



## DECISION NOTICE

### Denim Fogle Habitat Conservation Lease

May 13, 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 Denim Fogle 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 Denim Fogle 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 Denim Fogle 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 Denim Fogle Habitat Conservation Lease, including the public notice and map materials, is available for review at <https://fwp.mt.gov/public-notices/news/2024/apr/0408---denim-fogle-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 April 8, 2024 and a public meeting was held at the Montana Fish, Wildlife & Parks Region 7 Headquarters 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 this lease, satisfaction at seeing more acreage enrolled in conservation programs, and even gratitude for the landowner's participation. Conserving high priority native and restored habitats and migration corridors, creation of public access opportunities, and keeping working agricultural lands as working lands were listed as reasons for support.

**FWP Response:** Thank you for your comments.

**Comment:** A commentor asked about the source of funding for Habitat Conservation Leases.

**FWP Response:** Typically, funding for these leases comes from a combination of Habitat Montana, Pittman Robertson Wildlife Restoration, and possibly other federal, state, or partner habitat funding sources. With the current Region 7 projects, funding will primarily come from Habitat Montana.

**Comment:** A commenter shared that with temporary habitat leases now being a part of how Habitat Montana funds are spent, they feel 30–40-year leases are far better than none, and shared support for using Habitat Montana funds for Habitat Conservation Leases when funds would otherwise be unused.

**FWP Response:** Thank you for your comments.

**Comment:** Commenters shared concern about using Habitat Montana funding for leases rather than perpetual easements.

**FWP Response:** Habitat Conservation Lease Agreements meet the intended use of Habitat Montana dollars and 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. Pursuing Habitat Conservation Lease Agreements does not preclude using Habitat Montana or federal funding sources for conservation easements or acquisitions.

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:** A commenter expressed concern that Habitat Montana funding may be depleted by Habitat Conservation Leases, leading to a lack of funding for perpetual easements and permanent acquisitions.

**FWP Response:** 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.

**Comment:** A commenter asked why multiple Habitat Conservation Leases have been offered for public comment and are proceeding at the same time.

**FWP Response:** A competitive ranking system is used to determine which Habitat Conservation Leases may be funded, which means projects selected to proceed receive approval at the same time. Once approved, each lease proceeds through the process at approximately the same rate. This results in all of the leases reaching the public notice phase at the same time.

**Comment:** A commentor asked if FWP can specify that more of the required public access recreation-days be offered as hunter-days if it's determined that there is a lack of interest from non-hunting recreationists.

**FWP Response:** The formulas used for public access recreation-days will remain consistent throughout the lease period. A landowner may choose to offer more or all of the public access days as hunter days, however, FWP will not change the required proportion of hunter days that is established in the lease, and landowners do not have an obligation for unused public access days.

**Comment:** A commentor shared their hope that landowners allow hunting access beyond the minimum amount when non-hunting recreation days remain un-used during the rest of the year.

**FWP Response:** Private landowners enrolled in habitat conservation leases retain control of public access. Landowners have the discretion to offer more or all of the public access days as hunter days.

**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 Denim Fogle 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 stroke extending to the right.

Brad Schmitz  
Region 7 Supervisor  
Montana Fish, Wildlife & Parks