



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

PERFORMANCE AUDIT

# *Block Management Program*

*Department of Fish, Wildlife & Parks*

OCTOBER 2013

LEGISLATIVE AUDIT  
DIVISION

*13P-04*

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**PERFORMANCE AUDITS**

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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October 2013

The Legislative Audit Committee  
of the Montana State Legislature:

This is our performance audit of the Block Management program, administered by the Wildlife Division within the Department of Fish, Wildlife & Parks.

This report presents audit findings and includes recommendations to develop policies and procedures for program operations, address program funding shortfalls, coordinate with state and federal land management agencies, not provide compensation for properties in conservation easements, and implement a compensation method for the Block Management program that ensures accurate and consistent cooperator payments. A written response from the Department of Fish, Wildlife & Parks is included at the end of this report.

We wish to express our appreciation to the personnel of the Department of Fish, Wildlife & Parks for their cooperation and assistance during the audit.

Respectfully submitted,

Tori Hunthausen, CPA  
Legislative Auditor



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## APPOINTED AND ADMINISTRATIVE OFFICIALS

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# MONTANA LEGISLATIVE AUDIT DIVISION

## PERFORMANCE AUDIT

### Block Management Program

#### Department of Fish, Wildlife & Parks

OCTOBER 2013

13P-04

REPORT SUMMARY

Between 2001 and 2012, the Block Management program provided almost \$2 million in compensation for public hunting access to private lands where such access already exists through department conservation easements. The program contains some Block Management Areas (BMAs) that do not allow public hunting access to adjacent federal and state trust lands. Significant control weaknesses exist for enrolling property in the program and for calculating payments to enrolled landowners.

### Context

The Block Management program (program) facilitates public hunting access to private lands and isolated state and federal lands through voluntary contracts between the Department of Fish, Wildlife & Parks (FWP) and private landowners. FWP administers the program from Helena, while Regional Hunting Access Enhancement Coordinators in six of FWP's seven regional offices manage the program on the ground. Properties enrolled in the program are known as BMAs and participating landowners are known as cooperators. For the 2012 hunting season, the program consisted of 858 BMAs providing access to more than 8.16 million enrolled acres. According to FWP, the program is one of the most successful hunting access programs in the West.

The process and decisions to enroll and re-enroll properties in the program are conducted at the regional level, with involvement from field biologists, game wardens, and regional management. Regional staff is also responsible for establishing contracts with cooperators. Hunters access BMAs by completing self-administered sign-in cards or rosters (Type I BMAs) or obtaining permission slips from cooperators or FWP (Type II BMAs). At the end of the hunting season, regional staff collects and tabulates completed hunter

permission documents for all BMAs in their regions in order to track hunter use. The hunter day totals gathered through regional counts are the bases for cooperator payments. Cooperators can receive up to \$11 per hunter day in compensation. By statute, a cooperator may receive no more than \$12,000 per year from the program. In 2012, FWP paid \$4.95 million to cooperators in compensation.

### Results

Audit work found the program does not consistently review properties for participation in the program against established criteria. The program also does not have a system that ensures accurate payments to cooperators. As a result, audit recommendations address the need for FWP to explore a different method to compensate cooperators and develop policies and procedures to define and establish consistency in program operations. Audit work also identified the need for FWP to address program funding shortfalls, coordinate with state and federal land management agencies, and not use program funds to compensate landowners for private properties where public hunting access already exists through FWP conservation easements.

*(continued on back)*

Recommendation Concurrence	
Concur	1
Partially Concur	3
Do Not Concur	3
<b>Source: Agency audit response included in final report.</b>	

For a complete copy of the report (13P-04) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to [lad@mt.gov](mailto:lad@mt.gov); or check the web site at <http://leg.mt.gov/audit>  
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# Chapter I – Introduction

## **Introduction**

The Block Management program (program) establishes cooperative agreements between private landowners and the Department of Fish, Wildlife & Parks (FWP) to provide public hunting access to private lands and to isolated state and federal lands. These private lands, enrolled through voluntary contracts between landowners and FWP, are referred to as “Block Management Areas” (BMAs). Participating landowners are known as “cooperators.” The program offers monetary compensation to cooperators to help mitigate the impacts of hunter access on enrolled lands. Federal and state trust lands can also be included within BMA boundaries.

## **Background**

Launched in 1985, Block Management was revamped and expanded significantly in 1995 and is the largest of three programs in the Hunting Access Enhancement Program (HAEP), comprising about 90 percent of HAEP activities. With a reorganization of FWP in 2013, the program is now located in the Landowner/Sportsmen Relations Bureau of the Wildlife Division. The Landowner/Sportsman Relations Coordinator in Helena administers Block Management and other access programs under HAEP. In addition, there is one administrative assistant that works with the program on a part-time basis, mostly for contract verification and cooperator payment processing. Six of FWP’s seven regions have a Regional Hunting Access Enhancement Coordinator that manages HAEP programs (including Block Management), with the Region 2 office also overseeing Block Management in Region 1. Most regions have administrative assistants and temporary staff that assist in the regional administration of the program. Regions also employ a statewide total of 30-40 Hunting Access Technicians: seasonal staff, supervised by regional coordinators, who help administer program activities in the field, including issuing BMA permission, collecting hunter use documents, and patrolling BMAs.

Landowner participation in the program is voluntary, and cooperators and FWP can enter into contracts of up to five years. There are two types of BMAs. With Type I BMAs, hunters administer their own permission by filling out sign-in cards or rosters at sign-in boxes, which are located at access points. Type II BMAs consist of someone other than the hunter issuing permission to hunt. This is often the cooperator, but can also be FWP regional staff through a hunter reservation service offered by the program. Many Type II BMAs require reservations and may limit hunter numbers. Hunters must possess a valid hunting license and any applicable permits to hunt on a BMA. Access to all BMAs is walk-in only with motorized vehicles permitted only on open, established roads. It is also hunters’ responsibility to follow any rules cooperators

and FWP have placed on BMAs, which may include species, season, hunter number, or hunting equipment restrictions. These rules are included on individual BMA maps and are posted at access points. The program disseminates information to hunters by publishing individual BMA maps and a hunting access guide, both of which contain BMA access rules and species opportunities. According to FWP, the program is one of the most successful hunting access programs in the western United States and is very popular among hunters and landowners. In 2012, Block Management consisted of over 8.16 million acres contained in 858 BMAs, and paid almost \$5 million in cooperator compensation. The table below provides a snapshot of program statistics, by region, for the 2012 hunting season.

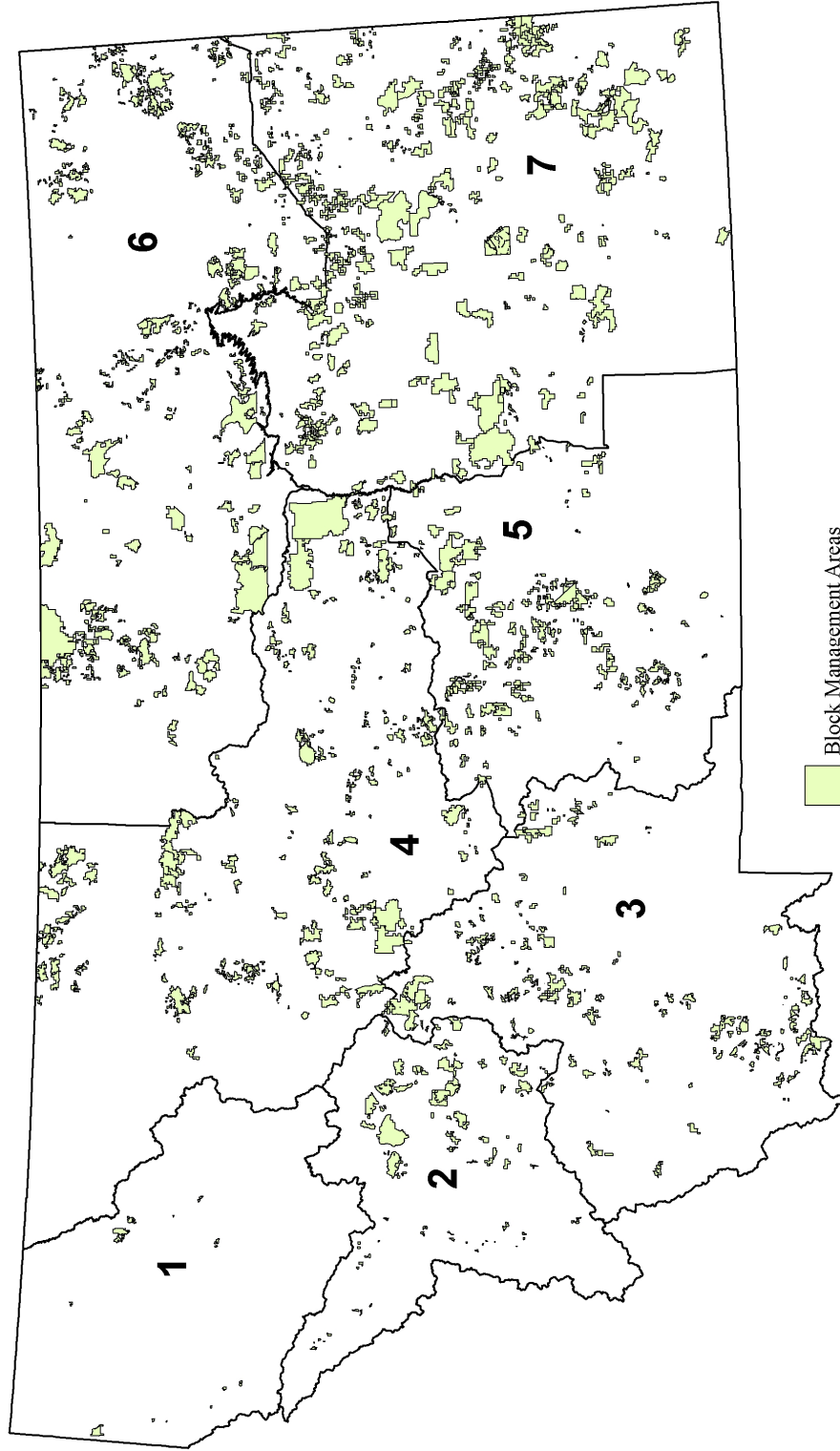
Table 1  
**2012 Block Management Program Statistics**

Region	Total # BMAs Enrolled	Total Acreage Enrolled	Total # Contracts	Total Cooperator Payment
1 and 2	77	1,292,520	162	\$ 493,287
3	81	607,352	111	664,287
4	118	1,384,216	232	930,534
5	144	750,139	191	608,699
6	150	1,367,810	318	1,018,942
7	288	2,765,396	369	1,239,216
<b>Total</b>	<b>858</b>	<b>8,167,433</b>	<b>1,383</b>	<b>\$4,954,966</b>

Source: Compiled by Legislative Audit Division from department records.

While Block Management opportunities exist across Montana, the large proportion of private land in central and eastern Montana means the majority of BMAs exist in these parts of the state. BMAs also vary widely in such qualities as size and hunting opportunities. Figure 1 shows all BMAs in the program for the 2012 hunting season.

Figure 1  
**Block Management Areas by Region**  
2012 Season



Source: Compiled by the Legislative Audit Division from department records.

## Property Enrollment, Contracting, and Re-enrollment

The process to enroll, contract, and re-enroll properties in the program is conducted at the regional level. Enrollment begins with an interested landowner contacting department staff, or with staff approaching landowners with desirable property. After a landowner submits a completed application to their regional office, staff uses an evaluation form to assess and score how the potential property meets various criteria. Depending on the region, various personnel may complete an evaluation form on a property, including regional coordinators, wildlife biologists, and game wardens. Each region has an enrollment committee – consisting of the regional coordinator, wildlife manager, warden captain, and regional supervisor – which reviews the application materials for each property being considered for enrollment and makes final enrollment decisions depending on available annual funding.

Once regions decide to enroll a property in the program, staff drafts a BMA contract with the cooperator. Regional coordinators, wildlife biologists, or game wardens may be involved in establishing contracts. Contract elements include initial estimates of annual hunter days on a BMA, which are the bases of cooperator payments, and any BMA access rules and hunting restrictions. Cooperators and regional supervisors sign all BMA contracts to indicate approval. Regions reported establishing one-year contracts for a BMA's first three years in order to adjust contract hunter days to reflect actual hunter use and to ensure the property is a good “fit” for the program.

Upon expiration of a BMA contract, regional coordinators solicit input from wildlife biologists and game wardens since these field personnel deal directly with cooperators, hunters, and program issues on the ground. Coordinators compile this input and any information submitted from BMA users (e.g., hunter complaints) and present it to regions' re-enrollment committees, which are identical in composition and function to enrollment committees. Re-enrollment committees consider this input and decide whether to re-enroll or remove BMAs from the program. If they elect to re-enroll BMAs, regional coordinators draft new contracts with cooperators.

## Cooperator Compensation

At the end of the hunting season, regional staff collects and tabulates completed sign-in cards and rosters (Type I BMAs) and permission slips (Type II BMAs) for all BMAs in their regions in order to track hunter use. These hunter permission documents request information including hunter name, address, phone number, vehicle information, Automated Licensing System (ALS) number, BMA name, date(s) of access, and hunter and landowner signature. An example of a Type I sign-in card is on the next page.

Figure 2  
Type I Sign-in Card

<p><b>BEFORE HUNTING, PLEASE PUT THIS PORTION IN THE BOX</b></p> <p># 53361</p> <p>BMA NAME _____</p> <p>Name _____ Date _____ (First) (Last)</p> <p>Address _____ (Street/Box#) City State Zip Code</p> <p>ALS # (Example 02/09/1954-3) _____ Phone( ) _____</p> <p>Vehicle Make _____ Color _____ License# _____</p> <p>Signature _____</p>	<p># 53361</p> <p>BMA NAME _____</p> <p>DATE _____</p> <p><b>RETAIN THIS PORTION TO VERIFY PERMISSION TO HUNT THIS BMA.</b></p> <p>Help evaluate this BMA. Please deposit completed coupon in roster box.</p> <p>1. What game species did you hunt? (Circle choice)</p> <p>Elk Deer Antelope Upland bird Other _____</p> <p>2. Did you observe the game species being hunted? Yes No</p> <p>3. Did you bag any game species being hunted? Yes No</p> <p>Game Taken: _____</p> <p>4. Please rate your hunting experience? Satisfactory / Unsatisfactory</p> <p>Other comments: _____</p>
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Source: Department of Fish, Wildlife & Parks.

The hunter day amounts established in BMA contracts are the basis for cooperator payments. Regional coordinators estimate these numbers upon drafting initial BMA contracts. Hunter day amounts in subsequent contracts are from documented hunter use on BMAs, ascertained through regional hunter use counts. If the three-year average of a BMA's documented hunter days differs from the BMA's contract hunter days by 20 percent or more, regional coordinators will modify contract hunter day numbers upon contract renewal to align with documented hunter use. Currently, cooperators can receive up to \$11 for each hunter that accesses their BMA each calendar day (i.e., \$11 per hunter day), with deductions of \$2.20 per hunter day for species or season restrictions. Cooperator payments may also be deducted for hunter management services received from FWP (e.g., hunter reservations). However, some BMAs operate on flat-fee contracts and some cooperators have chosen to receive no compensation from FWP. By statute, a cooperator may receive no more than \$12,000 per year from the program and is also entitled to one complimentary resident or nonresident combination license per year.

## Program Funding

The majority of program funding comes from 25 percent of the revenues from each Nonresident Big Game Combination License (Class B-10), Nonresident Deer Combination License (Class B-11), and Nonresident Youth Big Game Combination License (Class B-13). Funding also includes the resident (\$2) and nonresident (\$10) hunting access enhancement fee, \$55 from each nonresident upland game bird license (Class B-1), and SuperTag fees (\$5 per chance). According to department information, nonresident combination hunting licenses constitute over 80 percent of program funding. FWP also reported the program uses federal Pittman-Robertson dollars as they are available, matched to the earmarked revenues above. In 2010, Montana

voters passed a ballot initiative (I-161) that abolished variable-priced, nonresident big game licenses set aside for outfitters, formerly a significant piece of program funding. To compensate, the initiative increased the price of nonresident big game licenses. HB 607 was passed during the 2011 session and has further affected program funding by allowing hunters to refund certain licenses if hunters are unsuccessful in drawing special elk permits. Chapter III of the report discusses issues related to program funding.

## **Private Land / Public Wildlife Council**

The legislature established a “review committee” for Block Management with the 1995 revamp. This seven member advisory committee – the Private Land / Public Wildlife (PL/PW) Council – is appointed to two-year terms by the governor and is tasked with reviewing HAEP activities and presenting recommendations to the governor and legislature in a biennial report. FWP’s Landowner/Sportsman Relations Coordinator serves as the administrative secretary to the Council. The governor is in the process of appointing new members to the PL/PW Council. FWP reports the Council will begin meeting in fall 2013 and will investigate various issues related to recreational access to private lands, including Block Management.

### **Audit Objectives**

Based on our initial audit assessment of the Block Management program, we developed two audit objectives:

1. Determine whether properties reviewed for participation in the Block Management program are consistently measured against established criteria.
2. Determine whether the process to calculate and issue cooperator benefits is consistent and ensures accurate payment of benefits.

### **Audit Scope**

Assessment work led us to focus on two main areas of the program: the property enrollment process and the benefit payment process. How department staff evaluate, rank, and ultimately choose to enroll or not enroll properties in the program can significantly impact the level of use and satisfaction of both hunters and cooperators. FWP appeared to use various methods for how it tabulates hunter use documents, which can impact benefit compensation to cooperators. Like many FWP programs, Block Management is administered from Helena while the six Regional Hunting Access Enhancement Coordinators in FWP regional offices manage the program on the ground.



Since property evaluations, enrollment decisions, contract negotiations, and hunter use counts take place at the regional level, the majority of audit work was conducted at the six regional offices. Audit work at FWP headquarters in Helena consisted of reviewing BMA contracts, obtaining and reviewing data from the program database, analyzing cooperator payment information, and interviewing department management and staff. This included reviewing hunter use documents for a random sample of BMAs to evaluate the accuracy of regional hunter day counts, which are used to calculate cooperator payments. We also reviewed FWP's process to coordinate access to state trust lands and federal lands through BMAs. Audit work consisted of analyzing data from the Department of Natural Resources and Conservation (DNRC), reviewing Block Management contracts and other documentation, conducting Geographic Information Systems (GIS) analysis, and interviewing FWP and DNRC staff regarding state and federal land access issues.

File and data review activities mainly focused on calendar years 2011 and 2012. Since regions were not able to enroll any new properties in 2012 due to funding limitations, audit staff reviewed enrollment documentation for the 24 BMAs the program enrolled in 2011, and the 2012 re-enrollment documentation for these same 24 BMAs. Hunter use documents from the 2012 hunting season were reviewed for a random sample of 37 BMAs. For analysis related to conservation easements, audit scope extended to when the relevant easements were established, with the earliest being 1994. Audit scope also extended to 2001 for cooperator payments related to conservation easements, as program contract data supplied by FWP covered from 2001 through 2012.

## **Audit Methodologies**

To address the audit objectives, audit staff conducted the following audit work:

- ◆ Reviewed related statutes and administrative rules (ARMs).
- ◆ Reviewed program financial and budget data.
- ◆ Reviewed program documentation and information, e.g., mission and goals, regional reports, hunting access guides, maps and access rules for individual BMAs, and PL/PW Council reports.
- ◆ Interviewed department management in Helena and regional staff from six FWP regional offices, including Regional Hunting Access Enhancement Coordinators, Regional Supervisors, Wildlife Managers, and Warden Captains.
- ◆ Attended and observed Block Management coordinators' annual meeting.
- ◆ Analyzed role and functionality of program database, including financial controls over cooperator payments.
- ◆ Examined hunting access programs in Idaho, Wyoming, South Dakota, and Colorado; interviewed program staff; reviewed programs documentation.

- ◆ Examined FWP's Open Fields, Upland Game Bird Enhancement, and Private Lands Fishing Access programs to assess procedures for enrolling properties and documenting recreationist use.
- ◆ Reviewed enrollment, contract, and re-enrollment files for a sample of 24 BMAs in all seven FWP regions
- ◆ Reviewed hunter use documents to verify cooperator payments for a random sample of 37 BMAs in all seven FWP regions.
- ◆ Evaluated process to coordinate with state and federal land management agencies to include state and federal lands in BMAs by reviewing appropriate documentation, conducting GIS analysis, and interviewing agency staff.
- ◆ Evaluated BMAs also enrolled in FWP conservation easements by conducting GIS analysis, reviewing deeds and parcel data sheets, and interviewing department staff.

## **Report Contents**

The remainder of this report contains five chapters in which we discuss our audit findings, conclusions, and recommendations. Specifically:

- ◆ Chapter II examines the processes to enroll, contract, and re-enroll properties in the program.
- ◆ Chapter III considers effects of Block Management program funding on property enrollment.
- ◆ Chapter IV discusses issues related to federal and state trust lands within and adjacent to BMAs.
- ◆ Chapter V addresses BMAs in department conservation easements.
- ◆ Chapter VI explores alternative compensation methods for the Block Management program.

## Chapter II – Enrollment, Contracting, and Re-enrollment of Block Management Areas

### Introduction

Audit work for our first audit objective evaluated Department of Fish, Wildlife & Parks' (FWP) process to enroll properties in the Block Management program (program). Properties considered for enrollment can be identified by FWP employees or by interested landowners approaching FWP. Once a landowner completes an application, FWP reviews the property for potential inclusion to the program. Audit work determined that properties reviewed for participation in Block Management are not consistently measured against established enrollment and re-enrollment criteria. We identified inconsistencies within and among regions in how properties are enrolled, contracted, and re-enrolled in the program. This chapter addresses specific issues with the three processes in turn, beginning with enrollment.

### Property Enrollment Process

#### Not Consistent or Well-Documented

Administrative Rules of Montana (ARM 12.4.204) provide criteria program staff should consider when evaluating properties for participation in the program. These include whether the land is a high-priority resource, will result in increased hunter opportunities, and will increase public access to state/federal lands. The property evaluation form also supplies criteria regional staff is to assess and document when reviewing a property for enrollment, many of which relate to the above ARM criteria. The form also references regional wildlife management objectives and regional budgets during evaluation. Further criteria come from regional coordinators, who submit hunting access strategies and priorities as part of their annual funding requests. Examples include increasing Block Management Areas (BMAs) in certain geographic areas, increasing BMAs with certain species opportunities, and giving priorities to properties with large amounts of isolated public lands.

Audit work found FWP has limited policies and procedures to instruct program staff how to evaluate and document consideration of these enrollment criteria. This has led to weaknesses and inconsistencies in the property enrollment process. Based on file review of 24 BMAs enrolled in 2011, audit work determined FWP could not tie enrollment decisions back to established criteria. Audit work found inconsistencies within and among regions both in how properties are enrolled and in the level of enrollment documentation to support and justify enrollment decisions. For all files reviewed, enrollment documentation was either limited, incomplete, or nonexistent. The following are examples of the weaknesses identified in the current property enrollment process:

- ◆ Property evaluation forms contained little or no written justifications for their evaluation scores or how these scores tied to evaluation criteria. Program and field staff generally provided limited or no supporting explanations for their decisions regarding a property's habitat quality, hunting opportunities, or value to the program.
- ◆ Evaluation forms and other enrollment documentation (e.g., landowner applications, property maps) were often incomplete or not present in BMA enrollment files, indicating regional staff did not complete a thorough review of properties.
- ◆ Three regions reported the regional coordinator, a biologist, and warden each complete an evaluation form on a property. In another region, only one of these regional personnel completes an evaluation form, while in a third region only the regional coordinator completes the evaluation form. In addition to these regional inconsistencies in the level of evaluation performed on potential properties, audit staff also observed significant variances from what regional coordinators reported. For example:
  - ◇ For two properties reviewed in one region, field staff submitted evaluations via email (no evaluation form completed), with limited discussion of participation criteria, elements in the evaluation form, or how the property could benefit the program.
  - ◇ Of the six enrollments reviewed in one region, only one file contained a completed evaluation form.
- ◆ One region reported they do not complete applications or evaluation forms as they want to avoid paperwork. None of the enrollments reviewed in this region had supporting documentation.
- ◆ Regional enrollment committee decision reports are vague and lack documentation explaining or supporting decisions. Audit staff found no justification for how committee members determined which properties to enroll given limited regional funding and resources.

## **Property Enrollment in Other FWP Access Programs**

Other FWP programs with public access provisions have more comprehensive evaluation forms to document the property evaluation process. For example, the Open Fields program has an evaluation form that asks more direct, detailed questions of the evaluator (field biologist), such as percentages of the property that meet certain enrollment criteria. The form also provides guidelines for the reviewer that contains questions to consider for each aspect of the evaluation form. The property evaluation is likewise important for the Private Lands Fishing Access program, as a property's annual compensation is tied to a property's final score on the evaluation form. This form contains various criteria for field biologists to evaluate the property and sliding scales of one to ten for how well a property meets those criteria.

## **Current Process Does Not Demonstrate Properties Meet Enrollment Criteria**

The inconsistent nature of the program's enrollment process causes variances (both within and among regions) in how properties are evaluated for enrollment. The lack of documented explanation results in FWP not being able to support program enrollment decisions or relate decisions to the criteria for participation outlined in ARM, evaluation forms, or regional priorities. The program's current enrollment process does not demonstrate that properties enrolled are high-value resources and habitat areas, meet regional management objectives, address histories of game damage, or will result in increased hunter opportunities. Furthermore, the lack of documented enrollment decisions does not ensure FWP uses program funds in the most effective manner possible.

## **Property Contracting Process Lacks Consistency and Documentation**

Once FWP decides to enroll a property in the program, FWP enters into a contract with the cooperator. Contracts establish BMA access rules, hunting opportunities, and cooperator compensation based on hunter use. Similar to the enrollment process, audit work found inconsistencies within and among regions for all 24 BMA enrollment/contract files reviewed – both in how contract terms are established and in the level of documentation to support contract decisions. Aside from program timelines indicating a deadline for contract submission to Helena, no department policies exist to instruct regional coordinators on the specific procedures for how to document and establish BMA contracts. The following are examples of inconsistencies and documentation weaknesses in the program's current contracting process:

- ◆ No supporting documentation existed for how regional staff arrived at contract specifics. File review indicated contract terms such as BMA acreage, hunter days, hunter management service deductions, and BMA rules or restrictions often changed from landowner application to property evaluation form to BMA contract, with changes not supported or documented.
- ◆ Many initial BMA contracts reviewed had no signatures from state or federal land management agency representatives when BMAs contained state trust lands or federal lands, indicating possible lack of approval from these agencies.
- ◆ The majority of BMAs reviewed had inconsistencies in huntable species opportunities among applications, evaluation forms, and contracts. Species not indicated on applications or evaluation forms often appeared in contracts (and thus are listed as species opportunities on BMA maps and the hunting access guide). Alternatively, some species listed on applications or evaluation forms did not appear in contracts, while some contracts reviewed had no species opportunities listed.

- ◆ Regions use annual contracts for a BMA's first three years in the program and adjust contract hunter day numbers annually to better match actual hunter use. In one region, however, contract hunter days remain unchanged over these three years. This regional inconsistency leads to cooperator payments not tied to documented hunter use.
- ◆ The contracts for two properties reviewed in one region were signed in August and September 2011 – both past the program's mid-July enrollment deadline.
- ◆ File review also identified one BMA with a season restriction according to the access rules and contract. The contract includes a signature from the regional supervisor (indicating approval), but does not include a payment reduction for this season restriction per ARMs.
- ◆ File review also included one contract that regional staff established for ten years, reportedly since the cooperator receives no compensation from the program. However, ARMs state the program may establish contracts for only up to five years.
- ◆ Regional coordinators establish some BMAs as special circumstance agreements (SCAs), which are flat-fee contracts. No documentation existed for the SCAs reviewed to explain why the SCA was established or how regional staff arrived at contract hunter day estimates. Also, regions do not track hunter use on SCAs or base SCA payments upon documented hunter use.

State policy indicates management is responsible for establishing and maintaining internal controls, which it defines as “a coordinated set of policies and procedures used by managers and line workers to ensure that their agencies, programs, or functions operate efficiently and effectively in conformance with applicable laws and regulations, and that the related transactions are accurate, properly recorded and executed in accordance with management’s directives.” This applies to BMA contracts, in that contract terms and the process to develop and arrive at those terms should be well-documented. In addition, while ARM 12.4.206(2)(f) references the establishment of SCAs, it does not specifically authorize flat-fee payments or direct FWP staff in how to estimate hunter days. In reference to lengths of BMA contracts, ARM 12.4.205(1)(i) states the program may establish contracts for only up to five years.

### **Property Re-enrollment Process Also Needs Improvement**

When BMA contracts expire, FWP decides whether to re-enroll properties in program. Audit work also found no documentation in regional offices to provide explanation or justification of re-enrollment decisions for the 24 BMAs reviewed. Five of the six regions visited had re-enrollment committee decision reports on file, but these reports simply note regional committees’ final re-enrollment decisions and lack detail, explanation, or accompanying documentation for how field staff or committee members arrived at their decisions. These decision reports include specific evaluation criteria

to consider for re-enrolling properties, including consistency in habitat quality and hunter opportunity, high levels of hunter satisfaction, and adherence to program and contract terms. The reports also instruct committee members to explain their decisions by referring to the above criteria. However, regions provided no documentation to show committees considered these criteria or that these criteria factored into regional re-enrollment decisions. As another example of the inconsistencies with the current process, one region had no 2012 re-enrollment committee decision report. This regional coordinator position was vacant during the 2012 re-enrollment period, so regional management decided to bypass the committee process and automatically re-enroll all properties up for re-enrollment.

Regional coordinators often mentioned program funding as a main issue facing the program, as it directly relates to the number of BMAs they can enroll and re-enroll. However, without a well-documented and thorough re-enrollment process, FWP cannot ensure regions are spending Block Management funds on high-quality BMAs as defined by re-enrollment criteria. Regional coordinators also indicated an inability to remove low-quality BMAs from the program, since the program has no clear process in place for removing such properties and limited documentation to support these decisions.

### **Comprehensive Policies and Procedures Could Improve Enrollment, Contracting, and Re-enrollment Processes**

As stated above, limited FWP policies and procedures currently exist to instruct regional coordinators on the specific documentation and processes required to enroll, contract, or re-enroll properties in the program. File review and discussions with regional staff showed FWP has provided limited direction to regional coordinators, leading to the inconsistencies and documentation weaknesses identified. This was also evidenced through discussions with newer regional coordinators, as they often could not explain how or why properties were enrolled, contracted, or re-enrolled. In addition, regional coordinators often described the difficulties in obtaining input from field biologists and game wardens for the enrollment and re-enrollment of properties, as no policy exists which requires field staff provide timely input or describes the extent of information they should provide. Comprehensive policies and procedures would also be beneficial to formally establish the role of and the involvement required from regional field staff in the program.

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**RECOMMENDATION #1**

*We recommend the Department of Fish, Wildlife & Parks develop and implement comprehensive policies and procedures to document and establish consistency in the Block Management program's property enrollment, contracting, and re-enrollment processes.*

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## Chapter III – Block Management Funding and Property Enrollment

### **Introduction**

The Department of Fish, Wildlife & Parks' (FWP) ability to enroll and re-enroll properties in the Block Management program (program) is directly tied to available funding. Property enrollment criteria emphasize funding, as program goals include cost of Block Management Area (BMA) contracts as one item to assess when evaluating properties. Additionally, property evaluation forms request field staff to rank potential properties based on regional budgets. Audit work for our first objective identified the program has been experiencing decreases in program funding caused by a statutory license refund provision. Overall program expenditures are also exceeding revenues. This chapter discusses the need for FWP to address this program funding situation.

### **License Refund Provision Causing Reduction in Funding**

Regional staff and program management indicate funding is a major issue facing Block Management since it directly affects the program's ability to enroll properties and expand public hunting opportunities around the state. The program is funded through various sources. According to FWP information, over 80 percent of program funding comes from the statutory allocation of 25 percent of the revenues from each nonresident big game and deer combination license sold. These earmarked revenues are deposited to FWP's hunting access account. In 2010, Montana voters passed ballot initiative I-161, which abolished variable-priced nonresident big game licenses set aside for outfitters and increased the price of nonresident big game and deer combination licenses. Nonresident big game combination holders are now able to return their license and instead purchase a deer combination license if the hunter is unsuccessful in drawing a special elk permit. However, the "elk refund provision," §87-2-511(6), MCA, directs FWP to deposit 100 percent of the revenues from the deer combination licenses sold as a result of the elk refund provision to FWP's general license account. The elk refund provision thus reduces funds in the hunting access account in two ways: through the refund of the elk combination license and by redirecting the 25 percent of revenues from the resulting deer combination license sales.

All regional coordinators stated, and regions' annual reports showed, that regions were not able to enroll any new properties in the program in 2012 due to lack of available funding. FWP information indicates declining nonresident combination license sales and the statutory elk refund provision will significantly impact long-term revenues for the program. Documents provided by FWP report that at the close of fiscal year 2013, the elk provision refunds and declining nonresident combination license sales

have resulted in a \$1.03 million reduction to the hunting access account, which is the account used to compensate cooperators for existing and new BMAs. This funding situation indicates FWP needs to reduce program expenditures or seek additional revenue sources.

### **Hunting Access Account Balance Declining and Federal Funding Source not Reliable**

Information provided by FWP shows hunting access account expenditures have been exceeding revenues since at least fiscal year 2010, due in part to declining nonresident license sales and the statutory elk refund provision. This information also shows the balance in the hunting access account has been declining since fiscal year 2010. In fiscal year 2013, the hunting access account received an additional \$1.5 million of Pittman-Robertson federal grant dollars. Table 2 demonstrates these trends in the hunting access account. However, department management reported Pittman-Robertson moneys are not a stable long-term funding source, as they are tied to volatile levels of firearm and ammunition sales. These federal grant funds do not represent a reliable way to fund the program or to plan financially for program operations.

Table 2  
**Hunting Access Account Funding Trends**

	FY09	FY10	FY11	FY12	FY13
Hunting access revenues	\$5,408,595	\$4,731,878	\$6,288,304	\$4,868,641	\$5,988,420
Pittman-Robertson moneys	319,800	528,844	314,504	809,437	1,513,224
Total revenues (including Pittman-Robertson)	5,728,395	5,260,722	6,602,808	5,678,078	7,501,644
Total expenditures	6,802,809	7,884,968	8,103,996	7,512,846	7,251,324
<b>Fund Balance</b>	<b>\$6,242,552</b>	<b>\$3,618,305</b>	<b>\$2,117,117</b>	<b>\$282,349</b>	<b>\$532,669</b>

Source: Compiled by Legislative Audit Division from department records.

### **Department Should Address Block Management Funding Shortfalls**

Combination license revenues resulting from the elk refund provision are now being deposited to FWP's general license account, which is used to fund FWP's day-to-day operations. However, FWP management confirmed that nothing prohibits FWP from using general license account dollars to fund the program operations as needed. It was

a management decision not to use general license dollars for the program even though funds originally set aside for the hunting access account have been deposited to FWP's general license account via the elk refund provision. In addition to these deficits, hunting access account expenditures have consistently exceeded revenues. Audit work found these funding limitations impacted FWP's ability to acquire new BMAs in 2012. In addition, these funding limitations could also begin to impact FWP's ability to fund existing BMAs. Consequently, FWP should address the funding shortfall in the hunting access account by reducing total program expenditures or exploring options to increase revenues.

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***RECOMMENDATION #2***

*We recommend the Department of Fish, Wildlife & Parks address Block Management program funding shortfalls by:*

- A. *Reducing the total expenditures of the Block Management program, or*
  - B. *Reviewing additional options to increase Block Management program revenues.*
-



# Chapter IV – Access to State Trust and Federal Lands through the Block Management Program

## Introduction

One goal of the Block Management program (program) and criterion for property enrollment is to increase public hunting access to isolated state and federal lands. The program has opened public hunting access to many acres of state and federal lands throughout the state. “Isolated” state or federal lands are those that are not accessible by public road, waterway, or easement, but instead can only be accessed by crossing private land. Our objective of examining the program’s property enrollment process included reviewing access to state and federal land via Block Management Areas (BMAs). This chapter addresses issues audit work identified that are related to enrollment of state and federal lands in BMAs and access restrictions to state and federal lands adjacent to BMAs.

## **Recreational Use of State School Trust Lands in Montana**

Montana contains over 5.1 million acres of state trust lands, which are managed by the Department of Natural Resources and Conservation (DNRC) to produce income to support public schools and institutions. Trust lands represent roughly five percent of Montana’s land base. Legally accessible trust lands are open for most recreational activities, including legal hunting, unless closed or restricted by Administrative Rules of Montana (ARM) or by DNRC. Section 77-1-101, MCA, and ARM 36.25.145(15) define “legally accessible state lands” as those accessed by dedicated public road, public right-of-way, or public easement; by public waters such as lakes, rivers, and streams that are recreationally navigable; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. A recreational use license is required for persons 12 years of age and older to access school trust lands for general recreational activities, and is acquired upon purchasing a Montana hunting license.

Some trust lands are categorically closed to recreational use while others may be closed or restricted by DNRC on a site-specific basis. Closed or restricted trust lands are to be posted at customary access points with DNRC signs advising the public of the closure or restriction. However, general recreational use (including hunting and fishing) on legally accessible trust lands with a trust land recreational use license is permitted unless DNRC provides specific notice that the land is closed or otherwise restricted to recreational use. Furthermore, §77-1-806, MCA, states that a lessee may request to be notified by recreationists before those recreationists access the leased trust

lands. However, ARM 36.25.155 further defines this request of notification, stating recreationists engaging in legal hunting cannot be required to notify lessees prior to accessing trust lands.

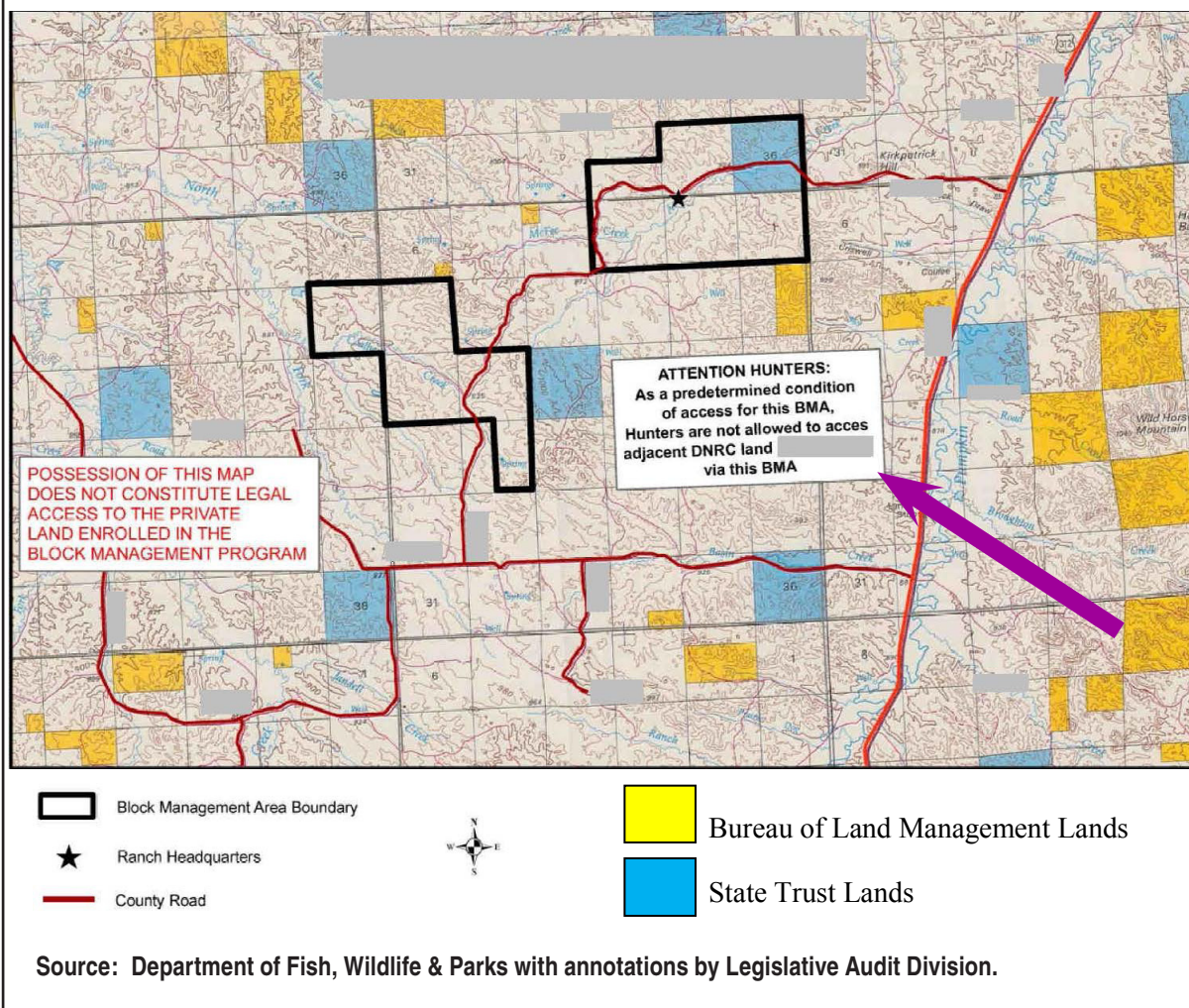
## **Recreational Use of Federal Lands in Montana**

There are large tracts of federal land in Montana. The largest amounts of federal land are managed by the US Forest Service (USFS), which administers approximately 16.8 million acres, and the Bureau of Land Management (BLM), which administers approximately 8.1 million acres. BLM and USFS lands represent roughly 26 percent of Montana's land base. Where legal public access exists, these federal lands are open to public use, including legal hunting. Only the managing federal agency can place access restrictions on federal lands. Lessees have no authority to control access or use of federal lands, including travel within federal lands over public roads or roads with public easements.

## **Some Block Management Areas Not Allowing Public Hunting Access to Adjacent State Trust Lands**

BMAs often have state trust lands adjacent to their boundaries. These adjacent trust lands, if not restricted by DNRC, are open to legal public hunting access once a hunter completes the requirements to enter the BMA and thereby obtains permission to cross the private land within the BMA. During audit work, we identified three BMAs that prohibit legal hunting access to adjacent trust lands. Interviews with FWP staff found trust land access restrictions have also existed on other BMAs. Figure 3 provides an example of a BMA that restricts public hunting access to an adjacent parcel of trust land, shown by a notice in the center of the map.

Figure 3  
**BMA Map With Access Restriction to Adjacent State Trust Lands**



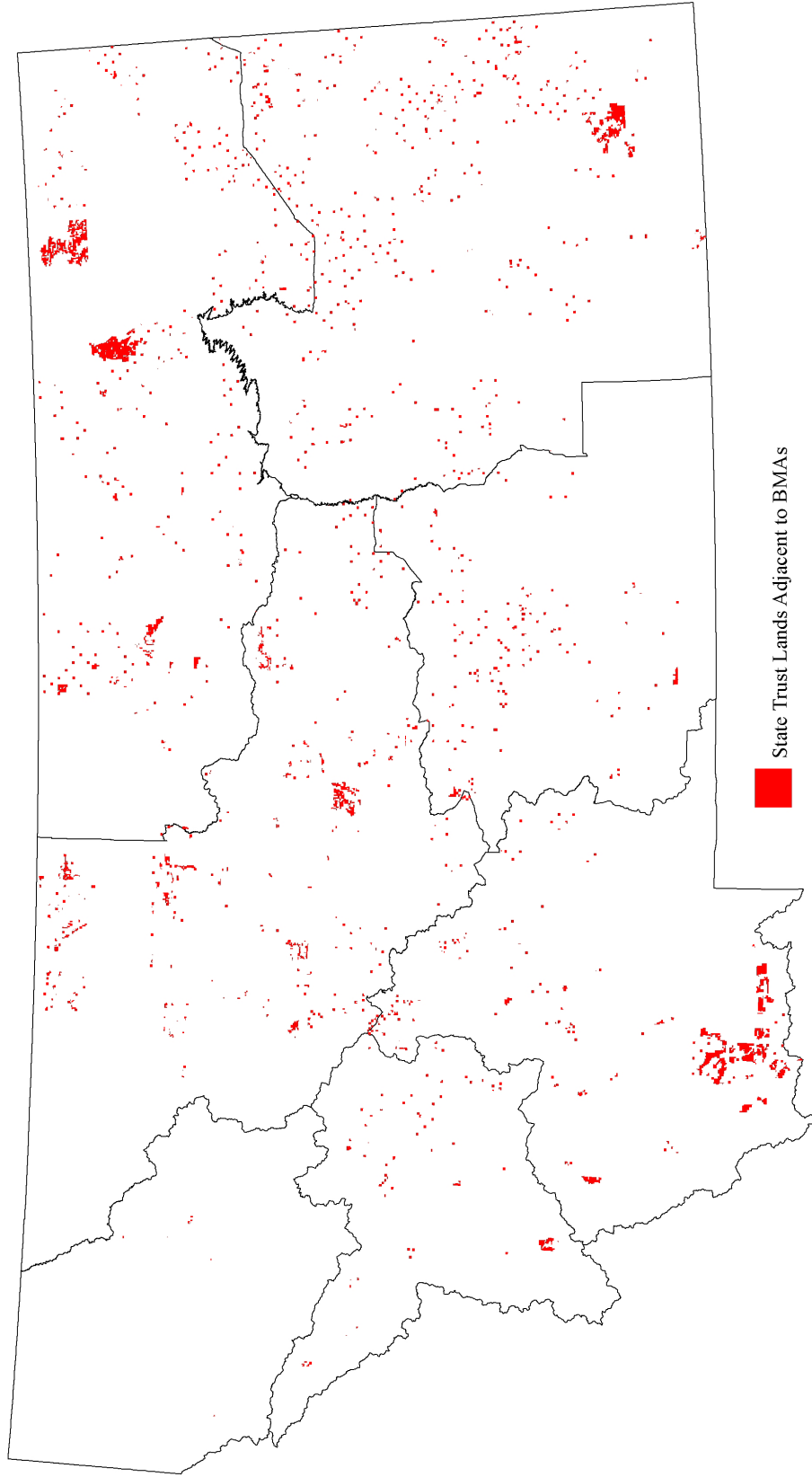
Audit work also identified one BMA where hunters are required to notify the lessee of an adjacent, isolated state trust land parcel prior to engaging in legal public hunting. By statute, lessees have the authority to require individuals to notify lessees prior to accessing state trust lands for certain recreational activities. However, ARM 36.25.155 excludes legal hunting from the recreational activities for which lessees may request prior notification. Requiring notification from hunters results in unnecessary steps for hunters to access legally accessible trust lands and is in violation of administrative rule.

## **Potential Exists for More State Trust Land Access Restrictions**

The potential effect of these restrictions is significant, as trust lands adjacent to BMAs are not uncommon. Geographic Information Systems (GIS) analysis found 1,282 parcels of trust lands are adjacent to 570 BMAs around the state, totaling over 1.16 million acres of state trust land, as Figure 4 demonstrates. Under current practices, additional public access restrictions or prior notification requirements could occur on state trust lands upon requests from lessees or cooperators. However, since FWP has no legal authority to do so, FWP should no longer agree to prohibit public hunting access to trust lands or require notification when hunters legally access trust lands adjacent to BMAs.



Figure 4  
**State Trust Lands Adjacent to Block Management Areas**



Source: Compiled by Legislative Audit Division from Department of Natural Resources and Conservation records.

## **Rule-Prescribed Process to Restrict Access to Specific State Trust Lands**

State law and administrative rule authorize access to state trust lands for recreational use when certain conditions are met. As described earlier, trust land is legally accessible if it can be accessed by public roads, navigable public waters, or if permission to cross adjacent private land is secured from the landowner. Cooperators participating in the program have granted permission to hunters to cross their enrolled private land as long as hunters accessing the property follow BMA access rules.

DNRC is the agency responsible for administering state trust lands. This includes reviewing and approving access restrictions to these lands if they meet statutory and ARM criteria for closure. For example, trust lands leased for cabin sites and military activities or lands under extreme threat of wildfire are automatically closed to public access. ARM 36.25.152 provides the procedures for closing specific parcels of trust land to public access. These procedures include specific reasons the proposed parcel must meet for closure, a written petition for closure submitted to the petitioner's local DNRC unit office, public notice and a public hearing on the proposed closure, and, if the closure is granted, posting the access restriction at all parcel access points. FWP supplied no documentation that they coordinated with DNRC to initiate the process to close public access to the adjacent state trust lands described above, or that DNRC approved access restrictions on these state trust lands. DNRC officials reviewed department lease information and confirmed the state trust land parcels identified above have no access restrictions in place by DNRC, confirming recreationists can access these trust lands as long as they have secured permission to cross the adjacent private land.

DNRC staff and most FWP field staff and management agreed hunters can legally access trust lands adjacent to BMAs as long as hunters are engaged in legal hunting and DNRC has imposed no access restrictions. In addition, DNRC legal staff contends neither FWP nor a lessee of trust lands has authority to place access restrictions on state trust land, but instead must coordinate with DNRC via the procedures set forth in ARMs. Discussions with DNRC legal staff and FWP enforcement staff indicated lack of enforceability is an additional problem with these inappropriate access restrictions. Hunters commit no crime when they cross into trust lands from a legally accessed BMA. They cannot be cited for trespass for entering trust lands (assuming no DNRC-imposed restrictions exist), and likewise cannot be cited for leaving private property which, through the BMA permission process, they have obtained permission to enter and cross. However, FWP legal staff contends landowners may place conditions on the permission granted to access and cross their private land. Just as the program allows cooperators to place BMA access rules such as species, season, and hunting

equipment restrictions on their land, FWP legal indicated cooperators may likewise impose BMA rules prohibiting hunters from crossing from enrolled private land to adjacent state trust or federal land. Given these differences of opinion between DNRC and FWP, coordination is needed between the two agencies to ensure adherence to ARM provisions for state trust land access restrictions.

### **Block Management Area Prohibiting Public Hunting Access to Adjacent Federal Lands**

During the course of fieldwork, audit staff identified one BMA that restricts access to BLM and USFS lands adjacent to the BMA. FWP staff reported these restrictions arose as a compromise after discussions between the cooperator, FWP regional staff, and USFS law enforcement officers to address issues related to outfitting in adjacent USFS lands without necessary permits, conflicts between hunters, and trespassing on private lands adjacent to the BMA. However, the region could supply no documentation of these discussions, or that BLM or USFS approved these access restrictions. In this situation, it appears FWP is using the program to mitigate issues which would be better addressed through specific enforcement actions. Once hunters have obtained permission to enter a BMA and have fulfilled the access requirements of a BMA, that hunter has legal permission to cross the enrolled private land and access adjacent public lands for legal hunting. These access restrictions appear to be unenforceable since hunters cannot be cited for trespassing onto public lands or for egressing private lands which they have permission to cross. Given that neither FWP nor the lessee has any legal authority to restrict access to BLM or USFS lands from private lands which hunters have permission to cross, FWP should cease its practice of inappropriately restricting public access to adjacent federal lands.

### **Access Restrictions on Adjacent Public Lands Deviate from Block Management Objectives**

Audit work found FWP regional staff agree to access restrictions on adjacent state trust and federal lands at the request of the cooperator, reportedly to help cooperators maintain positive relationships with neighboring landowners. Some FWP staff and management believe it is within a landowner's right to control access to adjacent state and federal lands. However, other FWP personnel hold the opinion that since trust lands adjacent to BMAs are legally accessible, legal public access to those adjacent trust lands should be allowed. Regional staff also reported they restrict access to such lands in order to lessen the risk of losing cooperators and BMAs from the program. Some program staff also indicated the possibility of drawing BMA boundaries short of the border between private lands and trust lands, essentially creating buffer zones of private land not enrolled in the program which hunters would have to trespass in order

to access adjacent trust lands. However, this would be a significant deviation from the program's enrollment criterion of opening access to inaccessible federal and state land.

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***RECOMMENDATION #3***

*We recommend the Department of Fish, Wildlife & Parks address issues related to state and federal lands access by:*

- A. *Allowing public hunting access to state trust lands and federal lands, adjacent to Block Management Areas, which do not have access restrictions imposed by the appropriate land management agencies.*
  - B. *No longer requiring hunters to notify lessees of state trust lands prior to engaging in legal hunting activities.*
  - C. *Coordinating with the Department of Natural Resources and Conservation to restrict public hunting access to state trust lands when requested by Block Management program cooperators.*
- 

## **Rule-Prescribed Processes to Include Federal Lands and Publicly Accessible State Trust Lands in Block Management Areas**

Administrative rule contains provisions to include federal lands and publicly accessible state trust lands (i.e., accessible by public road or navigable public waterway) within BMAs. Our file review sample included three BMAs that contain publicly accessible state trust lands within BMA boundaries and three BMAs that contain federal lands within BMA boundaries. Review of enrollment documentation and BMA maps and access rules for these BMAs showed regions are not following the provisions in ARMs to include such lands in BMAs.

## **Federal Agency Approval Required to Include Federal Lands in Block Management Areas**

ARM 12.4.205(1)(b) states managing federal agencies must approve the inclusion of all federal lands included in BMAs. Three BMAs in our sample included BLM lands within their boundaries, but none had any documented approval from BLM on file or signatures from BLM representatives on their Block Management contracts. Based on our review, it appears FWP is inappropriately including federal public lands in BMAs by not obtaining required federal approval.

## **Inclusion of Publicly Accessible State Trust Lands in Block Management Areas**

Administrative rule sets forth the process DNRC is to follow when FWP proposes including publicly accessible state trust lands in a BMA. However, the rule narrows these provisions to apply only to such trust lands when the access rules or restrictions of a BMA are more restrictive than general state land recreational use rules (e.g., species, season, or hunting equipment restrictions). ARM 36.25.164 states this process must include a proposal from FWP and a period of public notice and public comment on the proposed inclusion. Our file review contained three BMAs that include publicly accessible trust lands within BMA boundaries, and one contains season restrictions on the BMA. However, the region had no documentation to show the publicly accessible trust land within this BMA was included via the ARM-prescribed process, indicating FWP is not coordinating with DNRC to ensure adherence to administrative rule. While these ARMs pertain to DNRC, they also place responsibility on FWP, as the managing agency of Block Management, to coordinate with DNRC to initiate the process to include publicly accessible state trust lands in BMAs.

## **Use of Disclaimers for State Trust Lands Violates Administrative Rule**

Some regions include disclaimers on BMAs maps stating access rules do not apply to “legally accessible” federal or state trust lands contained within BMA boundaries. These regional coordinators indicated such disclaimers free them from needing to obtain approval from DNRC or federal land management agencies since they exclude public lands from the access rules and restrictions of BMAs. Audit work found three BMAs in our sample include such disclaimers for state trust lands. However, ARM 36.25.149(1)(i) says that for state lands included within a BMA, recreational use (including hunting) must be conducted in accordance with the access rules specific to that BMA. This provision shows FWP is inappropriately excluding state trust lands from BMA access rules and restrictions through their use of disclaimers. Given that trust lands in BMAs are subject to the rules and restrictions of BMAs, FWP must ensure publicly accessible trust lands are included pursuant to the ARM provisions described above. In addition, this rule further highlights the need to amend administrative rules to incorporate a process for including isolated trust lands within BMAs since any such trust lands could be subject to BMA access rules or restrictions which are more stringent than standard state trust land recreational use rules.

The situations described above show FWP is not following the requirements of administrative rule to include federal lands in BMAs, to include publicly accessible state trust lands in BMAs when BMA access rules are more restrictive than general

trust land recreational use rules, and to subject all state trust lands contained within BMAs to the access rules and restrictions of BMAs.

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***RECOMMENDATION #4***

*We recommend the Department of Fish, Wildlife & Parks comply with administrative rule by:*

- A. Obtaining and documenting approval from managing federal agencies when including federal lands in Block Management Areas.*
  - B. Coordinating with the Department of Natural Resources and Conservation to include publicly accessible state trust lands within Block Management Areas.*
  - C. Discontinuing the use of disclaimers which exclude state trust lands from Block Management Area access rules and restrictions.*
- 

### **Process Unclear to Include Isolated State Trust Lands in Block Management Areas**

As stated earlier, ARMs outline a process – which includes a public hearing – to include publicly accessible trust lands in BMAs when the rules of the BMA are more restrictive than trust land recreational access rules. However, no such rules exist to include isolated trust lands in BMAs. This lack of a clear process in rule has led to regional inconsistencies to include such trust lands. For example, three regions reported they do not coordinate with DNRC to include any state trust lands in BMAs, indicating they were not aware any DNRC approval was required. Staff in one region reported they obtain signatures from a DNRC representative on the contracts of all BMAs that include trust lands within BMA boundaries. Another region has developed its own unique form and process to report and include trust lands in BMAs, which are not used in other regions. In addition, while all regional coordinators reported they annually send their local DNRC offices copies of the maps and access rules for all BMAs in their regions that contain trust lands (for informational purposes), only one region was able to provide documentation of this correspondence.

### **Other States' Methods to Include State Lands in Hunting Access Areas**

Other states have adopted policies to include state lands in their hunting access areas. Colorado requires landowners to obtain a “letter of agreement” with the state land board to include any leased state lands in hunting access areas. In Wyoming, if the hunting access area includes isolated state lands, the state land board signs a contract

for such lands, thereby granting approval to include these state lands within hunting access areas. In contrast, Idaho does not include federal or state within hunting access area boundaries, often leaving “holes” in hunting access areas where public lands are located. However, Idaho reported they make it clear the public can access these lands if they meet legal access requirements. Since they do not include state or federal lands in hunting access areas, the Idaho Department of Fish and Game does not coordinate with state or federal land management agencies.

### **Amendments to Administrative Rule Needed**

Since no process exists in administrative rule to include isolated state trust lands in the program, regional inconsistencies have arisen in the documentation and coordination with DNRC to include isolated trust lands within BMAs. Given that ARMs contains provisions to include federal lands and publicly accessible state trust lands within BMAs, amendments to ARMs for a process to include isolated state trust lands would benefit the program, FWP, and DNRC. FWP should coordinate with DNRC to pursue such changes to administrative rule in order to establish and ensure consistency to include such trust lands in Block Management.

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#### ***RECOMMENDATION #5***

*We recommend the Department of Fish, Wildlife & Parks coordinate with the Department of Natural Resources and Conservation to amend administrative rules to define the process for including isolated state trust lands within Block Management Areas.*

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# Chapter V – Block Management Areas in Department Conservation Easements

## Introduction

Our second audit objective addressed the processes and controls related to compensation of Block Management program (program) cooperators. During fieldwork, audit staff identified situations where the Department of Fish, Wildlife & Parks (FWP) provides monetary compensation for private lands in FWP conservation easements. Conservation easements are voluntary conveyances of partial legal interests in land. They allow land to remain in private ownership while ensuring the property's natural resource values will not be compromised by land uses that are incompatible with those resource values. This is accomplished by placing perpetual restrictions – tailored to meet the agricultural, economic, and ecological goals of the landowner – on subdivision or other development. Audit work found most FWP conservation easements contain a provision that guarantees perpetual public hunting access as a condition of the easement. FWP purchases conservation easements throughout the state, principally through the Habitat Montana program.

## **Block Management Provides Monetary Compensation for Private Lands in FWP Conservation Easements**

Audit staff determined there are currently 26 BMAs either wholly or partly contained in 23 conservation easements across the state. FWP purchased these 23 easements between 1994 and 2008, paying roughly \$11.57 million from Habitat Montana funds. Audit staff confirmed that all 23 deeds of conservation easement contain provisions that the landowner must allow public hunting access to the lands under easement, and they also establish minimum numbers of hunters that landowners must allow on the land under easement. Moreover, §76-6-209, MCA, states all conservation easements run with the land, meaning the public hunting access to those lands are guaranteed in perpetuity. Despite these public hunting access provisions, FWP has enrolled much of the acreage in these 23 conservation easements in Block Management. Using program database records from 2001 to 2012 supplied by FWP, audit work determined during this time FWP paid \$1.97 million in total through the program to the various cooperators of the 26 Block Management Areas (BMAs) that are within these 23 conservation easements, as shown in Table 3.

Table 3  
**Block Management Areas in FWP Conservation Easements**

Conservation Easement	Year Conservation Easement Purchased	Conservation Easement Purchase Amount (Habitat Montana)	2012 BMA Payment	Total BMA Payments Years 2001 to 2012
1	1994	\$ 350,000	\$ 7,589	\$ 58,053
2	1994	735,000	12,000	120,247
3†	1994	640,000	12,000	48,000
			12,000	151,686
4	1994	300,000	4,755	88,622
5	1996	315,000	1,801	22,418
6‡	1996	404,000	12,000	144,000
7‡	1996	1,086,690		
8	1996	415,384	7,851	53,061
9	1996	450,000	12,000	138,611
10	1996	580,350	1,297	12,870
11	1997	255,000	3,335	37,958
12†	1998	2,350,000	16,406	149,748
			10,842	85,174
13	1998	250,000	5,622	56,874
14†	1999, 2002	0	7,065	71,323
			4,282	50,374
15†	2000	700,000	8,036	94,880
			2,596	50,588
16	2001	360,000	0	0
17	2002	1,217,842	5,021	60,475*
18	2003	40,000	1,276	13,214*
19†	2003	945,000	5,921	60,098*
			38,676	341,130*
20	2005	0	0	0
21	2007	180,000	3,043	33,432*
22‡	2008	0	9,606	28,819*
23‡	2008	0		
<b>Total</b>		<b>\$11,574,266</b>	<b>\$205,020</b>	<b>\$1,971,655</b>

Source: Compiled by the Legislative Audit Division from department records.

\* From Year BMA Established to 2012.

† The conservation easement has acreage in two BMAs.

‡ The conservation easements have acreage in the same BMA.

Administrative rules (ARMs) state the objective of the program is to pay private landowners to increase public hunting opportunities on private lands and to increase access to isolated state and federal lands. This indicates FWP should direct program funds to enroll private lands without public hunting access, thereby expanding the program and hunting opportunities across the state – not to properties that already have perpetual hunting access through department conservation easements. The 26 BMAs under FWP conservation easements could remain in the program without being compensated but still benefit from program services such as signage, FWP patrols, and designated parking areas, similar to BMAs with large timber and utility companies that have elected to receive no compensation. FWP could also use Block Management as a vehicle to advertise (via the hunting access guide and BMA maps) the public hunting access opportunities guaranteed through FWP conservation easements.

### **Additional Funds Available to Block Management to Expand Public Hunting Access**

Program staff often reported that lack of program funding is a main issue facing Block Management, as it directly hinders their ability to enroll new BMAs and expand the program. Regional 2012 annual reports confirm this, as regions were unable to enroll any new BMAs in 2012 due to funding limitations. Analysis showed that if FWP chose not to pay the cooperators for these 26 BMAs that contain lands also in FWP conservation easements, this would free over \$200,000 annually to enroll additional BMAs and expand public hunting opportunities through the program. Audit work showed further complications can arise with BMAs in conservation easements. For example, one FWP conservation easement states the landowner must allow a minimum of two parties of three hunters per day to access the property under easement. However, the access rules for this BMA state the BMA accepts no more than two parties of three hunters per day, meaning the program is annually paying a cooperator to allow only the minimum number of hunter stipulated in the conservation easement.

Program management and most regional coordinators believe it is appropriate for Block Management to provide compensation for properties that already have perpetual hunting access through FWP conservation easements. They contend the easement locks in public hunting access while the program pays to mitigate the impacts of that access. However, our review of deeds of conservation easement found potential impacts of public access were considered in the estimations of amounts of annual hunting use. While program information supplied to cooperators states properties in conservation easements can be enrolled in Block Management, FWP staff cannot explain how providing compensation for properties that are also in conservation easements fits the aforementioned goals and objectives of the program. Audit work showed no FWP policies or procedures exist to direct the establishment or compensation of BMAs that

are also in conservation easements, and statute and ARM do not address if properties in department conservation easements can or should also be compensated through Block Management. Since FWP already paid for public hunting access upon acquiring conservation easements on these properties, it is not an effective use of program funds to pay for public hunting access that already exists. FWP should not provide Block Management compensation for properties in FWP conservation easements.

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***RECOMMENDATION #6***

*We recommend the Department of Fish, Wildlife & Parks not provide monetary compensation through the Block Management program for private acreage that is also in a department conservation easement.*

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# Chapter VI – Alternative Compensation Method Needed for the Block Management Program

## Introduction

The second objective of this audit was to assess the consistency and accuracy of the process to calculate cooperator payments. Section 87-1-267(5), MCA, lists various factors the Department of Fish, Wildlife & Parks (FWP) may consider for calculating cooperator payments, including, but not limited to, hunter impact, resident game populations, and access to adjacent public lands. FWP has decided to base cooperator payments on hunter impact, in the form of hunter days. Administrative Rules of Montana (ARMs) outline the provision of how FWP will calculate these payments, with cooperators currently able to receive up to \$11 per hunter day.

Audit work found the Block Management Program's (program) current process to count hunter days and calculate cooperator payments to have significant control weaknesses, be resource-intensive, and result in inaccurate and inconsistent payments to cooperators. These issues led us to conclude that the program does not accurately base cooperator payments on hunter impact or have a process that ensures accurate cooperator payments. This chapter addresses these weaknesses and inconsistencies, as well as the various criteria for alternative compensation methods for the program which have stronger controls over cooperator payments.

## Inconsistencies and Variances in Hunter Day Counts and Cooperator Payments

Since they are the basis for cooperator payments, we reviewed the hunter use documents from the 2012 hunting season for a random sample of 37 BMAs. Audit work found 36 of the 37 BMAs reviewed (97 percent) were either missing cards, rosters, or slips or had errors or other inconsistencies on hunter use document elements (e.g., BMA name/number, date(s) of access, ALS number, cooperator/hunter signature), potentially rendering those hunter use documents invalid for hunter permission or cooperator compensation purposes. As a result, cooperator payments could vary for 97 percent of BMAs reviewed, depending on how regions count hunter use.

File review also showed inconsistencies between what regional coordinators reported they require to be completed on cards, rosters, and slips in order to count hunter days and what occurs in practice. The inconsistencies audit staff observed show significant control weaknesses with the program's current compensation method, ultimately

resulting in inaccurate cooperator payments. These issues are discussed below. Specific examples provided are BMAs from our file review sample.

- ♦ **Errors in hunter day counts:** Some BMAs in our sample had mathematical errors in regional hunter day counts, resulting in under- or over-payments to cooperators. For example,
  - ◇ Regional staff mistakenly recorded 270 hunter days on one BMA, while our review confirmed the actual count was 170 hunter days, a difference of 58.8 percent representing a potential overpayment of up to \$1,155.
  - ◇ On another BMA, we counted 170 hunter days while regional staff counted 85 hunter days, a difference of 200 percent representing a potential underpayment of up to \$981.75.
- ♦ **Multiple hunters and dates:** File review showed regions sometimes count multiple hunters and dates on a single card, roster, or slip when one document contains more than one hunter or date; other times they did not. For example, one sign-in card containing three hunters may be counted as one hunter day or three hunter days.
- ♦ **Regional counts of nonhunters:** Four regions reported they do not include cards or slips marked as “non-hunters” in hunter day counts since these recreationists are not engaged in hunting. Another region, however, counts nonhunters, contending these recreationists have as much impact on BMAs as hunters and are legally accessing the BMA to engage in activities directly related to hunting (e.g., spotting, game removal, parental guidance). Whether to include nonhunters in hunter day counts can significantly impact cooperator payments.
- ♦ **Season-long permission:** Regions have adopted individual methods to ascertain hunter use on BMAs that issue season-long permission, resulting in large fluctuations in total hunter days and therefore cooperator payments. Some regions use mail or phone surveys to gauge actual hunter use, while others use daily sign-in methods and reservation systems to count hunter use. Audit work identified one example where a cooperator may have been overpaid by more than \$1,800 in 2012 due to errors in the region’s hunter day count.
- ♦ **Spring hunting seasons:** Two regions compensate cooperators for spring turkey hunts (added to fall hunter days for the same calendar year), while other regions do not. Regional coordinators reported they currently do not compensate for other spring hunting seasons (e.g., black bear). This results in inconsistencies in the program’s compensation process.
- ♦ **Twenty percent hunter-day threshold:** When a BMA contract is up for renewal, regions modify the hunter day number established in the BMA contract only if the rolling three-year average of actual hunter days differs from the contract amount by 20 percent or more. However, audit work found not all regions follow this practice, causing inconsistencies in cooperator payments.

- ♦ **Three-hunter-day limit:** Three regions limit permission on Type II BMAs to a maximum count of three hunter days per hunter, per permission slip. Three regions do not follow this limit. With this limit, FWP is not basing cooperator compensation on accurate accounting of documented hunter use of BMAs. Audit work identified BMAs with hunter day counts reduced by the three-day limit, potentially reducing cooperator payments.
- ♦ **Hunter management services (HMS):** Rules authorize FWP to provide HMS to cooperators and deduct cooperator payments for these HMS. However, regions do not consistently apply or deduct for HMS. Three regions do not reduce cooperator payments for any HMS, despite operating reservation systems at their regional offices for some BMAs. Two regions deduct \$50 per year from cooperator payments for each Type I sign-in box on a BMA. One of these regions also deducts Type II cooperators \$50 per year for the regional office to issue permission or reservations. Audit work identified some BMA contracts showing deductions for HMS and other contracts showing no deductions for these services.
- ♦ **Twenty percent aggregate bonus:** Statute provides for cooperators to form voluntary associations of BMAs (aggregates), where multiple cooperators with adjoining BMAs agree to effectively establish one large BMA with common access rules and sign-ins for all properties that compose the aggregate. To account for hunter days, regional staff split the total hunter days for the aggregate according to each individual cooperator's acreage as a percent of the aggregate's total acreage. As a bonus, each cooperator in the aggregate receives an additional 20 percent of the aggregate's total hunter days, added on to each individual BMA's hunter days. All regions reported they use the 20 percent aggregate bonus. However, audit work showed regions apply the aggregate bonus inconsistently. While the majority of aggregated BMAs receive the 20 percent bonus, two regional coordinators reported some aggregate BMAs in their regions receive no hunter day bonus and others a 10 percent bonus. The aggregate bonus result in higher payments to cooperators which are not directly tied to or based on documented, actual hunter use on BMAs. Our sample contained five BMAs currently receiving the 20 percent aggregate hunter day bonus.

## **Program not Meeting Goals and Rule Provisions for Accurate Payments**

FWP documentation states the program has goals of fiscal responsibility and accountability, and accuracy in reporting hunter use. Program staff stressed the importance of hunters completing sign-in documents since this constitutes both the hunter's permission to legally access the BMA and the basis of cooperator payments. As the above examples demonstrate, few management controls are in place over the program's payment system to ensure accurate and consistent hunter day counts or payments to cooperators. Inaccuracies identified with contract hunter day estimates further highlights weaknesses in the current compensation method. For example, one BMA reviewed saw its initial estimate of 300 hunter days increased to 700 hunter days

in its second-year contract, yielding a payment increase of 233 percent (from \$3,727.50 to \$8,347.50). Another BMA reviewed was initially contracted for 200 hunter days (\$2,310 total paid), while the second-year contract was adjusted down 357 percent to 56 hunter days (\$646.80 total paid).

Audit work showed FWP does not have a method of documenting hunter use on BMAs that accurately reflects the hunter use of a cooperators' property, as required by ARM 12.4.206(2)(g). The program's current compensation method does not pay cooperators based on documented hunter use of BMAs. Given the complex nature of this hunter-use payment method, it is difficult to manage and ensure consistency and accuracy in calculating hunter use and cooperator payments. Furthermore, this current method of tracking hunter use relies on hunters and cooperators to complete permission documents accurately, with limited ability for FWP to ensure accuracy and completeness.

### **Current Compensation Method Does Not Ensure Accurate or Consistent Cooperator Payments**

The irregularities and inconsistencies audit staff identified show significant control weaknesses with the program's current compensation method. The process is also time-consuming and resource-intensive, often requiring months to complete hunter use counts and requiring FWP to hire temporary staff to assist in the manual counts of hunter use documents. Audit work determined it can take several hours to count hunter days for one BMA. Despite the amount of time involved, program controls have not improved over hunter use documents. In addition, since the current method to calculate compensation generally relies on hunters and cooperators to complete hunter use documents accurately and completely, the system is at risk for potential fraud. While no instances of fraud were identified, the difficulty in establishing sufficient controls to ensure documents used to calculate payments are accurate leads to increased risk for fraudulent activities to occur. This lack of controls results in questions regarding the accuracy of cooperator payments and the overall accountability of program funds.

### **Other FWP Access Programs and Other States Use Flat-Fee Compensation Methods**

Various alternative payment methods exist that have stronger controls over cooperator payments. We contacted hunting access programs in four surrounding states. None of these states base landowner payments on hunter use. Instead, these states compensate landowners based on a flat-fee, per-acre calculation. All states reported the flat-fee, per-acre model is a straightforward payment system that provides for better controls that ensure accurate contract payments are made to cooperators. In this model, payment amounts are clearly established in initial contract and are based on measurable



criteria (e.g., acreage of enrolled properties). Officials in other states indicated program inconsistencies, documentation errors, and inaccurate payments are reduced because cooperator payments do not rely on hunters and cooperators to complete hunter use documents accurately, or on program staff to count these documents manually to calculate payments.

In addition, FWP has other programs with public access components that base landowner payments on flat-fee payments, not on a hunter-day method. For example, the Upland Game Bird, Open Fields, and Private Lands Fishing Access programs pay landowners based on flat-fee, per-acre contracts or through habitat improvement projects negotiated with landowners. Further support for an alternative compensation model comes from the program itself. Regional staff reported for properties of 640 acres or fewer that are expected to have lower hunter use due to their size, FWP generally establishes Special Circumstance Agreements (SCAs). These are flat-fee contracts, with payment amounts not based on documented hunter use.

### **Different Method to Compensate Program Cooperators Is Needed**

We compared 2012 BMA contract payments to hypothetical per-acre payments in order to analyze potential effects of moving the program to a per-acre compensation method. Audit work determined \$0.87 was the average price per-acre FWP paid in 2012 for private acreage enrolled in the program. In total, FWP could potentially save over \$614,000 by switching to a per-acre model, but the average cooperator payment would decrease by \$457 annually. It is important to note, however, that these per-acre calculations do not include any potential payment incentives or deductions for elements such as species opportunities, quality/quantity of habitat, access to public lands, geographic location of the BMAs, species/season restrictions, etc. These elements are already built into the program's property evaluation and enrollment process, and FWP could tie per-acre monetary incentives or deductions to these elements.

FWP documentation states Block Management has goals of fiscal responsibility and accountability, and accuracy in reporting hunter use. However, audit work revealed the current hunter-day-based compensation method does not meet these goals. Statute lists various factors upon which FWP may base cooperator payments, including, but not limited to, hunter impact, resident game populations, and access to adjacent public lands. Interviews with program staff and review of program documentation revealed FWP has long used the hunter-day method to compensate program cooperators. However, FWP has given little consideration to other forms of cooperator compensation. Given the weaknesses and lack of internal controls identified with the hunter-day payment method, FWP should explore a different compensation method

that allows for stronger controls and ensures accurate, equitable, and consistent cooperator payments.

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***RECOMMENDATION #7***

*We recommend the Department of Fish, Wildlife & Parks use statutory criteria to implement a compensation method for the Block Management program that ensures accurate, equitable, and consistent payments to program cooperators.*

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DEPARTMENT OF FISH,  
WILDLIFE & PARKS

DEPARTMENT RESPONSE





# Montana Fish, Wildlife & Parks

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October 25, 2013

RECEIVED

OCT 25 2013

LEGISLATIVE AUDIT DIV.

Tori Hunthausen, Legislative Auditor  
Legislative Audit Division  
PO Box 201705  
Helena, MT 59620-1705

Dear Ms. Hunthausen:

Montana Fish, Wildlife & Parks (FWP) has received the performance Audit Report (Report) for the Block Management Program. The various comments and recommendations for improvements to this program reflect a great deal of work expended by your staff in trying to understand and evaluate some of the many elements involved with this large and diverse program. Thank you for your efforts.

The current Block Management Program has been in place for 18 hunting seasons. Over that time, the program has grown to become the largest and arguably one of the most successful private land hunting access programs in the nation. The program emphasis has been on balancing the needs of private landowners, public hunters, and the state wildlife agency through contractual agreements that can be tailored to individual farms and ranches.

Block Management contracts specify how that particular landowner or landowners will manage public hunting access on private land that remains under the landowner's control. The contract provides the agency with legal authority to enforce those ranch-specific rules. FWP does not purchase the hunting rights to enrolled property, nor does the agency acquire any interest in the enrolled land. Benefits provided by Block Management to landowners, including compensation and services, are to offset potential impacts of hunters on those enrolled private lands.

While the primary focus of Block Management is to open private land to public hunting, FWP works within the confines of existing law and administrative rule to negotiate with willing landowners to open access to otherwise inaccessible state and federal land.

The Department's response to the recommendations follows:

## **Recommendation #1**

*We recommend the Department of Fish, Wildlife, & Parks develop and implement comprehensive policies and procedures to document and establish consistency in the Block Management program's enrollment, contracting, and re-enrollment processes.*

### Partially Concur

FWP already has policies and procedures in place, and will review these and update them as necessary. FWP agrees that the implementation of more comprehensive policies and procedures to guide staff and document administrative processes used to determine which properties are enrolled and re-enrolled is important to ensure consistency within the program. Many of the inconsistencies noted in the Report are largely because of factors that cannot be controlled through rulemaking, such as the preferences of landowners in contracting specifics, habitat, hunting opportunity, access requirements, and other factors that differ from property to property. FWP cannot commit to making these processes a one-size-fits-all for a subject that is so variable. To the extent that there are inconsistencies that can be avoided through rulemaking, the Department will update and review the rules and policies for continual improvement.

In 2013 and 2014, FWP and the Private Land/Public Wildlife (PL/PW) Council, appointed by the Governor under 87-1-269 as a review committee for FWP hunting and fishing access programs, will be conducting a full review of FWP access programs, including Block Management, and developing recommendations that will be delivered to the Governor, FWP Director, and 64<sup>th</sup> Legislature. Since those recommendations could potentially alter the current structure or processes of the Block Management Program, FWP will wait to see what results from that work before initiating efforts to develop new comprehensive policies and procedures.

However, in the interim for the 2014 hunting season, FWP will develop more detailed instructions, where necessary, to guide staff in the proper implementation of existing processes and policies, and take action to ensure staff compliance with that guidance.

### **Recommendation #2**

*We recommend the Department of Fish, Wildlife, & Parks address Block Management funding shortfalls by:*

- A. Reducing the total expenditures of the Block Management program, or*
- B. Reviewing additional options to increase Block Management program revenues.*

### Concur

FWP has been adjusting the program as revenue sources and amounts have changed and will continue to do so. This has included not expanding the program and supplementing earmarked funding with federal P-R funding.

FWP has appointed a citizen's advisory committee, called the Licensing & Funding Advisory Council, charged with developing recommendations regarding FWP's license structure. That group is due to present recommendations to the FWP Director by March 15, 2014. It is possible

there may be some changes resulting from this work that could affect revenue associated with the Block Management Program.

Separate from this group's efforts, as noted through much of FWP's response to this Report, during 2013 and 2014, FWP and the PL/PW Council will be conducting a full review of FWP hunting access programs, including Block Management, and some of that work may result in recommendations related to Block Management expenditures or revenues.

In the meantime, FWP will continue efforts to increase efficiencies in delivering the program, including exploring various options for Block Management Area (BMA) reservation systems, producing one statewide Hunting Access Guide instead of three separate guides, etc.

### **Recommendation #3**

*We recommend Department of Fish, Wildlife, & Parks address issues related to state and federal lands by:*

- A. Allowing public hunting access to state trust lands and federal lands adjacent to Block Management Areas which do not have access restrictions imposed by the appropriate land management agencies;*
- B. No longer requiring hunters to notify lessees of state trust land prior to engaging in legal hunting activities;*
- C. Coordinating with Department of Natural Resources and Conservation to restrict public hunting access to state lands when requested by Block Management program activities;*

Do not concur.

Response to 3.A: The Report states in various ways on pages 20, 24, and 25: "Once hunters have obtained permission to enter a BMA and have fulfilled the access requirements of a BMA, that hunter has legal permission to cross the enrolled private land and access adjacent public lands for legal hunting." (p.25). FWP does not agree with this statement.

When an owner of private property enrolls land in Block Management through a contractual agreement with FWP, the owner identifies conditions under which the public may use that private land. Through a landowner's right to determine how, who, and for what the public uses the landowner's property, a landowner can legally limit the access to his/her property by requiring that it be used for recreational use rather than access to adjacent public land. Private land enrolled in the program does not become de facto public land, nor does the landowner relinquish any property rights by enrolling land in the program. In many cases, an owner of private land with adjacent public land willingly grants permission for hunters to use the enrolled private land to gain access to adjacent public land, making that land "legally accessible."

However, that grant is not automatic, and may be withheld by the landowner, rendering the adjacent state or federal land not legally accessible across that landowner's land.

FWP, because it retains no interest in the land enrolled in Block Management and only aids the landowner in administering access on his/her land under the conditions he/she desires, is not in a position to require the landowner to utilize his/her lands in ways that FWP dictates.

In order to respond properly to this audit finding, FWP Legal and Program staff met with a State Trust Lands attorney to discuss this issue, and he concurred with FWP's position.

Response to 3.B: The Report recommends that FWP refrain from requiring legal hunters from giving notification to the adjacent lessees. The Report, referencing ARM 36.25.155, makes the claim that FWP is "in violation of administrative rule."

First, this Department of Natural Resources & Conservation (DNRC) rule applies to lessees of state trust lands, and not to private landowners enrolled in the Block Management Program. FWP does not require that hunters notify state trust land lessees. In the one circumstance where a BMA map referred to the requirement of lessee (not the BMA landowner) to notify for use on a state trust land parcel adjacent to a BMA, it was a requirement by the lessee posted on the state trust lands and not a requirement enforced by FWP.

In summary, under ARM 36.25.155, only the lessee may require prior notification. FWP cannot and has not ever used the Block Management Program to "require hunters to notify lessees of state trust lands prior to engaging in legal hunting activities."

Response to 3.C: FWP agrees that coordination with DNRC is essential when state school trust lands are associated with private lands enrolled in Block Management. FWP works with DNRC through a process to include state trust lands into a BMA when the landowner finds it acceptable to use his/her property for the purpose of access to state trust lands. However, when the owner of private land chooses not to grant permission to the public to cross private land to make state trust land "legally accessible," that action is acceptable legally and not something FWP can force upon a landowner. In addition, the proper exercise of the landowner's property rights is not a "closure" of state trust lands requiring the process outlined in ARM 36.25.152.

#### **Recommendation #4**

*We recommend the Department of Fish, Wildlife, & Parks comply with administrative rule by:*

- A. Obtaining and documenting approval from managing federal agencies when including federal lands in Block Management Areas.*
- B. Coordinating with the Department of Natural Resources and Conservation to include publicly accessible state trust lands within Block Management Areas;*



*C. Discontinuing the use of disclaimers which exclude state trust lands from Block Management Area access rules and restrictions;*

Partially Concur

FWP agrees that it is necessary to ensure proper documentation is maintained when complying with administrative rules involving enrollment or inclusion of federal lands in Block Management Areas. FWP also agrees it is necessary to comply with the process outlined in administrative rule for including publicly accessible state trust lands, and ensure proper documentation of that process is maintained.

Response to 4.C: FWP does not concur with this recommendation. FWP does not believe that there is a rule or policy that requires state lands included in a BMA to apply the rules of a BMA. The Report inappropriately relies upon ARM 36.25.149(1)(i) indicating, “this provision shows FWP is inappropriately excluding state trust lands from BMA access rules and restrictions through the use of disclaimers.”

First, this rule provides no requirement for state trust lands to apply BMA rules and restrictions. The rule simply states, “The following restrictions apply to persons engaging in general recreational use of state lands *except for general recreational use subject to block management restrictions pursuant to ARM 36.25.163.* ARM 36.25.149 (1). This rule simply sets out the rules applicable to state trust lands. It does not, as the report claims, require that all state trust lands included within a BMA go through a process to apply BMA rules and restrictions. As such, there are circumstances where a landowner would like to allow access to the adjacent state trust lands, and thus, includes those lands within the BMA, but does not feel the need to have the more restrictive rules that apply to enrolled private land extended to legally accessible state land. The landowner, by including the notice to the BMA hunters, is simply indicating to the BMA hunter that rules and restrictions that apply to the private land do not also apply to legally accessible state land.

The Report seems to suggest that at the same time FWP is inappropriate in allowing a landowner to exclude state trust lands (see Recommendation 3.A.) within a BMA, FWP is equally inappropriate in allowing a landowner to permit access through the BMA without requiring that rules and restrictions also apply to those state trust lands.

This is an inconsistent approach. Instead, FWP recognizes that a landowner may or may not agree to allow hunters to use his/her private land enrolled in Block Management to gain access to state trust land. If that landowner wishes to have the same rules and restrictions that apply to his/her private land also applied to state trust land included in the BMA, FWP goes through the proper process to do so. If the landowner does not see the need to have the rules and restrictions that apply to enrolled private land also extended to state trust lands included in the BMA, hunters are given notice that the restrictive rules for enrolled private land do not extend to legally accessible state land.

Regardless, FWP will ensure that any such disclaimers used in the future do not **inappropriately** exclude state trust lands from Block Management Area access rules and restrictions.

**Recommendation #5**

*We recommend the Department of Fish, Wildlife, & Parks coordinate with Department of Natural Resources and Conservation to amend administrative rules to define the process for including isolated state trust lands within Block Management Areas.*

Do not concur.

FWP does not agree that amendment of existing administrative rules is necessary to define the process for including isolated, otherwise defined as “not legally accessible,” state trust lands within Block Management Areas.

ARM 36.25.163 – ARM 36.25.167 articulate a comprehensive process and procedures for including state land that is legally accessible and not legally accessible in Block Management agreements. Specifically, ARM 36.25.164 (1) (2) (6) and ARM 36.25.165 outline procedures and criteria for including state land that is either not legally accessible or is legally accessible with proposed rules that are not more restrictive than recreational use rules contained in ARM 36.25.149. ARM 36.25.164 (2) (3) (4) (5) outline additional procedures which must be used for including state land that is legally accessible with proposed rules that are more restrictive than recreational use rules contained in ARM 36.25.149.

As noted throughout this response, FWP and the PL/PW Council will be conducting a comprehensive review of FWP hunting access programs in 2013 and 2014. Part of that review process will include an evaluation of current administrative rules. The timeframe for proposing changes to existing rules or proposing new rules will depend upon the outcome of these efforts. FWP will coordinate with DNRC to develop any administrative rules necessary to address issues related to state trust lands and Block Management.

**Recommendation # 6**

*We recommend the Department of Fish, Wildlife, & Parks not provide monetary compensation through the Block Management Program for private acreage that is also in a conservation easement.*

Do Not Concur

The Block Management rules allow that cooperators may be entitled to “additional forms of compensation” through department programs. Specifically, ARM 12.4.206 states in Section (3), “Additional forms of compensation may also include: (c) participation in other department cooperative programs.”

This issue was previously addressed in a Block Management Program Performance Audit conducted in 1999, in a section that addressed coordination between Block Management and other FWP programs that had public access provisions. That Report examined and reported

much of the same information contained in this Report, with a conclusion that FWP should try to better coordinate the various programs.

Specifically, the 1999 Report recommendation related to this issue was:

“Recommendation #2.

We recommend the Department develop methods to:

- A. Coordinate access provided under the Block Management Program, the Upland Game Bird Habitat Enhancement Program, and Habitat Montana.
- B. Publicize and monitor hunting on conservation easements and the Upland Game Bird Habitat Enhancement Program.”

FWP concurred with this recommendation, and in a response to a 2001 audit compliance check, FWP reported that implementation was ongoing and reported measures taken to comply with the audit recommendation.

While the Conservation Easement program secures access for public hunting, the Block Management program simply helps the landowners administer access and offset the impacts of that access. As such, neither program directly “pays” for access and the two programs work well together. The Block Management program pays for hunter impacts in return for private landowners allowing access to public hunters without charging fees. The primary purpose of conservation easements is to conserve wildlife habitat. Public access is recognized by the Department as a prerequisite for enrolling land into a conservation easement. The conservation easement secures an interest *to the Department* on behalf of the public for the right of access to that land. FWP is getting a perpetual benefit protected by the landowner who is required to endure the impacts even though he/she no longer owns the right. FWP’s position is that the landowner deserves to have the impacts offset through the Block Management program.

Public access on private lands protected through FWP conservation easement can be managed through enrollment in Block Management or through self-administered hunter management. Often those landowners also enroll additional acres or lands in Block Management that aren’t covered under the easement, or allow a greater amount of public access through a Block Management Agreement than is required under the easement.

Offering hunter management services or benefits to offset the impacts of allowing public hunting on private lands are tools and incentives that FWP can provide to encourage landowners to enter into conservation easement agreements for long-term protection of important wildlife habitat.

**Recommendation #7**

*We recommend the Department of Fish, Wildlife, & Parks use statutory criteria to implement a compensation method for the Block Management Program that ensures accurate, equitable, and consistent payments to program cooperators.*

## Partially Concur

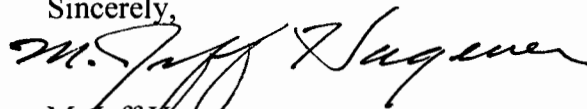
The current payment system uses hunter days and a formula to calculate payments, on the premise that the number of hunter days is indicative of potential hunter impacts, which the payments and benefits are intended to offset. While FWP agrees it is important to improve the consistency and process for calculating payments, FWP does not agree that a flat fee based on a per-acre fee is necessarily equitable or the most appropriate payment system to use for this particular program.

The Report, on page 39, offers a calculation of how much money would be saved if the program used a per-acre fee. That calculation is inaccurate because it doesn't take into account many different factors associated with current Block Management Area enrollments. Currently, several hundred thousand acres are enrolled where landowners accept no payment. In addition, lands currently enrolled might not be enrolled if a per-acre payment system was used, including ones that provide tremendous hunting opportunities of a particular type. The current system easily accommodates a wide array of variables associated with private land access hunter opportunity negotiations that encourage more access on behalf of the public. A simplistic, one-size-fits all approach to the program, including a flat-fee per-acre payment system, may actually destabilize the program, rather than help to improve the program.

As noted previously, FWP and Private Land/Public Wildlife Council will be conducting a comprehensive review of FWP hunting access programs in 2013 and 2014. As part of that process, the current compensation method used for Block Management will be evaluated and reviewed to determine what changes can be made to achieve an accurate, equitable, and consistent system of payments to program cooperators. Information contained in Chapter VI of this Report helps identify some of the challenges with the current system and will aid future efforts to improve this element of the Block Management Program.

In the interim, for the 2014 hunting season, FWP will take steps to address some of the specific issues identified in this Report regarding the current system to ensure greater consistency and accuracy in methods used to calculate and compute hunter day counts.

Sincerely,



M. Jeff Wagener  
Director

c: Tim Baker, Ken McDonald, Alan Charles

