

Meeting convened at 8:30 AM at the DNRC Building, 1539 11th Ave, Helena, MT 59601 and via Zoom.

Council Members Present: Ed Bukoskey, Sen. Duane Ankney, Lee Cornwell, Carl Zabrocki, Cindy Cohan, Dale Tribby, Ed Beall, Dan Fiehrer, Rep. Denley Loge, Commissioner Pat Tabor

Fish, Wildlife & Parks Personnel Present: Ron Jendro, Legislative Liaison; Jason Kool, Access Bureau Chief; Kammi McClain, Admin Support; Tim Potter, R6 Access Coordinator; Katie Iverson, R6 Access Assistant; Derrick Miller, R4 Access Coordinator; Ken McDonald, Wildlife Administrator; Zach Zipfel, Legal Counsel; Hank Warsech, Director; Dustin Ramoie, FAS Coordinator; Coleen O'Rourke, R3 Access Coordinator; Travis Musha, R7 Access Coordinator; Bill Dawson, R3 Warden; Bill Cook, Bear Awareness Instructor; Dale Nixdorf, R5 Access Coordinator; Lena Havron, Chief Financial Officer; Anne Howes, Budget Analyst

I. Agenda overview and welcome

Jason began the meeting by welcoming the committee and giving an overview of the agenda.

II. Legislative Session Re-cap & PL\PW Impacts

Ron Jendro updated the council on the legislation PLPW had suggested as well as a general overview of other bills relevant to the council. There were approximately fifty bills that affected FWP.

HB 2: state budget bill. There was an increase of 2.5 FTE, 5.1 million increase for FY22 and a 5 million dollar increase for FY23. Of the increase, 4 million dollars is the ongoing base funding. The 2.5 FTE increase included wildlife wolf technician positions that had previously been approved by the legislature as one time only. The additional funding was approved as one time only and will not remain in the base for the next starting point.

HB 108: Introduced by Rep. Loge. A PLPW bill that adds furbearers to permission to hunt. Previously, a person hunting a bobcat rather than trapping it was not considered under statute because bobcats are classified as furbearers not game animals. The bill also increases sanctions for hunting without landowner permission. The bill was changed from what PLPW had initially proposed, but sanctions still increased for a first-time offender. Language changed from "may" to "shall" regarding license forfeiture for second-time offenders. It went into effect March 2021.

The PLPW council asked if the changes had been discussed with enforcement and how it will be implemented? Ron explained that it shouldn't affect wardens, and that they will continue to respond in the field as they have been. The change will also be communicated to judges at their next meeting. FWP staff was provided with a synopsis of the legislation that affects FWP, so they are also aware and that synopsis was sent to PLPW members.

HB 119: PLPW bill that reinstates commission approval for all HB 454 agreements. A previous bill from the 2019 session moved approval from the commission to the director.

HB 120: PLPW bill that requires a license applicant to be eligible to apply for a license before purchasing bonus points. Parents will no longer be able to purchase bonus points for children that are not old enough to apply for hunting licenses. Any previous bonus point purchases for youth will not be lost.

HB 163: Increases commissioners from 5 to 7. The boundaries will mirror regional boundaries. It will go into effect October 1st.

HB 224: Trapping season must allow for use of snare for wolves as allowed by commission. This topic will be on the agenda for the June 24th commission meeting.

HB 225: Allows the commission to authorize a wolf trapping season beginning the first Monday after Thanksgiving with a close of March 15th the following year. It also allows the commission to adjust dates for specific WMUs. The implementation of this bill will be addressed at the June 24th commission meeting.

HB 242: creates a special muzzleloader season for deer and elk. The new season will begin the second Saturday after the end of the general season and will be nine days. The bill goes into effect Oct 1 and will be addressed at the June 24th commission meeting.

HB 468: Allows use of hounds to pursue bears during spring season as approved by commission. It also establishes a dog training season. The bill goes into effect Oct 1, so it will begin next year for spring bear season.

SB 98: Bill defines grizzly bear population as recovered and asserts that they should be removed from federal endangered species list. Under Montana law, the act of taking a grizzly bear attacking, killing or threatening to kill a person or livestock is an absolute defense against being charged with a crime. It is still a federal crime.

SB 115: The board of land commissioners must approve land acquisitions involving more than 500 acres of land or land or water acquisitions of more than \$1 million in value. Easements of land or water when \$1 million in state funds will be used would require approval of the board of land commissioners. The bill goes into effect October 1, 2021.

SB 116: PLPW bill that allows landowner preference for resident and nonresident hunter with 640 acres or 160 acres with documented game damage to apply for B-tags (antlerless). It will also allow the commission to approve the sale of resident and nonresident elk B-tags for one-half the cost of regular price in areas where the elk population is above objective. This bill goes into effect March 1, 2022

SB 267: will allow reimbursement for receipts of costs occurred for wolf harvests. Those reimbursements will be paid through a nonprofit or private organization and is very similar to the program in Idaho. The rule will go into effect Oct 1, 2021.

HB 637: cleanup bill for FWP. HB 637 increased the block management payment cap from \$15,000 to \$25,000. The bill also clarified statutes allowing game wardens to enforce littering and criminal mischief even if the land is not designated for hunting and/or fishing. Establishes that it is now a misdemeanor to use vehicle off road on state land while hunting. As part of our R3 (recruitment, retention, reactivation) effort, HB 637 authorizes the department to plant pheasant on WMAs. Those pheasants will be planted prior to the youth hunt. The bill authorizes the prison to raise the pheasants. There are twenty-nine WMAs with suitable habitat; the annual goal is for fifty thousand birds to be planted. Beginning March 1, 2022, a nonresident applying for a combo license may purchase a preference point for one hundred dollars. A nonresident hunting with an outfitter may purchase a second preference point for the same fee. No applicant may accumulate more than three preference points. The money generated from the sale of preference points will go towards access. Because there was such an increase in nonresident applications this season, if you have proof that you booked with an outfitter before April 1, you are eligible for a nonresident license. These extra licenses are only available and valid for 2021.

III. FWP Private Land Video Project w/ Hunters Connect and On Your Own Adventures

The PLPW council reviewed the proposed topics and deliverables for the hunter behavior video project they have been working on in conjunction with the International Hunter Education Association USA and On Your Own Adventures. The goal is to highlight a humorous aspect while also showing what landowners and hunters face. IHEA and the state agencies collectively are under contract with On Your Own Adventures, so there is no cost to FWP for this project. There are eight different behaviors to address with a short video under five minutes in length that will also be presented as a series of shorter videos. The content will not be specific to Montana but will still apply to Montana hunters. The videos will highlight private property rights and issues landowners are facing but should be light enough that people will still want to watch it. The PLPW council had previously asked that viewing the videos would be required prior to buying a license. FWP's licensing division didn't believe that would be possible, but Jason is still looking for alternatives. Filming of the videos is scheduled for next week, so the production group is seeking PLPW feedback on the proposal. The production company wants to ensure they are addressing the topics of concern to PLPW while not including anything the council doesn't want highlighted. After filming, the content will be returned to PLPW for review.

There was some discussion of how FWP could incentivize the public to view the videos. It was suggested that before the public gets access to block management, they must watch the video in a way similar to the videos hunters must watch after the purchase of some specialty licenses. There was question about whether FWP had authority to require viewing of the video before allowing access to block management; however, some landowners require a hunter to take the hunter-landownership stewardship course before accessing a BMA. The BMA cooperator could also require the viewing of these videos. Another member mentioned that most people are buying their licenses online, and when shopping online there are often pop ups. He suggested adding the videos to MyFWP because most people are accustomed to advertisements and other popups online.

A council member asked if there was a need to separate topics based on whether a law was being violated or if it was an ethical violation. The group decided that it was important to emphasize common courtesy to the landowner regardless of whether the violation would result in a ticket.

One member asked that as part of a video about littering, leaving toilet paper across someone's property would be addressed. Another suggestion was to remind hunters to be respectful to the people they run into while in the field. There is no way to know who a hunter is interacting with; it could be the landowner, a neighbor, or an employee of the landowner.

There was also a short discussion about respecting livestock. A council member gave an example of pulling over and waiting for cattle to be moved rather than driving through the herd. A landowner also mentioned a problem with archery hunters in full camo walking through cows rather than going around them. One of council members mentioned that during their hunter education courses, they emphasize respecting the opportunity as a whole. While hunting, a hunter needs to be in the moment and think about the right thing to do in the situation.

Jason asked the group if there were any topics they'd like to remove from the list. He mentioned that Wayne Cooperider, FWP's Outdoor Safety Skills Supervisor, had some reservations about the drinking while hunting topic. The PLPW council decided they weren't against addressing the topic but wanted to see the content before making a final decision.

They also discussed that the focus of the videos should be on respect regardless of the specific topic. People need to be reminded that hunting on private lands is a privilege not a right. Another member mentioned that the videos need to go beyond addressing issues on private property; the videos need to address respect for the land and the people. Some members felt the videos would already apply to public land. The primary goal of the video series is to address hunter behavior on private land, but the messages will apply to behavior overall. Jason commended the group on the idea for this video series as it will be utilized nationwide.

IV. Director Remarks

Director Worsch began his remarks by commending the PLPW council on the job they have been doing and how he looks forward to working with them in the future. He spoke about how he tries to explain to the public the background about decisions and policies. In the next Montana Outdoors, there will be an article discussing the department's position. We will be moving in same direction but taking a different approach. He is trying to be more transparent. Director Worsch also spoke about the process for the PLPW council members to be reappointed. Council members who are interested in continuing will need to reapply and appointments will be made by the Governor. The current PLPW appointments expire August 1st.

Director Worsch spoke with the council about their mission. He asked the PLPW council to consider whether they want to work on the migration topic. Next, he discussed HB 505. Speaker Galt had a bill that was going to put shoulder seasons in statute. From the agency's perspective, codifying shoulder season would tie the hands of the commission, so the department worked on an alternative. The approach was to structure things as incentive based to get elk to objective. Landowners in an area with elk at objective could get ten licenses for hunters to hunt solely on their deeded property. That was the incentive for landowners to open their property and allow hunters to harvest cow elk. As an incentive for hunters, they could receive five bonus points by foregoing their general license and hunting antlerless only. The hunters would be hunting on private property and not competing with public land hunters. When the department vetted it, they tried to get different groups together and explain the approach. Regardless of the fate of HB 505, there is still a need to figure out how to work with landowners and sportsmen to find solutions to reduce elk numbers. Director Worsch wasn't sure if PLPW was the right group to address the topic. But if it is not, he wants to be inclusive and have everyone involved in this discussion. He asked the PLPW to discuss if they should work on the issue. He noted that one of the benefits of PLPW is that they have the ability to work on legislation.

A council member asked how HB 505 and PLPW's possible involvement would work with the elk management plan. He was concerned that we would be heading down two different paths. Director Worsch agreed that the two issues were related and couldn't stand alone. He also said that the elk management plan is for managing elk, and that the HB 505 discussion is just another tool. He mentioned that FWP will need to work with groups we haven't worked much with in the past. He has made a commitment that when we hold constituent meetings that they will involve everybody; it is important to hear different perspectives on the issues.

There was some concern among the public that HB 505 was not properly vetted. Director Worsch believes that some of this concern stems from a lack of knowledge in the public about how legislative process works. There is no chance to vet it a bill that a legislator brought forward. We tried to do the best we could to vet it. When the department proposes a bill, we have 18 months to work on it and vet

it. If someone else brings it forward, the department is just there to provide information. Occasionally if a legislator asks for guidance on how to write it, we help with that. We provide information on how legislation can be implemented. One of the commitments, Director Worsech made to the Governor was to hire a deputy director, so he can spend a lot of time in the field.

Another concern Director Worsech brought forward was that FWP has some of the most highly educated biologists in the nation, but they aren't trained. Our wardens go through 18 months of training. They do ride-alongs, learn about conflict management, and learn how to deal with people before going out into the field. Our biologists are sent into the field with no training. Director Worsech believes we are setting our people up for failure. He wants to work on getting them trained on how to interact with social issues; he is also asking our universities for help on preparing students to deal with social issues. He believes staff should also be trained on the history of the department. Learning about history helps people be part of something bigger than themselves. Staff should be given all the tools needed to succeed. COVID changed the way FWP does business. There have been some positive changes as well. The Director participated in a Brown bag, a virtual meeting for FWP staff. Two hundred people attended that meeting and three hundred watched the recording later. These meetings give Director Worsech the ability to reach a lot of staff, and he doesn't have to rely on the chain of command to communicate the passage of major policies or changes. He can explain what we are doing, why and answer any questions.

Director Worsech briefly discussed some of the legislation that came from the 2021 session. He acknowledged that there had been some concern about what came out of the legislature, but that the commission still has the ability to make sure no harm is done to the resource.

The Director then opened to questions from the council. A council member brought up some concerns that the balance between outfitters and sportsman is not improving. Director Worsech said that with his previous history working with the board of outfitters he has the ability to watch both sides. He believes it is a jealousy issue. Some outfitters make a lot of money, and some don't. It isn't the department's job to make sure that they have a career, but doing something different or getting rid of outfitting isn't going to happen. From his perspective, a nonresident has three options. They can wander around opening day and hope for a harvest, spend a lot time and effort on research and getting gear together, or hire someone who already has that expertise. It isn't going to change, so we need to bring everyone together to talk about the issue. There is a problem with elk. The landowners take the brunt of it. Everyone has a different tolerance for elk. What is the expectation of the landowner who has a public trust animal on their property? Director Worsech believes we can't just keep putting the issue off, we have to try some solutions. We might fail, but we've got to try something. The director wants PLPW to discuss if they want to tackle these issues, or if another group should be assigned.

Another member mentioned that the director was beat up in the press and wondered if the department could add a section to their website similar to a fact check in the newspaper. Director Worsech replied that he will not fight someone who fights with a gallon of ink when he has a pen. He worked with some experts in the department: Greg Lemon, Communication & Education Bureau chief, and Tom Dickson, editor of Montana Outdoors. He worked with them to write an article for Montana Outdoors. The article will explain that FWP is moving in the same direction with a different approach. The goals haven't changed; FWP is just looking at it differently. The council member was still concerned that nothing is being done to address the negative press. The Director responded that they have their ability to speak,

and the way forward is to establish credibility. FWP has to do what we say we are going to do. The best response is to stay the course, do the right thing and move forward.

A council member thought that HB 505 was a good case in point for the department to look at how issues are resolved. HB 505's original goal was to codify shoulder seasons. The expectations of shoulder seasons were not met for either the landowner or the hunter. Shoulder seasons were supposed to be a toolbox item for the commission. The hunter expected three years of experiment. How is it going to work, is it going to do the job? They latched on to that message for their resource. Landowner didn't catch that message. Shoulder Season was a remedy to an overpopulation problem. That doesn't just stop after three years. The hunter expected it to be done with and analyzed. The landowner expected it to continue because the problem still exists. At the same time, a new elk working group was created independently to research this subject and come up with an understanding. When HB 505 came, where is the working group information and how is that going to come forward. In his opinion, there were two problems that didn't get addressed, so the legislature did. If it doesn't get addressed, legislature will address it because the constituent needs it resolved. There needs to be two solutions: an immediate one and a long-term one. Elk population objectives can't stay static for fifteen years because the landscape is changing. It is all changing as fast as zoom is changing communication. If you consider the outfitter fix in HB 505 a fix, what is the long-term solution? The long-term solution is to get the right parties together to work towards the best answer. Otherwise nothing gets fixed.

Director Worsech addressed another aspect of HB 505: the idea of objective. The objective was set many ago, so are they still accurate? There is a tolerance that has been built for elk and an expectation for sportsman. The other part of HB 505 as FWP envisions there would be groups getting together in areas to discuss the tolerance or objective for elk. Those tolerance levels or objectives would be adjusted through the commission. It would be a moving target. If it is affecting you as a neighbor, rather than having the department try to referee; landowners can work together to say they want to be at objective to get hunters to their property. HB 505 would create tools we've never had before. The bill had a lot more thought to it than it looked.

A council member had a question for Director Worsech. The PLPW has been working on a project to help emphasize the importance of hunter behavior and landowner relations. Earlier in the day, the council was discussing their video project that will focus on respect of the land and landowners. A few weeks ago, there was a hunter education workshop via zoom. The council member understood that there was a direction that came from the director's office that would eliminate in-person hunter education classes. All hunter education would be done via video with a field day. The council member wanted to know if that direction was accurate. If it is, he was concerned that by not having an in-class component there will be a missed opportunity to focus on landowner relationships and ethical behavior. For the Miles City classes he teaches, that's been a pride and is a large focus of his portion of the class. Teaching respect of the land and landowner.

Director Worsech did confirm that the classes will be offered online with an option for a field day. The field day is optional. COVID changed the way FWP does business. A lot of other states have gone to online only for hunter education. Director Worsech wants the instructors to come up with an incentive-based approach to make kids want to come to their classes and do the field course. There was public concern that the change to online classes would result in problems with youth hunters. The Director's response was that the same concerns were raised about apprentice hunters. In speaking to the hunter

education instructors, apprentice hunters who come through hunter education are more prepared and haven't had any issues. We've also had a year of hunter's education online and enforcement is not aware of any incidents. He wants to incentive it to make it bigger than it used to be and try to get people really involved in the hunter education courses. That's the rationale behind it. He appreciates everything the instructors have done.

Another point the Director made is that while BMA has been an amazing tool, it has been determinantal to landowner/sportsman relationship. Hunters don't have to speak with landowners and develop relationships. They can just sign in and hunt. The hunter education classes need to include information on how to interact with landowner and to increase the understanding of what landowners do. He also thinks FWP needs to do a better job to explain tribal relations. State bison hunters don't expect to see tribal members when they go out to hunt. They don't understand the 1855 treaty; Director Worsch wants to do a video to help explain that treaty. He believes that even if people don't agree with a decision or policy, if they understand the reasons behind it. It becomes more palatable.

V. Public Comment:

The PLPW council received two public comments.

Cole Mannix is based here in Helena. He works as contractor for Heart of the Rockies initiative. That group is partnership of land trusts that operate in Montana, Wyoming and Idaho. They came together with other groups around the same time of the secretarial order. There was a FWP presentation December 18th regarding the secretarial order with MT wildlife federation, Theodore Roosevelt Conservation Partnership, and others. It was group of folks that resonated with the need to ensure wildlife movement and migration and the need to help private and working lands with that goal. The reason the group reached out in these five areas of MT and brought this panel back in December before PLPW was to share their shared values in wildlife but also the challenges that their operations experienced. As a follow up to that, the coalition met with the Governor's office, and also met with Director Worsch, Dustin Temple, and Quentin Kujala in early spring to share what was done in December. The coalition has asked PLPW to consider what it might provide on meeting some of the unmet needs on working lands. What the coalition heard back from Director Worsch, was what is the coalition really asking? So on May 3rd, the coalition delivered a letter to the director's office. A lot of these unmet needs require funding in some way, but as clarification the coalition is not asking PLPW to identify funding sources; they are simply asking this council to consider policies and programs that may address some of these unmet needs. They also provided a second attachment that as a suggestion for the kind of program that could address those needs. The coalition is asking PLPW to weigh what they've submitted and provide some feedback.

Brett Huestis manages hunting on Cowan and Son Ranch in the Bear Paws. He manages six BMAs which is quite a bit of land. This year, he applied for landowner preference. Mr. Huestis gave his landowner preference to a full-time employee who manages the ranch. His preference this year was declined and not put into the drawing. His signature for Wine Cup Ranch, which he owns with his wife, wasn't verified signature as a landowner. It wasn't true because three years ago he verified his signature with FWP, so he could get the sportsman without bear package. It was already set up that way. To have that rejected wasn't good. He was pretty upset about that. He wouldn't have been as upset as if he was the one applying for it, but the fact that he had given it to an employee and got rejected made him quite upset which is why he started making phone calls. His brother-in-law who is son of the owner of the ranch had

the other landowner preference. They have three landowner preferences for their place. His was rejected. He's an out-of-stater. His got rejected because he didn't show proof of hunter education. He is a 50-year-old man who has hunted Montana and other places. Mr. Huestis's wife got rejected just because she got rejected. The crux of everything, they do follow all the rules and they do all that. There wasn't an opportunity to fix the problem. They weren't given a chance. They got a letter after the drawing was done saying they didn't qualify because of this. Which isn't true because he had his signature already authorized. Why can't there be, it is all set up online, why can't he get an email to notify him to fix this problem.

Director Worsch addressed Mr. Huestis's comment. FWP is building a new system. The system the agency has currently was put in place in 2001. It is archaic. We are trying to work with landowner preference on the cadastral database to verify the owners. The problem with the LLCs is if you don't have the name on file with them, the system kicks it out. Director Worsch said that he will look into exactly why Mr. Huestis's landowner preference was rejected.

Another topic the Director wants the council to look at is landowner preference. Our landowner preference in the past stated that a landowner had to have elk on their property to qualify. FWP was challenged on it, so the legal division looked into it. The interpretation now is FWP has to prove that a landowner doesn't have elk on their property. The new interpretation opened it up for more people to apply for landowner preference, so the odds of drawing went down. Adding LLCs and the other issues with it, it creates a problem. That is first and foremost to be fixed with the new XMT. The bigger issue is how do we approach landowner preference, and how we award it. Should it require a drawing, or should a landowner be issued a license only for their deeded land? He wants the council to consider possible legislation to address landowner preference.

PLPW brought a bill that changed the approval for 454s to the commission rather than the department. When we looked at that we had that for the license and the permit, the assumption was that the permit and license had to be the same thing, but it doesn't read that way. It is a three to one ratio, but it could be three cow licenses to one bull license. It doesn't have to be the same license. That is an issue we had, so we are going to have more people come forward this year that didn't draw a license or permit wanting to invoke 454 agreement with the commission and get a permit or license and then allow hunters out there.

A council member shared some observations he had in relation to the PALA program. One of the guidelines for eligibility is that access to the public land has to be less than two miles. If it is more than two miles, they are not eligible. Looking at other examples, he believes the group could be missing the boat on some important properties. For example, he looked a project recently and calculated the distance to get into the public land. First a person had to walk around some state land before getting onto a two-track trail. That distance was a over a mile. Then there is a road the person would have to travel almost two miles before getting to the chunk of public land with a two-track trail that went in for several miles. With the current guidelines, it would not be eligible for the PALA program. He think the group needs to look at those requirements. He believes there with where PALA is going now. There is a concern that through the PALA program, landowners will be paid a significant amount of money to allow access to the public land. Many of those landowners are enrolled in BMA. Historically because they have been in BMA, there has been access to the whole ranch unit. In his area, so much of that land is intermingled public and private land. Through the PALA program, FWP is going to pay them significantly

more money to drive across a piece of private land to access the public land. He believes it is possible that the landowner will decide it is more lucrative to participate in PALA without participating in block management. The landowner then has the option to possibly outfit their private land and make more money through that. When considering the proposals, he asked the council to think about that. The goal is to increase access for resident and nonresident hunters into these parcels of land. He thinks the flip could happen as more and more people find out the potential payout for participating in PALA.

There was some concern that people may drop out of block management to only be in PALA. As they look through the PALAs, the group acknowledged that there is potential for that to happen. There was also a brief discussion about how some PALA applications mentioned that if the PALA was not recommended, it could authorize the BMA. One council member agreed with the potential for loss of block management but said mortality can't be legislated. Jason also reminded the group that the PALA program was set up to coexist with BMA, and that landowners have the option to participate in both.

VI. Hunter Access and BMA Access Discussion/Updates and Reservation System Presentation

Brett Huestis from Cowan & Son Ranch gave the PLPW council a presentation on the website and reservation system he uses to allow access to the Cowan and Son BMA. Prior to the website, Brett and his wife took reservations over the phone. The messages and time required led to the creation of their website. When hunters look up the Cowan and Son BMA in the access guide, their website cowanhunting.com is listed for permission and reservations. The website identifies the property as a type II BMA, offers a few pictures of the ranch, and lists the ranch rules. Before a hunter can make a reservation on the BMA, they have to review the ranch rules. Then to request permission, the hunter has to provide their information along with the information for any other hunters in their party. Once their reservation is approved, Brett sends them an email with where they are going to hunt, the dates, and detailed directions on how to get to that pasture. The email serves as their permission slip to be printed off and displayed on their dash. They can then go hunt the pasture for their allotted time frame. All of the reservations go into a spreadsheet maintained by Brett. The spreadsheet serves as his permission book. At the end of the year, Brett emails his spreadsheet to FWP. That spreadsheet gives the department the information they would typically get from a permission book. Brett also maintains a second spreadsheet for his different pastures. He shares this second spreadsheet with FWP, so they have the necessary information for any patrols.

VII. Public Access Land Agreements, Public Access and PL/PW Role

Zach Zipfel, an attorney with FWP, answered questions from the PLPW council.

One member asked Zach about prescriptive easements. Zach explained that a prescriptive easement is essentially adverse possession for a right of way. He then defined adverse possession for the group. It is if you are using someone else's property and are using it in a way that is adverse to their use, after a certain period time that property becomes yours. The elements of prescriptive use in Montana is that use has to be open, notorious, exclusive, adverse, continuous, uninterrupted and for the full statutory period of five years. It isn't seen very often because if someone is using your property, you generally stop them. A council member asked if those eventually have to be articulated with a surveyor? Zach explained that with prescriptive easement the burden of proving that is on the individual or entity that wants to assert the prescriptive right. A claim would be filed in district court. In that claim, the factual elements would be laid out to establish each one of those legal elements. That evidence would be

presented to the court using affidavits and documents that weigh on the legal elements. In certain circumstances, a survey might be part of that process, but it wouldn't be the only evidence provided.

A concern was raised about PALA projects. One of the tracking form questions that precludes the council from even thinking about a PALA is the access. The project is researched by FWP to verify that no right to public access exists. The onus is on the department, not on PLPW. The regional people begin the PALA application and determine if there is any existing access. The council member's understanding is that one of the worst things to do would be to enter a PALA without having preformed due diligence to make that determination. One of the PALA agreements we have is a clear example of an unknown. There might be information with the historical society, DNRC, BLM, Forest Service, Bureau of Reclamation. He was concerned whether a BMA coordinator has access to that information through the legal division of FWP to make sure the due diligence has been done.

Zach explained that from a legal standpoint for due diligence the standard is not perfection. Due diligence are the steps or investigation done by a reasonable person prior to entering a transaction in an effort to prevent harm. The key from a legal standpoint is "reasonable person." What is reasonable changes depending on the circumstances. Determining a right of way is different than buying a home. The due diligence taken by a reasonable person in those circumstances are not necessarily the same. This list is not the research that needs to happen, it is the questions that need to be answered based on the research. The questions are aimed at identifying the common understanding based on local experience, local government, landowner and their understanding about this particular land. Answering those questions is a reasonable approach. For some of those questions, the research is going to be harder to answer. A good effort is necessary to find the answers based on what the people familiar with the subject know. Sometimes the answer is not clear. There is a ton of litigation about roads. It is a complex area of law because it is based on documents that go back over one hundred years. Knowing that the due diligence standard is what is reasonable; is it necessary to chase down every document out there? No, in part because we are trying to prove a negative. The goal is to prove there is no public access. The best approach is to move forward the best sources of information available and make a determination based on that.

One of the council members was concerned about due diligence. The charge from the legislature was to secure public access to access that doesn't exist. What the department has to do for due diligence is different than what PLPW has to do for due diligence. The due diligence is on the department; the due diligence for PLPW is that FWP already completed it. He wants to be sure there has been the proper amount of due diligence to determine that situation before proceeding.

Zach reminded the council that for due diligence perfection is not the standard. It is critical to remember what the legislature was trying to accomplish when they enacted the PALA program. Legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing and other recreational activities as determined by the commission. That is the point of the program and what we are pursuing.

Through ARM and PALAs, there has been an attempt to build a recognition that entering an agreement isn't an indication or evidence one way or another as to the nature of a road. There is an acknowledgement that just because we are entering this agreement, we are not conceding anything about the nature of the road one way or another. It is another tool to keep a public claim to that road potentially open if there is one.

Zach shared the language from the administrative rule, 12.2.607 sub 5: A PALA shall not be construed to support, establish or preclude, limit or diminish any claim for the right to public use. That language is also included in the PALA contracts. When a landowner is signing into a PALA, they are acknowledging that point because it is one of the terms.

The council member still had some reservations. He wants to be sure that when making recommendations to the director, that PLPW is giving him clear guidance after getting guidance from the region about whether a PALA should be pursued.

Zach asked what the group recommendations look like. For department decisions, he encourages people to show their work. He tells people that they need to explain why they are doing what they are doing. It will get people in hot water far less than making a decision and not explaining what they are doing. Going forward, for those PALAs are tricky or difficult identify what factors that played into the decision and why they played into the decision. Zach said that is something the PLPW council could do to make their reasoning clearer. In the event of litigation, PLPW could explain why the recommendation was made and the director could explain the thinking behind his decision.

The PLPW council wanted to know more about SB 354. Zach Zipfel wasn't familiar with the bill, but he did briefly look over the bill and give his initial interpretation. It seemed to be a restatement of the common law. Common law is the law that has been developed by courts over time. The bill basically says that somebody who holds an easement can't grant anything beyond what they have. There was also a statement about when you own property, you are generally allowed to do anything with that property. When someone has a right of way across your property, their use of that right of way is limited to the grant by which they got. If that right of way grant is for administrative purposes only, then they can only use it for administrative purposes. The landowner can use the land underlying that that right of way for any purposes than a landowner can use their property. Those are long-standing common-law principles. Unless the bill sponsor has a different thought, that is how Zach initially interpreted it. If an easement is for hunting, you can't use the easement for fishing.

Zach Zipfel later asked Jason to let the council know even if a PALA is approved because of the evidence we have at the time, it doesn't mean FWP can't terminate the agreement if something new is learned.

VIII. Public Access Land Agreement Review and Official Recommendations

Region 7 PALA Agreements

Connor Beach: This property is good habitat for birds, deer and antelope. Landowner was satisfied with the PALA, and so were users. Last year the landowner requested road improvements. Those improvements were denied last year while the PLPW council was still outlining the process. He asked for that improvement again, \$2000 for dirt and gravel. He agreed to do a three-year agreement if he is reimbursed for that improvement. The PALA is open year-round and will allow other uses such as hiking and birdwatching. There is motorized access for all hunting seasons. Total would be \$5,025 plus the \$2,000 for road improvements. Last year payment was \$6,500. This year's total would be \$7,025. Official recommendation – yes to move forward.

Country Cross Ranch: This landowner is also part of BMA. The property is very high use; last year they had 1,042 hunter days. The adjacent BMA annually receives over 1,000 hunter days. The project has good deer and turkey hunting with some antelope opportunity as well. Landowner was satisfied last year and willing to participate again this year. This project is only open for all established hunting seasons, not year-round. It is open fall hunting season through spring turkey. It does allow motorized access through private land. The payment would be \$4,000 total. Last year, we paid \$7,250. Official recommendation – yes to move forward

Ralph Losing: Another renewal project. The landowner was happy with everything last year. This PALA opens 640 acres of public land, so it falls under the flat rate payment of \$1,050. Last year we paid him \$2,750. He was fine with the change to flat rate and a smaller payment than last year. Official recommendation – yes to move forward.

CA Weeding & Sons: PALA opens over 12,000 acres of public land. Adjacent BMA has over 1,000 hunter days annually. There is good deer and turkey hunting. It also has the potential to help reduce elk conflict by giving access to public land. Landowners and hunters were satisfied with last year's agreement. The project is Walk in only. It is open just for fall hunting season, but the project will allow for other activities such as bird watching. Because this project opens up over 10,000 public acres, it qualifies for an additional \$6,000.

The group discussed how the landscape could lend itself to a situation where it is more profitable for the landowner to participate in PALA and drop out of BMA. Travis explained that the landowners have participated in BMA for the past twenty-five years, so he did not have any concern about them dropping out.

Last year the PALA payment was \$7,000; this year it went up \$5,000 because of the large contiguous acres for a total payment of \$12,000. Official Recommendation: Yes to move forward with the three year agreement.

Region 6 PALA Agreements

Maxwell Spring Coulee WMA: This PALA is a renewal from last year. It allows access through Maxwell property into an FWP WMA, some BLM acres and a little bit of state land. Public acres opened was 1,491. Demand for this WMA/BMA was a lot higher than we thought it would be. There was an estimate for one hundred hunter days, but it was in fact 342 hunter days. This landowner is also enrolled in BMA. This PALA would decrease conflict from potential trespass issues. Last year we paid \$9,750. In 2020, the PLPW council recommended a \$3,000 bonus payment since this project allows access to an under accessible FWP WMA. The department hasn't been able to manage that property because of its limited access; it is only accessible by water. Some members of the council were hesitant to approve the \$3,000 bonus this year for access to the WMA. There was some concern that removing the \$3,000 bonus payment may jeopardize the PALA as well as the BMA. A proposed solution was to approve the agreement for this year while reserving the option to reassess the bonus payment next year. Official recommendation – approve the agreement as presented for one year only with the probability of reassessment next year. Moving to a one-year agreement will reduce the base amount because the PALA won't be eligible for a long-term bonus. The payment will be reduced to \$6,800.

Shawn Downing Cut Coulee: The property was enrolled in BMA last year. The landowner is choosing not to be in BMA this year but would like to continue with the PALA. Last year there were 377 hunter days on the adjacent BMA; the region estimates that the public land will have similar use. The PALA will allow access to just over 1,800 public acres. The PALA would help with deer management by mitigating some game damage. The land offers good mule deer habitat. The PALA would also help decrease trespass issues. Last year we paid \$7,700. Since he is going to drop his BMA, the PALA score would drop below a score of twenty one and would therefore drop below the additive payments. He is requesting an improvement for a low water crossing. The improvement is estimated to cost \$10,000. He is asking to be reimbursed for half of that expense, \$5,000. With the improvement, it would be a five-year agreement. The total payment annual payment would be \$6,275 with the additional \$5,000 for improvements. Official recommendation – yes to move forward.

Tom Browning Morris Coulee: This landowner expressed that he didn't agree with the reduction in payment this year. There was some concern that this agreement had too high of a payment compares to their hunter days, but ultimately the group decided that with the new criteria the payment was less than it was in 2020. The reduction in payment this year across his three projects was \$9,000. This year each project is valued as \$4,275 compared to \$6,500 for 2020. Official recommendation – Yes to move forward for all three Browning PALAs for five years.

North Rock Creek – last year we did four projects with Bergtoll's on the Bitter Creek. Those were 10-year projects. This North Rock Creek is one project with two different landowners that lease the BLM. Tim split the BLM acres in half to come up with the assessment for number of public acres the PALAs are accessing. The demand for this property is very high. They plan to enroll their property into BMA this year. These PALAs would help with CWD management. They would help reduce conflict due to trespassing. Official recommendation – yes to move forward for both North Rock Creek PALAs (Blaze & Darrel Bergtoll)

Blaze Bergtoll Dolson Coulee – High demand area and would allow motorized access for fall hunting season. It will access over 5,700 public land acres for a payment of \$6850. Official recommendation – yes to move forward

Lee Cook – There is some good bird habitat in this area with some deer too. The landowner will allow access via motorized vehicle. Because the PALA allows access 640 public acres, it falls into the flat rate calculation for \$1,050. Official recommendation – yes to move forward

Wittmayer Grazing Association – The association includes multiple landowners. The landowners asked Tim to remind the council that these projects will affect a lot of people and families. Over the years there have been problems with the public going wherever they want in this area. These PALA agreements should help with trespass problems. This has been a long process for the department. We've had people that have hunted CMR without signing in on BMA. FWP tried to issue citations for traveling through their private to get to CMR, but those were thrown out. For the last few years, Tim and the region have done due diligence to try and identify what is a private road or county road etc. Identified some petition roads. All these roads that go to CMR do not have legal access by the public. Tim reached out to the CMR to verify if they had any easements with the grazing association, and they do not. Another issue in the region is the closure of CMR roads. A lot of those roads are getting cut back and closed. We want to keep these CMR roads open and that was another issue addressed by this PALA.

PLPW asked if these PALAs are two miles apart. If measured from where the public would access, it is two miles. Each of these agreements is asking for \$3,000 in improvements: a cattle guard for \$2,400 and gravel for \$600. These PALAs are all three-year agreements. Demand for CMR is very high and the habitat in this area supports a lot of wildlife. These landowners are also in BMA. There has been an ongoing issue with people taking advantage of them and not following the rules. To try and fix these problems, the region tried changing the BMA rules and adding different signage, but the landowners are still having issues with the public. The PALA should also help establish that these are in fact private roads.

The majority of the year-round agreements also have fishing access. PALA would reduce landowner conflicts and access conflicts. \$7,525/year plus \$3,000 for improvements. Official Recommendation – yes to move forward with all the Wittmayer Grazing Association PALAs.

Day 2 began at 8:30 AM.

Region 3 PALA Agreements

XC Ranch – Opens a section of DNRC land. It is a renewal from 2020. The adjacent BMA had 478 hunter use days. The area is used for antelope, bird and occasionally elk hunting. Because it only opens a section, it is subject to the flat rate of \$1050. Official Recommendation – yes to move forward.

Dunn Canyon Road – 13,235 public acres accessible. Boulder Mtn BMA is adjacent to the parcels. The BMA had over 500 hunter days. Elk, bird, and deer hunting are available. The PALA will be open for the fall hunting season only. They will allow motorized vehicle access for fall hunting and fishing. The PALA qualifies for a \$4,350 payment. There are multiple landowners that own property along this access route. During the meeting at the regional level, there was still some discussion about whether the project should be valued as one PALA or if there would be multiple agreements.

There are two Careys who have submitted applications: Dunn Canyon Cattle Company and the Carey brothers. Both applicants have leases on the forest service and are both eligible. The region valued this PALA as one project because of the access road. The landowners have requested that if group decides to recommend a PALA that the valuation double or that each entity gets the valuation and payment. They are not willing to go forward splitting the \$4,350.

There was some concern about prior existing access in the area. One of the members explained that Dunn Canyon road has been understood as a public road by hunters for many years. The Forest Service provided a formal response that gives the history of the road from their standpoint. There is no recorded easement that the public has either on the lower section or into the checker boarded areas. Also, the road is generally open through the hunting season through BMA or through the fact that it has been allowed for years. The road also has been locked off during the winter months since the nineties. The Forest Service has not contested that closure nor has the public. There is a strong case for adverse possession. The history is that the landowners through logging created the road. There is an argument from the public standpoint or Forest Service standpoint that there are some other access roads closed down to maintain this as the main access road. That's a fairness in any negotiation between the forest service and the landowners, but it probably doesn't carry much for legal weight for whether the road is open. Landowner contends it is a private road with no easements. The Forest Service has said they are in

support of this agreement. The Forest Service listed the road status as unknown because there is the potential for a prescriptive case albeit likely weak.

There was a discussion about possibly only doing one agreement, but it was pointed out that one property alone wouldn't allow access into the public acres. People would have to cross the other private property to reach the public property. If you value the projects individually, they would be valued the same. A concern arose that it was precedent setting because of other possible scenarios where you cross two different landowners. One landowner may have no ties to the public land, but for a payment the landowner would provide access across their private land. As an example, there could be three miles of access road that connects to one mile of private land with no access to the public and then it could go through two more miles of another landowner that does have access the public land. A council member felt that there could be some lost opportunities if they decide that this project doesn't qualify for PALA. He cautioned the group to be careful how they handle it. One suggestion was possibly giving the landowners without access the flat rate fee, but the group wasn't sure if it would be allowed under statute. In this instance, both landowners do have ties to the Forest Service land because of the grazing leases.

Bill spoke with the Jefferson Valley Sportsmen through Whitehall regarding this project. The sportsmen were in support to maintain access. There are some checkerboarded parcels that are not included in this agreement. He has had discussions with both Careys on this road. Initially they came to us about trying to do a PALA near the deadline for applications. It would have more value to the public if those additional checker boarded sections were included. There was some general agreement by the landowners that may be something that could be negotiated in the future, but for now, they have decided to include what they've been allowing for the last few years. There is room for potential increase in public land acreage in the future.

There was still some concern about the unknown status of the road, but the council did decide to move forward. Because of the shortened timeline, the group decided to move forward utilizing the special considerations section of the scoring criteria to increase the payment.

Official Recommendation – Approve for one year as one PALA, but with both landowners receiving the \$4,350 payment under the special considerations section of the scoring criteria.

Region 4 PALA Agreements

AJ Kuhry Ranch - Renewal from last year. The project opens about 7,000 public acres in hunting district 410. The acreage is in two parcels: one to the east and one to west. The landowner will allow game retrieval with permission. The habitat supports antelope, upland game bird, mule deer with some elk. The landowners are long-term BMA cooperators. The BMA averages 550 hunter days annually.

The PALA application is for a ten-year agreement which would be valued at \$7,900 annually. Last year the payment was \$5,750 for the project. The main reasons for the increase are length of agreement and last year we focused on grazing lease acres and not the total public acreage opened by project. Official Recommendation – yes to move forward.

APR/PN Ranch – HD 426 just south of Missouri River and northwest of Winifred. This PALA is a renewal from last year. It is two parcels of DNRC that they have the grazing lease on. It opens 3,000 public acres. The access road is shown as yellow on the map because there is a seasonal closure on it. It is closed from

rifle season to April 1. The closure is primarily because of road condition. The property is open year-round for access to the public land. People can drive from May 1 to rifle season. During winter months, people have to stop at the Old PN bridge road. Last year the closure didn't seem to impact use. The region did periodic car counts for vehicles in the parking area. The project has an estimated use of 400+ hunter days. Adjacent BMA only open 5 days a week had 250+ hunter days. The landowner is asking for a one-year contract valued at \$5,350. Last year the payment was \$6,350. The parking area on the PN bridge road after October they can't drive on it, but hunters can use e-bikes, bikes, horseback or walk during road closure. The road also hits a northwest parcel of state by that last parking area. In the future, that would parcel would qualify for PALA as well, but the landowner didn't include it in their application this year. The landowner also added their private land into BMA. They expanded the access for their BMA as well; they are opening for spring turkey. Official Recommendation – yes to move forward.

Boone & Crockett – we've had access to the Forest Service acreage via access corridor agreement through the block management program for several years. There have been some issues with compliance. Some of the locals believed it was a public road. It was determined through the supreme court to be a private road. There have been problems with compliance for sign ins which was an enforcement issue. To use the access corridor, the hunter has to sign in and turn in their stub for how long they were on the property. The PALA reduces conflict with fall season compliant issue. After supreme court decision, the Forest Service tried to pursue a long-term access agreement, but they couldn't secure that on Boone and Crockett ranch. The Forest Service did secure a smaller access on the adjacent land. It will be accessible through motorized use all the way to Forest Service from July 1 – Oct 15. Then after that time period it will close. Then the public can access from the parking area down the primitive two track trail via horseback, pedal bike, etc. Due to the isolation of this area, the closest access areas are Blackleaf which is 5 miles away and Swift Dam is 8 miles away. This PALA opens over 57,000 acres of Forest Service land. The landowner is seeking a three-year agreement valued at \$11,500 per year. They are also seeking a \$1,000 per year, \$3,000 total, for maintenance to fords. Official Recommendation – yes to move forward.

Mikes Ranch – This PALA is a new project which would open over 800 acres. The landowner is seeking a one-year contract open during fall hunting season from Sept 1 – Jan 15. The payment would be \$2,600. Official Recommendation – yes to move forward.

Wherley Ranch – Renewal from last year. Last year the payment was \$3,200 dollars; this year it falls into the flat rate payment of \$1,050. The landowner is asking for a five-year agreement to align with their BMA contract. Their BMA has 500+ hunter days. Official Recommendation – yes to move forward.

Region 5 PALA Agreements

Mike Grewell & Nancy Elliot – The PLPW council considered these two agreements at the same time. They both fall under the flat rate payment; Mike Grewell's project access 160 acres, and Nancy Elliot's project access 320 acres. They are both seeking a three-year agreement to be eligible to receive reimbursement for road improvements. They are each seeking \$3,000 for those improvements. Last year, both projects were paid \$3,500 each. Majority of the use will be during fall hunting season while hunting the BMAs, but the access will be open year-round. Mike Grewell's PALA qualifies for a \$525 payment, and Nancy Elliot's PALA qualifies for a \$790 payment both also requesting \$3,000 for improvements. Official Recommendation – yes to move forward for both Mike Grewell and Nancy Elliot.

Sunset Colony (Fred Wipf) – This project is a renewal. It would open two separate sections of DNRC. There were two applications submitted, two assessments and two payments at the flat rate for 640 acres. The PALAs would be open from Oct. 1 to March 31. Most of the use is going to be during fall hunting season incidental to BMA. The BMA had 398 hunter days last year. The 2020 payment was \$2,750. The council did discuss changing this agreement to one PALA rather than two. Combining the two projects would result in one payment of \$1,600.

Proposed – go with two agreements this year, but let the landowner know that next year it could be only one. There was another suggestion to change the language on the application to clarify what would qualify as a separate agreement. The council recommended that if there is one entity, with one lease that that they get one agreement.

There was also a discussion about how this project would score next year if it does move to one agreement. Would it be scored as two separate 640-acre pieces, or one 1,280-acre piece? It seems that 1,280 acres would score higher and may be entitled to a larger payment. The council didn't come to a clear conclusion on this question, but agreed they need to consider these situations for next year.

Official Recommendation – approve both as presented for one year, but the situation needs to be addressed for the future.

IX. Bear Aware Training and Presentation

Bill Cook, FWP Bear Aware Instructor, shared his bear aware presentation with the PLPW council. He gives this presentation throughout the state to a wide variety of audiences. The science of bear safety evolves as attacks are analyzed each season. There are new safety products are the time. There are new challenges in bear safety as grizzly bears move to areas they haven't been seen in a long time. There has also been an increase in visitation to Montana with the pandemic and as more people move to Montana.

He shared that if people are recreating in the field anywhere west of Billings, that it is important to implement bear safety. As part of the presentation, Bill gave the council some tips on how to avoid encounters. Knowing when bears are most active is an important part of bear safety. Bears are typically most active at night and the low light periods of dawn and dusk. Sows and cubs may be out more during the day, but typically bears are bedded down during the heat of the day. He also spoke about yearly cycles for bears. As bears come out of the den, they typically spend summer in lower elevations working up to higher elevations. In fall, when they are hyper focused on eating, they may be less aware of their surroundings. Because they are less aware, a person may be more likely to surprise a bear. Bill also described the importance of noticing bear signs such as scat, rubbed trees, logs torn open by bears, etc. Picking up on those signs can help avoid an encounter. The next topic he addressed was attractants. It is important to secure attractants. He referred to these attractants as "smellies." These smellies can include food as well as other items with a smell like insect repellent or dirty dish water. There are various options to secure these attractants. These items can be stored in a hard-sided vehicle, bear lockers, electric fences, certified bear resistant containers and others. People also need to be mindful about where and how camp is set up. People shouldn't set up camp in a path traveled by bears. The sleeping area should be separate from the cooking area and storage. Ideally, there should be one hundred yards in between each area.

Some other suggestions Bill gave the group were to stay alert, travel in groups of three or more, make noise, have bear spray handy and know how to use it. He suggested putting the bear spray somewhere you can get to it quickly: a belt loop holster, the shoulder strap of your pack, etc. Bear spray reduces the bears ability to breathe, smell and see. As a last resort in a bear encounter, play dead. The data from attacks shows that it is likely to be a grizzly. If you are positive it is a black bear, fight back. Bill ended his presentation by allowing the PLPW members to practice spraying bear spray using an inert spray.

X. Wildlife Migration & Movement Discussion

The PLPW council reviewed copies of the letter sent to the director by the Migration Coalition. Director Worsech thinks that where we are going has a lot of merit and is a good idea. He isn't sure PLPW is the appropriate group to handle the topic. PLPW is already charged with PALA, landowner preference, HB 505, and other topics. On the 23rd, Director Worsech is going to go to Paradise Valley to speak with landowners and hear what their perception is and their ideas. He knows they have some issues on how we track the migration and the mapping. At of the last meetings he had with them, we use bigger arrows showing the corridors and rather than finite and landowners were appreciative of that. If PLPW believes it is something they should address, Director Worsech is fine with it; however, he knows the council is busy and believes the topic may be better served with a different group. The topic may be better served by setting up a group through the legislature. Because the coalition is looking for funding and other things statewide. When PLPW discussed the topic, they weren't sure they were the right group. The group asked if there was another group that may be better suited. Director Worsech said there wasn't an already established group that would be better.

The PLPW council didn't feel that they had enough time to do justice to the migration topic. One suggestion was for a member of the PLPW council to work with the new group that will be established to work on the migration topic. Dale Tribby volunteered to participate in a new group that works on the migration topic as a representative from PLPW. He can speak from experience about anything that PLPW may be better suited to address.

XI. HB 505 and Landowner Preference

The council asked for some more clarification from the department and the director about what he wants from PLPW. The council member wants to make sure PLPW is working in conjunction with Dr. Parsons, the department and the other entities that working on the elk management plan. PLPW could get a black eye if they come up with solutions while other groups are making their own recommendations. He thinks PLPW is a good fit, but he would like to know more about the task. He also doesn't want to bypass the public input that has been going on around the state. He is looking for some clarification in terms of what the director is looking for from PLPW.

Ken McDonald gave the group some basic information about the elk working group. The working group came together solely to produce guiding principles for the next elk management plan. There are no plans for that group to continue meeting or for a new working group. The commission approved those guiding principles for public comment. The guiding principles will be finalized at the June 24th commission meeting. Those guiding principles will be used to create a draft plan that will also go out for public comment.

One member understood that Director Worsech was talking about incentivizing elk harvest particularly on private lands. With HB 505, what are some potential things to incentivize elk harvest? A council member asked that a meeting would be dedicated to that topic. He didn't feel like it could be included during a meeting for PALA projects. He asked that different entities present to the council and brief them on various topics.

XII. Budget Update

Lena Havron and Anne Howes stopped by the meeting to answer any budget related questions for the PLPW council.

A council member asked if there was any access money going unused. Lena answer that there is a little block management that is unused because the cash doesn't support what we have for an appropriation. Some of the PALA funds didn't get used because of implementation. FAS is a little underutilized; they usually leave about seven percent on the table annually mainly due to maintenance projects.

Currently, the earmarked portion of funds that comes from the sale of nonresident licenses is not enough to fund the block management payments. The money has to be supplemented through federal aid.

XIII. Update on Fishing Access Enhancement Programs

Dustin Ramoie provided the PLPW council with an update on the fishing access program. Private land fishing agreements (PLFA) fall under PLPW whereas the general FAS projects are set aside on their own. The programs are related and fall under Dustin's responsibility. The program has had success during the first half of the year. There is a nice project underway on the Grasshopper reservoir near Havre; the official paperwork is expected at any time. The agreement is with a long-time friendly landowner who had allowed some access in the past. The landowner recently had a dam failure, so he approached the department about entering into a PFLA. Entering into a PLFA would allow him to get some compensation for repairs to the dam while continuing to allow access to sportsmen. It should be a long-term agreement, likely 10 years. A few weeks ago, FWP completed five new PLFAs in region four. These projects were done with friendly landowners who previously have allowed access to anyone who asked. Fisheries is trying to move away from handshake deals for liability reasons and if there are any issues with users, it makes it easier for both parties to engage and resolve any issues. These new PFLAs in region four are zero cost agreements. All five projects are rainbow trout fish plants. The amount of fish that are planted each year can vary between 500 – 1,500. The amount depends on the size of the waterbody and the recommendation of the local biologist. The fish plants are the compensation to the landowner and benefit the public users. The cost for one of the catchable rainbow trout is forty-five cents. At that rate, the cost for a thousand fish is \$450. Of course, there are other costs, fuel for the truck and staff time. That cost does not come out of the PLFA program; they are zero cost agreements, and FWP's compensation to the landowner is the fish plants. Currently, FWP is working on a new agreement on Missouri River below Holter Dam. Landowner reached out recently, and we are starting the steps on that. Entire corridor there is important for access. It is another project with a landowner who has been friendly to anglers in the past, but someone crashed into his fence. Now he is looking for a little bit of help from the department. FWP is going to enter into a formalized agreement, so that he can continue to provide access there.

One of the big things that fisheries has been working on is formalizing agreements with friendly landowners that were previously just a handshake deal. Things are changing, user groups and dynamics on landscape are changing. FWP is trying to move a lot those handshake deals to PLFAs to formalize the terms and the agreement. This move to a formal agreement solidifies the relationship and gives the department more tools to work with the landowners. Some of the PLFAs are for compensations, some agreements are with landowners who just want to be friendly stewards and neighbors. There will be some growth in the PLFA program. Last year the program had \$15,000 dollars for the annual budget, and now there is \$25,000. These agreements are unique in that most of them are one-time payments. FWP can enter into an agreement for fifteen to twenty years and pay five, ten or fifteen thousand upfront while maintaining long-term access. It is a constant rolling cost as properties enroll and reenroll with upfront payments. There are a few agreements that are yearly payments. One of those yearly payments is the Leonia PLFA on the Kootenai River west of Troy. This PLFA is a combination effort between Idaho Fish and Game and FWP. Idaho pays half of the cost and FWP pays the other half. The access is less than a mile upstream of the Idaho state line. The access is important for the public, outfitters and also for Idaho Fish and Game's research. The PLFA is in its last year of their contract. Last year there was an influx of users because of COVID. The landowner was concerned about the increased use. There was some uncertainty about whether the landowner was going to participate this year. Last year, Dustin met with some of the region one staff, Idaho Fish and Game, enforcement staff and the landowner. They met on site and toured the property. The group looked at some of the issues the landowners was facing. They discussed the needs of the landowner and the support he needed to keep the access open. He did remain enrolled this year, and fisheries will reassess when the contract expires Nov 1. FWP will work with him to try and keep this access open; it is an important access point. The PLFA is \$6,000 annually which is a higher cost than most of our program, but because the bill is split with Idaho, it only costs FWP \$3,000. It is a high use area. Landowner said he thought the use was up more than double. Fisheries hires a porta potty at the site, and they were being serviced twice as much as before. The project will be reassessed and will hopefully be under contract for another five years this fall.

Sen. Ankney mentioned PALA in relation to the Lower Yellowstone project that is just starting to get underway. Dustin clarified that for the council. The Lower Yellowstone project that is being considered would establish some new fishing access sites. The infrastructure involved in the fishing access sites can include latrines, boat ramps, road work, parking areas, fencing, picnic tables, fire rings, etc. The projects can have an initial cost of \$150,000 to \$400,000. Agreements in the PALA program are capped at ten years if they qualify. The Sackman PALA is at the mouth of the Powder River. That agreement is in place for ten years. It's not a permanent solution, but fisheries is looking for permanent solution. An FAS would satisfy the need for a permanent solution at the mouth of the Powder River. With the bypass going in at the diversion and intake, the paddlefish are going to find their way to the mouth of the Powder River over the next few years. Heavy fishing will start to occur. Legally, we will need to get over the railroad and will likely have to purchase an easement with DNRC. Fisheries will also need a new agreement with BLM in terms of the site area. FWP has started those discussions even though fisheries doesn't have the budget yet. It will be a two to four-year project, but they have started the discussions to secure a permanent solution to access to the BLM where the FAS would go. For the moment, the PALA allows for access there. If the PALA program were to be canceled, fisheries wouldn't be able to spend the infrastructure money for the FAS based on the access through the PALA. There needs to be legal and physical access. The solution needs to be either permanent or long term enough that fisheries

can justify spending money on the infrastructure and the site. Typically, fisheries would want an agreement with a minimum of twenty to twenty-five years of access to justify spending those dollars. With PALA only allowing agreements for ten years, they don't mesh together very well. With the Lower Yellowstone, FWP will be looking at permanent solutions for the access.

Dustin also spoke to PLPW about the lease program for FAS. There have been had a handful of leases that either expired and fisheries couldn't afford to redo them or when terms were renegotiated, the lease was too expensive. Now leases are not going to be paid out of the acquisition budget for FAS. That allows for the acquisition fund to be used for purchasing easements or acquiring property. A tremendous amount of money was spent out of the acquisition funds just doing due diligence on property. Paying for surveyors, hazmat studies and other expenses to get a property up and running before it can be entered into the system. It has been a positive change.

Fisheries also had a big success on the Eureka reservoir near Choteau with the Teton Canal Company. The department had worked with them for thirty years. The lease was coming up last year. While negotiating a new deal, the department did a short-term one-year deal for \$1,000. The new agreement was for twenty-five years for \$20,000. It was lower cost than fisheries had been paying, but it gave the canal company the assurance that they would be paid. It was a one-time upfront payment, and the public knows they have the access for twenty-five years. The canal company also gets some money to put towards their dam inspections moving forward. Those inspections are done every five years. All parties were happy. Because it is a long-term agreement, the department can invest money in the campground and a new latrine. The site has very high use. It is number three or four in region four for use. The quality of fishing there is exceptional. That reservoir in the past has gone dry, but fisheries felt it was worth the risk for the cost. The Director's office gave fisheries a goal of providing six new access sites this year. There are four FAS sites that will close over the next couple of months when the department receives documents. The goal was met in March.

XIV. Public Comment

No public comment was received on day two of the meeting.

XV. Trap Line Reports

Commissioner Pat Tabor: Commission has a scheduled meeting for June 24th. There are twenty-nine items to consider that day. Commissioner Tabor highlighted a few of the topics that are drawing public interest. One of the most controversial topics is the approval of special trout projects that are in progress. The legislature passed a law that would require the commission to have oversight over any of those decisions, so the department made the decision to do a onetime catch up process to make sure all existing projects had commission approval. None of the in-progress projects were in jeopardy of losing anything. The projects just need the commission's stamp of approval. There was never a desire to derail any of these projects; the agenda item is just about compliance. The commission had a work session in May on these projects to expedite the process and approval them as a package deal in June. Hopefully that will put the public at ease. Personally, Commissioner Tabor received over 150 emails with a large outcry about a change in fisheries process and a fear that the department was no longer doing these special trout projects. That is not the case, we are just doing some Fish and Game housekeeping. Some other significant items coming up: Quite of a bit of approval of different land use and sites. All of them look very positive. A part of the rule making process starting with the previous commission is the

formation of a Madison Working committee. The commission saw fit to change a little bit of the rule. There was a requirement in the initial rule for the implementation of one element of the overall river management plan taking effect on Jan 1, 2022 with the onus trying to put the rest of management plan together at some point after that. The current commission feels that it makes the most sense to have the working committee come through with an entire holistic solution with implementation dates that are aligned. The commission proposed the extension of that deadline to align with the rest of the plan deadlines. The commission will be coming to a final decision regarding the appointments for that committee. That committee's job is to look at the entire river management system on the Madison in its totality all the activities associated: commercial, non-angling use among others. Everything really. Come back with recommendations if there is going to be an allocated use system what would that look like. Not only as it relates to commercial interests but all users. Once that committee is done with its work will come back with recommendations to commission for commission's consideration. Commission will either act on or increase or decrease whatever the recommendations are and may ultimately make a decision sometime near the end of this year or the very early part of 2022. Considering some of the wolf activities, muzzleloader season and try to get some rules associated with that, looking at shoulder seasons which is of course a pretty significant issue to this group, a little bit of look at quotas and things for remainder of 2021 season. Although not a lot of changes to that. Spot checks and recommendations coming from the department. Will be embarking on a Biennial – coming up into the fall and into Feb 22. Makes sense to look at it more holistically when we go through biennials.

One council member asked if Madison River plan they put together is going to be rolled into the entire river plan. Commissioner Tabor explained that there isn't a Madison River Plan. There was a Madison River rule package that passed that led to the creation of the working committee with the charge to come back with the development of a plan. They had identified some components of that. The potential for a commercial allocation system. Restrictions on certain areas, where you could walk and wade. Some potential blackout areas/off limit areas depend on time of year. Onus will be on working group to come back with all the recommendations once they formulate. Rule did specify the composition of the working group. Really interesting collaborative model. The working group will have one commissioner on it, 3 outfitters, 3 members from business environments who are impacted in that area (paradise valley), 3 members at large, a person with natural resources background, representative BLM, along with support from FWP fisheries staff. What we will be voting on will be the extension of that deadline, but also the composition of the working group.

Ed Beall: Grizzly bears over west of Helena identified as now there that have been there a while. A lot of talk about that. Interesting among the landowners figuring out how to deal with it. How to more effectively use something other than pepper spray. A lot of them have been real proactive. Has a video on his phone with an enclosed hay stack that also has guard dogs. The dogs chased in the Grizzly into the fence around it. Grizzly played with food container, so the dogs got mad. Then the grizzly bear showed them who is bigger. They're all just figuring out how to best manage their operations and how to deal with these bears. Definitely more there that they knew about but maybe FWP didn't know about. That's been a lot of discussion lately. With the direction of hunter educations, his experience has been that a lot of the hunter ed inspectors were unhappy and the hunters who took it online were happy. That's just a reality. For that to work better in the future more discussion has to happen. Fishing has been good. Everybody is looking forward to more fishing.

Ed Bukoskey: Last year we had a fairly good pheasant population. This year weather has been good. If they have a good hatch, it is going to be a phenomenal year for pheasants in our area. It should be same with turkeys. Fifty-four in two different sections coming through our land. And like I said don't know how many got bred and what the hatch will be. Turkeys ought to be really good. One question I get asked which I realize there is no quota for out of state people to be able to get white tail tags, but there are a few out of nonresidents who contact Ed and ask why when they own a section of land, why can't they ever draw a deer tag. Ed tells them it isn't in the system. That's the way it is. We will lots of deer if we don't have blue tongue or something like that come through. Didn't have a winter, or rain, lots of grasshoppers.

Sen. Duane Ankney: His area is similar to Ed's. Around the Colstrip area, people go to Hell Creek and fish on Fort Peck. They are wondering how that transition is going to go with the Little Shell. Sen. Ankney is also involved with the lower Yellowstone project.

Cindy Cohan: Her group was concerned with the legislation: 505, 637 and prescriptive easement. They were really engaged on it. They were sending emails back and forth and into the legislature. They really watched the legislature this year.

Dan Fiehrer: Some of the people Dan talked to wonder how our lakes and reservoirs on Missouri River are being managed. Are these waters being managed for trout or walleye? There doesn't seem to be a balance there or direction from FWP. There are more and more walleyes as everybody knows. There is also starting to be northern pike in these lakes. If we have northern pike, how long is the trout fishery going to maintain? Grizzly bears were another topic of discussion. Dan spoke about a bear over on Nevada Creek eating on a cow elk and two wolves on one side with the grizzly bear on the other to see who has jurisdiction over the elk. The grizzly bears are even close to Helena now; they don't seem to know what their position is in life. People have been wondering if FWP sent to the US Fish and Wildlife Service the recommendation that we'd like to see the grizzly bears hunted. Dan asked if it has been documented that we wanted to see them hunted. Has that been on record? Ken McDonald answered that yes, the recommendation has been given; however, the response was while grizzly bears are listed, there won't be any hunting.

Carl Zabrocki: Like Ed, there is some gnashing of the teeth going in the hunter ed community right now. Carl thinks we need to just wait and see. COVID threw a kink into everything. Online statistics are phenomenal, but he doesn't think that is a fair representation because he knows a lot of people took it. He has been encouraging older people to take it because you can get it out of the way right away. With COVID and expectations, it is going to change. He hopes it changes for the better. There has been concern among the instructors and a lot of it boils down to having a field course. In his opinion, the field course is extremely valuable. He thinks FWP got a black eye with some of the legislation that went on, but at least fifty percent of it was not deserved. He believes Director Warsech has a handle on it.

Dale Tribby: Also concerns in his part of the world about legislative issues. There are two sides. The sportsmen were upset with HB 505, especially elk bills and prescriptive easement. On the flip side, some of the landowners were not happy with muzzleloader bill. A lot of those landowners are tired of hunters coming through their yards by Thanksgiving time, and they are ready for the season to be over. He also knows people who move their livestock into the winter pastures as soon as the big game season is over. Those areas are some of the better mule deer country. They don't want to have to think about delaying that move. The landowners were happy to hear that the department would allow them to opt out of

muzzleloader season for those that participate in BMA. They appreciated that they could opt out of muzzleloader season and not take a hit to their BMA payment. BMA cooperators are also excited about the potential for the cap increase. Dale spoke to one landowner who spends time on Ashland Forest. He said never seen as many turkey hunters on the Ashland. Dale hunts a lot of BLM and state land outside of Miles City, and he saw less use this year than a year ago. Drought and grasshoppers appear to be abnormally severe this year. He thinks the department needs to be prepared because when we see significant drought, there will likely be some landowners who say no hunting until there is some precipitation. There are also some changes Dale wants to see and have this group address. He would like Jason to reach out to some access coordinators and get their thoughts. He can see a situation where you have a mile drive across a piece of private land that hits a chunk of BLM land. A person could walk around the private property and maybe it is a mile and a quarter get into where that road is. If they could drive through the private land get into existing trail on BLM or state, you may be able to go several miles. Currently with the sideboards for PALA, we can't do that. There may be some opportunities missed. He would like the chance to discuss that at a future meeting.

Rep. Denley Loge: Haven't had a lot of trap line time. He did go to Sportsmen for Wildlife banquet recently. The group was very happy with the legislation regarding wolves and trapping. There has been some pretty good fishing in his area. The waters were calm until a little bit ago. St. Regis River is still calm. Even though there has been some flooding, the midrange snowpack is way down. Upper levels were high. Rep. Loge is already down to irrigation water and that doesn't usually happen until July. He thinks we are going to see some low rivers around Montana.

The meeting adjourned at approximately 2:30 PM.