013 House Bill 454 Hunting Access Agreement – Proposed**

Under the provisions of 87-2-513 MCA, FWP received the authority to issue either-sex or antlerless elk permits to landowners for management purposes. The landowner must offer free public elk hunting, meet the various conditions of the statute, and enter a contractual public elk hunting access agreement with FWP.

The contract defines the areas open to public elk hunting, the number of elk hunting days that will be allowed on the property, and other factors that FWP and the landowner consider necessary for the proper management of elk on the landowner's property.

The Swanz Hunting Access Agreement specifically states that in return for allowing access to elk hunters, Mr. Swanz, or a family member, would receive one 411-21 either-sex permit. In turn, FWP would issue four additional 411-21 permits from the already randomized list of unsuccessful applicants for that license permit type (LPT). Successful applicants could only hunt on the Swanz deeded property. This agreement was first used in 2002 and has been reapplied annually since then based upon continued positive post-hunt evaluations. The proposed agreement for 2013 represents no change from the 2012 agreement.

### **2013 Fall Upland Game Bird Quotas and Limits - Proposed**

FWP proposes a permit quota change for the Gallatin County fall turkey hunts. The 375-50 permits would be increased from 10 to 50, while permits for the 375-51 youth hunt would be increased from 2 to 10.

Reflecting the typically static nature of upland bird bag and possession limits as supported by biology and management history, all other upland game bird bag, possession limits and permit quotas are proposed unchanged from 2012 or as otherwise finalized during season structure changes in February 2012. For reference, the 2012 upland bird regulations may be found on the Hunting home page at the [fwp.mt.gov](http://fwp.mt.gov) website.

### **HD 304 Bighorn Sheep Hunt Closure - Proposed**

The bighorn sheep population in HD304 is experiencing a pneumonia die-off, with a 35 percent decline in the population due to mortalities between mid-February and late March, 2013. Only two mature rams were observed on a recent survey. At this time, the HD304 bighorn sheep population cannot support hunting.

FWP recommends closing the hunting district. Hunting opportunity is very limited and will likely decline further due to additional mortality. Additionally, because the season structure provides an either-sex license, the successful applicant would have the option of harvesting a ewe. In the midst of a die-off, allowing ewe harvest is not biologically justified and is not likely to be viewed favorably by sportsmen and other public.

If this proposed rule is adopted, FWP will contact applicants that have applied for HD 304 and allow them the opportunity to apply for other bighorn sheep hunts.

### **2013 Wolf Season – Proposed**

The following changes from the 2012-13 wolf season are proposed for 2013-14. The archery season is proposed to open on Sept 7 and run through Sept 14. The rifle season is proposed to open on Sept 15 and close on Mar 31. Trapping dates are proposed to remain the same (Dec 15 – Feb 28), and trappers would still be required to have completed the Montana or Idaho Wolf Trapper Education Course. The bag limit is proposed to be 5 wolves per person in any combination of wolves taken by hunting or trapping. WMU 316 north of Yellowstone National Park is proposed to be expanded to include portions of deer/elk HD 313 and would have a quota of 7 wolves. The quota of 2 wolves is proposed to remain in WMU 110 west of Glacier National Park. Hunters would be allowed to take wolves over bait placed for trapping during the wolf trapping season. Trappers would be required to dispatch wolves via gunshot. In Regions 1-5, trappers would be required to set pan tensions on wolf traps to 10 pounds. This standard would minimize the take of lynx, wolverines, and other non-target species.

In addition to the above the Commission asked for input on:

- trappers assisting in response to livestock depredations,
- a hunter or trapper taking only 1 of the 5 wolf bag limit from the quota areas near Glacier and Yellowstone Parks, and
- adjusting slightly the quota area north of Yellowstone National Park.

For reference, the 2012 wolf regulations may be found on the Hunting home page at the [fwp.mt.gov](http://fwp.mt.gov) website.

## COMMENT PERIOD DEADLINES AND FINAL ADOPTION MEETINGS

**The public comment period on the proposed HD 304 Bighorn Sheep Hunt Closure will extend through 5 p.m., Monday, May 27, 2013.** Final adoption on this item will be made at the June 5, 2013 Commission meeting.

**The public comment period on the proposed Marias River WMA Access Settlement, 2013 House Bill 454 Hunting Access Agreement, 2013 House Bill 454 Hunting Access Agreement, 2013 Fall Upland Game Bird Quotas and Limits and the 2013 Wolf Season will extend through 5 p.m., Monday, June 24, 2013.** Final adoption on this item will be made at the July 10, 2013 Commission meeting.

NOTE there are different comment period deadlines for these proposals.

### TO MAKE COMMENT

For further clarification, you may call the Wildlife Bureau office at 406-444-2612. To submit comments electronically, this letter with the imbedded links below can be found under “Opportunity for Public Comment” on the Hunting home page at the fwp.mt.gov website. Written comments can be sent to: FWP – Wildlife Bureau, Attn: Public Comment, POB 200701, Helena MT 59620-0701. NOTE there are different comment period deadlines for these proposals.

#### Imbedded Links to Submit Public Comment

NOTE there are different comment period deadlines for these proposals.

#### **Marias River WMA Access Settlement - Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, June 24, 2013.*

<http://fwp.mt.gov/hunting/publicComments/2013proposedMariasRiverWmaAccess.html>

#### **2013 Nongame Check-off Work Plan - Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, June 24, 2013.*

<http://fwp.mt.gov/hunting/publicComments/2013proposedNongameCheckOffWorkPlan.html>

#### **2013 House Bill 454 Hunting Access Agreement – Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, June 24, 2013.*

<http://fwp.mt.gov/hunting/publicComments/2013proposedHb454HuntingAccessAgreements.html>

#### **2013 Fall Upland Game Bird Quotas and Limits - Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, June 24, 2013.*

<http://fwp.mt.gov/hunting/publicComments/2013proposedFallUgbQuotas.html>

#### **HD 304 Bighorn Sheep Hunt Closure - Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, May 27, 2013.*

<http://fwp.mt.gov/hunting/publicComments/2013proposedHd304SheepHuntClosure.html>

#### **2013 Wolf Season - Proposed**

*The deadline for public comment on this item is 5:00 PM Monday, June 24, 2013.*

[http://fwp.mt.gov/hunting/publicComments/2013\\_14proposedWolfSeason.html](http://fwp.mt.gov/hunting/publicComments/2013_14proposedWolfSeason.html)

**Appendix I**  
**Marias River WMA Access Settlement Agreement**

Agreement

This agreement is made and entered into this 15<sup>th</sup> day of April, 2013, by and between State of Montana, Department of Fish, Wildlife and Parks (Plaintiffs) and Wanken Farms, and Troy Wanken (Defendants) following a Settlement Conference with Dennis Lind as Settlement Master.

The parties agree as follows:

1. The parties shall enter into a Road Maintenance Agreement for the road crossing the Wanken property with equal sharing of reasonable maintenance and repair expenses.
2. The Plaintiff shall be granted administrative access through the Wanken property across the access road and the bench or two track roads which traverse the property. Similarly, Defendants shall have access to the Plaintiff's property where appropriate over the bench or two track existing roads.
3. Access to Plaintiff's property shall be granted by Defendants solely for hunting privileges based upon regulations for the Marias River Wildlife Management Area from the beginning of archery season through the end of the big game rifle season. The parties agree that hunting access will be limited to a parking area on Plaintiff's property which restricts parking to 3 day use spots and 3 overnight parking spots for 2 nights via the road traversing Def's property. Plaintiff agrees that there will be no campsites constructed in this locality and open fires shall not be allowed.
4. Plaintiff agrees to deed 360 acres to Wanken Farms as depicted on the attached map and designated by the red boundary line, subject to a reservation easement for access for management purposes on the existing two track road. (See Exhibit "A").
5. The Complaint and Counter Claims shall be dismissed with prejudice.
6. This Agreement is subject to and conditioned upon approval by the FWP Commission and Montana State Land Board.
7. Signs shall be posted that access is limited to permitted hunters only. Gates shall be locked except for hunting season, with dual locks.
8. The Parties agree to enter into a Settlement Agreement and Release of all Claims that memorializes this Settlement Conference Agreement.

/s/Francis E. Wanken, Prez.  
Wanken Farms

/s/Tom Lewis  
Attorney for Wankens

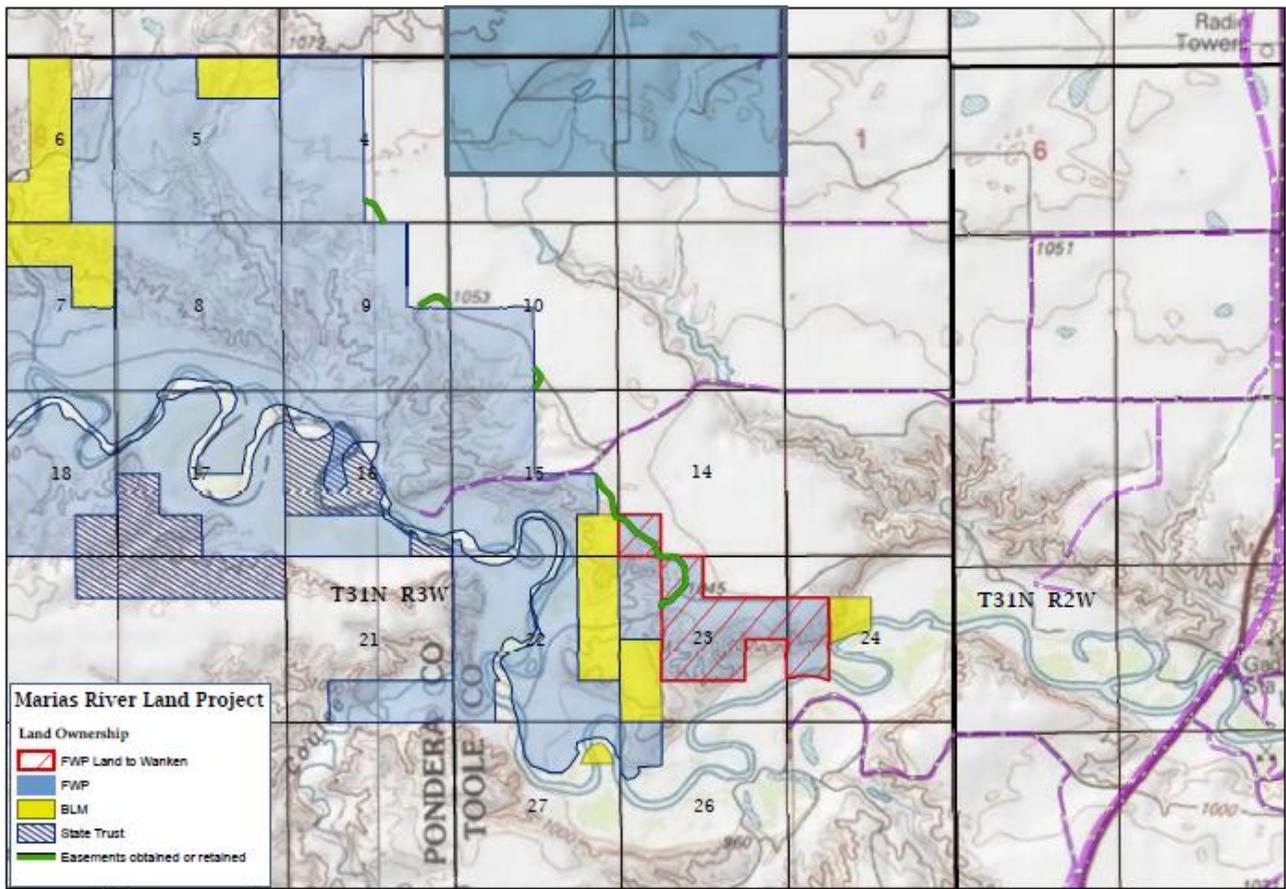
/s/ Gary Bertollotti  
FWP Representative

/s/CJ Johnson  
Attorney for Insurance  
Wankens, Via State Farm

/s/ Troy Wanken  
Troy Wanken

/s/Max Davis  
Attorney for FWP

## Appendix II. Marias River WMA Access Settlement Agreement Map



Base is National Geographic USA Topographic Map

1 inch equals 0.75 mile