

After recording, please return to:

Land Unit
Montana Fish, Wildlife & Parks
P O Box 200701
Helena, Montana 59620-0701

30-YEAR (40-YEAR) CONSERVATION LEASE AGREEMENT

THIS AGREEMENT, is made by and between _____, whose address is _____, and his/her/its heirs, successors, assigns and persons claiming possessory rights (“Landowner”) and the Montana Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

I. RECITALS

A. Whereas the Department recognizes that landscapes of predominantly native grass, shrub-lands, and wetland complexes provide important wildlife habitat for a number of priority wildlife species, especially sage-grouse, migratory grassland birds, big game, and other Montana Species of Concern,

B. Whereas the Department and Landowner recognize that retaining large tracts of priority wildlife habitat through sustainable grazing is a direct benefit to native wildlife,

C. Whereas the Department and Landowner recognize that loss of native habitat is one of the greatest threats facing declining grassland birds, sage-grouse, waterfowl, and other wildlife species in Montana,

D. Whereas the Department has pursued this Conservation Lease Agreement (“Lease”) by voluntary, cooperative means to conserve this important wildlife habitat as specifically defined in Part II, paragraph 2,

E. Whereas the Landowner is the owner of certain real property containing native habitat in _____ County, Montana, (“Land”) described in Exhibit A attached hereto and incorporated by this reference,

G. Whereas the purpose of this 30-Year Agreement is to conserve, protect, and enhance native wildlife habitat on approximately _____ acres.

H. Whereas the Department and Landowner recognize that hunting and recreational activities are effective tools for engaging the public in habitat conservation.

II. AGREEMENT

NOW, THEREFORE, the Landowner, for and in consideration of the sum of \$ _____ (“Department Payment”) and other good and valuable consideration, the receipt of

which is hereby acknowledged, does hereby voluntarily grant and convey to the Department, its successors and assigns, a Lease for a term of 30 years, upon the following terms:

1. **WILDLIFE HABITAT DEFINED:** FWP recognizes five focal wildlife habitats as among the highest importance for conservation. **Sagebrush grasslands** comprise sagebrush (*Artemisia* species) dominated steppe that includes an understory of perennial grasses and forbs. **Wetland habitats** include depressional wetlands, wet meadows, and backwaters of stream and river systems. **Riparian/floodplains** are plant communities influenced by shallow water tables and include adjacent lands that seasonally flood. They are dominated by deciduous woodlands and shrubs with an understory of herbaceous vegetation. **Mixed grasslands** are dominated by perennial grasses and forbs that in some areas are interspersed by coulees with woody vegetation. **Intermountain grasslands** include foothills and valley habitats dominated by perennial grasses or a mix of grasses and shrubs intermingled with timbered draws. Collectively, the focal habitats are valuable to resident and migratory priority wildlife species for seasonal and year-round life cycles.

2. **PURPOSE:** The purpose of this Lease is to conserve, protect, and enhance wildlife habitat on the Land and grants the Department the right to prevent certain activities on the Land and uses of the Land that have detrimental impacts to the habitat accompanied with the right of the Department or its assigned agent to enter upon the Land to monitor and enforce the terms of the Lease. An additional purpose of this Lease is to provide the public with recreational opportunities on the Land.

3. **TERM:** The term of this Lease shall be for 30/40 years, beginning on the first day of [REDACTED], 202X, and terminating on the last day of [REDACTED], 20XX.

4. **BINDING EFFECT:** This grant of Lease, and the covenants and agreements contained herein, shall run with the Land and shall be binding upon and inure to the benefit of the parties to this Lease, their respective heirs, successors, assigns, any person claiming any possessory rights through the Landowner, and any person or entity that shall come into ownership or possession of the Land, until its expiration or termination.

5. **LANDOWNER OBLIGATIONS:** The Landowner covenants and agrees that he/she/it will maintain the wildlife habitat existing on the Land in conjunction with Landowner's agricultural use. To accomplish the purpose of this Lease, the Landowner covenants and agrees as follows:

- a. Not to remove, destroy, control, or manipulate grassland, sagebrush, woody plants, and other native vegetation by any means, including but not limited to burning, plowing, chemically treating, or flooding the areas depicted on the map attached as Exhibit B, except as provided in Paragraph 7. [OPTIONAL] include following only if property includes sagebrush habitat: If however, future research reveals that sagebrush management is found to be beneficial to sage-grouse and other sagebrush obligate species, Landowner may, with the prior written approval of the Department, manage sagebrush through methods approved in writing by the Department.] [OPTIONAL] at landowner's request: Limited haying of

enrolled acres may be permitted on a case-by-case basis after July 15 with prior written approval of the Department. Haying will not be permitted prior to July 15.] [OPTIONAL at landowner's request: With prior written approval of the Department, limited mowing, haying, or clearing of vegetation may be permitted on a case-by-case basis to serve as fire breaks to help minimize the spread of wildfire. Mowing, haying, or clearing of vegetation as an emergency response to an emerging wildfire that is threatening the Landowner's or neighboring properties is permitted under this Lease. However, the Landowner shall notify the Department of the actions taken as soon as practical.]

- b. To minimize damage to native plants, sagebrush, and wildlife, by limiting the use and type of pesticides and agrichemicals for noxious weed and insect control on the areas depicted on Exhibit B. Landowner will limit use of such chemicals to the minimum amounts and frequency necessary to control noxious weeds and insects. Chemicals that lessen impacts to shrub and woody vegetation would be acceptable for this type of limited use.
- c. Not to convert hay land to cropland or an annually planted cropping system. Except for protection of native vegetation, hay land and cropland under this Lease are subject to all other obligations described herein. Landowner may, at their choosing, convert cropland to hay land or any farmed land to grasslands or grazing lands.
- d. Not to drain, fill, dredge, or dike wetland or riparian areas.
- e. Not to develop the Land, including construction of buildings, solar or wind energy, or other surface developments.
- f. If a third party proposed development of oil, natural gas, or any other mineral substance, Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the wildlife habitat values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing in this section dealing with third-party mitigation measures shall be deemed to obligate Landowner to bear the costs of mitigation measures. Landowner's only responsibilities for mitigation on the Land are those already imposed on Landowner by Applicable Law, if any.

This Lease does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land in accordance with their legal rights as mineral owner. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

- g. Not to develop, lease, or sell oil, natural gas, or any other mineral substance owned by the Landowner under the Land unless another owner of minerals under the Land initiates development.
- h. Gravel extraction is prohibited.
[Existing or anticipated gravel sites can be excluded from conservation lease enrollment]
- i. Concentrated animal feeding operations are prohibited.
- j. Subject to prior approval by the Department, Landowner retains the right to install or allow installation of utilities or rights of way such as pipeline, distribution or transmission line, communications tower, or roadways. Department may choose to allow, allow with modifications, or not allow the proposed development with associated justifications. For Prior approval, Landowner must notify the Department in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. Notice must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity to permit the Department to make an informed judgement as to its consistency with this Lease and its purposes.
- k. To allow free hunting and recreational wildlife or nature viewing on the Land and adjacent public lands for the term of this Lease in accordance with the following terms:
 - 1) When demand exists and upon request by members of the public, the minimum number of recreation-days that the Landowner will allow is _____ recreation-days per week throughout the year. For Fish and Wildlife Commission-approved hunting seasons during September 1-January 1, public recreation access would specifically be for hunting.
 - 2) A “recreation-day” is defined as one person who recreates on the Land during a calendar day.
 - 3) Public access must be managed on a non-preferential and nondiscriminatory basis.
 - 4) Landowners, Landowners’ immediate family, shareholders, partners, and employees and their immediate families are not defined as members of the general public for the purpose of calculating “recreation-days.” The term “immediate family” means a parent, grandparent, child, or grandchild of the Landowner related by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperators or spouse, or a niece or nephew, and “employee” is defined as a person who works full time and year-round for the Landowner as part of an active farm or ranch operation.
 - 5) Landowner has the right to manage the distribution of recreationists on the Land to address reasonable concerns for the safety of persons and property, including livestock. Landowner may deny access to anyone who is not conducting or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

- 6) Charging fees for providing hunting or recreation access to the Land is prohibited. Outfitting may take place on the Land only if public recreation and hunting opportunities are not restricted and the Landowner gives written consent and annually provides a copy to the Department in January of each year of the Lease.
- 7) Landowner will provide FWP with current information during the term of the Lease for how the public can secure access permission. Location of the Land and current Landowner permission details will be made known by the Department to the public through published guides, web-based information, or other means.
- 8) The Department may periodically request the Landowner to keep a record of recreation use or report on number of public access activities.

[Internal formula to calculate minimum recreation days:

- 1) ***For enrollments up to 3,000 acres, minimum of 1 Recreation-Day/month for every 300 acres***
- 2) ***For enrollments of 3,001 acres and over, minimum of 1 Recreation-Day/week for every 1,500 acres. Public recreation access would be in the form of hunting during the Fish and Wildlife Commission approved seasons, between September 1-January 1.***
- 3) *For applying this formula, round to the nearest 300 acres for enrollments of up to 3,000 acres or to the nearest 1,500 for enrollments of 3,001 acres and over.]*

- l. Not to subdivide the Land except for ranching functions, no smaller than 320 acres. For the purposes of this Lease, subdivision is defined as transferring a portion of the Land to another landowner and ranching functions is defined as traditional livestock grazing that is part of a ranching operation. This definition does not include pasture space designated for hobby, recreation, or work animals including horses, mules, lamas, or similar stock.
- m. To provide the Department with prior notice in writing no later than 30 days after any sale, transfer, or lease of the Land or a portion thereof, and to provide the buyer, transferee or lessee with a copy of this Lease no later than 15 days after entering into a contract to sell, transfer or lease the Land.
- n. To notify and furnish a copy of this Lease to any other person claiming any possessory rights through the Landowner at any time during the Lease term.

6. LIMIT TO LANDOWNER OBLIGATIONS: It is understood that this Lease imposes no other obligations or restrictions upon the Landowner and that neither the Landowner nor Landowner's heirs, successors, assigns, lessees, nor any other person or party claiming under them shall be restricted from using all of the Land in the customary manner for agricultural practices except as provided herein. Examples of customary agricultural practices include livestock grazing and land maintenance activities such as fencing, stockwater, noxious weed control, and road maintenance.

The Landowner shall not be liable or responsible for violations resulting from fire, flood, acts of God, or other elements beyond the Landowner's control. However, after such event, if damage occurs to the wildlife habitat protected by this Lease, the Landowner shall notify the Department of the damage as soon as practical.

7. NOTICES: For general questions, the regional wildlife manager for FWP Administrative Region ___ at phone number _____, will serve as the Department's primary contact. For submitting a notice, Landowner shall send all written notices to Land and Water Unit, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620. The Landowner shall respond to any requests from the Department to self-certify compliance with this Lease within 30 days of the request or a reasonable time thereafter. All notices from the Department to the Landowner shall be made in writing to the Landowner at the address specified on page one of this Lease. The Department may change its designated representative, and the Landowner may change his/her/its address, by either party notifying the other in writing via mail or email of such change. The Department shall contact the Landowner via mail, email, or phone to schedule a mutually acceptable time for the Department or its assigned agent to access the Land for the purpose of monitoring compliance with this Lease.

8. DEFAULT: If the Landowner violates any term of this Lease, the Department may give the Landowner written notice of such violation. If the violation is not cured within 60 days of the notice or a reasonable time thereafter, the Department, in its sole discretion, may pursue any remedy available to it including recovery of damages, a court order to cure the violation, and/or termination of this Lease. If the Department chooses not to enforce a violation of this Lease, it does not waive enforcement of the same or any other violation. Department and Landowner agree that the actual damages for a violation of this Lease would be extremely difficult to determine; therefore, if the Landowner does not cure the violation, or if the Landowner otherwise defaults on the Lease or provides a notice of intent to default on and terminate the Lease, Landowner shall pay Department liquidated damages in an amount calculated under the following formula:

$$\text{Department Payment} \times \frac{\text{Number of years remaining in the Lease}}{\text{Total \# of years in the original Lease term}} + (\text{Department Payment} \times 0.25) = \text{Liquidated Damages due to Department}$$

The Department may, but has no obligation to, waive the Department Payment in whole or in part upon settlement of a claim of violation of the Lease or agreement to modify the Lease.

9. CONSERVATION EASEMENT OPTION: Landowner may extinguish this Lease for the sole purpose of replacing the temporary conservation protection of this Lease with a permanent conservation easement on the Land that provides similar, but permanent, habitat protection by paying the Department using the following formula:

$$\text{Department Payment} \times \frac{\text{Number of years remaining in the Lease}}{\text{Total \# of years in the original Lease term}} = \text{pro-rated extinguishment payment}$$

10. SUBORDINATION: This Lease is subject to all statutory rights of way and other valid existing rights of way for, including but not limited to, highways, roads, railroads, pipelines, canals, laterals, electric transmission lines, telegraph and telephone lines, cable lines, and mineral rights.

11. JURISDICTION AND VENUE: This Lease shall be governed by and construed in accordance with the laws of the State of Montana. Venue for any court action arising under this Lease will be in the First Judicial District for the County of Lewis and Clark.

12. ENTIRE AGREEMENT: This Lease constitutes the entire agreement between the parties hereto and may be amended only in a writing signed by the parties. No verbal agreements or representations made by either party shall be binding upon the other.

IN WITNESS WHEREOF, the Landowner executes and conveys this Lease on the date set out in the acknowledgement.

Landowners:

ACKNOWLEDGMENT

State of Montana)

County of _____)

This instrument was signed before me on _____ by _____ and _____.

(STAMP)

Notary Public
Printed Name _____

Montana Department of Fish, Wildlife & Parks

By: _____
Ken McDonald
Wildlife Division Administrator