Grizzly Ridge Bison Fence Decision Factors

Terms of the easement:

EXHIBIT C: PERMITTED USES AND PRACTICES

The following uses and practices by Granter, though not an exhaustive recital of all uses and practices of said lands, ***are hereby deemed to be consistent with the conservation purposes of the Easement.*** Any proposed activities or uses that may impact the conservation and habitat values of the lands depicted on Exhibit A and/or in the Easement Documentation Report but not identified below shall require prior written approval by Grantee. In addition, certain uses and practices identified below are subject to specific conditions or require prior approval. Any activities or provisions requiring prior written approval should be submitted in writing to Grantee who will approve or deny such requests in a reasonable time frame***. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.***

3. ***Maintaining, repairing and/or*** ***replacing existing agricultural buildings and structures, including but not limited to corrals, fences,*** hay sheds, loafing sheds, barns, or other non-residential buildings, and water facilities including but not limited to headgates, weirs, pipelines, irrigation ditches, reservoirs or wells, that support agricultural uses of the property and other uses permitted herein; ***and with prior written approval by the Grantee, construction and/or development of new agricultural buildings, structures, water facilities, and reservoirs; provided that any maintenance, repair, replacement, construction or development activities*** ***do not create barriers that inhibit the movement or migration of wildlife*** or cause long-term impairment to the wetlands or wildlife habitat on lands depicted on Exhibit A.

The above language was taken directly from the easement document and is the legal framework that the Service has to work within for easement enforcement. While the language may seem vague for a legal document, it was intentionally written that way in order to allow flexibility to support conservation and ongoing ranching. Existing fences are listed under Permitted Uses and Practices, which have been found to be consistent with the conservation purposes of these easements. It is important to note that both fences and grazing are specified under this section. It was clearly understood by the architects of this easement document that the framework of the document should be focused on the conservation of intact landscapes, native prairie, forests, and wetland habitats to facilitate the preservation and recovery of the U.S. Fish and Wildlife Service’s (FWS) trust species (grizzly bears and grassland birds). In order to be successful, it would be critical to not inhibit day-to-day ranch management.

The sustained success of the easement program in Montana can be attributed to several factors, one of which is the easement document itself. While the landscape in Montana is large, the community of ranchers who are willing to sell the FWS easements is relatively small. The simplicity of the easement document, with minimal restrictions while supporting conservation works for the people in this landscape. This simplicity leads to ranchers selling the program to their neighbors. These easements are perpetual and while ownership and management change over time, the resources will remain protected.

Based on the easement document language, Grizzly Ridge Bison Ranch (GRBR) did not have to ask for permission from FWS to replace the existing fence. GRBR did however reach out to Western Montana Complex (Refuge) staff prior to purchasing the property and staff saw this as an opportunity to ensure the fences were not modeled after many bison fences that are eight to ten feet high woven wire. GRBR requested to build a fence with a 48-inch high woven wire panel with one strand of barbwire on top supported by drill stem pipe. Based on this knowledge, staff determined that this request was reasonable and in keeping with the spirit and intent of the easement document.

The Easement Document specifies, ***“do not create barriers that inhibit the movement or migration of wildlife”, not “wildlife friendly fencing”***. When the GRBR fence was discussed with the DOI solicitor, he acknowledged that any fence, no matter how constructed, could inhibit wildlife movement and migration. The solicitor acknowledged that the easement document was written in a manner that allowed the easement manager the latitude to use their judgment to permit or deny uses. This decision-making authority is broad and unless the decision made was an egregious violation of the legal terms, FWS’s position is strong and supported by previous case law. Additionally, the solicitor stated that the easement managers can consider the spirit and intent of the document when making determinations. As the spirit and intent is to conserve the intact landscapes, native prairie, forests, and wetland habitats to facilitate the preservation and recovery of Service trust species (grizzly bears and grassland birds) the actions taken by GRBR (listed below) align very well with the Service’s conservation goals.

GRBR has completed the following.

* Removed approximately 30 miles of interior fencing in order to prevent animal entanglement.
* Identified wildlife movement corridors and installed removable fence panels that can be taken out when bison are not present in the pasture.
* Collected GPS coordinates of locations where animals have been observed moving and installed additional gates and panels.
* Added approximately 300 new gates to the fence that are left open when bison are not occupying the pasture.
* Reduced the number of animals grazed on the land from approximately 3,500 to 570, resulting in much improved habitat for wildlife.
* Removed the top strand of barbed wire from the newly built fence in order to reduce the risk of wildlife entanglement, despite being approved by FWS staff in the past.

Based on all of these factors the solicitor stated that the Service’s legal position is strong. We have stayed true to the intent of the document and are well within our professional decision-making space allowing the GRBR fence.