From: Edward Boling
To: Greenberger, Sarah
Cc: Harding, Stephenne; Benjamin Gruber; Bean, Michael; Dan Ashe; Dominic Maione; Neil Kornze; James Lyons; Megan Kelhart; Katherine Kelly
Subject: Re: Can we get your comments on the NDAA rider ASAP?
Date: Tuesday, April 28, 2015 12:29:11 AM

(b) (5) [redacted]

Sent from my iPad

On Apr 27, 2015, at 11:29 PM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:

> Here are my thoughts. Redline attached. I could be convinced to stop after the line on constitutional concerns.
>
> *The Administration strongly opposes this amendment. This language is beyond the scope of the NDAA, legally ambiguous and undermines bedrock principles of law and policy.*
>
> *The amendment bears no relationship to national defense policy properly considered in this legislation. It would break with existing law and upend well-established public land management policy by divesting control of federal land from the federal government (BLM and USFS) and require agencies manage their lands consistent with state-approved management plans that these agencies would have no authority to review, modify or reject. The state plans would not be required to meet any defined legal, scientific or other standards, would remain in place for a period of at least five years and potentially indefinitely. The amendment could halt and lay to waste work underway for years to finalize federal sage grouse conservation plans that address threats to sagebrush habitat that supports 350+ species of wildlife, ranching, recreation and other economic activity as well as provide certainty to public land users across the sage-grouse range.*
>
> *The amendment would also break with the fundamental principle that science should govern determinations under our nation's environmental laws by legislating the conservation status of a species under the Endangered Species Act without regard to science. More practically, by preventing the Service from determining whether the sage grouse warrants protection under the ESA until 2025, the amendment precludes any opportunity for reaching a not warranted determination by September of this year.*
>
> *Finally, the amendment raises Constitutional concerns by preventing judicial review of any decisions made pursuant to it.*
>
> *Delay is a false solution. The time to address the threats to sagebrush habitat is now - not in 5 or 10 years, when the West is more fragmented, wildfires are more intense, or invasive species have gained more ground.*
>
> *In April, the U.S. Fish and Wildlife Service determined that the Bi-State population of sage-grouse no longer requires the protection of the ESA. This is a clear indication that if states, localities and federal land managers continue to work together with urgency to put durable conservation measures in place, we can conserve sagebrush habitat across the West while encouraging sustainable economic development and achieve our shared goal of a "not warranted" determination by the end of the fiscal year.*

On Mon, Apr 27, 2015 at 6:11 PM, Harding, Stephenne <stephenne_harding@ios.doi.gov> wrote:

From all the input we received late today, this is what OCL is proposing to use to communicate on the NDAA tomorrow to the hill. Please let me know if you have any edits by 9 am tomorrow.

Thank you!

Stephenne

The Administration strongly opposes this amendment. This language is beyond the scope of the NDAA, legally ambiguous and poses significant policy challenges.

The amendment would ignore existing law and upend well-established public land management policy by requiring that the BLM an USFS manage their lands consistent with state-approved management plans that these agencies would have no authority to review, modify or reject. These plans would not be required to meet any defined scientific standards and would remain in place for a period of at least five years and potentially indefinitely. It would prevent the FWS from implementing key components of the ESA by halting its ongoing collaborative efforts to determine whether the sage grouse warrants protection under the ESA until 2025. This would result in increased costs to the taxpayer, further delays and greater threats to the sage grouse.

This isn't just a delay, it is a false solution that undercuts science and the unprecedented land-use planning progress that is happening throughout the West to provide regulatory certainty that could prevent the listing of the greater sage grouse. It adds politics to this process, creating uncertainty and encouraging conflict, and undermines collaborative, science-driven decision-making.

In April, the U.S. Fish and Wildlife Service determined that the Bi-State population of sage-grouse no longer requires the protection of the ESA. This is a clear indication that if states, localities and federal land managers continue to work together with urgency to put durable conservation measures in place, we can conserve sagebrush habitat across the West while encouraging sustainable economic development and achieve our shared goal of a "not warranted" determination by the end of the fiscal year.

Finally, the amendment raises Constitutional concerns by preventing judicial review of any decisions made pursuant to it. This onerous provision would deny the public an opportunity to ensure that these decisions sound and based on science.

On Mon, Apr 27, 2015 at 5:38 PM, Boling, Edward <ted.boling@sol.doi.gov> wrote:

(b) (5) [redacted]

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On Mon, Apr 27, 2015 at 5:29 PM, Bean, Michael
<michael_bean@ios.doi.gov> wrote:

> The rider effectively divests the federal government (BLM and USFS) from control over a significant portion of its lands without transferring ownership thereof. It does so by requiring that BLM and USFS manage their lands consistent with state-approved management plans for which BLM and USFS have no power to review, modify, or reject..
>
> The state-approved management plans that effectively displace federal authority over federal lands do not have to meet any standards or criteria, and can remain in place for as long as a Governor specifies (but for at least five years). Although FWS cannot revisit the issue of whether the sage grouse warrants protection under the ESA until 2025, BLM and USFS must continue to manage their lands in accordance with state-approved plans for as long as the Governor specifies, including well beyond 2025.
>
> The rider does not require that state-approved plans be based on the best available science (or, indeed, any science at all), nor does it require that BLM and USFS lands be managed for sustained yield of renewable resources.

On Mon, Apr 27, 2015 at 3:55 PM, Harding, Stephenne
<stephenne_harding@ios.doi.gov> wrote:

> We'd like to get talking points together and out this afternoon, but haven't heard from any of your offices at this point.
> Thanks,
> Stephenne
>
> --
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