



DECISION NOTICE

52 Ranch Habitat Conservation Lease

August 20, 2024

ACTION

Decision Notice (DN). Pursuant to the Montana Environmental Policy Act or MEPA, 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.

BACKGROUND AND AUTHORITY

According to the applicable requirements of 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)*.

On August 12, 2022, following MEPA's required public participation process, FWP published their decision to approve a *Programmatic Environmental Assessment* or *Programmatic EA* prepared and publicly processed to identify, consider, and disclose any potential impacts of FWP's *Habitat Conservation Lease Program* or *HCLP* on the affected human environment. A copy of the subject *Programmatic EA* and associated *DN* are available for review at <https://fwp.mt.gov/conservation/habitat/habitat-conservation/lease-program>. The approved *Programmatic EA* and § 87-1-241, *MCA*, require FWP serve public notice for each specific *HCLP* project covered under the scope of the approved *Programmatic EA* each time a specific *HCLP* project is proposed and recommended for approval. A copy of the required public notice for the 52 Ranch Habitat Conservation Lease is available for review at <https://fwp.mt.gov/news/public-notice>.

Further, pursuant to *ARM 12.2.440(1)(a)*, on May 12, 2023, following MEPA's required public participation process, FWP approved a *Supplemental Programmatic EA* proposing various changes to the *HCLP*, as initially detailed and approved by the *Programmatic EA*. More specifically, the *Supplemental Programmatic EA* proposed changes to the payment level for participation in the *HCLP* and added a penalty-free *HCLP* buy out provision. A copy of the *Supplemental Programmatic EA* and associated *DN*

are available for review at <https://fwp.mt.gov/conservation/habitat/habitat-conservation/lease-program>.

FWP determined the proposed 52 Ranch Habitat Conservation Lease falls within the scope of the approved *Programmatic EA*, as modified by the *Supplemental Programmatic EA*. Therefore, with consideration for the above-cited, prior programmatic review of the *HCLP*, and pursuant to *ARM 12.2.430, General Requirements of the Environmental Review Process*, the 52 Ranch Habitat Conservation Lease has met all obligations for approval pursuant to MEPA and § 87-1-241, MCA.

DESCRIPTION OF PROPOSED ACTION

Detailed information concerning the 52 Ranch Habitat Conservation Lease, including the public notice and map materials, is available for review at <https://fwp.mt.gov/public-notices/news/2024/jul/0711---52-ranch-habitat-conservation-lease>.

PUBLIC INVOLVEMENT

The public process for the *Programmatic EA*, *Supplemental Programmatic EA*, and their respective *DNs* is detailed within those respective process documents, see links above. Also, specific to the proposed action, and pursuant to § 87-1-241, MCA, a 30-day public comment period was announced on July 11 and a public meeting was held at the Montana Fish, Wildlife & Parks Region 7 Headquarters on July 23, 2024. Public notice was sent through FWP's regional distribution lists as well as to owners of neighboring properties.

PUBLIC COMMENT AND FWP RESPONSE

FWP received substantive public comments on the proposed action. A substantive public comment was defined as the identification of the proposed action, or elements of the proposed action, as being outside the scope of the *Programmatic EA* and/or *Supplemental Programmatic EA* previously prepared and publicly processed for approval of the *HCLP* program. The following provides the public comments received and FWP response(s):

Comment: I support the FWP in establishing the QT Ranch and 52 Ranch habitat conservation leases. These 2 leases will be important to Montana and our recreationists.

FWP Response: Thank you for your comments.

Comment: I wanted to voice my support for the proposed habitat conservation leases for the 52 Ranch and the QT Ranch. Both my wife and I have lived and worked in Eastern Montana, and we value conservation of rangeland habitats for wildlife. We also strongly support the use of conservation leases and support for agriculture. Kudos to FWP and the landowners for these pragmatic, win/win proposals. Thanks for listening.

FWP Response: Thank you for your comments.

Comment: I support the 52 Ranch Habitat Conservation lease agreement, as long as it enhances recreational and hunting opportunities for the public.

FWP Response: Thank you for your comments.

Comment: That is a lot of money, but I suppose it is worth it to lock up public access and recreational opportunities, including hunting, for the next 40 years. I still support this project.

FWP Response: Thank you for your comments.

Comment: Montana is Big Sky Country, which implies that you need a LOT of Big Sky to recreate. 18,000 acres is tempting, again, 40 years is not enough time to turn around decades of abuse and misuse. For that reason I oppose this lease. But, does it provide unlimited access to 5000 acres of public land, which has previously been inaccessible?

If it is desirable to conserve land, then the need does not dissolve after a fixed period of time. It is a waste of Sportsmen dollars for a fixed period of time conservation lease and prevents FWP from helping to design a long term conservation management plan. It can take more than 40 years to unwind, i.e. correct, poor management of the past. We recently discussed fixed leases with the Montana Land Reliance organization and they also question the logic of fixed term conservation easements. Fixed term and Conservation seem to be in conflict with each other, definitionally. I oppose all fixed term conservation easements, unless it provides unrestricted public access to public lands which are more than 5000 acres and previously inaccessible.

"We the people of Montana, grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution. June 6, 1972

FWP Response: The Habitat Conservation Lease program is not intended to be remedial or corrective in nature. Instead, the basic intent of the conservation lease program is to retain substantial blocks of high priority native or restored wildlife habitats while keeping working agricultural lands as working lands. FWP recognizes the difficulty some landowners may face trying to make decisions about their property for future generations, especially when it comes to family, values, and finances. Habitat leases help bridge the gap between no conservation and perpetual conservation and can have potential to ensure significant acreages of priority habitats are conserved for a minimum of three decades – many more acres than could be affected with only conservation easements.

The agreements include a penalty-free buyout provision that allows landowners to extinguish their Habitat Conservation Leases for the sole purpose of replacing them with permanent conservation easements providing similar protections. This option provides additional flexibility to landowners, integrates the Habitat Conservation Lease program with other permanent conservation programs in Montana, and ensures that leases may lead to permanent protection in the future.

The 52 Ranch Habitat Conservation Lease will provide access to approximately 1,055 acres of public land for 624 recreation-days per year.

Comment: 1055 acres does not negate the principles and purpose of conservation easements.

FWP Response: The Habitat Conservation Lease program is not only intended to support recreation opportunity, but also to retain substantial blocks of high priority native or restored wildlife habitats while keeping working agricultural lands as working lands. Habitat leases help bridge the gap between no conservation and perpetual conservation and can have potential to ensure significant acreages of priority habitats are conserved for a minimum of three decades – many more acres than could be affected with only conservation easements.

Comment: I object to any term lease by any agency of Montana unless it unlocks more than 10,000 acres of public land. The term conservation LEASE did not exist until Montana created the program. A term-limited lease violates the key principles of conservation: “to permanently preserve their land for future generations. “

The BLM lease proposal is not a comparable program. BLM is never going to sell public land in the future for development. A BLM lease is would be an opportunity for conservation groups to protect public land that has been abused by previous commercial lessees.

The philosophy of conservation easements is: environmental, cultural, and wildlife protection should take precedence over financial gain. Conservation easements are a way for private landowners to preserve permanently their land for future generations. They involve giving a third party, such as a government entity or land trust, the right to control the use of the land for conservation purposes. In exchange, the landowner may receive payment and establish conservation practices, such as restoring wetlands, planting trees, or establishing native grasses and forbs.

[viewthefuture.org]https://www.google.com/search?q=conservation+easement+philosophy&dq=conservation+easement+philosophy&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAMQIRigAdIBCTI4NDg2ajBqNKgCALACAQ&sourceid=chrome&ie=UTF-8 [google.com]

A conservation easement is a voluntary, legal agreement that permanently limits uses of the land in order to protect its conservation values. Also known as a conservation restriction or conservation agreement, a conservation easement is one option to protect a property for future generations. <https://www.conservationeasement.us/what-is-a-conservation-easement/> [conservationeasement.us]

Legal concepts related to the permanent preservation of the natural landscape have existed since the 1930s. It took several more decades for federal and state governments to develop the necessary incentive packages to encourage landowners to take advantage of those concepts and, thereby, contribute to the conservation of natural places. After much maturation, one specific tool (the conservation easement) now provides a great opportunity for the owners of agricultural or undeveloped land to realize the land’s value without having to sell to a third-party developer. The easement, in

effect, grants the recipient the power to control the land in certain contexts – contexts focused on the preservation of the land in its wild and/or natural state or to protect the land’s historical and cultural significance. Conservation easements often prohibit development on the property while allowing the landowner to maintain certain uses consistent with the overall conservation scheme. A conservation easement’s prohibitions on land use continue indefinitely – burdening the new owner, if the property is ever sold. <https://www.deanmead.com/the-role-and-benefits-of-conservation-easements-in-protecting-land/> [deanmead.com]

Please see that this comment is entered into the Public Record for the above proposed 40 year (aka 2 generation) conservation lease proposals. Thanks;

FWP Response: FWP recognizes the difficulty some landowners may face trying to make decisions about their property for future generations, especially when it comes to family, values, and finances. Habitat leases help bridge the gap between no conservation and perpetual conservation and can have potential to ensure significant acreages of priority habitats are conserved for a minimum of three decades – many more acres than could be affected with only conservation easements.

The agreements include a penalty-free buyout provision that allows landowners to extinguish their Habitat Conservation Leases for the sole purpose of replacing them with permanent conservation easements providing similar protections. This option provides additional flexibility to landowners, integrates the Habitat Conservation Lease program with other permanent conservation programs in Montana, and ensures that leases may lead to permanent protection in the future.

Comment: Limited-term conservation easements are just another way to transfer millions of tax dollars into the hands of the wealthy. It is paying the landowner to not subdivide for 30-40 years. The landowner can then turn around and apply for more millions of public money or sell their land to the highest bidder. Win/win for the landowner. Just a loss for the people of Montana.

Land placed in conservation for perpetuity, done transparently, benefits the landowner, the land, and Montanans, with far less opportunity for fraud and loss of habitat and open space.

It appears the fox is now guarding the henhouse.

FWP Response: As part of Habitat Conservation Lease agreements, landowners will be financially compensated in return for retaining substantial blocks of high priority native or restored wildlife habitats while keeping working agricultural lands as working lands. FWP intends to utilize federal Pittman-Robertson (P-R) funding for future Habitat Conservation Lease Agreements, matched with Habitat Montana dollars at a 3:1 ratio, as well as other federal, state, or partner habitat funding sources including the Migratory Bird Wetland program. Habitat Montana funding is a percentage of primarily non-resident hunting license fees, as described in 87-1-242, MCA, with the legislature setting the number of combination licenses available to non-residents. This funding source generates approximately \$3.5 million per year available for habitat acquisition, easement, or lease.

Habitat Conservation Lease contracts are recorded with the property deeds in relevant counties to ensure that a record of the agreement is available to any organization considering program eligibility in the future. Should a property under an agreement be sold, the new landowner would be obligated to the terms of the agreement for the remaining duration.

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The agreements include a penalty-free buyout provision that allows landowners to extinguish their Habitat Conservation Leases for the sole purpose of replacing them with permanent conservation easements providing similar protections. This option provides additional flexibility to landowners, integrates the Habitat Conservation Lease program with other permanent conservation programs in Montana, and ensures that leases may lead to permanent protection in the future.

Comment: On behalf of the Montana Wildlife Federation (MWF), Montana's oldest and largest hunter and angler-based conservation group, founded in 1936 by conservationists, landowners, hunters and anglers. MWF is a 501(c) 3 nonprofit organization comprised of staff, more than 5000 members, and 14 affiliate clubs throughout the state who share a mission to protect and enhance Montana's public wildlife, lands, waters, and fair chase hunting and fishing heritage. Please accept these comments in support of the QT Ranch and 52 Ranch Habitat Temporary Conservation Leases.

These leases facilitate public access to approximately 18,255 acres of the 52 Ranch and 640 acres in the QT ranch in Eastern Montana. Both of these leases allow public access to previously inaccessible ground and continue the administration's overarching goal of enrolling 500,000 private land acres into conservation lease agreements.

We commend the 52 Ranch landowners for their decision to provide additional access beyond what is required through the temporary lease. We encourage these ranches to participate in BMA to secure public access on a larger and more successful scale. We would appreciate enhanced public access to the QT ranch in the future commensurate with the price of the temporary lease.

The terms of these temporary conservation leases reflect fairness and generosity, benefiting both the landowners and the public. In a prairie landscape that is increasingly more valuable, we appreciate the investment that the state is willing to make. We extend our gratitude to them for their application and their conservation ethic. The funding for these conservation leases are primarily derived from state hunting license fees and federal Pittman Robertson Wildlife Restoration funds, supplied by hunters. These easements play a pivotal role in conserving wildlife, habitat and access to expansive landscapes.

We believe that temporary leases are better than no conservation easements in most cases. We support using funds for these leases when these funds would otherwise be unused. What is concerning, is a large portion of funds being dedicated to temporary leases, and we could lack the funds to work on permanent conservation leases when willing sellers would like to enter into such an agreement. This could lead to higher costs for lesser conservation outcomes and result in some willing sellers putting their properties on the market when they would prefer to have them permanently conserved.

Both leases amount to a sum of \$2,226,906.50 for 40 years of conservation management. With 18,895 acres involved, this equates to \$117.86 per acre within the leases. If these figures were made more transparent to the public, we believe that FWP would receive more public feedback. We also believe that detailing the specific threats to these parcels of land would be helpful. While MWF has consistently supported the stance of "cows not condos," understanding external threats, or the lack thereof, would aid in our and the public's ability to comment on these proposed temporary leases.

Additionally, we want to help FWP make their process more transparent with the public, as the process of temporary leases has not been universally accepted. To help the public digest and comment clearly on these leases, it would be beneficial to include on each proposed lease a full property evaluation of the land, annualized cost per acre, and total price tag for these leases. This transparency would foster better understanding and engagement from the public. The Montana Wildlife Federation supports the advancement of the 52 Ranch and QT Ranch Temporary Habitat Conservation leases. We extend our appreciation to the Department for their facilitation of this initiative and to the landowners for their commitment to conservation and the provision of public access and hunting opportunities.

FWP Response: Thank you for your comments.

Habitat Montana funding is a percentage of primarily non-resident hunting license fees, as described in 87-1-242, MCA, with the legislature setting the number of combination licenses available to non-residents. This funding source generates approximately \$3.5 million per year available for habitat acquisition, easement, or lease. In addition to Habitat Montana, FWP intends to utilize federal Pittman-Robertson (P-R) funding for future Habitat Conservation Lease Agreements, matched with Habitat Montana dollars at a 3:1 ratio, as well as other federal, state, or partner habitat funding sources including the Migratory Bird Wetland program. Habitat Conservation Leases are not anticipated to deplete Habitat Montana funding or prevent other Habitat Montana funded conservation projects, such as permanent easements or acquisitions, from proceeding.

FWP recognizes the value of transparency to the public and will work to incorporate your recommendations regarding payments, pricing per acre, and the specific threats to each property in future Habitat Conservation Lease proposals.

DECISION

FWP reviewed the proposed action and all public comments received in response to the proposed action. Based on this review, and pursuant to the applicable requirements of MEPA and § 87-1-241, MCA, FWP hereby recommends approval of the proposed 52 Ranch Habitat Conservation Lease Pursuant to § 87-1-209, MCA, approval of the proposed action is a function of the Montana Fish & Wildlife Commission and the Montana Land Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Schmitz". The signature is stylized with a large, sweeping initial "B" and a long, horizontal flourish extending to the right.

Brad Schmitz
Region 7 Supervisor
Montana Fish, Wildlife & Parks