



## USFWS INFORMATION MEMORANDUM

**DATE:** November 10, 2021

**TO:** Matt Hogan, Acting Regional Director, Mountain-Prairie Region

**FROM:** Steve Small, Assistant Regional Director, Ecological Services, Mountain-Prairie Region

**SUBJECT:** Logan County, Kansas, Black-footed ferret recovery site

### I. KEY FACTS

The Black-footed ferret (BFF) safe harbor site, Smoky Hill River Safe Harbor (Smoky Hill SHA), was established and finalized in November 2019, with some of the cooperators who currently have an existing safe harbor, Butte Creek Ranch Safe Harbor (Butte Creek SHA), for BFF recovery in Logan County, Kansas.

A November 3, 2021, letter from Logan County Commissioners to Kansas Ecological Services Field Office (KSFO) alleges that the U.S. Fish and Wildlife Service (FWS) failed to follow National Environmental Policy Act (NEPA) and Endangered Species Act processes for the establishment of Smoky Hill SHA site, including that we failed to follow the BFF Programmatic Safe Harbor Agreement (PSHA). The letter did not ask for any remedy, however the County alleges that the Smoky Hill SHA is invalid.

On November 5, 2021, a Freedom of Information Act (FOIA) request was received from the Budd-Falen Law Offices. The FOIA requests information related to the Smoky Hill SHA site. We assume Logan County and the Budd-Falen Law Offices are in communication.

A November 18, 2021 meeting to discuss PD control between FWS and Logan County has been postponed due the legal tenor of the November 3, 2021 and November 5, 2021 letters. FWS will seek legal guidance from DOI Solicitors prior to meeting with Logan County.

Logan County embraces the eradication of prairie dogs (PD), permitted by an existing state law. The County has also legally challenged the Butte Creek Ranch SHA and FWS BFF reintroductions multiple times without success.

FWS has not implemented PD control around the Smoky Hill SHA, and BFF have not been introduced at the site. The Butte Creek SHA site is a few miles south of the Smoky Hill SHA sites. In FY22, FWS will provide financial support for PD control around Butte Creek SHA, BFF introductions, monitoring and PD control.

## **II. BACKGROUND AND FWS POSITION**

The Logan County, Kansas, BFF recovery site has been politically charged since its inception in 2007. Logan County asserts they were not notified or coordinated with on the release of BFF in 2007. Logan County has asserted that PD control continues to be poorly implemented and ineffective and has raised other concerns such as plague and incidental mortality of non-target species with FWS approved PD poisons. There have been two state district court cases to halt or interrupt FWS recovery activities. Neither effort was successful, nor was an appeal to the Kansas Supreme Court, which chose not to review the case.

FWS followed standard operating procedure when establishing BFF recovery efforts under a Programmatic SHA in Logan County. FWS will review the procedures with DOI Solicitors.

Although Logan County is resistant to BFF recovery efforts, FWS continues to pursue BFF recovery there as participating landowners have made significant commitments and the area holds great recovery potential because of the vast acres occupied by PD and, to date, the absence of plague.

## **III. POSITION OF AFFECTED STAKEHOLDERS/PUBLIC LANDS AFFECTED**

Logan County asserts that the introduction of BFF in Logan County is federal overreach, specifically for private property owners. The County asserts that efforts have not been well communicated or planned and have not adequately taken into consideration non-participating interests.

## **IV. DISCUSSION**

FWS continues to work address Logan County's concerns as we support the existing Butte Creek SHA site and the Smoky Hill SHA site. Although we have followed Solicitor guidance when enrolling additional lands via a Certificate of Inclusion through the 2013 BFF PSHA, we will revisit with the Solicitors to confirm.

**V. TIMELINE AND NEXT STEPS**

**FWS will seek Solicitor input on how to respond to the allegations and questions raised in November 3, 2021, letter from Logan County Commissioners. Once a response to the County letter has been developed, we will reconsider the utility of meeting to discuss PD control with the Logan County Commissioners.**

**Prepared by: Jason Luginbill and Pete Gober**

☐ FYI or ☒ Requested by: **Matt Hogan, Acting Regional Director**

☐ Prepared for a meeting: *[meeting date]* *[meeting invite title]*

**Does this involve, directly or tangentially, any Director's Office recusals?** ☐ Yes ☒ No

**If yes, please identify:**