



September 20, 2023

Martha Williams
Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
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Via Email and USPS

Re: Missouri Headwaters Conservation Area Proposal

Dear Director Williams:

I write to voice serious concerns about the U.S. Fish and Wildlife Service's (USFWS) "Missouri Headwaters Conservation Area" (MHCA) proposal announced today that seeks to transform nearly 5.8 million acres (over 9000 square miles) into a national wildlife refuge via conservation easements on private land. Spanning five counties across southwestern Montana, this would be the largest conservation area ever proposed in America.¹ The Kafkaesque scheme of environmental laws and regulations in this country already provides a nearly insurmountable obstacle to the energy, mining, and agriculture industries. And this designation would be another tool wielded and abused by well-funded environmental groups to oppose all permits for responsible development on state and private land. Most troubling, however, is how this project has come to fruition: behind closed doors and hidden from public scrutiny.

My office is aware that prior to today's announcement, the USFWS had been working with nongovernmental organizations such as The Nature Conservancy and Theodore Roosevelt Conservation Partnership, and that these organizations have been conducting meetings with select local officials in Silver Bow, Deer Lodge, Beaverhead, and Madison counties to garner support for the project. Prior to today, nothing about the MHCA appeared anywhere on the USFWS website. And despite the

¹ The proposed MHCA is larger than the land area of New Hampshire, New Jersey, Connecticut, Delaware, Rhode Island, Massachusetts, and Hawaii.

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proposed area containing approximately 500,000 acres controlled by the State of Montana, USFWS has failed to consult Montana state officials on this gargantuan project. State-owned lands generate crucial revenue for Montana schools from natural resource development and livestock grazing.²

USFWS's clandestine actions appear to be a blatant violation of the Federal Advisory Committee Act (FACA). Congress enacted FACA "with the objective of 'opening many advisory relationships to public scrutiny except in certain narrowly defined situations.'" *Votevets Action Fund v. McDonough*, 992 F.3d 1097, 1101 (D.C. Cir. 2021) (quoting *Pub. Citizen v. Dep't of Justice*, 491 U.S. 440, 463 (1989)). "FACA's terms promote transparency, accountability, and open public participation in executive branch decisions and prevent informal advisory committees from exerting improper or one-sided influence." *Id.* FACA defines "advisory committee" broadly as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof ... which is ... established or utilized by one or more agencies in the interest of obtaining advice or recommendations for ... one or more agencies or officers of the Federal Government ..." 5 U.S.C. app. 2 § 3(2). FACA, importantly, imposes strict procedural requirements. For example, advisory committees must publish notice of any meetings in the Federal Register, 5 U.S.C. App 2 § 10(a)(2); 41 C.F.R. § 102-3.150(a); meetings must be open to the public, 5 U.S.C. App. 2 § 10(a)(1); and committees must make their records and drafts publicly available. *Id.* § 10(b)-(c).

According to today's announcement, USFWS intends to allow the public just 36 days to comment during the scoping period. That is plainly unacceptable. *See, e.g., Centro Legal de la Raza v. Exec. Office for Immigration Rev.*, 524 F. Supp. 3d 919, 954-962 (N.D. Cal. 2021); *California ex rel. Becerra v. United States Dep't of the Interior*, 381 F. Supp. 3d 1153, 1177 (N.D. Cal. 2019). The public deserves—and the law requires—a meaningful opportunity to scrutinize a project of this magnitude, especially one that has been orchestrated surreptitiously with special interests.

I, therefore, request that USFWS immediately release all additional records related to the MHCA and postpone any further action until it formally complies with FACA. Finally, if USFWS tries to move forward without satisfying FACA, it must provide a public scoping period of at least 90 days followed by a public comment period of another 90 days.

² In 2022, state land trust revenue provided \$46.3 million for Montana public schools.

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Montanans deserve better than covert deals between federal bureaucrats and conservation oligarchs. I will vehemently oppose any attempt to ram through this consequential project without full transparency and procedural accountability.

Sincerely,



AUSTIN KNUDSEN
Attorney General of Montana

cc: Via USPS Mail

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