

Otero County Ordinance No. _____

This Ordinance Shall Be Known As the Otero County Elk Ordinance

WHEREAS, the County of Otero has a substantial population of elk and a substantial amount of elk habitat located within its borders on both private land and federal (particularly Forest Service managed) land;

WHEREAS, the Otero County citizens, the users of the Lincoln National Forest and owners of private lands in Otero County have repeatedly reported and recorded their concerns regarding an expanding elk population and deteriorating rangeland, forestland and riparian conditions due to expanding elk populations;

WHEREAS, the increasing elk populations have led to inappropriate numbers and/or distributions of elk which in turn has resulted in hardships to various county residents, and damage to private and federally managed lands which then leads to adverse economic, social and environmental consequences to Otero County;

WHEREAS, NMSA § 17-1-26 provides the authority for the State Game Commission to make rules and regulations pertaining to hunting, killing, possessing, purchasing, and shipping of game animals, birds and fish;

WHEREAS, 19 NMAC 30.5.9 provides the State Game Commission the authority to determine the number and kind of hunting opportunities by bag limit and weapon type available in each Game Management Unit.

WHEREAS, according to the Elk Regional Management Information, the factors that go into setting elk population and hunt limit goals are 1) the estimated pre-hunt population, 2) the number of elk actually observed, 3) the bull to cow to calf ratio, 3) the number of depredation complaints (public comment), 4) the level of concern (set by the Forest Service and Bureau of Land Management), 5) the special considerations and agreements that correspond to that region, and 6) the three year elk harvest average success rate. Elk Regional Management Information 2, 22-23 (New Mexico Department of Game and Fish, 2001). With regard to the "level of concern," the Department considers the Sacramento Region within Otero County to require a "major adjustment" in the total level of ungulate use, based upon the "high" "relative degree of management concern" and "resulting forage conditions;"

WHEREAS, the New Mexico Department of Game and Fish is authorized to issue licenses to hunt elk in Otero County and other areas in New Mexico;

WHEREAS, the New Mexico Department of Game and Fish has published a "Strategic Plan for FY 2006 through FY 2010" stating its intention to "collaborate with land

management agencies, landowners and other affected interests to establish broadly supported management objectives for game animals and game fish;”

WHEREAS, counties in New Mexico are political subdivisions with legislated responsibilities and powers, including those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of any county or its inhabitants. NMSA § 4-37-1. A Board of County Commissioners, elected by the citizens in each county, may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties. Jicarilla Apache Tribe v. Board of County Comm'rs, 118 N.M. 550, 554, 883 P.2d 136, 140 (1994);

WHEREAS, the Otero Board of County Commissioners is authorized to adopt this ordinance pursuant to NMSA §§ 3-21-1 through 3-21-12 and NMSA §§ 4-37-1 through 4-37-9 and is empowered to provide a process and system of guiding appropriate activities under powers granted to it to protect and promote prosperity;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Otero County, New Mexico:

SECTION 1. Title.

- 1.1 This ordinance shall be known as the “Otero County Elk Ordinance.”

SECTION 2. Purpose.

- 2.1 The purpose of this ordinance is to protect the health, safety, and welfare of the citizens of Otero County; to restore, maintain, and enhance the ecological conditions and environment in Otero County, to achieve functional forestlands, rangelands, riparian areas, streams, rivers, watersheds and an elk population commensurate with the available habitat; to preserve and protect the county customs, culture, economy, and associated industries such as livestock ranching, and hunting businesses; to protect private property and property values; and to encourage immediate and long-range stewardship to ensure appropriate sustained multiple use of the natural renewable resources in Otero County. This includes the establishment of a viable elk population by the Commission/Department commensurate with the available spacial and habitat conditions necessary for a sustainable ecosystem.

SECTION 3. Definitions.

- 3.1 **Appropriate Management:** Management practices, based on the “best available scientific data” and/or professional recommendations. Such “best available scientific data” should follow the guidelines set forth by the federal Office of Management and Budget pursuant to the Federal Data Quality Act, § 552(a) Pub. Law. 106-554; HR 5658; 114 Stat. 2763 (2000). These guidelines require public notification that the scientific data used in the decisionmaking process meet four elements including (1) quality, (2) utility (i.e., referring to the usefulness of the data for its intended purpose), (3) objectivity (i.e., the data must be accurate, reliable and unbiased) and (4) integrity. 66 Fed. Reg. at 49718.
- 3.2 **Commission:** New Mexico State Game Commission.
- 3.3 **County:** Otero County, New Mexico.
- 3.4 **Culture:** A practice or belief established over a long period of time that is adhered to by a society. In the context of this ordinance, the term culture pertains to the land use practice of the citizens of the County. The citizens have demonstrated their belief that natural resources of the land should be appropriately utilized as opposed to preservation or nonuse.
- 3.5 **Customs:** The methods people use to implement their culture. The citizens of the County have the long-standing land use industries of livestock ranching and hunting that, combined with associated businesses, contribute to the economy health and welfare of the County’s society.
- 3.6 **Department:** New Mexico Department of Game and Fish.
- 3.7 **Elk:** Members of the Cervidae family, which are statutorily protected game mammals in New Mexico.
- 3.8 **Forestland:** Land that is at least ten percent (10%) covered with trees.
- 3.9 **Grazing Permittee or Licensee:** Person, corporation, partnership, or other entity who holds a livestock grazing permit issued by the U.S. Forest Service on the Lincoln National Forest.
- 3.10 **Habitat:** The environment supplying the needs of individuals; the complex of physical and biological components that provide food, water, cover, and shelter.

- 3.11 Multiple Use: Achieve diverse objectives and sustained yield of the renewable natural resources and associated opportunities in the County.
- 3.12 Rangeland: Large, naturally vegetated lands that are grazed by domestic livestock and wildlife.
- 3.13 Riparian Areas: Banks and adjacent environment of springs, seeps, watercourses, lakes, and wetlands characterized by soil characteristics or distinctive vegetation communities that require free or unbound water.
- 3.14 Watershed: The entire terrain that drains a particular geographic area.

SECTION 4. Applicability.

- 4.1 This ordinance shall apply to all unincorporated areas of the County, excluding Indian reservations.

SECTION 5. County Participation in Elk Population Management Determinations.

- 5.1 The County recognizes that elk are mobile and secretive by nature. Elk cannot be readily counted nor be easily captured and held in a corral pending further management options. Nevertheless, appropriate management considerations can result in benefits to the environment, economy and local employment of the County. Appropriate management of elk population numbers can also result in amelioration of the detrimental effects caused by mismanagement of elk. To advance the premise of appropriate management, the County therefore:
 - 5.1.1. Shall consult, cooperate, and coordinate with the Department and Commission on all natural resources planning efforts, programs, research studies, monitoring and field projects relating to elk population management within the County.
 - 5.1.2. Shall prepare and forward to the Department and Commission the considerations the County determines are necessary to establish elk harvest numbers to achieve an elk population size that is in balance both with sound ecological and habitat conditions and with other uses important to the county, including protections of the County's custom and culture, and a sustained elk population that benefits the associated hunting industry, the ranching industry including use of federally managed grazing allotments and the county economy. Such considerations may include:

- 5.1.2.1 The geographic distribution of the elk population within one (1) month of the beginning of the first hunting season each year;
- 5.1.2.2. The season of use by elk in various habitats;
- 5.1.2.3 The damage caused to both private property and federally managed livestock grazing allotments, such as fences and forage or crops due to elk;
- 5.1.2.4 The degradation caused to private land and adjacent rangelands, national forestlands, and state trust lands, such as over-grazed riparian areas and watersheds resulting from excessive elk use;
- 5.1.2.5. The adverse economic impacts to local ranchers or landowners who must reduce the number of livestock grazed, or reduce the length of time their livestock can utilize their private land or permitted grazing allotments on the Lincoln National Forest due to excessive use by elk.

5.2 Shall provide recommendations to the Department and Commission in acknowledgment of the current Strategic Plan and longstanding Memorandum of Understanding with the United States Forest Service to be used in the preparation of an appropriate management plan for elk. Additionally, the County shall provide recommendations regarding monitoring and annual updating of the management plan.

5.3 Shall conduct studies to determine the elk forage utilization or use pattern mapping for a given area in recognition of the Department's and United States Forest Service's "level of concern," which, as recognized by the Department requires a "major adjustment" in the total level of ungulate use, based upon the "high" "relative degree of management concern" and "resulting forage conditions." The purpose of such studies is to inform the Department of the current upland and riparian area use levels by elk so that appropriate population levels can be set based upon sound scientific data and information. As set forth pursuant to New Mexico statute and regulations, the Department shall consider such data in establishing hunting levels for elk in Otero County.

Federal law
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SECTION 6: Additionally the County shall initiate a dialogue with the Department or Commission, which may result in proposals discussing methods in which

depredation hunting licenses could be granted to United States Forest Service livestock grazing permittees or licensees.

SECTION 7. Severability.

- 7.1 If any part of this ordinance is held invalid, the remainder of its application and other instances or persons shall not be affected.

SECTION 8. Conflicting Provisions.

- 8.1 Should a conflict exist between any limitations or requirements within this ordinance or in any other ordinance, regulation or law, the more restrictive limitation or requirement shall prevail.

THEREFORE, the Board of County Commissioners of Otero County will review, approve and adopt this ordinance to take effect thirty (30) days subsequent to the approval and signature of this ordinance, dated this _____ day of _____, 2007.

BOARD OF COUNTY COMMISSIONERS
OTERO COUNTY, NEW MEXICO

ATTEST:

Robyn Holmes, County Clerk

(Seal)

Doug Moore, Chairman

Clarissa McGinn, Vice-Chairperson

Michael Nivison, Member