



DECISION NOTICE
71 Ranch Prairie Dog Conservation Contract
FWP-DN-WLD-R7-24-007

June 6, 2024

ACTION

Decision Notice (DN). Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment (Draft EA), as amended by the Draft Supplemental EA, as final and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*.

Based on these factors, FWP determined a Checklist EA (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA, as modified by the Draft Supplemental EA, for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps: determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement or EIS; determine the EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or determine the Draft EA adequately addressed the issues raised by the proposed action and make a final decision, with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received. See *Public Comment and FWP Response* below.

PUBLIC PARTICIPATION PROCESS

The initial Draft EA proposing a black-tailed prairie dog (hereinafter prairie dog) conservation *lease* was made available for public review and comment on April 8, 2024, through May 7, 2024, and was modified by a Draft Supplemental EA published on May 1, 2024. The Draft Supplemental EA changed the agreement type from a *lease* to a *contract*, but did not otherwise substantively change any terms of the prairie dog conservation action proposed by the initial Draft EA. The Draft Supplemental EA also extended the public comment period for the proposed action through May 16, 2024.

A Legal Notice was published in the Forsyth Independent Press and both the Draft EA and Draft Supplemental EA were posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA and Draft Supplemental EA were also made available for public review on the Environmental Quality Council or EQC website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties. FWP received substantive public comments during the public comment period. See *Public Comment and FWP Response*, below.

BACKGROUND AND DESCRIPTION OF PROPOSED ACTION

Under the proposed action, FWP would implement a Prairie Dog Conservation Contract (*contract*) in the affected area of Garfield and Rosebud County, Montana. The affected area is located 8 miles north of Ingomar. The contract will conserve, protect, and enhance approximately 2,975 acres of important prairie dog colonies and associated habitat for 10 years, beginning July 2024 and continuing through July 2034. The *contract* would be implemented by a one-time payment of \$148,750 to the affected landowner. This one-time payment would be funded by a 50/50 split between a National Fish & Wildlife Foundation grant and state tax revenue from FWP's Nongame Wildlife Account.

Terms of the contract include the following:

- Conservation of approximately 2,975 acres of prairie dog colonies and associated mixed-grass prairie habitat.
- No lethal control (i.e., shooting or poisoning) of prairie dogs identified within the boundaries of the protected area would be allowed.
- Protecting prairie dogs by maintaining the habitat where they occur. This would be done by not significantly altering the habitat by burning, plowing, chemically treating, building development, flooding, or other forms of habitat fragmentation or conversion.
- Allowing a certified pesticide control operator access to the affected area to conduct Sylvatic plague management by application of an insecticide (deltamethrin or fipronil-treated grain) within prairie dog towns for flea control. Sylvatic plague is an infectious bacterial disease caused by the plague bacterium, *Yersinia pestis*, which primarily affects rodents, such as prairie dogs. *Yersinia pestis* is the same bacterium that causes bubonic and/or pneumonic plague in humans.
- Required monitoring of the affected prairie dog colonies twice annually (by the landowner, FWP staff, and/or private contractors).
- Limiting the amount and type of pesticides and agrichemicals to the minimum amount and frequency necessary to control noxious weeds and insect pests.

Under the contract, traditional agricultural practices (i.e., grazing) would continue on the affected property. Further, the landowner agrees to allow the reintroduction of black-footed ferret in the future if conditions are deemed favorable, subject to approval by the Montana Fish & Wildlife Commission. Also, pursuant to the Montana Environmental Policy Act or MEPA, if conditions are deemed suitable, FWP would prepare and publicly process a separate environmental review (Draft EA) for the reintroduction of black-footed ferrets prior to approval of the action. Should conditions be deemed unfavorable, FWP would not be obligated to release black-footed ferrets on the affected property.

PURPOSE AND NEED

FWP recognizes prairie dogs as a critical part of the ecosystem while also remaining aware of the challenges they present to landowners. The proposed action would conserve prairie dogs and their habitat, and thereby improve ecosystem health using a voluntary, incentive-based approach enforced by a contract. Also, if conditions are supportive, reintroducing black-footed ferret to the affected property would constitute a step toward recovery of the species, with the goal of removing the species from the federal Endangered Species Act and returning management of the species to the state of Montana.

ALTERNATIVES ANALYZED

Alternative 1: No Action

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the Draft EA and Supplemental Draft EA. Under the No-Action alternative, the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the "No Action" alternative, prairie dogs would not be protected on the affected property. Prairie dogs could be lethally removed from the affected property and the prairie habitat they depend on would remain at risk of fragmentation, conversion, and/or development. Additionally, ecosystem benefits that result from prairie dog activity would not be realized on the affected property and plague would not be managed, thereby decreasing stability within the prairie dog population, and posing a risk to human health.

Alternative 2: Proposed Action

Under the proposed action, approximately 2,975 acres of prairie dog habitat would be protected under contract for a term of 10 years. For more detail, see *Background and Description of Proposed Project* and *Purpose and Need*, above.

PUBLIC COMMENT AND FWP RESPONSE

FWP received substantive public comment on the Draft EA. A substantive public comment was defined as the identification of a specific issue or impact. In some cases, multiple individuals provided the same or similar comment; these comments were summarized, categorized, listed once, and a single FWP response is provided below. Most comments received were supportive, one was neutral, and some comments were opposed. The following constitutes a synopsis of public input received during the public comment period for the initial Draft EA and the Supplemental Draft EA, and FWP's response to those comments.

Comment: Several commentors recognized prairie dog colonies facilitate important habitat that supports prairie dogs and many other wildlife species as a component of a healthy ecosystem.

FWP Response: Thank you for your comments.

Comment: Several commentors expressed support for the contract, applauded FWP for providing an opportunity for this type of contract and applauded the landowner for their participation in this effort.

FWP Response: Thank you for your comments.

Comment: Commentors recognized the contract preserves agricultural and ranching practices while contributing to prairie dog habitat and benefiting associated species.

FWP Response: Thank you for your comments.

Comment: One commentor acknowledged the contract allows FWP to meet objectives outlined in Montana's Black-footed Ferret Conservation and Management Guidelines, Montana's State Wildlife Action Plan, and Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana.

FWP Response: Thank you for your comment.

Comment: One commentor acknowledged the contract contributes to federal delisting goals of black-footed ferrets (delisting from federal Endangered Species Act).

FWP Response: Thank you for your comment.

Comment: One commentor acknowledged the contract prevents cultivation of intact grassland habitat, one of the greatest threats facing the Northern Great Plains.

FWP Response: Thank you for your comment.

Comment: One commentor recommended, given the *endangered species* status of the black-footed ferret and their need for large, connected prairie dog colonies, additional funds, or alternative avenues to maintaining populations on the affected property should be established prior to the end of the contract.

FWP Response: Thank you for your comment. Efforts to identify additional sources of funding that would allow FWP to expand the prairie dog conservation program or extend the contract period are ongoing.

Comment: One commentor noted it would be beneficial to engage the Montana Department of Natural Resources and Conservation (DNRC) and potentially other area landowners to participate in hosting prairie

dogs and black-footed ferrets on lands adjacent to the affected area to minimize potential prairie dog conflict along property boundaries.

FWP Response: Thank you for your comment. FWP has engaged in conversations with DNRC on this project and alerted adjacent landowners of the project during the public scoping process.

Comment: One commentor was neutral about the contract but offered that FWP could host all the prairie dogs on their property because they do not appreciate the impact on their land.

FWP Response: Thank you for your comment.

Comment: Several commentors were generally opposed to the contract and against sportsman's dollars and/or government time and money being used to support prairie dog conservation.

FWP Response: Thank you for your comments. The contract is funded by a 50/50 split between a grant from the National Fish & Wildlife Foundation (a non-governmental organization) and state tax revenue from the Nongame Wildlife Account. No license dollars will be used to fund the contract. The amount of time required by FWP personnel for this project is minimal, with one day to monitor colony activity and document boundaries expected annually.

Comment: One commentor noted the enjoyment of recreational shooting of prairie dogs.

FWP Response: Thank you for your comment. This contract only limits shooting and poisoning of prairie dogs on the parcels included in the contract (2,975 acres). Recreational shooting of prairie dogs in Montana is still allowed on unaffected lands consistent with State and local rules and regulations.

Comment: One commentor expressed concerns with the toxicity of the chemicals being used for plague mitigation.

FWP Response: Thank you for your comment. Plague management activities include the use of deltamethrin and/or fipronil. Deltamethrin has very low toxicity to birds and is non-toxic to mammals but can be toxic to some species of reptiles. It is not known to bioaccumulate in animal tissues, so carnivores are unlikely to be exposed through consumption of carcasses. Because deltamethrin would be applied directly to burrows, availability to non-target species is reduced. Additionally, the proposed application rate is 150 times lower than recommended rates for customary home and agriculture use.

Fipronil is highly toxic to gallinaceous birds, fish, aquatic invertebrates, and insects. However, application timing can be adjusted to avoid gallinaceous birds and application is targeted at habitat containing little to no aquatic habitat. Application is also limited to proximity of burrows, reducing the uptake to non-target species. Fipronil is moderately toxic in the oral form to humans, however it will only be applied by a licensed pesticide control operator. As humans will not be eating the treated grain or the prairie dogs that ingest the grain, potential impacts to humans are minimal. Fipronil has not shown carcinogenic or chronic adverse effects in humans.

FWP will use caution and be cognizant of which insecticide is used based on time of year and proximity to known breeding gallinaceous birds (e.g., grouse).

Comment: One commentor expressed concern for the landowner receiving money without any requirements.

FWP Response: Thank you for your comment. Under the contract, the affected landowner is responding to a voluntary, monetary incentive to conserve prairie dogs and their habitat on the contracted acres. They are restricted from any lethal management of prairie dogs within the area identified in the contract. They are also limited by allowable activities including no cultivating, developing, or altering of the land identified in the contract.

Comment: One commentor expressed concerns that an FWP easement will have negative impacts to the land and the prairie dogs.

FWP Response: Thank you for your comment. The agreement is a term contract for 10 years, not a perpetual easement. The contract retains the primary existing use of the land (livestock grazing) and conserves prairie dogs by restricting any lethal management of prairie dogs and activities (i.e. burning, plowing, etc.) that could alter the habitat.

Comment: One commentor expressed concern with the money required for black-footed ferret reintroduction and the negative impacts of black-footed ferrets on sage-grouse and other ground-nesting birds.

FWP Response: Thank you for your comment. Studies show that black-footed ferret diet consists of prairie dogs (up to 75%) and a variety of other small mammals. FWP is unaware of studies that include bird eggs among the prey items. While it is possible that ferrets could consume sage grouse and other bird eggs research does not suggest predation would have a significant impact on sage grouse productivity.

Comment: One commentor questioned if this prairie dog conservation contract was an attempt to appeal to parties concerned with animal rights.

FWP Response: Thank you for your comment. FWP recognizes the important role prairie dog colonies serve in the mixed-grass prairie ecosystem. This contract protects prairie dog colonies on 2975 acres, prairie grassland habitat and the associated wildlife benefits, which includes potential progress toward black-footed ferret reintroduction. FWP is committed to working toward the recovery of the black-footed ferret in accordance with the Section 87-1-201(10) MCA, along with objectives developed by the US Fish and Wildlife Service's 2013 Black-Footed Ferret Recovery Plan. Reintroducing the species is a step toward recovery, with the goal of removing the species from the federal Endangered Species Act and returning management of the species to the state of Montana.

Comment: One commentor expressed concern with the adverse impacts prairie dog colonies have on the land by reducing grassland production and agricultural use.

FWP Response: Thank you for your comment. Prairie dogs are historically and currently a natural part of Montana's mixed-grass prairie ecosystem. Prairie dog colonies serve as an important part of the ecosystem by providing habitat for numerous other wildlife species, including several *Species of Greatest Conservation Need*, such as burrowing owl, swift fox, mountain plover, and black-footed ferret. In addition, prairie dogs serve as a principal prey species for other wildlife species including black-footed ferret, badger, golden

eagle, and ferruginous hawk. While FWP acknowledges the challenges prairie dogs pose to landowners, the contract is voluntary, and the affected landowner accepts these challenges.

Comment: One commentor expressed concern for adverse impacts on sage-grouse from an increase in aerial predation.

FWP Response: Thank you for your comment. FWP is unaware of studies that examine how black-footed ferrets impact sage-grouse populations, nor how ferret reintroduction might increase aerial predation.

Comment: Several commentors asked for clarification on the cost of the prairie dog conservation contract and the breakdown between funding sources

FWP Response: Thank you for your comments. The incentive payment depends on the number of years the landowner chooses to enroll their land in the contract, if the landowner agrees to the potential release of black-footed ferrets at a future date, and if there are any existing conservation/habitat leases in place. Under the contract, FWP would pay the affected landowner a one-time payment of \$50/acre, which equates to \$148,750. The cost of the contract was included and published with the Supplemental Draft EA (but not the Draft EA). The contract is funded by a 50/50 split between a grant from the National Fish & Wildlife Foundation (a non-governmental organization) and state tax revenue from the Nongame Wildlife Account.

Comment: One commentor asked what happens at the end of the contract term.

FWP Response: Thank you for your comment. When the contract expires after 10 years, the affected landowner could proceed to manage the land without any of the contract requirements. However, FWP would assess the success of the contract during the 10-year period (i.e., are prairie dog colonies sustainable, were ferrets released, is the ferret population sustainable, etc.). FWP would continue to seek funding sources to continue efforts if the contract is successful and the landowner is interested. Neither FWP nor the affected landowner would be obligated to continue the contract beyond the initial 10-year term.

Comment: One commentor asked how FWP decides whether to release black-footed ferrets.

FWP Response: Thank you for your comment. Releasing ferrets would depend on the condition of the prairie dog colonies; would be subject to additional environmental review pursuant to MEPA, including public participation; and would be contingent on approval by the Montana Fish & Wildlife Commission. The black-footed ferret is almost entirely dependent on prairie dogs for their diet. The U.S. Fish & Wildlife Service requires at least 1,500 acres of active prairie dog colonies before releasing ferrets is a consideration. Prairie dog colonies would need to undergo plague management via dusting with an insecticide and/or the use of fipronil-treated grain to control flea populations. Sylvatic plague is an infectious bacterial disease caused by the plague bacterium, *Yersinia pestis*, which primarily affects rodents, such as prairie dogs. *Yersinia pestis* is the same bacterium that causes bubonic and/or pneumonic plague in humans.

Comment: One commentor asked how FWP chose who to engage in the prairie dog conservation contract and if that part of the state was chosen specifically.

FWP Response: Thank you for your comment. FWP has been working on establishing a prairie dog conservation contract for many years but has been challenged with lining up all the necessary pieces

including, but not limited to funding, interested landowners, and suitable locations with at least 1,500 acres of active prairie dog colonies necessary for consideration of black-footed ferret release.

Initial efforts began in 2015 to develop an incentive program for landowners after seeing the success of a similar program in Colorado supported by NRCS and the Colorado Cattlemen's Association. Staff from FWP and the US Fish and Wildlife Service began pitching the concept to a wide variety of audiences in Montana (CMR Working Group, Soil and Water Conservation Districts, Grazing Associations, Montana Audubon, Montana Stockgrowers Association, Montana Prairie Dog and Black-footed Ferret Working group (included private landowners), etc.) There was initial interest from multiple counties around the state, but no agreements were ever initiated for a variety of reasons.

The initial focus around the Ingomar area came from a conversation between FWP staff and a landowner at a Montana Audubon meeting. The landowner did not have enough prairie dog acreage to meet the minimum requirements, so letters were sent to surrounding landowners to gauge interest in participation. The 71 Ranch was one of the surrounding properties and reached out to FWP to express interest in the program. The original landowner north of Ingomar backed out of negotiations for personal reasons. There were discussions with three or more landowners with property around the 71 Ranch, but negotiations never progressed for a variety of reasons. This is the first contract of its kind specific to prairie dogs in Montana.

Comment: One commentor asked what other actions FWP was taking to protect prairie dogs in the contracted area and if prairie dogs could still be shot on adjacent private lands and nearby public lands.

FWP Response: Thank you for your comment. The contract applies to the landowner and only affects the area identified in the contract. Any of the landowner's property outside of the contract area would not be subject to terms of the contract. Additionally, any private land adjacent to the contracted area would not be subject to terms of the contract. For public lands located in the affected area, it would be up to the affected land management agency and their mission to determine how prairie dogs are managed on their respective properties. Year-round recreational shooting is allowed on BLM and DNRC parcels. However, prairie dogs are considered a sensitive species for BLM and the use of poison is prohibited.

Comment: One commentor asked what the penalty was for breaching the contract.

FWP Response: The payment for the prairie dog conservation contract is a one-time, upfront payment. If the landowner chooses to end the contract early there is a penalty, as described in section 11 on page 4 of the contract and pasted below for convenience:

11. DAMAGES: If this Contract is terminated due to noncompliance by the Cooperator (landowner), the Department will be reimbursed for its costs. Reimbursement will be the amount determined by the following formula:

$$\text{Sum of all FWP payments} \times \frac{\text{Number of years remaining in the Contract}}{\text{Total \# of years in the original term}} + (\text{Sum of FWP payments} \times 0.25) =$$

Reimbursement to FWP but not more than FWP payments.

DECISION

Based on the environmental review provided by the Draft EA, as amended by the Draft Supplemental EA, and in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), as amended by the Draft Supplemental EA, will not have significant adverse impacts on the human environment associated with the proposed action and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an EIS is unnecessary. FWP hereby adopts the Draft EA, as amended by the Supplemental EA, as final, and approves Alternative 2, the proposed action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Schmitz', with a stylized flourish at the end.

Brad Schmitz
Region 7 Supervisor
Montana Fish, Wildlife & Parks