From:	Bush, Jodi
To:	Jeff Berglund
Cc:	Brent Esmoil
Subject:	Fwd: DRAFT DRAFT Follow up notes from meeting DRAFT DRAFT -- to be refined!
Date:	Sunday, March 29, 2015 8:04:36 PM

Please review in light of our comments on the EO and the EO itself. In order to get this into the record, I need you to review and let me know how close you think we are. This includes the reanalysis of the additional elements of the distance buffers in core and GH.

We will need to get back to Tim asap so he can get us a final memo. JB

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From: **Baker, Tim** <TBaker@mt.gov>
Date: Sun, Mar 22, 2015 at 12:31 PM
Subject: DRAFT DRAFT Follow up notes from meeting DRAFT DRAFT -- to be refined!
To: "Bush, Jodi" <jodi_bush@fws.gov>

Hi Jodi,

Thanks for the productive meeting on sage grouse. Based on that discussion, I think we are making good progress on a common understanding on the Governor's Executive Order (EO). Assuming that we continue to make progress, I think it is very likely that we would be able to make some adjustments to our program. But the timing of our second EO will be very dependent on our progress in the Legislature, and on our further discussions. With that in mind, and addressing a few key issues that you have raised, here are a few thoughts:

1. We anticipate a second EO that activates a mandatory program – a lot of that will depend on the last 30 days of the Legislature, and then our efforts to hire staffing, which should be in place before the Program becomes effective. It's possible that parts of our Program could move earlier – for example, if we can achieve a unified approach across all lands regardless of ownership, we could work on a BLM/Board of Oil and Gas Conservation MOU to move those provisions to implementation on an expedited basis.

2. Regulatory certainty for state authorizations – I have put together an analysis of our regulatory reach on private lands, which comprise 54% of core habitat. Our mandatory permitting authority, to which the sage grouse EO stipulations will attach, covers most the higher profile threats that are mentioned in the COT report such as energy, infrastructure, and mining. The private lands habitat fund to be proposed to the Legislature would go a long ways to filling in for those activities, like grazing and agricultural conversion, where our reach is not as strong.

3. Operation of Program relative to BLM lands—as you know, we believe strongly that the EO should operate across all lands seamlessly, regardless of ownership. The express terms of SB 261 will likely preclude us from including BLM and USFWS on the Oversight Team, but we can include language in the second EO that mandates BLM and USFWS attendance and active participation at all meetings.

4. BMPs – the concept of Best Management Practices is intended to cover those activities of minimal or no significance that may be common in occurrence – the EO already sets forth certain activities that are exempt and it seems likely that as we move forward with implementation we will discover other activities that, while not exempt, may be commonplace and of minor or no significance if conducted in a certain manner. We can clarify this intent.

5. Sequencing – our starting point when looking at activities proposed for core habitat is "avoidance first" and "avoid when possible," and this determination must be clearly documented. Our sequencing provisions are strong and set forth a clear hierarchy: avoid, minimize, reclaim, offset.

6. Mitigation – we were purposely very broad in the EO about mitigation. There's so much good work going on that we didn't want to preclude or limit our efforts. We also want to make sure that the subject receives due attention, and is something that the Service can ultimately support. In this regard I'm sure that the MSGOT will give strong preference to the Service's September Mitigation Framework – in fact, the express terms of SB 261 will require it (p. 8, lines 14-16). As an aside, I forgot to mention that the Montana Stockgrowers have approached me about sponsoring and administering a habitat exchange.

7. Wind development – it is our intention that wind development not be allowed in core areas, except if it can be demonstrated that the project will not cause a decline in sage grouse populations. The phrase "should be avoided" may not be clear enough, and "excluded" is more indicative of our intent. For general habitat our language ("not recommended") may be too ambiguous, especially given the 4-mile siting restriction and exceptions language. In general habitat such projects should not be allowed within 4 miles of an active lek, unless the exceptions can be met (burden on developer).

8. Noise – with regard to noise limitations, our objective is to adopt the Wyoming provisions, recognizing that site-specific conditions may allow for a different restriction to be agreed upon. The EO already provides for exceptions based on site-specific conditions.

9. Power lines – for all activities subject to the EO, the overriding principles are avoid, minimize, reclaim, offset. Our existing provisions for power lines and communication towers are somewhat unclear as to how they fit within the sequencing scheme, and an explicit "step-down" analysis can better capture the intent of the EO as a whole.

10. Fire – I understand that the BLM has developed language on prescribed burns that would be helpful and we will include it. Prescribed burning seems like an important tool, but only if it can be shown to be beneficial or neutral in sage grouse country. As for fire generally, one of our adjustments we made to the recommendations of our Advisory Council was the inclusion of fire as an existing disturbance in the DDCT analyses, regardless of whether natural or human-caused.

11. Staffing – although the Program will have a lead biologist, the Montana Fish, Wildlife and Parks folks who are out in the field will play a significant role in regard to matters concerning on-the-ground conditions, such as monitoring and data collection.

12. Application of EO – when the second EO activates the mandatory aspects of the Program, it is well understood that those stipulations will have the full force and effect of law and will be applied to their maximum legal extent to existing rights.

I fully recognize the urgency that you feel in addressing these issues. I believe we are making good progress.

Thanks,

Tim