

SYNOPSIS OF THE CASE**2019 MT 50: OP. 18-0599, STEVE BULLOCK, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF MONTANA; MARTHA WILLIAMS, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, Petitioners, v. TIMOTHY C. FOX, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MONTANA, Respondent.¹**

Governor Steve Bullock and FWP Director Martha Williams filed an original proceeding in the Montana Supreme Court seeking to determine whether the State Land Board is required to approve Habitat Montana conservation easement transactions of more than 100 acres or \$100,000 in value. The Attorney General and other members of the Land Board have asserted that Land Board approval was required for such transactions. The Montana Supreme Court concluded that FWP has authority to purchase Habitat Montana conservation easements once the FWP commission approves of the transactions. Land Board approval is not required by Montana law.

The statute at issue states: FWP “land acquisition involving more than 100 acres or \$100,000 in value” requires “the approval of the [Land Board].” After the Land Board vetoed an otherwise final conservation easement in eastern Montana, Governor Bullock directed FWP to finalize the project without Land Board approval. Attorney General Fox issued an Opinion stating Montana law requires FWP to seek approval from the Land Board. The A.G. Opinion binds state agencies, but can be overturned by the Montana Supreme Court, which has the constitutional authority to interpret the meaning of “land acquisition.”

The Montana Supreme Court concluded that acquisition of land means something different than acquisition of a conservation easement. FWP does not acquire land itself through its acquisition of a conservation easement on private land; it acquires an interest in the land. The private landowner continues to own, pay taxes on, and maintain his or her right to sell the property. The Montana Supreme Court held that the statute only requires FWP to seek Land Board approval for acquisition of land itself, not acquisition of conservation easements.

As part of its Habitat Montana Program, FWP uses hunting license fees to purchase conservation easements on otherwise private lands across Montana. The purpose of Habitat Montana is to conserve wildlife habitat, maintain traditional agricultural uses of land, and provide increased public access to private land for hunting and fishing.

¹ The Court prepared this synopsis for the reader’s convenience. It constitutes no part of the Court’s Opinion and may not be cited as precedent.

Justice McKinnon dissented. She concluded the term “land acquisition” generally describes all acquisitions, including acquisitions of conservation easements. She noted the non-specific nature of the term “land acquisition” and recognized that the Legislature would not require the Land Board to approve FWP’s acquisition of fee title land valued over \$100,000 while not requiring the Land Board to approve FWP’s acquisition of a conservation easement valued at \$6.1 million.