

EVENT MEMORANDUM FOR THE SECRETARY

MEETING WITH MONTANA GOVERNOR STEVE BULLOCK

DATE: December 6, 2014
LOCATION: Four Seasons, Sierra Boardroom, 39th Floor
TIME: 4:30PM – 5:00PM PST
FROM: Sarah Greenberger, Counselor; John Blair, Director OIEA

I. PURPOSE

You will be meeting with Governor Bullock to:

- Thank and commend him and his team for progress on the Montana Greater sage-grouse plan.
- Convey FWS concerns with the State plan's buffers, but acknowledge the Governor's constraints.
- Resolve outstanding issues related to Montana Greater sage-grouse plans including:
 - Acknowledge work by his team and BLM to find a middle ground that recognizes the State Plan while providing the certainty the Service needs.
 - Flag the need for an adaptive management strategy that includes a hard-wired plan response.
- Introduce your plans to develop an enhanced rangeland fire strategy.

Additionally, we know that Governor Bullock plans to discuss litigation regarding the State of Montana's Habitat Conservation Plan (HCP) for state lands.

II. ATTENDEES

- Governor Steve Bullock
- Ali Bovington, Deputy Chief of Staff, Governor Bullock's Office
- Tim Baker, Natural Resources Policy Advisor, Governor Bullocks's Office
- Sarah Greenberger, Counselor
- John Blair, Director OIEA

III. TALKING POINTS

State Plan

- Governor, I want to thank you for the incredible progress you have made on the Montana state sage grouse plan.
- In record time after your election you went from no plan to a plan with broad support, but one that still needs funding from your legislature to be implemented. I know how much goes into an effort like that.
- I do have to convey that the FWS is very appreciative of the recent positive dialogue that has occurred with your staff, and the progress being made to resolve several concerns. However, FWS still has grave concerns about the 0.6 mile buffer in the state plan and the

risk that poses to their determination given the importance of Montana's habitat and bird population.

BLM Plans

- I am very pleased, however, that we seem to have reached a common ground on the BLM plans.
- I know that took concessions on both our parts.
- There is one outstanding issue that I want to flag for you.
- BLM Montana plans need a hard-wired adaptive management response when a hard trigger (indicating catastrophic population or habitat declines) is hit
- I understand that is not the case in the plans currently and that is something my team will be working with yours to address.

Fire

- FWS has identified the downward spiral of invasive grasses and fire in the Great Basin as one of the greatest threats to Greater sage-grouse.
- Our team, led by Assistant Secretary Janice Schneider, is engaged in an effort to develop an enhanced approach to combatting rangeland fire that will give the Service something to consider in their listing process.
- I am planning to issue a Secretarial Order in the near future directing my Department to develop this approach focusing on research, efficient resource allocation, seed banking, and streamlined administrative processes, among other things.
- While I know that rangeland fire is not as big an issue in Montana, we will want to work closely with you and your office to be sure this effort has no unintended consequences.

HCP for MT state lands

- I commend MT Department of Natural Resources Conservation (DNRC) for developing and implementing a landscape-level HCP that provides conservation benefits to grizzly bear, Canada lynx, bull trout, and other native trout.
- I am pleased that the judge ruled in FWS's favor on all but one of the claims.
- FWS believes that the HCP is adequate and does not require MT DNRC to make any changes in response to the judge's remand.
- Thus, FWS is working closely with DOI Solicitors and DOJ on the remand to bolster our rationale supporting our conclusions that the HCP meets requirements for the grizzly bear in the Stillwater Block.
- FWS understands the timber industry's concerns with not being able to work in the Stillwater Block while the permit is enjoined. We have made responding to the court one of our high priorities. My team is working as speedily as possible while taking the time necessary to ensure that our response clearly responds to the court's concerns. The issues are highly complex and require careful crafting.
- FWS is keeping DNRC informed on where they are in the process.

IV. KEY FACTS

- Over 60% of PAC ownership in Montana is on private and state land.

- Montana has the second largest sage grouse acreage in the nation and the second-highest number of birds.
- Currently, Montana only includes 76% of breeding birds in its Core Areas (WY has over 80%)
- Declining population trends (this year's count was the lowest since 1980) led the state to close all or parts of 32 counties to sage-grouse hunting and to shorten the hunting season from two months to one.

MONTANA'S HABITAT CONSERVATION PLAN

- HCP covers take from timber-related activities on 548,500 acres of State school trust lands in western MT for grizzly bear, Canada lynx, bull trout, and two unlisted fish (Columbia redband trout and westslope cutthroat trout).
- Permit issued to DNRC in Dec 2011
- Plaintiffs: Friends of the Swan, MT Environmental Information Center, Natural Resources Defense Council
- Judge ruled in FWS' favor on all but one claim on Aug. 21, 2014.
- In the ruling against FWS, he found that FWS was arbitrary & capricious in its determination that the HCP mitigates to the maximum extent practicable for impacts to grizzly in the Stillwater Block.
- He also found that since the HCP didn't adequately mitigate, FWS failed to adequately analyze DNRC's ability to mitigate to the maximum extent practicable.
- He enjoined the permit for just the Stillwater Block and remanded FWS' findings on meeting permit issuance criteria.
- In response to the remand, FWS is working with SOL, DOJ in supplementing the Findings with more support for our determination. *FWS is not requiring MT DNRC to change anything in the HCP.*
- FWS does not recommend appealing because we believe we can support our original determination that the HCP meets permit issuance criteria.

V. BACKGROUND



Governor Steve Bullock (D) is the 24th Governor of Montana and was inaugurated in 2013. Born in Missoula, Montana, Bullock is a graduate of Columbia Law School. Bullock began his career working as the legal counsel to the Secretary of State of Montana before becoming the Executive Assistant Attorney General and acting Chief Deputy Attorney General of Montana. Bullock then entered private practice as an attorney for Steptoe & Johnson. He was also an adjunct professor at the George Washington University Law School before opening his own private law firm upon returning to Montana. In 2008, Bullock was elected Attorney General of Montana, where he served one term from 2009 to 2013.

After incumbent Governor Brian Schweitzer was term-limited, Bullock declared his candidacy for the Governorship on September 7, 2011. He won with 87% of the vote in the Democratic primary and defeated Republican nominee, former Representative Rick

Hill, in the general election with 48% of the vote. In September 2014, Bullock signed an executive order creating a habitat conservation plan for sage grouse in a bid to keep management of the imperiled bird in state hands rather than see it come under federal Endangered Species Act protections. The government said to the press: "Montanans recognize that it is in the best interest of our state, its economy and our quality of life to maintain state management of the greater sage-grouse."