



Bush, Jodi <jodi_bush@fws.gov>

Fwd: progress

1 message

Berglund, Jeff <jeff_berglund@fws.gov>

Wed, Jan 28, 2015 at 4:35 PM

To: "Baker, Tim" <tbaker@mt.gov>

Cc: Jodi Bush <Jodi_Bush@fws.gov>

Hi Tim. Thanks for sending this over. We didn't complete an in-depth, exhaustive review, but rather tried to understand and provide some feedback regarding the overall components of the draft bill. It appears there will be many details to follow, so our comments are largely at the concept level. Also, in the interest of time, we did not submit this for any type of solicitor (legal) review on our end, but would be happy to do that if it would be useful to you. Our initial thoughts and questions at the Field Office level are summarized below (in the same order as the issues appear in the bill):

- As we have mentioned in the past, we recommend that the Oversight Team include FWS and BLM. If this can't be included in a State law, would it be possible to reference that federal agencies with sage-grouse expertise, including FWS and BLM, shall be invited to join? Also we are unclear as to the role of the Oversight Team related to initial development project evaluation and compliance with the standards and stipulations set forth in the EO (these duties were not included in this bill - will they be included elsewhere?).
- Funding for the Sage-Grouse Program staff does not appear to be included in the bill - is this proposed for a separate bill or process? As we have discussed, it is critical that technical Program staffing is implemented soon.
- We suggest that definitions for connectivity areas, core areas, and general habitat reference the maps and revision considerations included in the Executive Order. Also, the definition for conservation bank should indicate that credits are conserved and managed "in perpetuity".
- We appreciate that the habitat quantification tool and habitat exchange process would be subject to FWS approval; the Service is currently developing a range-wide habitat exchange evaluation process, including standards necessary to achieve "credit" (e.g., minimum project duration, minimum level of habitat quality, etc.). Review of the quantification tool would likely occur under that evaluation process.
- Conceptually, the overall stewardship account / mitigation relationship and process seems workable and could open the door for valuable conservation projects for both voluntary and required compensatory mitigation projects. However, the process promises to be highly complex and many details still would need to be addressed, including careful accounting of credits and funds (especially where federal funds are concerned), avoidance of credit "double-dipping", achievement of "additionality" (demonstrating benefit that would not have otherwise occurred under required management, etc.) and development / achievement of other standards.
- Sec 7.4, Sec 8 and others: It is highly important that any conservation project intended to result in "credit" for required offset mitigation under the EO or other laws / policies, including any retroactive credit calculation (section 6.3, p. 7), be subject to successful application of the habitat quantification tool and the associated minimum standards for compensatory mitigation. Note that some of the example measures in Section 8, while potentially resulting in conservation value, may ultimately not meet minimum standards for sage-grouse compensatory mitigation once evaluated. Outcome-based credits (e.g., based on the benefit to sage-grouse viability) are preferred over project-based credits.
- Section 8.k.1.ii: Just clarifying that monitoring costs should be included along with project design/implementation costs for any projects resulting in credit (i.e., contributions of funds to only be used for monitoring should not qualify for credit).
- Section 9.1: We suggest inserting the word "required" between "provide" and "compensatory" to clarify and emphasize that this section provides a means to address required compensatory mitigation per the EO. We also recommend it be clarified here that project developers first need to comply with the required sequence of 1) maximum impact avoidance and 2) maximum impact minimization prior to progressing on to compensatory mitigation.
- Section 9.1.ii: It will be important to account for temporal considerations here (through credit ratios or other cost considerations). Given time lag issues, purchasing credits at today's rate will result in a net conservation loss if those credits are actually realized later in time.

- Section 9.2: We appreciate that compensatory mitigation is to be consistent with the FWS sage-grouse mitigation framework. The framework points to many of the standards of compensatory mitigation to ultimately be addressed, including the goal of attaining net conservation benefit. Please note that FWS is also in the process of updating the FWS-wide mitigation policy.
- Section 9.3: We recommend that compensatory mitigation actions be prioritized to benefit 1) core areas; 2) connectivity areas; and 3) general habitat - unless a case can otherwise be made for greater conservation benefit. Note that the greatest credit per action will likely result from actions in core habitat.
- We are pleased to see that the State would be a third party beneficiary to any lease or conservation easement; this adds protective value to such agreements.

Again, thanks very much for the opportunity to provide feedback. Please don't hesitate to call Jodi or me with any questions.

Jeff

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From: **Bush, Jodi** <jodi_bush@fws.gov>
Date: Wed, Jan 28, 2015 at 11:27 AM
Subject: Fwd: progress
To: Jeff Berglund <jeff_berglund@fws.gov>

Please review asap and give Tim feedback directly with cc to me as I will be heading out shortly. JB


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From: **Baker, Tim** <TBaker@mt.gov>
Date: Wed, Jan 28, 2015 at 9:58 AM
Subject: progress
To: "Bush, Jodi" <jodi_bush@fws.gov>

Here's a draft of what is going on here. I would appreciate someone in your shop looking at this and giving me feed back. This is all moving very fast. Thanks, Tim

—
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