Kolman, Joe

From: Dave Galt [dave@montanapetroleum.org]
Sent: Monday, June 30, 2008 4:11 PM
To: Kolman, Joe
Subject: HJ57 Comment

Mr. Kolman:

The Montana Petroleum Association offers the following comment regarding the HJ 57 Study Document on Conservation Easements on State Land.

It is my understanding that oil and gas development is allowed on land covered with conservation easements. Language I have seen in conservation easements from both MFWP and private conservation organizations allow oil/gas development with stipulations. After a review of the draft study document MPA is concerned by the absence of a discussion on oil and gas development on conservation easements on State Lands. MPA suggests that the study document contain some mention of the ability to develop oil and gas; perhaps under the findings section. Furthermore, any stipulations that are included in such easements should be reasonable and practicable.

Joe, thanks for the opportunity to comment.

Best Regards:
Dave

David A. Galt, Executive Director
Montana Petroleum Association
Box 1186
Helena, MT 59602

Musselshell Planning Group
PO Box 736
Harlowton, MT 59036

Comments on EQC Draft Conservation Easement Study per HJ57.

This planning group is a cooperative effort of five counties in the Musselshell River drainage, including Meagher, Wheatland, Golden Valley, Musselshell and Petroleum counties.

1. Comments on Findings and Recommendations sections, by study task.

A. Analyze how or if conservation easements can ensure that multiple use management occurs.

This study task is unanswered by the draft report. The findings indicate that the land board shall manage state lands that are utilized in a combination of ways with latitude for periodic adjustments. No discussion or finding about conservation easement providing for periodic adjustments is referenced or included. No discussion or finding about conservation easements providing for utilization ensuring judicious use of some or all resources is included or referenced. The finding regarding that mineral rights be held in reserve does not address the question if conservation easements ensure utilization of mineral rights if desired. Similarly no discussion of the opportunity to utilize and manage the mineral resources should be included. This should include sand and gravel. A similar analysis of agricultural and silvacultural opportunities, utilization and management should be included. The discussion about recreation does not specifically discuss recreational opportunities and management with a conservation easement.

The opportunity to utilize and manage is important since the dictionary definition of "ensure" is to guarantee. The attached exhibit is an example of these concerns, and a discussion and findings should be included that addresses recreation, agriculture, silvaculture, habitat, energy, and open space.

B. Determine options and alternatives for providing the continuance of recreational uses in place prior to an easement being granted.
This study task is unanswered in that no options or alternatives are discussed or disclosed in the report. The finding on multiple use quotes the present law and includes a temporal component in mentioning periodic adjustments. This issue is not discussed in the findings and no specific options or alternatives are mentioned to continue existing recreational uses or new recreational uses are mentioned. We believe these should be discussed and disclosed in the report.

C. Evaluate opportunities for DNRC to partner with other organizations to acquire state trust lands ETC.
The findings do not address the study task concern or "perpetuating traditional uses of the lands". This may be an issue if per the third finding the specific purposes designated by the person gifting are only conservation and not ht e opportunity for multiple use. An in depth discussion of this issue and opportunities for multiple use should be included in each study task.

D. Can beneficiaries sue regarding conservation easements? The conclusion of yes we believe to be accurate. The conclusion that success is unlikely seems inconsistent in that the "large discretionary power" is subject to the multiple use requirement and if multiple use is not accomplished or ensured as a result of an easement, a suit may be successful for violating that requirement. This requirement is discussed on page seven of the draft

2. Comments relevant to all study tasks.

A. BMP's are good tools to ensure multiple use with minimal or nil environmental consequences. No discussion of BMP's or their inclusion in easements is included, and we believe it should be.

B. The introduction, page one, paragraph four, states that conservation easements are an effective tool available to protect these traditional uses. This conclusion is not substantiated in the study task or findings text. Importantly, a multiple use mandate ensures opportunities to use multiple

resources. No discussion of conservation easements ensuring the opportunity for use is included in the findings. Please reference the attached comments.

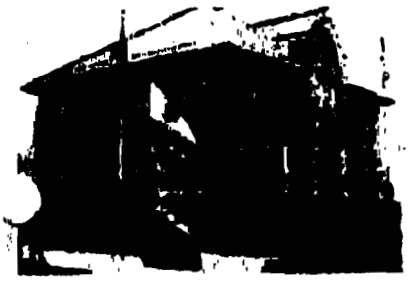
C. We are concerned with the "blank check" finding, which is that an easement is an agreement between parties that may include any provisions mutually agreeable. Multiple use and the Land Boards management is mandated by MCA 77-1-203, and as the finding on page three says "the Land Board shall" manage in certain ways. A discussion of language of terms that may be mutually agreeable to accomplish this should be included.

D. A discussion of conservation easements use as a tool in implementing other state strategies like the MDFWP Fish and Wildlife Conservation strategy should be included in this draft report. If consideration has not been given to this role, we believe it should be. This discussion should be included in the report.

The planning group will address the EQC or the Land Board regarding these concerns if that would be helpful. It would be helpful to understand how a conservation easement protects traditional uses. An explanation of what traditional uses need protection from would also be helpful. Our understanding of the importance of opportunity is made clear in the attached exhibit and it would be helpful to include this discussion in the introduction and in the findings.

Very truly yours,

Musselshell Planning Group



Wheatland County

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Harlowton, Montana 59036-1903

Phone (406) 632-4891
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December 14, 2007

Montana Land Reliance
324 Fuller Ave.
Helena, Mt. 59601

Dear Lois and Rock and Staff;

Wheatland County has reviewed the draft easement for Taber Ranch. This is a very good project and acknowledges some very important conservation and resource values in this county. By way of comment, we would request you consider seven additional things be addressed in the documents.

First, a sentence providing that agricultural opportunities will be available on this premises would facilitate preserving local agriculture. A sentence could read as follows: If the landowner ceases agricultural production at these premises, the landowner will make the ability to graze and cultivate the land will be made available at market price for agriculture to other producers. The first page statement about a working agricultural operation is very relevant to this.

Second, a sentence providing that silvacultural and agricultural practices on the premises will be conducted utilizing state or federal BMP'S (best management practices) would facilitate good management practices as management or ownership changes. A sentence could read as follows: the landowner will implement recognized BMP's in their silvacultural and agricultural operation, as a guideline for appropriate conservation and environmentally sustainable practices. Given that viewing a working agricultural operation is important, BMP's implemental would help increase a positive experience.

Third, a sentence providing that the landowner will cooperate with state and federal agencies in the management of big game would be helpful, as wildlife management is an important tool for State and Federal agencies. A sentence could read as follows: The landowner will cooperate with and facilitate State and Federal agencies activities to manage wildlife, including big game, on the subject and surrounding premises. An example of this would be in the Rostad easement in Wheatland County, which provides limited public access with limited days and limited numbers of people to facilitate appropriate control of elk populations. In addition some species are not big game. This is notably animals reintroduced, such as wolves. Cooperation with State and Federal agencies in the management of non-big game wildlife is important as significant wildlife and conservation impacts occur from reintroduction or similar programs.

Fourth, a sentence providing that the landowner will provide Wheatland County with comment and information relating to development or growth on properties in the vicinity would help the county minimize adverse impacts on the subject premises if development is proposed or occurs on surrounding lands. The County is in the process of rewriting it's growth policy and subdivision regulations, and will incorporate language in those to consider and mitigate impacts on lands like Taber Ranch that will occur if surrounding properties are developed. A sentence could read as follows: The landowner will provide comments to and information to Wheatland County in the event development or properties surrounding Taber Ranch, is proposed and is reviewed by the County, for subdivision, development, conservation easement, or other purposes.

Language identifying the riparian area importance and it's preservation value might be helpful. The biologic values of that we think are significant.

Lastly, page 1 should also reflect the importance of traditional and nontraditional agricultural opportunities. This is important relevant to our first comment on agricultural opportunities.

Thank you very much for the opportunity to comment. It is our hope that these suggestions are acceptable in some form, and will facilitate the county helping the Land Reliance and the Land Owner is accomplishing the objectives and preservation activities set forth in the conservation easement.

Very truly yours,

Tim Bennett David Miller

Richard Moe

Wheatland County Commissioners

DRAFT

October 10, 2007 TABER CE

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 20_____, by Taber Ranch, LLC, a Montana limited liability company, of P.O. Box 61, Shawmut, Montana 59078-0061, (hereinafter together with its successors and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

RECITALS:

1. Grantor is the owner of certain real property in Wheatland County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"); and,

2. The Property has significant open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

3. The Property constitutes a valuable element of the Musselshell Valley and its scenic and open space lands which are of great importance to Grantor and to the people of Wheatland County, the State of Montana, and the United State of America, and are worthy of preservation and that provide opportunities to continue traditional agricultural practices; and,

4. The Property provides significant benefit to the people of the State of Montana, Wheatland County, and the United States by preserving and providing the following important resources:

a. Open-space lands which maintain the rural, agricultural and natural scenic qualities of the area and provide opportunities to continue traditional farming and ranching practices in perpetuity; and,

b. Scenic views of an historic Montana working agricultural landscape in the Musselshell Valley that is enjoyed by members of the general public traveling on State Highway 12 that borders the Property; and

c. Retention of significant scenic open space for a variety of other uses, including wildlife habitat and recreation;

(hereinafter collectively referred to as the "Conservation Values"); and,

5. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the open space character, scenic values, and significant relatively natural features and other Conservation Values of the Property; and,

MONTANA ASSOCIATION OF LAND TRUSTS

Box 675 Whitehall, Montana 59759
Glenn Marx, Executive Director 490-1659
Email: malt@jeffersonvalley.net
Website: montanalandtrusts.org

June 30, 2008

Senator Dave Wanzenried
Presiding Officer
Montana Environmental Quality Council
Box 201704
Helena, MT 59620-1704

Dear Senator Wanzenried:

Thank you for the opportunity to comment on the draft report relative to the Environmental Quality Council study on House Joint Resolution 57, conservation easements on state lands.

The Montana Association of Land Trusts would like to first compliment the EQC membership and staff for their work on HJR 57, and for the detailed and thorough presentation of the issue reflected in the draft report analysis submitted for comment.

Knowing the EQC membership's fondness for brevity, the comments from the Montana Association of Land Trusts will be brief and touch upon a few key elements of the report and the issue.

First, it has always been – and continues to be – the position of Montana land trusts that conservation easements on state lands would complement, rather than replace, existing or traditional uses of state lands. Conservation easements on private lands, which feature a wide variety of agricultural and forest management activities, testify to the commitment land trusts have in honoring and retaining traditional farmlands, ranchlands and working forests.

Second, in testimony to the EQC and to the Legislature, land trusts have emphasized that conservation purposes on state lands have the potential to increase revenue to the state school trust fund.

Third, land trusts believe, as evidenced in legislative testimony and presentations to the EQC, that the concept of conservation easements on state lands will largely be a locally-driven concept, with individual municipalities, counties or locally-led coalitions seeking solutions on definable state land parcels for local planning or future community needs. Land trusts believe it is imperative that the Montana Department of Natural Resources and Conservation have the authority and the policy flexibility to address these types of locally-driven initiatives. An unofficial question for the ECQ HJR 57 study is, Does DNRC have existing authority and the policy flexibility to address these types of locally-driven initiatives?

From the critical standpoint of state DNRC flexibility and authority, the information on page 31 of the draft report appears to provide an affirmative response. The eight points under the heading "Some Concluding Thoughts on Existing Legal Authority" provide a sound legal basis for DNRC to employ a wide variety of "tools" as provided in the eight examples.

Taken individually, the examples provide specific guidance and precise options to DNRC and the Montana Board of Land Commissioners, and taken collectively the range of policy options available through the examples would appear to allow DNRC and the Montana Board of Land Commissioners to address a wide variety of state land management conservation issues when and how they may arise. The brunt of the entire draft report suggests the DNRC and land board have substantial flexibility in managing trust lands, and page 31 of the report appears to define an already available array of "tools" for the state to employ. This should be construed as good news for the DNRC and for communities.

Directly under the eight policy/legal authority examples on page 31, Mary Sexton, Director of the Montana Department of Natural Resources and Conservation, indicates the department is not requesting "any additional authority regarding conservation easements and similar dispositions of state trust land property interests at this time."

Montana's land trusts would echo that sentiment, and agree that at this time no additional statutory authority regarding conservation easements on state lands is warranted.

It may be more prudent for the EQC, the Land Board, the Montana Legislature and communities to explore the range of policy/legal authority options listed on page 31 of the draft report and see where the exploration may lead them. That exploration may – or may not – result in identification of needed new or expanded authority for DNRC and the Land Board. If so, those questions or issues could be addressed at some future time.

Again, thank you for the opportunity to comment on the draft report, and again, land trusts offer compliments to the EQC membership and staff and also offer support for the draft report.

Sincerely,

Glenn Marx
Executive Director
Montana Association of Land Trusts