



## DECISION NOTICE

### Hartman Land & Livestock Company Habitat Conservation Lease

May 15, 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 Hartman Land & Livestock Company Habitat Conservation Lease is available for review at <https://fwp.mt.gov/news/public-notices>.

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 Hartman Land & Livestock Company 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 Hartman Land & Livestock Company 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 Hartman Land & Livestock Company Habitat Conservation Lease, including the public notice and map materials, is available for review at <https://fwp.mt.gov/public-notices/news/2024/mar/hartman-land--livestock-company-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 March 25, 2024, and a public meeting was held at the Ranchers Stewardship Alliance office in Malta on April 18, 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* prepared and publicly processed for approval of the *HCLP*. In some cases, multiple individuals provided the same or similar comment; these comments were summarized, categorized, listed once, and a single FWP response is provided below. The following constitutes a synopsis of public comments received and FWP's response to those comments.

**Comment:** Several commentors expressed support for the leases and even gratitude for the landowner's participation. Stating that it will provide important wildlife and agriculture conservation as well as hunting and other outdoor opportunities. Believing that these leases safeguard local biodiversity, promote sustainable land management practices, demonstrate commitment to preserving Montana's rich natural heritage for future generations and furthermore supports the well-being of our communities and economies.

**FWP Response:** FWP agrees. Habitat Conservation Leases help conserve priority wildlife habitats on private lands while also supporting working lands and public hunting and recreation opportunity. Maintaining working ranches on the landscape is important to maintaining important wildlife habitat. These leases are designed to maintain working ranches and their valuable wildlife habitats.

**Comment:** A comment expressed concern about using Habitat Montana Funding. Stating that a 40-year lease is a waste of sportsman dollars when the next generation could sell the land for profit and that if there is need for protection then it should be into a perpetuity.

**FWP Response:** Habitat Conservation Lease Agreements meet the intended use of Habitat Montana and Migratory Bird Wetland program dollars and have potential to ensure significant acreages of priority habitats are conserved for at least three decades – many more acres than could be affected with only conservation easements. Pursuing Habitat Conservation Lease Agreements does not preclude using Habitat Montana or federal funding sources for conservation easements or acquisitions and may lead to permanent protection in the future.

**Comment:** A commentor expressed concern over property rights of the leases.

**FWP Response:** The landowner still retains ownership of the land. Under FWP's *Programmatic Environmental Assessment*, Background and Need, pg. 11 "FWP respects, as a core American value, the right of private landowners to manage their properties as they see fit. "Under FWP's *Supplemental Environmental Assessment*, Pg 21 VIII. *Private Property Impact Analysis (Takings)* Under the *Programmatic Environmental Assessment* or *Programmatic EA, Lease stipulations* pg. 12 "Through the enrollment process, the landowner would have the opportunity to identify areas to enroll and areas to exclude from enrollment, which would be depicted on a map as part of the lease agreement". Further details are address under the *Supplemental Programmatic EA, pg. 21, VIII. Private Property Impact Analysis (Takings)*. Landowners have been in clear communication with the department throughout the proposal process about which areas of the property they desire to maintain greater flexibility while still providing some conservation assurances.

**Comment:** A concern was expressed over the incentives for the leases, stating FWP has no evaluation on whether the landowners' intentions are for conservation or for the financial gain. The concern continues that income from the lease is to further develop land in southwest Montana resulting in a net loss of wildlife habitat to include in and near sage grouse Core areas.

**FWP Response:** The comment is correct that FWP does not seek to evaluate or judge the landowner's personal decisions about why they may want to enroll in their property in a conservation lease. Regardless of the specific reasons a landowner may desire to enroll their property in a conservation lease, their agreement to do so is a clear indication of their interest in conservation in that location. However, FWP does recognize the concern for the net loss of habitat. Regarding protections of sage grouse habitat, there is the Montana Sage Grouse Habitat Program. The program implements the Greater Sage Grouse Stewardship Act and Executive Orders 12-2015 and 21-2015 across state government, coordinating with federal land management agencies as they implement the sage-grouse conservation provisions in their land use plans, and working with other partners, especially private landowners who conserve the majority of important sage grouse habitat in Montana.

**Comment:** Concern about negative impacts on the Phillips County community and the economic viability.

**FWP Response:** Community impact is addresses under the *Programmatic EA, PART II. ENVIRONMENTAL REVIEW CHECKLIST, Table 2., Possible Impacts, Human Environment, pg.21, "Payments to private landowners could result in economic benefits to landowners and their associated local communities and private businesses that provide goods and services. FWP does not expect the Proposed Action to have any impact on local schools. FWP does not expect the Proposed Action to substantially impact employment opportunities. FWP does not expect the proposed conservation leases to substantially affect traffic or transportation facilities. Enrolled lands would serve as destinations for hunters and other recreationists from the public, but the minimum access requirements do not represent a substantial additional usage to public roadways, which commonly receive additional use during general hunting or other recreation seasons". Economic viability is address in the *Supplemental Programmatic EA, Table 5 - Potential Impacts of Alternative 2: Proposed Project on the Human Population, pg.19 Resource: Other appropriate social and economic circumstances, "No significant adverse impacts to other appropriate social and economic circumstances would be expected because of the proposed action".**

**Comment:** Concern about the residency of the landowners.

**FWP Response:** When the landowner enters into a habitat conservation lease, they are agreeing to the requirements and restrictions of the lease regardless of their residency.

**Comment:** Concern the incentives not being greater for Sage Grouse habitats.

**FWP Response:** Habitat Conservation Leases will be focused on five priority habitats that have been identified as being the highest conservation priority for maintaining Montana’s diverse wildlife, including game species and Species of Concern. These are: shrub grasslands, mixed grass prairie, pothole wetland grasslands, intermountain shrub and grasslands, and riparian floodplain habitats. FWP applies a ranking criterion to applications. Sage-grouse core habitat would receive higher ranking. However, there are additional species and criteria to be considered see *Programmatic EA*, APPENDIX B Wildlife Associated with Each of the Five Focal Habitats (State Wildlife Action Plan 2015).

**Comment:** Concern for the percentage breakdown of leases by county, acres per county and, the percentage need for protection to adequately safeguard wildlife habitat and what percentage of that is core Sage grouse habitat.

**FWP Response:** The Habitat Lease Program is voluntary. The total number of acres proposed for the habitat conservation leases in Philips County is 13,445.9 acres across three projects:

Mark James French <https://fwp.mt.gov/binaries/content/assets/fwp/news/public-notice/2024/region-6/notice-of-habitat-lease-proposal--m-j-french.pdf> (307.9 acres),

B&C French <https://fwp.mt.gov/binaries/content/assets/fwp/news/public-notice/2024/region-6/notice-of-habitat-lease-proposal--bc-french.pdf> (11,612 acres)

Hartman Land & Livestock Company <https://fwp.mt.gov/binaries/content/assets/fwp/news/public-notice/2024/region-6/notice-of-habitat-lease-proposal--hartman.pdf> (1,526 acres). Sage grouse habitat maps can be referenced in the *Programmatic EA*, pg. 4. *Figure1*. There is no acreage objective on a county level. The Habitat Conservation Lease Program has a goal to protect up to 500,000 acres statewide in the next five years.

**Comment:** What is the 40- year goal of MTFWP of private land acres under conservation leases and easements in all of Montana?

**FWP Response:** The primary goal of the habitat conservation lease program is to implement an expansive, long term habitat conservation tool that effectively addresses habitat conversion and fragmentation threats for high priority wildlife habitats at a landscape scale.

**Comment:** Concern for how FWP prescribes the number of license sales necessary to fund the project and associated negative effects such as increased hunting activity on Block Management and concerns about overcrowding and over hunted areas.

**FWP Response:** The Habitat Lease Program does not have a license sale objective. The 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. FWP intends to utilize federal Pittman-Robertson (P-R) funding for the Habitat Conservation Lease Agreements, matched with Habitat Montana dollars at a 3:1 ratio, as well as Migratory Bird Wetland program. The general hunting license and season structure does allow hunters to distribute themselves across the state, and FWP has heard overall concerns of overcrowding in Region 6. Related to Block Management, private landowners enrolled in that access program retain control over public access and can limit hunter numbers and/or distribution on enrolled lands.

**Comment:** Concern for coordination with the Phillips County Commissioners in meeting the objectives with

the Phillips County Land Resource Use Plan. Specific objectives the comment referenced are included in the below response.

*PCLRUP Objective 2H: The county will coordinate with MFWP in consultation with all affected landowners, lessees, and permittees to develop specific wildlife population targets, harvest guidelines and late-season hunts when harvest guidelines are not met.*

**FWP Response:** The Habitat Conservation Lease program does not have any specific wildlife population targets, harvest guidelines and late-season hunts associated with the individual habitat conservation leases proposed in Phillips County.

*PCLRUP Objective 1D: Encourage the retention of full unencumbered private property rights, and a further goal of no net loss of private lands and rights.*

**FWP Response:** A private property assessment (takings) was addressed under FWP's Programmatic EA and Supplemental EA, resulting in a finding of no taking or damaging implications of private property as a result of the proposed action. Furthermore, the Programmatic EA states under Background and Need, pg. 11 "FWP respects, as a core American value, the right of private landowners to manage their properties as they see fit. Further, it will be up to the landowner to determine how much of their property they want to include in a conservation lease and the landowner retains ownership of the land.

*(PCLRUP) Object 3C: Create committees to effect greater county involvement in land planning processes.*

**FWP Response:** Under FWP's Programmatic Environmental Assessment, pg. 4, PART IV. PUBLIC PARTICIPATION 1. Public involvement: and pg22, SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT CHECKLIST, IX. Public Participation

*(PCLRUP) Object3E Increase the capacity for land resources to provide more economic return for rural economies.*

**FWP Response:** Under FWP's Programmatic Environmental Assessment PART II. ENVIRONMENTAL REVIEW CHECKLIST pg. 21 "Payments to private landowners could result in economic benefits to landowners and their associated local communities and private businesses that provide goods and services." Further, habitat conservation leases allow for current agricultural practices to continue on private lands under the lease.

*(PCLRUP) Object 4C Better inform private property owners that conservation easement reduce rights of future property owners:*

**FWP Response:** Habitat Conservation leases are not perpetual easements, and allow for decisions to be made by future property owners once the term of the lease is up.

*(PCLRUP) Goal: That the design and development of all federal and state land dispositions and acquisitions, including land adjustments and exchanges, be carried out to the benefit of the residents of Phillips County*

**FWP Response:** FWP's Supplemental Environmental Assessment includes a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other. FWP has the authority under 87-1-201, MCA to protect, enhance, and regulate the use of Montana's fish and wildlife resources and to manage those species in a manner that prevents the need for federal listing, all for public benefit now and in the future. Under FWP's Programmatic Environmental Assessment, PART III. NARRATIVE EVALUATION AND COMMENT, pg. 24 "Wildlife populations associated with enrolled habitats would continue to benefit from these priority habitats. Hunters and other recreationists are also expected to benefit with expanded opportunity for public access to enrolled lands." Therefore, the residents of Phillips County would benefit.

**Comment:** Concern for wildlife monitoring in regard to wildlife population targets, current wildlife species inventory that reside in the acres proposed in the leases. The commentor wants to know the number of species and their population numbers and their projected increase in the 40-year period and how often inventories will be taken.

**FWP Response:** There are no specific wildlife population inventories or targets associated with the Habitat Conservation Lease program or the individual habitat conservation leases proposed in Phillips County. The *programmatic environmental assessment* for the Habitat Conservation Lease program discusses this in detail, starting on page 11. To summarize in brief, the goal of the Habitat Conservation Lease program will be to conserve up to 500,000 acres of five priority habitats that have been identified as being the highest conservation priority for maintaining Montana’s diverse wildlife, including game species and Species of Concern. These habitats have been selected based on the Habitat Montana Plan (FWP 1995) and the more recent habitat prioritization described in the State Wildlife Action Plan (2015) which identifies terrestrial habitats of highest conservation priority. These 5 habitats host a wide range of game species and over 130 species of concern. By focusing on reducing habitat fragmentation and conversion of these priority habitats, FWP can address populations of all of the species that use those habitats without needing to inventory all of them.

**Comment:** Clarification on protection the lease provides to wildlife and what control landowners have with wildlife on their property.

**FWP Response:** Habitat Conservation Leases do not have additional restrictions or additional limitations on a landowner’s ability to manage individual species of wildlife within their land. In other words, lessee’s have the same ability as all landowners under state and federal wildlife laws and regulations. This includes species which are managed under several different state and federal laws or regulations, including nongame wildlife, predators, game species, and species listed on the federal Endangered Species Act.

**Comment:** Concern that conservation leases are affecting local human populations and the difficulty for the remaining agricultural producers in areas where human populations have declined.

**FWP Response:** FWP supports supporting agricultural working lands. These leases are designed to maintain working ranches and their valuable wildlife habitats. Lease agreements and associated payments are also expected to help support sustainable ranching operations. Population concern is address in the *Supplemental Programmatic EA*, Table 5 - Potential Impacts of Alternative 2: Proposed Project on the Human Population, pg.19 Resource: Other appropriate social and economic circumstances, “No significant adverse impacts to other appropriate social and economic circumstances would be expected because of the proposed action”.

**Comment:** Concern for safety with the public access regarding the risk of firearms being discharged near homes and livestock of the neighbors.

**FWP Response:** Private landowners enrolled in habitat conservation leases retain control of public access, including safety zones or weapons restriction areas necessary to maintain safety. FWP, primarily through its Block Management Program, will work with proposed lease landowners and neighbors to maximize safety of persons and property within and adjacent to Habitat Conservation Leases. This may include examining the need to expand existing safety areas and the weapons restriction area on the proposed Habitat Conservation Lease to further reduce the concerns from neighbors about hunters too close to their properties and homesteads.

**Comment:** Concern of “double dipping” in the funds by allowing landowners to partake in the lease and block management.

**FWP Response:** The Habitat Conservation Lease Program and the Block Management Program are separate but complementary programs. Landowners are eligible to participate in both programs. The Block Management Program provides signage and other services to help landowners manage that hunter use. The Habitat Conservation Lease program, as mentioned previously in this document, primarily includes habitat conservation stipulations but does require limited public access because public license dollars are being used to purchase them. The lease payments are not providing funding to mitigate potential impacts of that public use, even if the landowners are willing to accommodate more public use than the lease requires. For this reason, the Department views these programs as addressing different issues and is not concerned about landowners “double dipping”.

**Comment:** Concern of unviable crop land and acres being taken out of mixed grass habitat and converted to annual grain production being considered in the lease.

**FWP Response:** The Habitat Conservation Lease program is not only intended to help conserve wildlife habitat by preventing tillage of native and introduced grasslands, but also from other forms of habitat fragmentation or conversion, such as energy development (traditional or renewable) or recreational housing development, pressures of which are being seen to varying degrees in these priority habitats in eastern Montana. Additionally, the program allows landowners to determine what acres they are willing to enroll, with previously tilled lands being eligible for enrollment as cropland if they desire the flexibility to manage it as such. Lands enrolled as cropland are paid at ½ of the standard per acre lease rate, and these lands may make up no more than 25% of the total acreage of the Habitat Conservation Lease. The reduced payment rate recognizes the lower habitat value of those acres, but also that the ability to use croplands for farming is a traditional agricultural use and may be important to the overall management and viability of a landowner's operation. The reduced lease rate for cropland acres also recognizes that cropland associated with priority habitats still provide some wildlife habitat values that could be further lost by certain other land uses. Finally, the landowners of the proposed lease have expressed an interest in using several years of annual cropping to clean up the existing, less productive, non-natives grasses that dominate these old CRP/hay fields, with an intention to plant it back to a more productive hayfield mix in the future. They decided to accept the reduced payment for designating those acres as cropland in exchange for the ability to do such management on those acres as needed during the proposed 40-year life of the lease.

**Comment:** Concern for public information about past payments to the landowners of the proposed lease. The concern is that FWP is issuing funds twice where separate programs overlap on the same acres.

**FWP Response:** FWP has made payments to the landowner under separate agreements to promote better habitat management of the property by implementing multiple conservation practices such as idling certain areas for game bird nesting cover, planting food plots, and installing infrastructure to facilitate improved grazing practices. To account for the limited number of acres and length of time where the terms of existing conservation agreements with this landowner are substantially similar to the proposed Habitat Conservation Lease, FWP is prorating the proposed Habitat Conservation Lease payment. Public information regarding FWP programs to help private landowners benefit wildlife habitat can be found on the website under Conservation here, <https://fwp.mt.gov/conservation/habitat> and scrolling down to the Landowner Programs section. Furthermore, all payable transactions through the State of Montana accounts are publicly available on the Montana Transparency in Government Website: <https://dataportal.mt.gov/t/DOASITSDDataPortalPub/views/SABHRSCheckbookAccountsPayable/AccountsPayableDashboard>

**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 Hartman Land & Livestock Company 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 that reads "Drew Henry". The signature is written in a cursive, slightly slanted style.

Drew Henry  
Region 6  
Montana Fish, Wildlife & Parks