# Environmental Assessment Decision Notice
# North Sunday Creek Conservation Easement
# Montana Fish, Wildlife and Parks
# September 21, 2018

## Description of Proposed Action

The Montana Department of Fish, Wildlife and Parks (FWP) proposes to purchase two separate and distinct but overlapping conservation easements totaling 14,300.75 acres in Custer and Rosebud Counties, Montana. The reason for two separate conservation easements, rather than one single conservation easement, is to utilize available federal funding sources, which come with different requirements. The first conservation easement, the North Sunday Creek 1 (ALE) Deed of Conservation Easement would be funded through the, Agricultural Lands Easements Program (ALE) which is administered by the United States Department of Agriculture, Natural Resources Conservation Service and funding from Habitat Montana as non-federal match. The ALE program does not fit well for areas that are actively farmed. Therefore, the proposed ALE Easement would not include cultivated land. The second conservation easement, The North Sunday Creek 2 (FWP) Deed of Conservation Easement, would be funded with FWP, Habitat Montana dollars. The FWP conservation easement would encompass the remaining acres and would also encumber the entire property to ensure that the Land remains in a single unit in the future. Collectively, the two conservation easements are referred to here as the Easement.

The Easement is comprised of over 90% native prairie grassland and provides wildlife habitat for species associated with the great plains of eastern Montana such as mule deer, antelope, sharp-tailed grouse and sage-grouse. As outlined in the Environmental Assessment, the Easement would restrict the conversion of native ground to other cover types and limit development. Also, the Easement would require the landowner to comply with FWP's Minimum Grazing Standards and to provide public recreational access. Based upon the terms of the Easement, an independent appraisal service valued the Easement at $3,432,000. The purchase of the Easement would not exceed the appraised value.

## Montana Environmental Policy Act and Public Process

The Montana Environmental Policy Act (MEPA) requires FWP to assess impacts to the human and natural environment. Formal public participation in the MEPA process was initiated with a public scoping process. The public scoping was conducted February 9 to March 2, 2018, wherein the public was asked to identify issues or concerns related to this Conservation Easement proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Custer and Rosebud County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in the Miles City Star, Billings Gazette, the Helena Independent Record, and on the FWP website. Two comments were received during the scoping process and addressed in the draft Environmental Assessment (EA).

The draft EA was released to the public August 10th, 2018 with a comment period ending September 9th, 2018. Legal Notice of the EA release and comment period was published two times in each of the following newspapers: *Miles City Star*, *Billings Gazette and Helena Independent Record*. Public notice was placed on the FWP website. Direct mailing and/or email notification was provided to adjacent landowners, interested parties, Custer and Rosebud County Commissioners, and DNRC and BLM staff. The Draft EA, the two easements and the management plan were available to interested parties by downloading from the FWP website, hard copies were available at FWP Region 7 Headquarters office in Miles City and available at the public hearing in Miles City. The public hearing was advertised and held at the FWP Region 7 Headquarters on August 29th, 2018; nine members of the public attended.

**Summary of Public Comment**

A total of ten comments were received through the public comment period, six were from individuals and four were from organizations. Six comments supported, two opposed and two comments neither supported nor opposed the Easement. Three comments made specific requests of changes to the Easement documents. Comments are summarized in the table below and copies of the comments are presented in the attachment as they were received along with FWP's response.

| Comment | Support or Oppose | Comment Summary | FWP Response |
|---|---|---|---|
| 1 thru 5 | Support | Five written comments of support were received without management suggestions. Comments supported conserving wildlife habitat and creating public recreational opportunities. | Thank you for your comments. |
| 6 | Oppose | The Easement will reduce the tax base and will provide limited benefits. Funding would be better used elsewhere in Montana. | See Attachments Section (page 11) |
| 7 | Oppose | The Land board should be involved in the Easement process. | See Attachment Section (page 12) |
| 8 | Neutral | Requested a clarification on water rights language and to include local government authorities in approval process of residential/agricultural development and use of weed and pesticide management | See Attachment Section (page 15) |
| 9 | Neutral | Requested to list road in 11N44E Section 19 as public in the Easement. | See Attachment Section (page 18) |
| 10 | Support | Supported with management recommendation regarding public access. | See Attachment Section (page 20) |

**DECISION NOTICE**

In accordance with the Environmental Assessment process, a decision must be rendered by FWP which addresses the concerns and issues identified for this proposed action. I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment (EA) is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

**After review of this proposal, it is my decision to accept the draft EA as supplemented by this Decision Notice and changes herein as final, and to recommend proceeding with the proposed North Sunday Creek Conservation Easement.**

The Final EA may be viewed on FWP's Internet website: http://www.fwp.mt.gov or be obtained from Montana Fish, Wildlife & Parks, Region 7 Headquarters, P.O. Box 1630, Miles City, MT 59301, (406) 234-0900.

Sincerely,

Brad Schmitz

Regional Supervisor, FWP Region 7

# Attachments

**Comment One: Support**

MONTANA WILDLIFE FEDERATION

Protecting Montana's wildlife, land, waters and hunting & fishing heritage for future generations.

Aug. 17, 2018

Montana Fish, Wildlife and Parks
Region 7 Headquarters
352 I-94 Business Loop
Miles City, MT 59301

RE: North Sunday Creek Conservation Easement Proposal

Dear Steve Atwood,

The Montana Wildlife Federation is our state's oldest wildlife conservation and sportsmen's organization. We were formed in 1936 when landowners joined hunters to restore depleted wildlife in our state. For 82 years we have advocated for healthy wildlife herds, habitat protection and public opportunity to enjoy our public wildlife resources. MWF is a strong advocate to protect important wildlife habitat throughout our great state.

That's why MWF strongly supports the North Sunday Creek Conservation Easement proposed in Custer and Rosebud counties. This project would permanently protect 14,783 deeded acres that includes roughly 90 percent native grasslands. These intact native plant communities are important wildlife habitat that support numerous native game and non-game species. Mule deer, pronghorn antelope, sage and sharp-tailed grouse are all found on the property, and it offers good hunting opportunity for those species.

The property also supports non-game species including songbirds, small mammals and other native wildlife. In short, this is a large block of land that is largely in its native state, unbroken by agriculture and intact as grazing land. It represents native grasslands that are important for native wildlife species.

This project will have benefits not only for wildlife, hunters and wildlife watchers, but also the local economy. Private lands that are open to public hunting help bring people to rural areas. This benefits local economies by pumping money from around Montana and the country into local hotels, restaurants, gas stations and sporting goods stores. They represent an important boost to rural economies that is needed to help sustain smaller towns.

PO Box 1175 | Helena, Montana 59624 | t: 406.458.0227 | e: mwf@mtwf.org | montanawildlife.org

**Comment One: Continued**

Using Habitat Montana dollars that are paid by hunters is another example of the strong working relationship between hunters and landowners. This land will remain in agricultural production for a ranching family, while also opening up more access for hunters. MWF is thankful to have excellent landowners who provide significant habitat for our public wildlife and generously open up their land to the public for hunting and wildlife watching.

We urge you to move forward with this quality project.

Sincerely,

Bill Geer
President

## Comment Two: Support

**Atwood, Steven**

**From:** [redacted]
**Sent:** Monday, August 20, 2018 10:31 AM
**To:** Atwood, Steven
**Subject:** Public Comment: North Sunday Creek Conservation Easement Draft Environmental Assessment

Name: Russell Garcia
City: Glendive, MT
I support FWP acquiring the North Sunday Creek Conservation Easement.

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This e-mail was generated from the 'North Sunday Creek Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

## Comment Three: Support

**Atwood, Steven**

**From:** [redacted]
**Sent:** Tuesday, August 21, 2018 8:14 AM
**To:** Atwood, Steven
**Subject:** Public Comment: North Sunday Creek Conservation Easement Draft Environmental Assessment

Name: Bert Otis
City: Emigrant
Dear Fish Wildlife & Parks Commission,
I support Alternative A, the purchase of the proposed North Sunday Creek Conservation Easement. After reviewing the easement it looks like a win/win for the public, the land, and the landowner. It will keep this ranch as a working ranch and that is great for the wildlife and the public. Please Thank the landowner, for thinking of the land first and not just taking the easy way to make money. I know the grazing agreement, is going to be lots of added work in the future, but it's benefits will also help the habitat.
Thanks Bert Otis

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## Comment Four: Support

**Atwood, Steven**

**From:** [redacted]
**Sent:** Thursday, August 23, 2018 12:05 PM
**To:** Atwood, Steven
**Subject:** Public Comment: North Sunday Creek Conservation Easement Draft Environmental Assessment

Name: Kip and Adele Stenson
City: Wibaux
Easements like this provide a tremendous opportunity for both landowners and outdoor enthusiasts of all kinds. There is this idea that Eastern Montana will never actually be threatened by development. Folks should go back 50 years and see what other areas people thought would never be touched by development or by big money that can afford to purchase land for their private hunting area, while ranchers can't begin to purchase that same ground. Easements are for perpetuity, and I am certain our progeny will look back in the next 50 years and be grateful that Habitat Montana and other programs helped ensure that there would always be legitimate ranching land in ranch families' hands in Montana. Additionally, this particular easement will help ensure that hunters and other members of the public from all over have access to explore this beautiful, rugged part of the state. And finally, this easement will benefit rural community businesses. Our small Eastern Montana businesses struggle everyday - competing with the internet, big box stores and struggling every time farmers and ranchers have to tighten their belts. We urge you to approve this easement for the benefit of a lot of people and the wildlife and habitat that makes Montana such a special place to live and recreate.

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This e-mail was generated from the 'North Sunday Creek Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

## Comment Five: Support

**Atwood, Steven**

**From:** [redacted]
**Sent:** Thursday, August 23, 2018 4:14 PM
**To:** Atwood, Steven
**Subject:** Public Comment: North Sunday Creek Conservation Easement Draft Environmental Assessment

Name: Thomas Kilmer
City: Helena
This is great news. I fully support this proposal. I don't hunt anymore, but I would love to explore this area for wildlife viewing via hiking. This is wonderful country. Beautiful landscapes. The fact that a ranch would be preserved and public access granted is terrific.

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This e-mail was generated from the 'North Sunday Creek Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

**Comment Six: Oppose**

**Atwood, Steven**

**From:** [redacted]
**Sent:** Sunday, August 26, 2018 9:30 PM
**To:** Atwood, Steven
**Subject:** Public Comment: North Sunday Creek Conservation Easement Draft Environmental Assessment

Name: Terry Wagner
City: Miles city
The proposal is not a favorable alternative for most Montana residents. In addition to reducing Custer County tax base, the amount of future benefits are very limited, compared to current use. The same land would be just as accessible and availbe for hunting, bird watching or outdoor activities by use of Block Management Program.
In addition, the recent aquation of the Angela Tract, already gives the FWP a large presence north of Miles City. Just because funding is available, doesn?t justify spending 3 million dollars for more land, there?s hopefully better use for those funds in the future, elsewhere in the state.

This e-mail was generated from the 'North Sunday Creek Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

**FWP Response to Comment Six:** Thank you for your comment. As outlined in the EA there would be no impact on local or state tax bases or revenues, Montana Code Annotated (MCA)76-6-208 states that, "Any land subject to such easement may not be classified into a class affording a lesser calculation solely by reason of the creation of the easement."

This Easement would create public access in perpetuity. The assumption that the "the same land would be just as accessible and available for hunting, bird watching or outdoor activities" is inaccurate. The Block Management Program facilitates public hunting access only and does not include other activities. Prior to exploring an Easement on the property, the hunting was leased for restricted use, without the Easement there would be no assurance on public hunting access in the future.

Montana Department of Natural Resources (DNRC) purchased property near Angela through the DNRC Land Banking Program that is referred to as "Angela Farms". The proposed Easement would be independent of DNRC's Angela Farms property and FWP has no management authority over Angela Farms.

When proposed, the Easement project proposal was subjected to a rigorous internal ranking process against other conservation easement proposals from across the state. The proposal ranked as a high-priority because of its conservation values as 90% of the property is identified in the 2015 FWP Comprehensive Fish and Wildlife Management Strategy as "Tier 1" community type which is the highest-ranking community type and its public access opportunities. This Easement would not preclude future conservation easements elsewhere in the state.

**Comment Seven: Oppose**
Fred Murnion
Cohagen, MT
August 29, 2018

*Verbal comment as received at public meeting: People should be aware of how this is being handled. The Landboard should be involved in the process.*

**FWP Response to Comment Seven:** Thank you for your comment. As outlined in the EA, FWP is authorized by MCA 76-6-103 to acquire conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." However, the final authority on approving conservation easements is beyond the scope of the EA process.

**Comment Eight: Neutral**

P.O. BOX 47
FORSYTH, MT 59327
406-346-2251
FAX 406-346-7551

# ROSEBUD COUNTY COMMISSIONERS

Robert E. Lee, Member
Douglas D. Martens, Member
Ed Joiner, Member

COPY

September 4, 2018

Montana Fish Wildlife & Parks
Candace Durran, Land Agent
PO Box 200701
Helena, MT 59620

**RE: Ponessa/ALS/FWP Conservation Easements**

Rosebud County has reviewed these easements in regards to the County's Growth Policy and long term planning goals and has the following comments to offer. Rosebud County has conferred with Custer County as the easements cover land in both Counties. The following comments generally apply to both Counties.

- North Sunday Creek 1 (ALE) CE, § C-5 Landowner's Rights, Pg 7, 8 & 9 of 45; Additional residential/agricultural developments are allowed and procedures to do so are listed. Local government permitting is not listed among those procedures. Local subdivision, sanitation, and floodplain permits are ordinances that are enforced by both Rosebud and Custer Counties within their respective jurisdictions. We believe that Local Government authorities should be included in the approval process of residential/agricultural structures. This comment also applies to North Sunday Creek 2 (FWP) easement, §C6 – pgs 8 & 9 of 35.

- North Sunday Creek 1 (ALE) CE, §C-10, Pesticide Application and Weed Management, pg 10 of 45; The text mentions " . . . other lawful authority . . ." in the weed identification and herbicide use. Rosebud and Custer Counties have weed management authority by ordinance. We believe that Local Government Authorities should be mentioned specifically in the procedures of weed & pesticide management. This comment also applies to North Sunday Creek 2 (FWP) §C-11, pg 10, 11 of 35.

- CE 2, §C-14(b) This sentence has apparently fallen victim to the computer age and has been inadvertently trunicated.

- CE 1 (ALE), §D-5, Water Rights, pg 14 of 45; This text indicates that water rights may not be separated from the land and may not transfer or "encumber" . . . , the water rights.

**Comment Eight: Continued**

However, Exhibit F of this CE, pg 45 of 45 includes the sentence that indicates that the listing of water rights . . . "are encumbered by this Easement."
CE 2 (FWP), §D-5, Water Rights, pg 14of 35; The text of this subsection is very similar to the text in the corresponding subsection in CE 1 (ALE) mentioned above. Exhibit E of CE 2 (FWP) does not include the sentence found in Exhibit F of CE 1 (ALE) that indicates that the water rights are encumbered by this easement. This discrepancy needs to be addressed.

The use of the word "encumber" in Exhibit F suggests that FWP intends to claim/transfer a portion of the water rights to support fisheries/wetlands or other program which are included in the conservation values in both easement proposals. The listed water rights are attached to lands in both Rosebud and Custer Counties.
Thank you for the opportunity to comment on your proposed CE's.

ROSEBUD COUNTY COMMISSIONERS

Ed Joiner, Presiding Officer

Robert E. Lee, Member

Douglas D. Martens, Member

**FWP Response to Comment Eight:**

Montana Fish, Wildlife & Parks

P.O. Box 200701
Helena, MT 59620-0701
(406) 444-3939
E-mail: cdurran@mt.gov

September 12, 2018

Rosebud County Commissioners
P.O. Box 47
Forsyth, MT 59620

Dear Commissioners:

Thank you for your letter of September 4, 2018 enumerating your comments on the proposed Ponessa ALE/FWP Conservation Easements (CEs).

The CEs provide a description of activities that are allowed or prohibited by the CEs. They do, where applicable, reference State Statute or State authority to insure compliance with statute. State Statute is the overarching authority.

We recognize the counties have authority over a variety of activities. There is nothing in the CEs that prohibits or precludes the landowner from complying with county regulations and permitting processes, and we expect that they will do so. This applies to the comments on pesticide use and application. However, in light of your concerns, FWP added the highlighted language to the sentence at the bottom of page 6 under Landowners Rights in the FWP and ALE CEs:

"Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, and further subject to state and local regulations, the Landowner expressly reserves the following rights;"

Thanks for your observation about a portion of the subdivision language being deleted. This has been rectified.

In regards to the comments on water rights:

- The water rights language on page 14 is identical in both CEs.
- The CEs do encumber the water rights covered by the CE's once the documents are signed. From that time forward, the landowner may not further encumber the water rights except as described in the CEs. Until the documents are signed, the water rights as they appear in the DNRC records are not encumbered except by previous encumbrances.
- The land encumbered by the ALE CE is a subset of the land encumbered by the FWP CE. Please refer to page 2 of the FWP CE where the relationship of the CEs to one another is described.

**FWP Response to Comment Eight:** Continued

- The sentence you refer to in Exhibit F Water Rights in the ALE CE is meant to clarify that only those water right whose place of use is on the ALE CE are encumbered by the ALE CE. Any water rights in the Exhibit whose place of use is not covered by the ALE are unencumbered.
- The place of use for the water rights listed in the FWP CE are all located on land encumbered by the FWP CE, therefore all the water rights listed in the Exhibit are encumbered by the FWP CE, and that clarifying language is not necessary
- FWP has no intention of claiming or transferring water rights associated with this or any of our other CEs to support fisheries/wetlands unless the landowner wishes to do so.

Attached are the revised FWP and ALE CE's. If you have further questions or comments, please let me know.

Best regards,

Candace Durran

Candace Durran
Land Agent

**Comment Nine: Neutral**

# Custer County Commission
# County of Custer

1010 Main Street, MILES CITY, MONTANA 59301

Montana Fish Wildlife and Parks
Candace Durran, Land Agent
PO Box 200701
Helena, MT. 59620

9-6-2018

**RE; Ponessa / FWP Conservation Easement**

Two of our County Commissioners attended the public meeting held at Miles City FWP office regarding the North Sunday Creek Conservation Easement on the Ponessa Ranch.

We have a question regarding Custer County Road 136. In your Environmental Assessment, this road is classified as Unimproved. Our records show this as a Fuel Tax Road, requiring it be maintained in a condition that a two-wheel drive vehicle can travel this road in fair weather. Also, as a Fuel Tax Road, it is open to the public. After the rains in 2011 Custer County replaced culverts on this road as well as other maintenance.

This road services ranches beyond the Conservation Easement, and was established during the Homestead days. It was the route residents south of the Rock Springs Divide and both North and South Sunday Creek areas used to come to Miles City. As an unimproved road it would be rather easy to have it closed, thus having the potential to put a hardship on ranches and hunters that use this road beyond the Conservation Easement.

In our opinion this road should be classified as a public road in the easement, and only be able to be closed by the hearing process through the County Commissioners.

Thank You,
Custer County Commissioners

Keith Holmlund

Kevin Krausz

Commissioners: Jason Strouf, Chair, 406.874.3352 • Keith Holmlund 406.874.3350 • Kevin Krausz 406.874.3351
TDD 406-874-3457

**FWP Response to Comment Nine:**

Montana Fish, Wildlife & Parks

P.O. Box 200701
Helena, MT 59620-0701
(406) 444-3939
E-mail: cdurran@mt.gov

September 11, 2018

Custer County Commissioners
1010 Main St.
Miles City, MT 59301

Dear Commissioners:

Thank you for your letter of September 6, 2018 and your comments on Road 136 which runs through a portion of the proposed Ponessa North Sunday Creek ALE/FWP Conservation Easements.

There is no question that the portion of Rd 136 and Rd 57 on the Ponessa Ranch shows on MDT maps for Custer and Rosebud counties as a Fuel Tax Road. The Fuel Tax Road designation appears to terminate at the western boundary of the Ponessa Ranch.

In our title review for this project we could not find a recorded road easement. If you have such a document, please send us a copy.

In response to your concerns, FWP changed the designation of Rd 136 and 57 to "road" in the Conservation Easements for FWP mapping purposes (attached). FWP designation of roads on document maps is for internal and management purposes, and is in no way meant to change the status of MDT or county road designations.

We hope this satisfies your concerns. If you wish to discuss this further, please don't hesitate to call me at 444-3939.

Best regards,

Candace Durran

Candace Durran
Land Agent

cc: Steve Atwood
John Ensign

## Comment Ten: Support with Recommendation

North Sunday Creek Conservation Easement Environmental Assessment

c/o Steve Atwood

Montana Fish, Wildlife and Parks

352 I-94 Business Loop

Miles City, MT 59301

Dear. Mr. Atwood:

The Montana Sportsmen Alliance (MSA) appreciates the opportunity to comment on the North Sunday Creek Conservation Easement Environmental Assessment (EA).

MSA has been and continues to be a supporter of Conservation Easements administered by Montana Fish, Wildlife and Parks (FWP). MSA appreciates and supports the increased and long-term public hunting opportunities and management prescriptions provided through these Conservation Easements.

There are two items specific to the North Sunday Creek Conservation Easement EA/Management Plan which MSA has concerns. The two items are repeated in the both the EA and Conservation Easement/Management Plan. MSA recommends the following items are adopted in this EA and Conservation Easement/Management Plan and modifications to the documents made.

Section 2.1. Page 9: The second bullet reads: Allow noncommercial recreational use by friends and family on the Ranch.

> MSA Concern: The wording is too wide open. As written, there appears to be no controls insuring the landowner does not reserve areas or dates for family and/or friends to the detriment of non-family/friends.
>
> MSA Recommendation: Allow noncommercial recreational use by friends and family on the Ranch, so long as the use of these lands mimic the opportunities provided to the public. Examples include: Family and friends are only allowed to hunt on the same days and pastures, and are subject to the same rules (i.e. game retrieval, parking areas as family/friends. Preferential treatment for family/friends shall not be allowed.

Section 2.1. Page 9: The last paragraph reads: Public access for hunting, trapping, and wildlife viewing is guaranteed by the easement, but is subject to limitations specified by the easement and the Management Plan (Attachments A and B). The Landowner will provide 400 hunter-days annually if demand exists, but the Landowner has the right to regulate public use. Members of the public may be required to obtain permission prior to accessing the Land, and the Landowner may manage the distribution and numbers of the public that are allowed to access the Land at any given time. The Landowner is prohibited from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes.

> MSA Concern: It is our understanding FWP-Region Seven issues the Block Management permissions. We are concerned with potential conflicts between the landowner and recreationists.

**Comment Ten Continued: Support with Recommendation**

It is in the best interest of the hunting public and vital to the success of the Conservation Easement that permission continues to be issued by the FWP-Region Seven Office.

MSA Recommendations: Public access for hunting, trapping, and wildlife viewing is guaranteed by the easement, but is subject to limitations specified by the easement and the Management Plan (Attachments A and B). The Landowner will provide 400 hunter-days annually if demand exists, but the Landowner has the right to regulate public use. Members of the public may be required to obtain permission prior to accessing the Land, and the Landowner through coordination with FWP may manage the distribution and numbers of the public allowed to access the Land at any given time. If permission to access the land is required, such permissions will be issued by FWP-Region Seven. The Landowner is prohibited from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes.

MSA strongly supports this Conservation Easement and the opportunities it would provide. By incorporating our concerns, we believe the easement will garner greater support by the hunting public and limit potential landowner-hunter conflicts. Rigorous monitoring for compliance with the terms of the easement is of utmost importance.

If you have questions or if we can be of further assistance, please do not hesitate to contact us.

Sincerely;

Montana Sportsmen Alliance Leadership Team

Joe Perry

**FWP Response to Comment Ten:** Thank you for your comments. The Montana Sportsmen Alliance's comments are consistent with the terms of this Easement. FWP believes public access is adequately addressed in the Deed of Conservation Easement and the Management Plan. The purpose of the EA is to outline the basic terms of Easement and address impacts on the human and physical environments with many of the finer details of the Easement included in the attachments (i.e. Management Plan and Deed of Conservation Easements). The language used in the Easement regarding public hunting access is standard language used in FWP conservation easements.

MSA expressed concern regarding Section 2.1, Page 9 second bullet of the EA, "Allow noncommercial recreational use by friends and family." This statement is addressed in further detail in Section II.C.8 of the Easement which states, "Noncommercial Use. Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing in accordance with Section II.B5. and Section II.D.9." Whereas Section II.B.5.c.3. of the Easement affirms, "public access for hunting must be managed on a non-preferential and nondiscretionary basis."

In response to MSA's comment, the second bullet of Section 201, Page 9 of the EA has been edited to further clarify the intent as follows, "Allow noncommercial recreational use by friends and family on the Land in accordance with Section II.B.5 and Section II. D.9 of the Easement."

MSA expressed a second concern over "potential conflicts between the landowner and recreationists." Again, FWP believes public access is adequately addressed in the Deed of Conservation Easement and the Management Plan. The Easement affirms, "public access for hunting must be managed on a non-preferential and nondiscriminatory basis" and the Management Plan outlines in Section 8, page 37 that FWP may, "Manage public hunting access on the Land if the Landowner fails to provide public access as specified in the Easements and this Management Plan. In addition, MSA requested that, "if permission to access the land is required, such permissions will be issued by FWP Region Seven." Currently, hunting is managed as part of the Block Management Program and permission is granted through the Region Seven office. On page 37 of the Management Plan MSA's request is addressed through the statement that FWP may, "Manage public access on the Land if the Landowner fails to provide public access as specified in the Easement and this Management Plan."

In acknowledgement of MSA's comments, edits were made to the Management Plan and EA to better represent the intent of public access to be allowed through the auspices of the Easement. The EA was edited to now read (edits are italicized and underlined), "Public access for hunting, trapping, and wildlife viewing is guaranteed *on a non-preferential and nondiscriminatory basis* by the Easement. Public access is subject to limitations specified by the Easement and the Management Plan (Attachments A and B). Members of the public may be required to obtain permission prior to accessing the Land, and the Landowner may manage the distribution and numbers of the public that on the Land. The Landowner will provide 400 hunter-days annually if demand exists. The Landowner is prohibited from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes".

In response to the comments, the Management Plan was edited to read (edits are italicized and underlined) "The Landowner may allow family, friends and other members of the public to access the Land for hunting, wildlife watching, or any other reason. *Family and friends will not count as public access and may not exclude or interfere with those members of the public that were granted access on a non-preferential and nondiscriminatory basis*."