



Their Land Our Wild

How conservation easements benefit the public's wildlife while maintaining private ranching traditions

By Henry Gould



MIKE AND LISA BAY run several hundred head of cattle on 3,800 acres in Lewis and Clark County. During the summer, their cows graze in fenced pastures on designated parts of the ranch and are moved periodically to avoid overgrazing the grass and forbs. Where the cows aren't grazing, deer, elk, and ground-nesting birds feed and raise their young. Each year, some pastures are not grazed at all, providing winter forage for wildlife, including roughly 900 elk last year, Mike says.

Since 1994, the Bays have negotiated this wildlife-friendly system, called restoration grazing, with Montana FWP as part of a conservation easement. In exchange for a one-time payment by the department, the couple gave up their rights to subdivide the ranch and agreed to conserve the land for wildlife by using specified agricultural practices. The partnership between the Bays and FWP has conserved an important chunk of wildlife-rich agricultural land in a state where, according to a study by American Farmlands Trust,

5 million acres of prime ranchland is at risk of being subdivided by 2020.

Conservation easements are a relatively new tool used by the department to protect wildlife habitat in the face of growing population growth and suburban sprawl. Since 1994, FWP has either negotiated or received as donations 37 easements, mostly for wildlife purposes, covering about 320,000 acres. Under these voluntary legal agreements, which are custom-made with individual landowners, the department typically pays 40 to 45 percent of the value of the property. In return, the landowner agrees to keep the land in traditional agricultural use, employ agricultural practices beneficial to wildlife, forgo all but limited development, and, in most cases, allow public access for hunting. The rancher continues to own the land, which can be sold or passed on to heirs. But the title carries the agreed-upon terms of the easement, which are negotiated to remain with the land "in perpetuity," a legal term for "forever."

The easements were created with the goal

COWS ON THE GO As part of their conservation easement with FWP, Lisa and Mike Bay move their cattle from one pasture to another throughout the summer. The rotational grazing system invigorates forage and improves habitat for elk, deer, and other wildlife species.

JON EBELT

Wildlife



GARY LEPPART

of conserving two things highly valued in Montana: wildlife habitat and family ranches. Payment for the conservation easement, in the Bays' case, allowed Mike to purchase a portion of the ranch from his mother and become the fourth generation of his family to work the land. Other ranchers use easement money to buy new equipment, reduce debts, or fund retirement. For its part of the partnership, FWP has been able to preserve wildlife habitat to ensure healthy game and nongame wildlife populations far into the future.

"As development pressure continues to grow across the state," says Ron Marcoux, senior lands program manager for the Rocky Mountain Elk Foundation, "conservation easements are becoming more and more important for protecting a wide range of wildlife habitats."

CRITICAL HABITAT LOST

Easements haven't always been necessary. In the early years of statehood, Montana appeared to have unlimited wildlife habitat on public and private land. But over the past half-century or so, elk and deer winter range has been lost to subdivisions, and sagebrush-grasslands and prairie pothole wetlands have been converted to crop fields.

As early as 1940, FWP had bought land to protect wildlife habitat using federal funds under the Pittman-Robertson Act. Biologists and conservationists promoted these "fee title acquisitions" (the outright purchase of land) because the resulting wildlife management areas could be completely dedicated to enhancing wildlife habitat, increasing wildlife numbers,

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PUBLIC-PRIVATE AGREEMENT Because FWP uses hunters' license dollars to buy conservation easements, landowners must, in most cases, allow public hunting on their easements.

and providing public access.

But public land acquisition didn't sit well with some Montanans. FWP efforts to buy more wildlife habitat were criticized by lawmakers who thought the department should stick to season-setting and stay out of land ownership.

The debate intensified in the mid-1980s, as suburban sprawl increased, eating up land where elk once grazed and pheasants crowded. Hunting and conservation groups urged the Montana legislature to establish a funding source to help FWP protect critical habitats threatened by development. Because public demand for habitat protection was strong, yet fee title acquisitions were increasingly opposed by lawmakers, attention during the 1987 legislative session turned to conservation easements.

At first, both conservation and ranching groups questioned the easement option. Habitat advocates, for example, believed easements wouldn't do enough for wildlife. "Many sportsmen and conservationists questioned whether we'd be getting our

money's worth," says Steve Knapp, FWP Wildlife Habitat Bureau chief. "They saw fee title as the best way to go."

On the other hand were those who thought easements went too far, contending that the legal agreements would mix FWP into affairs where the agency didn't belong.

"A portion of the ranching community," Knapp continues, "didn't want government involved in buying, or having partial control over, any private land."

Still, there was no argument that habitat was fast disappearing. So the 1987 legislature passed a bill that sets aside roughly \$3 million per year in hunting license revenue to protect important or threatened wildlife lands, using a range of wildlife management tools including fee title, conservation easements, and leases. HB 526, which fostered the program now known as Habitat Montana, was considered a landmark in Montana conservation law. But to placate the bill's opponents, the legislature also required that FWP attempt to

buy conservation easements first before buying any more land.

Just because FWP had been granted legal authority to buy conservation easements didn't mean acquiring them would be easy. Both FWP and landowners were unfamiliar with how easements worked, what a fair price would be, and what conservation conditions should be set. And many farmers and ranchers, though comfortable selling their land outright to the department, were less so when it came to entering into complex legal land agreements.

The department tried to negotiate conservation easements from the start, says Knapp, "but the owners we were dealing with at the time wanted to sell their land. It takes two to tango, and for several years there was just one partner on the dance floor."

Unable to acquire conservation easements, yet still legally authorized to buy land outright to protect habitat, the agency continued to use Habitat Montana money to purchase fee titles. That upset lawmakers opposed to new state land ownership. In 1993, a disgruntled legislative committee refused to release funds for any additional FWP land acquisitions.

"The committee made it clear they were unhappy our focus was still on fee title," says Pat Graham, FWP director at the time. "So I made a commitment we would pursue easements over fee title whenever feasible."

FOCUS ON HABITAT

The following year, FWP signed its first conservation easement, 40,000 acres of Brewer Ranch rangeland in southeastern Montana. The Brewer easement was a mix of habitat types supporting cattle and also sage grouse, sharp-tailed grouse,

antelope, mule deer, and prairie songbirds. Knapp says it was the Brewer easement that paved the way for all the easements since: “That was the first one, and it was a signal to the ag community that one of their own had enough faith in FWP to enter into this type of agreement.”

One of the challenges when buying conservation easements is deciding which habitats to protect. When they set goals for Habitat Montana, FWP Commission members focused on the three habitat types most vulnerable to subdivision development and intense agricultural practices: riparian (riverside) areas, intermountain grasslands, and sagebrush-grasslands.

“From the beginning, [the commission] tried to avoid a species-specific approach to conservation easements,” says Don Childress, administrator of FWP’s Wildlife Division. “They understood that if we took care of the three major habitat types, then all species—game and nongame—would benefit.”

After local wildlife biologists identify these three habitat types in their area, and various threats that exist, they approach landowners who have expressed interest in negotiating an easement. As more agricultural land has been added to the conservation easement roster, the program’s positive reputation has

spread, generating more interest among ranchers and farmers. Currently, demand to sell easements exceeds the money available to buy them.

“We’ve gotten to the point where we have to turn people down,” Knapp says.

The conservation-minded, he adds, are given preference over those just in it for the cash: “If a landowner is only interested in the money, it usually doesn’t work. They’ve got to be committed to the habitat.”

KITCHEN TABLE NEGOTIATIONS

Negotiating a conservation easement requires far more than signing legal documents. FWP biologists and land agents spend hours on the phone or at the kitchen table with a potential seller discussing various options. The FWP staff need to understand how that particular ranch or farm functions and what the landowner’s objectives are. The landowner in turn needs to understand the department’s habitat goals for the property and what agricultural or timbering practices are compatible with those goals.

“So, in the process of negotiation, a lot of education goes on,” says Knapp.

The terms of most conservation easements establish rights for both the landowner and FWP. Despite some restrictions—such as subdividing,

GREAT GRASS

Rotational grazing required under conservation easements creates grassland conditions beneficial to elk, deer, and ground-nesting birds such as sharptails.

damaging critical habitat, and leasing land for hunting—the agreements still allow landowners to use their property commercially.

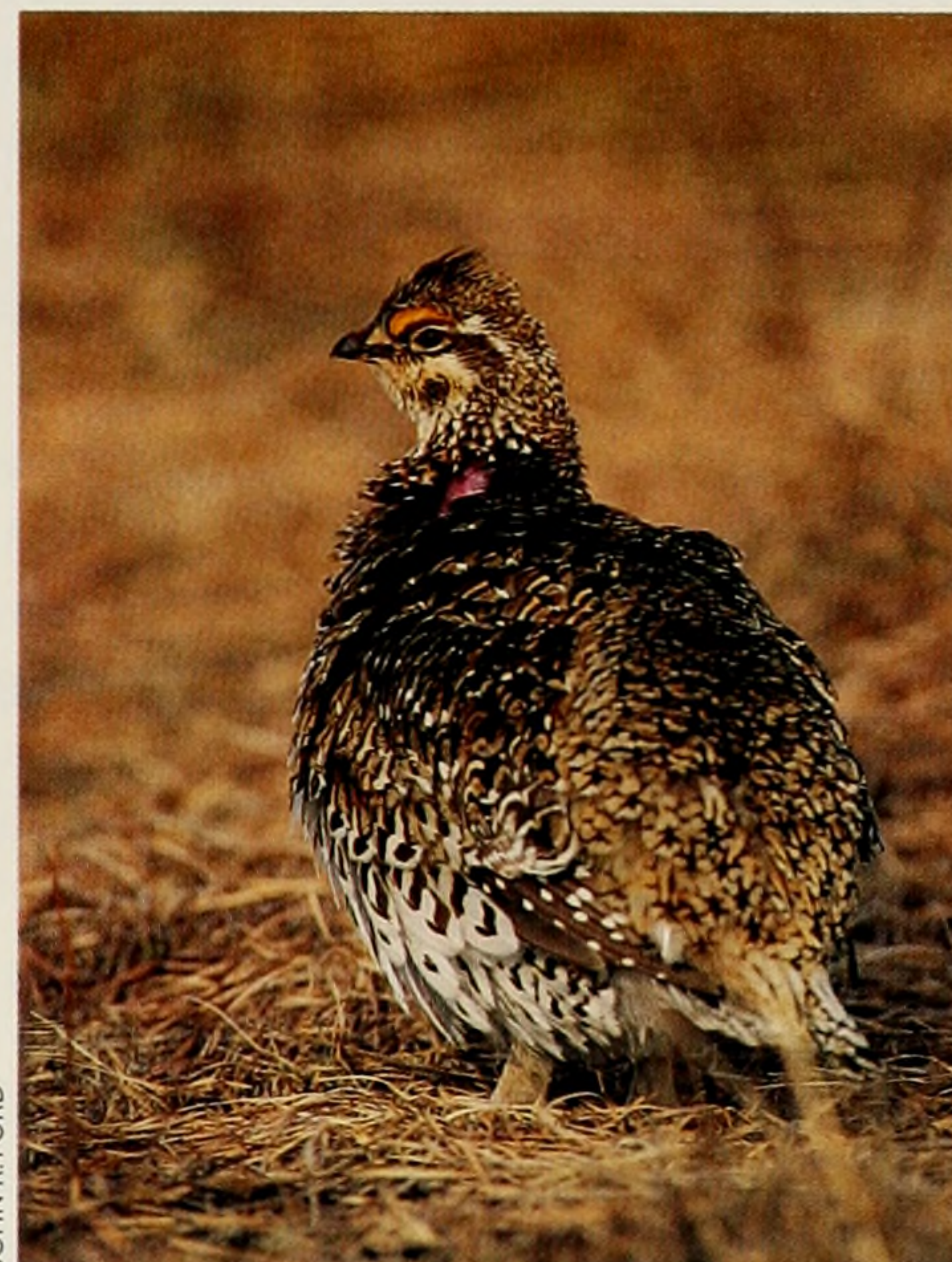
Logging, grazing, and farming can continue, though they must benefit wildlife habitat. When ranchers hold grazing permits on public lands, FWP works with the various federal and state agencies so that the grazing can continue as part of the easement.

The department also teams up with private conservation organizations, such as The Nature Conservancy and the Montana Land Reliance, that hold their own conservation easements. The organizations try to link easements to prevent habitat fragmentation and consolidate larger areas of land.

“We try to look at a broader landscape picture rather than just this or that single parcel of land,” says Alan Wood, FWP wildlife mitigation coordinator at Kalispell.

That landscape is expanding as the department buys easements in key areas throughout Montana. Two years after it secured conservation rights on the Brewer Ranch, FWP

SUBDIVISION SQUEEZE A major impetus for conservation easements is the increasing conversion of ranchland and wildlife habitat into housing.



JOHN R. FORD



LUKE DURAN

“The public needs to know they are not losing local tax revenue when land is put in a conservation easement.”

—LISA BAY, *Rancher*

BUY OR LEASE?

Though the major thrust for protecting wildlife habitat over the past ten years has been conservation easements, FWP still has the authority to purchase wildlife habitat and create new wildlife management areas. And there are still some strong arguments for that option.

“For our field staff,” says Childress, “the quickest and easiest arrangement is having fee title to the land, because then they don’t have to negotiate management methods and goals with anybody.”

And John Gibson, president of the Montana Wildlife Federation, maintains that vital habitats need more protection than easements can provide.

“I’m convinced that key winter game ranges, as well as critical migration corridors, should be in public ownership,” he says.

Yet even FWP biologists concede that much habitat can be protected while it remains in private hands. Historically, many Montana farms and ranches have greatly benefited wildlife. Perhaps the most persuasive argument in favor of easements, especially in light of ever-increasing real estate costs, is that they can protect approximately twice as much wildlife habitat as can be secured with fee title purchases.

“If we’d tried to buy all the land we now have in conservation easements,” says Childress, “we’d have protected 150,000 acres of habitat, not 300,000 acres.”

Another benefit of conservation easements, say FWP officials: lower maintenance costs.

“When we buy land,” says

FWP chief of staff Chris Smith, “we can incur costs for fencing, weed control, road maintenance, and things like that. With easements, our maintenance consists only of visiting the landowner to see if the terms of the easement are being followed.”

That’s not to say easements are worry-free. Knapp notes that the agency will need to work harder to inform new owners who take over established easements about their legal responsibilities. He also says FWP staff will need to devote more time and effort to monitor soils and vegetation to see if habitat is being enhanced, one of the program’s goals. And reviewing easements each year and enforcing conservation provisions becomes a larger concern as more are added.

Another challenge to the program is dispelling the ongoing myth that conservation easements take land off the tax rolls.

“I still hear that all the time,” says Lisa Bay. “But the fact is, the conservation easement does not affect our property taxes in the least. The public needs to know they are not losing local tax revenue when land is put in a conservation easement.”

The biggest challenge facing the program, according to FWP director Jeff Hagener, is ongoing resist-

FAMILY FRIENDLY Not only does his conservation easement help wildlife and cattle, says Mike Bay, but it allowed him to buy part of a ranch that had been in his family for four generations.

ance to the department securing additional conservation easements.

“I hear a lot about the ‘in perpetuity’ aspect,” he says. “Some folks don’t like that an easement lasts forever, even though it’s an agreement with a willing landowner.”

Yet Hagener maintains that landowners who want to should be able to make sure their land isn’t subdivided in the future.

“It’s your property, and if you want to protect it, you should have that right,” he says.

With authorizing legislation for Habitat Montana sunseting in 2006, Smith says the department is looking closely at its conservation easements to see if they are working as intended.

“Part of the challenge we face as an agency between now and the 2005 legislative session is effectively evaluating the program and making sure that we’re using the funding wisely and accomplishing the goals we set out to achieve,” he says.

Ask Mike Bay, and you’ll get an endorsement of the conservation easement program. “I’ve developed a real partnership with FWP, particularly with Quentin Kujala, the local wildlife biologist,” he says. “And I’ve found that the grazing system is really better for the grass. I’ve got more forage because of it.”

It’s not often that something is good for wildlife, hunters, wildlife watchers, ranchers, and cows. Conservation easement supporters are hoping that in 2005, when citizens and legislators begin discussing the merits of the program, such broad benefits will make it worth continuing.

“A lot of people misunderstand conservation easements, and I was one of them,” says Dan Walker, current chairman of the FWP Commission. “But I’ve come to understand that they help people preserve their ranches and wildlife habitat as well.” 🐄



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