

## Elk Management in Areas With Brucellosis

### 2015 Proposed Work Plan Public Comments

FWP Commissioners, Thank you for the opportunity to once again submit public comments against this Elk Management in Areas with Brucellosis program, specifically this time, the 2015 Proposed Work Plan. Following the Work Plan, my comments are below.

#### **Elk Responsibility**

The introduction states concerning the 2015 and preceding plans, “Fundamentally these are meant to reduce the risk of brucellosis transmission from elk to cattle in a manner that maintains elk on the landscape.” At no time has FWP ever conducted an independent investigation of the Montana cattle infections to determine if elk were actually responsible for transmitting brucellosis to cattle. As I have been investigating these infections and accruing evidence, including APHIS reports, I do not see the evidence that elk infected those cattle, rather cattle transmissions. Therefore, FWP never had a foundation for creating this elk brucellosis program to begin with, much less to continue on this course. FWP needs to conduct an independent investigation into the Montana cattle infections which DOL has implicated elk in.

#### **DSA Jurisdiction**

Also in the introduction, FWP brings up the DSA (Designated Surveillance Area) as defined by the Montana Department of Livestock. The creation of the DSA was based on the Department of Livestock, Animal Health Division, Official Order No. 09-02-D, “Brucellosis infected wild ungulates including elk and bison pose a real and continuing risk of transmission of *Brucella abortus* to livestock in Montana. Surveillance for brucellosis in livestock in the high risk area has been successful in detecting previous transmissions. It is imperative that surveillance and risk mitigation activities including brucellosis vaccination continue in this area to rapidly detect disease and to enable the continued marketability of Montana's livestock.” Which was then written into the Montana Code Annotated 81-2-101-105, livestock disease control. It was further defined under the Administrative Rules of Montana 32.3.433-437 as far as boundaries, animal identification and testing. The reasoning for the DOL establishing a DSA is stated as, “Further, 'any Class Free State or area with *Brucella abortus* in wildlife must develop and implement a brucellosis management plan approved by the administrator in order to maintain Class Free status.' The implementation of a DSA in Montana fulfills this requirement and therefore protects the State and its producers from a downgrade in status.” It is not based on any actual documented transmission from elk to cattle, simply direction from APHIS with their agenda of eradication of brucellosis from all wildlife. APHIS has not conducted a NEPA for such a plan, nor did DOL conduct a required MEPA for the creation of the DSA here in Montana, per Montana Legislative Services Division, which needs to be done. Had a MEPA been conducted, evidence of elk transmission to cattle in Montana would have had to be provided.

#### **FWP and FWP Commission Authority**

According to Title 87 -1-301 (J) FWP Commissioners requirements shall comply with, adopt policies that comply with, and ensure the department implements in each region the provisions of state wildlife management plans adopted following an environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3. (Last Statewide Elk Management Plan 2004) Title 75 - 1, parts 1-3 environmental review Title 75, chapter 1, parts 1-3 MEPA

Montana Environmental Policy Act MCA 87-1-323 Management of viable elk populations based on habitat acreage, not brucellosis management. Montana Legislative Services Division - Legal Services Office, Legislative Inquiry into the MT Elk Management In Areas With Brucellosis finding - "Based on a review of the foregoing information, it appears that there is no specific reference in the Montana Code Annotated regarding the Department's authority to manage elk for purposes of reducing or preventing the transmission of brucellosis between elk and livestock," Dec. 6, 2013.

FWP needs to conduct the required EIS and following Environmental Review according to Montana Law, to manage for scientific wildlife management of our Public Trust wildlife, not politics. Therefore, FWP and FWP Commissioners do not have the legal authority for such a statement on page 1 of the 2015 Work Plan - "Non-lethal management actions may be applied in any sequence or combination with appropriate approval from FWP and/or the commission. DoL has no authority to prescribe wildlife management actions. Lethal removal will be considered only after nonlethal means have been deemed insufficient. While some actions (dispersal hunts, haystack fencing, hazing, etc.) would be available for implementation without additional public review, other potential management actions would require additional public review prior to implementation (biennial season setting, public land habitat manipulations, fencing projects larger than stackyards, etc.)."

### **Annual Review Effectiveness**

On page 2 it is stated, "The commission will publicly review annual efforts at its August meeting." I do not believe this commission is capable of fulfilling such an action as this commission has refused to follow Montana law in calling for a required EIS, abide by its own passing of the Elk Management Guidelines in Areas with Brucellosis Proposed Final Recommendations, or conduct a review of the contested management of this program thus far.

### **Conditioned FWP Assistance**

As to "public hunter access is not initially required for a landowner to receive FWP brucellosis risk management assistance," FWP and the FWP Commission have ignored legal Montana Game Damage laws, requiring public hunter access for assistance, instead creating an illegal program based on politics using sportsmens dollars and no required public hunter access.

### **Local Work Groups**

FWP has not legally, and in accordance with the Commission approved Proposed Recommendations, coordinated multi stakeholder working groups. "Commingling" does not equal brucellosis transmission from elk to cattle and is not one of the management objectives of the current Montana Statewide Elk Management Plan. Neither is "best opportunities to address risky concentrations of elk associated with limited or no public hunting access." Any proposed local work plans cannot bypass the legally required MEPA process.

### **Education and Outreach**

FWP cannot "**continue** to explore and implement effective communication, education and outreach" when it has not done this in the first place. On January 10th, 2013, the FWP Commission passed the Statewide Elk Brucellosis Management Proposed Recommendations. Within the Proposed Recommendations - Fundamental Objective #2 stated: **Maximize acceptability of elk management tools and populations in the DSA for:** Sportspersons (measure with satisfaction survey), Wildlife enthusiasts (measure with satisfaction survey), Landowners (measure with satisfaction survey), and Livestock producers

(measure with satisfaction survey). FWP elk brucellosis management actions have not maximized acceptability. Instead, the more awareness of the situation has caused increased public comments against the program, many upset hunters going to Helena to speak to the FWP Commissioners at the April 10th meeting, a lawsuit against FWP and the FWP Commissioners, public statements and public comments from some of the Statewide Elk Brucellosis Working Group Members and a former FWP Commissioner who was one of those that passed the original Proposed Recommendations in 2013.

### **General Hunting Seasons**

I was at the July 2014 Statewide Elk Brucellosis Working Group meeting and the only members that expressed adjustments to the general hunting season were ranchers that wanted less elk on the landscape in general, regardless of brucellosis, saying if they could remove more before the fall hunting season, there would be less during the risk periods. Depopulation is not a "stated" objective of this brucellosis management program, but it continues to be an unstated objective.

Montana Supreme Court decision, State V. C. R. Rathbone states, "Montana is one of the few areas in the nation where wild game abounds. It is regarded as one of the greatest of the state's natural resources, as well as the chief attraction for visitors. Wild game existed here long before the coming of man. One who acquires property in Montana does so with notice and knowledge of the presence of wild game and presumably is cognizant of its natural habits. Wild game does not possess the power to distinguish between fructus naturales and fructus industriales, and cannot like domestic animals be controlled through an owner. Accordingly a property owner in this state must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse." C.R. Rathbone was convicted for shooting an elk, out of season, for eating the grass at his ranch.)

### **Agency Collaboration**

Currently there exists an agreement instituted by APHIS through the state of Montana to gain access and control of our wild elk populations. This agreement created a Work Plan with a Cooperative Agreement between APHIS and the Montana Department of Livestock through a dead interagency program known as the Greater Yellowstone Brucellosis Interagency Committee, whose mission statement was the eradication of brucellosis in wildlife by 2010. The GYIBC died in 2006 when it could not get all the agencies to sign the new MOU in 2007 to begin implementing test and slaughter of wildlife in the GYA. Yet, taxpayer dollars continue to be funneled through this dead agency from APHIS into Montana's Department of Livestock through what they call the Montana Greater Yellowstone Area Brucellosis Program Activities.

In the introduction of this Cooperative Agreement for **FY 2010** it states, "The United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services (USDA, APHIS, VS), in cooperation with the State of Montana (State) through the Montana Department of Livestock, knowing the necessity to prevent further introduction of brucellosis into the cattle herds of Montana and **to control and eliminate brucellosis from wildlife** in Montana and the Greater Yellowstone Area (GYA), do hereby submit this plan to develop and implement brucellosis herd action plans for cattle, **elk herd unit management plans**, perform functions and duties of Montana relative to the Greater Yellowstone Interagency Brucellosis Committee (GYIBC) and planning efforts, and conduct brucellosis prevention, surveillance, control and eradication activities in Montana and the GYA."

It further states, “**The State (remember that is Montana DOL) serves in a lead role** in development and implementation of brucellosis herd action plans for cattle, wildlife herd unit management plans, ensures environmental compliance and management of GYIBC activities and planning efforts, provides education and information to the public and coordinates brucellosis-related research activities. These activities are critical to the state, regional and national efforts to **eliminate brucellosis from the GYA** and from the United States and maintain Montana's Brucellosis Class Free status.”

This Cooperative Agreement then details results and benefits which include: prevent transmission of brucellosis to livestock from infected wildlife; implementation of brucellosis herd action plans for cattle, and wildlife herd unit management plans; reduction in prevalence of brucellosis in wildlife herds; identification of prevalence and distribution of brucellosis in wildlife herds in Montana; improved coordination of activities to address wildlife brucellosis; enhance surveillance of wildlife populations to better understand the prevalence and extent of brucellosis infection in the wildlife populations in Montana's GYA; better understand the risk of transmission from the wildlife populations to livestock.

The planned activities of this Cooperative Agreement state, “1. The Montana Department of Fish, Wildlife and Parks (FWP) will conduct surveillance for brucellosis in free-ranging elk in an area surrounding Yellowstone National Park. The emphasis of this surveillance will be to determine the geographic distribution and extent of brucellosis in Montana's free-ranging elk population. Surveillance will focus on collection and testing of blood from hunter harvested elk for antibodies against *Brucella abortus*.”

Also included was a detailed Work Plan summary for FWP's elk brucellosis surveillance and spatial movement study, which was a 5 year program, sunsetting in 2015, 80% of which is funded by APHIS. This surveillance and spatial movement study utilizes hunter harvest tests, captures elk in various areas to test for seroprevalence, collars those that are positive and inserts VITs in those that are pregnant. This APHIS directed program which DOL is the State lead on has never had a NEPA, nor a MEPA conducted and has no place in our statewide elk management plan.

It is disingenuous to state on page 3, “This collaboration shall not dilute the wildlife management authority of FWP and the FW Commission and it shall not expand management authority of DOL or APHIS beyond livestock.” FWP knows that APHIS already has claimed authority and that through the Governor's agreement to the APHIS Brucellosis Management Plan and signing on to the Cooperative Agreement that FWP has no authority, that through the MOU, DOL is the lead state agency directing what FWP will do in this matter. Why lie in this 2015 Proposed Work Plan?

### **Non-Lethal Actions Applied In Any Sequence or Combination**

The following sections have no legal foundation. The broadening of these actions to include an area beyond the DSA (**if there is confirmed elk movement from inside to outside the DSA**) and allowing “**these actions may be applied with cause outside that window** (Jan. 15 – June 15) clearly shows the intentions of this program from the beginning, which is APHIS and DOL orchestrated “**to control and eliminate brucellosis from wildlife** in Montana and the Greater Yellowstone Area (GYA).”

- Hazing is covered under Game Damage laws requiring public hunter access and is not defined for commingling reduction efforts.

- Stackyard fencing is a part of Game Damage law and requires public hunter access and to applied to a food source.
- Larger scale fencing is not mandated by Montana law for brucellosis mitigation from elk, obstructing wildlife corridors. In fact, Montana does have legal fencing descriptions, defined under the Agriculture section of the Montana Code Annotated – 81-4-101-108, “if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana...all fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts.” This should not be considered, definitely not by FWP using sportsmen's dollars and again without required public hunter access. Any such fencing would require an Environmental Impact Study, not a simple EA, according to MEPA.
- Lethal Actions, whether Elk Management Removals or landowner Kill permits are outside of the scope of Montana law and the Statewide Elk Management Plan for brucellosis management, regardless of what quota you set or hunting district objectives. You need a MEPA!!! There are biological reasons why hunting and Game Damage kill permits are not after Feb. 15<sup>th</sup>.

This entire elk brucellosis management program needs to be abolished. An independent investigation of any possible elk transmission of brucellosis to Montana cattle needs to be conducted; the legally required EIS followed with the Environmental Review and a scientific updating of the Montana Statewide Elk Management Plan.

Thank you,  
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