

IN DEFENSE OF EPLUS

A COMPREHENSIVE LOOK AT NM'S ELK PRIVATE LAND USE SYSTEM

By Kerrie Cox Romero

New Mexico's Elk Private Land Use System (EPLUS) has been referred to as a model program that "creates new revenues to counterbalance the cost of living with wildlife and promote conservation practices that maintain or enhance habitat" (*Conserving Wildlife Habitat With Landowner Hunting Permits—Property & Environmental Research Center Policy Brief, Sept. 2021*). The program has also been

referred to as a "privatization of big game hunting opportunity based on personal wealth and land ownership" (*New Mexico Elk Tags—There Must Be a Better Way— Back Country Hunters and Anglers Website Article, August 2021*).

These two statements couldn't be further apart. In fact they basically say the exact opposite. So which is it? Here's a comprehensive review of the program, how it originated, and it's primary purpose to help you formulate an educated opinion on the issue.

HISTORY OF EPLUS

During the 1980's the New Mexico Department of Game and Fish (NMDGF) came to the realization that if they were going to properly manage elk populations in the state they must do so on both public and private land. Since approximately 50% of New Mexico's elk habitat is on private land, as elk populations continued to steadily grow, so did the conflict between wildlife and agriculture. In 1989 the New Mexico State Legislature mandated, by statute, that the NMDGF develop a landowner authorization system to provide licenses for elk hunting on private land which would allow for better management of the state's elk herds.

Because the NM Constitution has an anti-donation clause which prevents any state agency from "directly lending or pledging its credit" to a private landowner, the NMDGF was prevented from (and still is) providing wildlife conflict reimbursements to landowners through direct compensation. The EPLUS program was created to establish an equitable and flexible system that recognizes the contributions of private lands and landowners in the management of elk and their habitats while providing hunting opportunities on private land as a method to support appropriate, biologically sound, and effective harvest goals set by the NMDGF. The program gives hunters and landowners a way to work together to effectively manage elk on private lands.

Over its nearly 40 year history the EPLUS program has evolved

several times to become the system we have today. A system that simultaneously relieves wildlife related costs, encourages habitat conservation on private property, and increases hunting opportunities on traditionally inaccessible lands.

WHO QUALIFIES AND HOW IT WORKS

Photo Credit - Walker Daugherty

The EPLUS program is the NMDGF's method through which the agency issues landowner hunting authorizations. These authorizations, often referred to as "permits", are a common tool used by western state wildlife management agencies to mitigate wildlife damages and achieve conservation objectives. 13 western states offer landowner permits which can be used by family to hunt wildlife on their private land (CA, CO, ID, MT, ND, NE, NM, NV, OR, SD, UT, WA, & WY). 7 of these states (CA, CO, NM, NV, OR, UT, & WA) allow for transferable permits, which means the landowner can use or sell the permit to another hunter for market value. Transferable permits generate great value and create a powerful incentive for landowners to conserve and improve wildlife habitat.

For a NM landowner to become eligible to obtain permits through the EPLUS program they must enroll their property according to the elk management zone in which the property is located. The majority of landowner permits are issued in the Primary Management Zone (PMZ), which is the area where the bulk of NMDGF elk management efforts are focused. Properties in this zone must prove meaningful benefit to elk. Elk authorizations are issued to landowners through a benefit based allocation system. Each property is evaluated to determine the level of forage, water, cover, surrounding area, and agriculture use. This scoring system dictates the number of permits authorized to the property. Permit numbers are adjusted annually based on property conditions. Permits in the PMZ can be issued for deeded acreage (Ranch Only - RO) or Unit Wide (UW), which can be used within the Game Management Unit (GMU).

The Special Management Zone (SMZ) is an area where no specific elk management goals are set however control of licenses is desirable due to the SMZ elk herd's proximity to the PMZ elk herds. Elk authorizations issued in the Special Zone are a negotiation between the landowner and Department. All permits authorized to landowners in the SMZ are RO.

The Secondary Management Zone (Secondary) is an area where no specific elk management goals are set by the NMDGF but huntable elk populations exist. Licenses in the Secondary are available over-the-counter to hunters who possess a ranch code from a landowner who must be registered with the department. Hunters must also have written permission from the landowner issuing the ranch code for their elk license to be valid. All permits in the Secondary are RO.

UNIT WIDE PERMITS - WHY THEY EXIST & HOW THEY BENEFIT PUBLIC LAND HUNTERS

It's important to always keep in mind that EPLUS was created to recognize and incentivize landowners for their contributions to elk populations. That includes properties that are primary elk calving grounds in the spring but are void of elk during hunting season as well as much smaller properties that provide essential sources of water. In our arid high desert water is the most critical resource for wildlife survival. And in NM the most reliable water sources are located on private land. Small landowners providing vital water resources to elk herds often choose the UW authorization option.

Landowners who selected the UW option receive authorizations that can be used within the same GMU on all UW private lands, any legally accessible public lands, and other private land (with written permission). Landowners who choose UW must also agree to allowed free access to their entire ranch to all public draw elk hunters during their licensed hunt dates, including scouting up to two days immediately preceding the start of their hunt. Vehicular access may be restricted on the ranch however; it must be equally restricted to all elk hunters, including the ranch's EPLUS hunters.

Most of the private land authorizations issued through the EPLUS system are RO. In fact, less than 15% of the total private land elk authorizations are designated UW. However, the UW program opens over 500,000 acres of private land to public draw elk hunters every year. Because New Mexico, like many western states, has large areas of checkerboard land (interspersed sections of private and public land) many of the UW ranches also provide additional public access to federal and state lands that are either landlocked or have extremely limited public access. None of this public access would be available without the UW option under the EPLUS program.

THE PUBLIC TRUST DOCTRINE & THE NORTH AMERICAN MODEL

Adversaries of the EPLUS program like to proclaim that the system is a privatization of a public resource and contrary to the North American Model. This accusation is resoundingly false. The Public Trust Doctrine is the principle that wildlife is a public

resource held in trust for the benefit of the people. It means that wildlife located on private property are not owned by the landowner. The North American Model is the wildlife management philosophy subscribed to by all game and fish agencies in the United States and Canada. Although it has no direct legal power, the North American Model is the foundation for our user pay system where hunters and anglers fund wildlife conservation through the purchase of licenses issued by wildlife agencies for the purpose of management based on sound scientific and biologic research.

[Excerpt from the PERC Report—Conserving Wildlife Habitat with Landowner Hunting Permits: Transferable hunting permits fit neatly into the North American Model of Wildlife Conservation from a regulatory, public management, and common-practice perspective. From a regulatory perspective, state agencies authorize and



manage landowner permits just as they do all hunting permits. Whether awarded to a landowner or any other hunter, each hunting permit, commonly called a "tag," authorizes the holder to harvest one animal of a specific game species according to rules set by the state agency, which include when and where the permit is valid, what weapons can be used, and other regulations specific to the animal, such as sex or antler restrictions. Landowners, like all hunters, must also own an up-to-date license to hunt in order to receive permits, regardless of whether they intend to use or sell the permits.

Landowner permit programs do not allow landowners to privatize publicly managed wildlife resources because they do not guarantee a kill or authorize landowners to sell wildlife bodies. Just as public land hunters cannot fence-in, harbor, or capture publicly managed wildlife to increase or ensure hunter success, neither can private landowners. Instead, like any state-sold hunting permits, landowner permits only grant legal access for the opportunity to pursue game.]

EPLUS VS TRESPASS FEES

A common argument of those opposed to the EPLUS program is that landowners could instead sell trespass fees to allow hunters to access deeded land. Several states do utilize this type of system and those states have proven that straight trespass fees work for very large landowners but are ineffective in managing elk herds located on small deeded properties or properties with high levels of checker board public/private land. Additionally, trespass fees systems are difficult to regulate and do not promote partnership between agriculture and wildlife conservation. Trespass fee systems also lead to other wildlife management decisions such as how to distribute hunting permits.

On assumption is that permits under a trespass fee system would be distributed through the public land draw. In NM a distribution of tags exclusively through the draw would lead to financial complications to the NMDGF since tags allocated through the draw are restricted to the resident/nonresident quota (84% of bull tags, and 100% of cow tags would go to resident under a this scenario).

Because the NMDGF depends on nonresident revenues generated primarily through the EPLUS program, a sudden redistribution of tags to resident hunters (who pay 6 times less for a license) would have devastating consequences for the agency's annual budget. But that problem aside; distributing all elk tags through the draw would have other dire consequences. The most alarming of which would be the amount of hunting pressure that would be created on public land.

In reality, NM landowners are not just going to open their private land to hunters for free. After all they could do that right now if they wanted to and they don't. A trespass fee system (like EPLUS) would primarily be utilized by hunters who have the means to pay



for access. Most NM resident hunters would not be willing to pay trespass fees and would instead look to use public land. This would increase the number of hunters on public land, decrease overall hunter satisfaction, push elk herds further onto private land, and increase landowner/elk conflict. Why would NM want to risk the quality of elk hunting just to move to a straight trespass fee system.

CONCLUSION

The EPLUS program is not broken. In fact it is the envy of many states that have not yet adopted the idea of transferable landowner tags. More and more western states are looking to NM's as a model that is mutually beneficial to all stakeholders; hunters, landowners, outfitters and most of all, wildlife. Yes it is difficult to draw a tag in NM. But the EPLUS program exists to facilitate landowner partnership in the conservation of the states elk herds. Dissolving the program may create a slight increase in resident hunter opportunity but it would deteriorate the quality of elk hunting in NM and it would put unnecessary stress on our elk populations.

Instead of focusing so heavily on increasing opportunity lets focus on our shared passion of wildlife and wild places. We are all sportsmen. We all care about the condition of wildlife habitat on

both public and private land. Its time to come together to support a system that is rewarding landowners for good stewardship, bringing critical nonresident income into our rural NM economies, and providing both nonresident and resident hunters with opportunity to hunt on private land.