

**Before the
United States House of Representatives
Committee on Natural Resources**

**Respecting State Authority, Responsibilities and Expertise
Regarding Resource Management and Energy Development**

Testimony of Montana Governor Steve Bullock

September 30, 2015

Chairman Bishop, Ranking Member Grijalva, and Members of the House Natural Resources Committee, on behalf of the citizens of the State of Montana, I want to thank you for the opportunity to offer Montana's perspective on this topic of great import. I appear today not only as the Governor of a great state and wonderful place to live, but also as the Vice Chair of the Western Governors Association, an organization that embodies my idea of bipartisanship.

Montana is a vast and varied state of mountains, canyons, river valleys, forests, and badlands, making it rich in beauty and resources. It is known as "Big Sky Country" as it covers an area of more than 147,000 square miles, making it the fourth largest state in the United States. Our diversity of wildlife and fisheries follows suit, and folks come from around the world to fish for trout and paddlefish, hunt for elk and antelope, or catch a glimpse of a Grizzly Bear, Gray Wolf or Mountain Goat.

Charming towns and bustling cities serve as gateways to Montana's natural wonders. With one of the most diverse geographies of any state in the country, Montana is home to both Glacier National Park and the gateway to Yellowstone National Park, making it a popular tourist destination.

In fact, tourism is one of our leading industries. Nearly 11 million people visit us each year with an economic impact of nearly 4 billion.

But there is also much more to Montana than our spectacular, unspoiled nature and vibrant and iconic small towns. Montana also has a strong, diverse, and growing economy. Major industries include agriculture, energy production, manufacturing, education, and healthcare. Montana is known best as the “Treasure State” due to its rich deposits of mineral wealth, fertile valleys for agriculture, and vast timber resources. But it also produces a significant amount of intermediary and finished products, including industrial chemicals, machinery and metals, and food and beverage products. High-tech industries, such as biosciences research and development, software, and photonics manufacturing are also becoming integral parts of the state’s economy.

Long before Montana became known as the “last best place,” Indian nations and Indian people knew this area as “the first best place.” Montana is home to 7 Indian reservations and the state-recognized Little Shell Tribe of Chippewa Indians. Since becoming Governor, I have appointed 116 Native Americans to serve on many of Montana’s most important state boards, council and commissions and am proud to have worked closely with a bi-partisan coalition in the state legislature to create jobs and improve education throughout the state of Montana, including Indian Country.

Montana's higher education system boasts sixteen institutions: two universities, four regional universities, and ten two-year and tribal colleges, which serve 47,000 students and employ more than 7,000 faculty and staff. Montana State University in Bozeman and the University of Montana in Missoula have been ranked among the best places to live by Outside Magazine and among the top colleges by the Best College Review. Students come to Montana not only for the quality academic experience, but also for the unparalleled quality of life.

World-class recreation, rich culture, friendly people, great jobs, and amazing schools – there is truly no other place like the Big Sky State.

Almost 30% of our land mass is owned and managed by the federal government, most of that by the Forest Service and Bureau of Land Management. Our major waterways are all subject to major federal interests, including dams and irrigation projects. In addition to the Tribal sovereigns within our boundaries, there are military reservations as well. And although the state holds its wildlife in trust for its citizens, there are species where the federal interest is significant, such as migratory birds and threatened and endangered species.

Governors, as Chief Executives, offer concrete perspectives on issues that affect their states. I can tell you that how we relate to the federal government, especially in regard to issues concerning our public lands, waters, and wildlife, is something we hear about from Montanans every day in our office and for good reason. The actions of the federal government in my state affect the lives of Montanans every single day and in myriad ways.

Western Governors can come together and find common interests regarding the state-federal relationship because our economies, communities, landscapes, and quality of life are intertwined in ways that bring us together. We may talk about these issues in different ways, but when we spend time working on them together, we're often closer than we think.

There is often, and understandably, a dichotomy between state and federal interests and as a result there are always challenges in determining how to get along with our federal agencies. That tension is part of what makes our country strong.

With regard to public lands, we in Montana may have problems with federal management but we do not have issues with the public lands estate. For families in Montana, our public lands heritage is the great equalizer, where anyone can hunt, fish, hike, or ride to their heart's content, regardless of their social or economic status. Montanans, myself included, have been clear that they do not want the state to pursue the takeover of our federal public lands. For one thing, we simply couldn't afford to own and be responsible for managing all of those lands.

We'd be forced, over time, to sell some of them off. Montanans believe that these lands are part of their birthright and they will simply not accept any discourse regarding the security of their future.

When I think about natural resource issues, and particularly about topics like forest health, water, and wildlife, certain realities shape my thinking.

Regardless of what you think about climate change (and I believe in it), our forest health issues are becoming more acute, water is becoming a more difficult resource to manage, and the challenges for our wildlife and fisheries are becoming more pronounced.

At the same time that natural resource issues are becoming more pressing, the federal agencies have fewer resources with which to meet their obligations and responsibilities. That isn't to suggest that the states have unlimited resources and we run a tight ship, which is what Montanans expect.

These realities, as I see them, have serious implications for both state and federal authorities. As those challenges become greater, the lines between federal and state interests become more challenging to delineate.

We do our share of pushing back against federal intrusion, and we've also aggressively pushed for constructive partnerships and active engagement with the federal government using our authority, expertise and research, and harnessing the incredible capacity of our citizens to work together collaboratively and problem solve.

I'm not here to tell you that this approach is a magic bullet. But as we look closely at the blurred and shifting line between federal and state interests, I've found it helpful to recognize that there is a certain amount of gray area where the state can find productive ways to assert itself, and insert its authority and resources to make the voices of its citizens heard by a federal government that can seem far away.

Forest Management: bringing state expertise and resources to build a strong partnership and get results

Federal forest management in Montana is in tough shape, and as a result the state is suffering. As our climate changes and our forests become drier, the impacts of past management on the one hand, and historical fire suppression on the other, become more apparent. Our fire seasons are longer, more intense, and more expensive. Our forests are unhealthy and beetle-killed trees are everywhere. While ours is a fire-dependent landscape made and shaped by consistent fire, now some unprecedented fires threaten not only our communities but ecological balance. As our forests decline, so do the wildlife and fish that depend on those forests for healthy habitat and clean abundant water.

At the same time, our mill capacity is shrinking, impacting our communities with lost jobs and economic opportunity. While our wood products infrastructure still has some vertical integration, we're in danger of losing that structure and with it, more mill capacity. Yet this is the very capacity we need to manage forest health issues on our public lands, including the restoration of

wildlife and fisheries habitats. Not only that, but Montana's school trust lands are also threatened. As Chair of Montana's Land Board, which oversees management of the state's more than 5 million acres of state trust lands, I'm concerned about the future capacity for the management of those lands and the generation of revenue for schools if that mill infrastructure is further weakened.

As these conditions have converged and worsened, Montanans have reacted by coming together. Groups of citizens representing very divergent interests have been meeting to work out their differences. All those folks who love their public lands and forests have realized that they are all losing. Sportsmen, mill owners, conservationists, small business owners, and local elected leaders are working with the Forest Service to find solutions.

In January 2014 I met with the Forest Service Regional Forester. Montana had just signed a statewide Master Stewardship Agreement with the Forest Service, the first of its kind in the nation. Under the Agreement Montana's Department of Natural Resources and Conservation was working with the Helena National Forest to implement a sizeable fuels reduction/forest health project in the Helena municipal watershed. Work was progressing, but more was needed, not only on that project, but across the state.

I asked the Regional Forester what the agency could do to put more logs on trucks and encourage folks to continue to work together and be successful. Her answer was less than encouraging, and centered on a lack of tools and resources.

Then Congress passed the Farm Bill of 2014.

The Farm Bill provided the Forest Service with several new tools to accelerate forest restoration. A Governor could nominate landscapes substantially affected by insects and disease to the Secretary of Agriculture for designation as Priority Areas for expedited NEPA and administrative process and judicial review. In addition, and importantly, the new authorities further streamlined the process and categorically excluded from NEPA requirements projects developed through a collaborative process (subject to size limitations, best available science, and other sideboards).

In those new Farm Bill authorities I saw a clear path forward to give those Montanans working so hard together a chance to see their efforts succeed. I worked with Montanans of diverse interests to nominate 5 million acres of national system forest lands for designation as Priority Landscapes. The Secretary of Agriculture approved almost every acre of my request as eligible for expedited consideration under the new Farm Bill authorities.

I hosted a meeting of the various collaborative groups that work on forest management in the state. People came from all corners of the state, many staying overnight because of the drive. Fifty or sixty people crowded into my reception room, including County Commissioners, mill owners and managers, sportsmen, conservationists, and local government leaders. These were just the representatives of the various groups, which are much larger in number.

Their goals are generally the same: put logs on trucks, improve forest health such as fisheries and wildlife habitat, reduce fire danger, and keep intact those places that should be left alone.

I've recently seen the power of diverse groups of Montanans setting aside their differences and working together. Just last week I participated in Interior Secretary Jewell's announcement that the Greater Sage-grouse is not warranted for listing under the Endangered Species Act. Montana's efforts were a linchpin in that decision, and our work started with a stakeholder's process where diverse members rolled up their sleeves and found a path forward.

The same opportunity for success exists with forest management.

The local Forest Service commitment to moving forward with the new Farm Bill authorities was strong and enthusiastic. Still, the time it actually took for the agency to respond was surprisingly slow to me. This led me to look closely at the capacity of the agency to do its work and what I found was shocking. Today the agency spends more than half of its budget on firefighting and other fire-related expenses, and since 1998 non-fire staff in the agency has been cut by 39%. Working with stakeholders, and doing it well, requires staff, yet the agency didn't readily have that capacity. Because of the costs of fighting fires, the agency has less money to spend on the very activities that would help reduce fire risk.

Under our “Forests in Focus” Initiative we brought resources to the table, in terms of money and staff. We invested \$1 million of state funds in 14 Forest Service projects that will help restore over 200,000 acres, improve recreation opportunities, and produce nearly 50 million board feet of timber when implemented. Priority for those investments was given to projects that are within Farm Bill landscapes, are collaboratively developed, produce commercial forest products, and improve watershed health and/or recreation opportunity.

We created a new position, DNRC Liaison to the USFS, to represent Montana’s interests in National Forest Management, with priority on Farm Bill projects. She’s located in the Forest Service Regional Office, follows and advocates for forest health projects, and makes sure that Montana’s collaborative partners are getting the attention they need from the agency.

As a result of legislation I signed last spring, we’re getting ready to add another position to our efforts to promote active forest management and collaboration: a new Forest Advisor will help Montana local governments engage in federal forest management and play an active role in collaboration efforts.

The Forest Service has responded very positively. Just over 15 months following the designation by the Secretary of Priority Landscapes, 30 projects using the new Farm Bill authorities are planned or underway in the Northern Region, and 22 of those projects are in Montana.

The Region has identified a three-year prioritized program of work and is redirecting resources to focus solely on these projects.

In addition, the Master Stewardship Agreement between Montana and the Forest Service has proven to be a positive step. So far over a million board feet of timber has come off the project in the Helena municipal watershed, roads have been reconstructed, and erosion control performed. Much more is planned, including noxious weed treatments and more timber and hand felling treatments, all to reduce the threats to the watershed infrastructure.

Of the 14 Forest Service projects we've directly invested in, seven are using the new Farm Bill authorities, including 4 that are using the Categorical Exclusion for projects derived from collaboration. Twelve of the 14 projects are utilizing a collaborative process.

A small project on the Lolo National Forest is the first Farm Bill CE to get to decision in the Nation, and a contract has been awarded (another project we've invested in, a non-Farm Bill CE, has also been decided and a contract awarded). One of our projects is being litigated (non-Farm Bill EIS), and four other projects with state investments are to be decided in 2015 (including two Farm Bill CEs).

I committed state resources to the Farm Bill projects because the new authorities in the 2014 Farm Bill are significant and could, when implemented, dramatically improve federal forest management.

Although the threat of litigation may play a factor in the relatively slow start in using these authorities, I believe a far greater issue is the lack of funding and staff to plan and implement sound forest restoration projects. Congress should pass legislation to fund federal wildfires off-budget as many states --- including Montana---already do, and ensure the USFS budget for forest restoration, recreation, road maintenance, and wildlife/watershed protection is fully restored. We will collectively fail without this, and our forests and communities will pay the price.

The Western Governors have been strong supporters of ending fire borrowing. At WGA there have also been serious discussions regarding forest management and the need for reform, and the need to find out where we, as westerners, can stand together on this issue. As Governors, we have our own forestry programs and we are acutely aware of the challenges on the ground. We believe we can build a strong bipartisan foundation among the western Governors to support change.

In my incoming role as Chair of the Western Governors Association, in spring 2016, I want to take up the issues of federal forest management reform and hold discussions around the West. I believe we should start with the Farm Bill authorities to see how those substantial changes in agency authority are playing out on the ground, with an eye toward bringing a bipartisan set of comprehensive suggestions forward.

Water Compacts: using state authority to get in front of difficult issues and protect state powers and resources

The federal reserved water rights claims of Indian tribes and the United States can be resolved in one of two ways: litigation or negotiation. Litigation is costly, divisive, zero-sum, and protracted. While it is sometimes still necessary, Montana chose, when setting up our state-wide stream adjudication in 1979, to try to resolve these claims by negotiation whenever possible. To that end, Montana created the Montana Reserved Water Rights Compact Commission, a state agency specifically tasked with negotiating settlements with Indian Tribes and federal agencies claiming federal reserved water rights in the State of Montana.

Although some initial litigation was necessary to define the full parameters of the waiver of federal and tribal sovereign immunity contained in the McCarran Amendment (43 U.S.C. § 666), once it became clear that Montana state courts had jurisdiction over these federal and tribal claims, the work of the Compact Commission was able to begin in earnest. The first negotiated settlement was for the reserved rights of the Fort Peck Reservation, which became state law in 1985. Seventeen more compacts with six other reservations and 11 federal enclaves were negotiated over the next 30 years. Montana is very proud of this long track record of success.

Quantification of these large federal water rights through negotiation avoided costly litigation, resolves long-standing uncertainty for state-based water rights, and strengthens our ability to administer our water resources, which is so critical especially in times of drought. Congressional action is required to finalize three Tribal settlements. The Blackfoot Nation has worked diligently with the Department of the Interior to agree upon terms of federal settlement legislation, and I understand that the Senate Indian Affairs Committee intends to move that bill to final mark-up this fall. I hope this committee will be able to take up that bill shortly thereafter.

In addition, legislation to ratify the Fort Belknap reserved water rights settlement is currently being drafted, and will hopefully be ready for consideration in this Congress. Finally, the Montana legislature ratified the compact with the Confederated Salish and Kootenai Tribes this past spring, and initial discussions and drafting of federal legislation to ratify that settlement have begun as well.

I want to express my appreciation to Chairman Bishop for laying out a pathway for moving these settlements forward in the House in his letter of last February, and my administration looks forward to working with Chairman Bishop, Representative Zinke and this committee to advance all three of these important settlements as they become ready.

Congressional approval of the long-standing claims against the United States associated with these federal reserved rights is essential for the final approval of all three of these settlement agreements by the Tribes and for the incorporation of these rights into Montana's statewide water rights adjudication.

These settlements settle claims against the federal government and will allow the Tribal Nations, State and Federal Government to move forward into the future. Quantification and settlement of these reserved water rights is critical to the economies for these Tribal nations as well as the State of Montana's economy.

Endangered Species Act

Shortly after taking office, my staff and I engaged with WGA on our first substantive policy resolution, relating to the Endangered Species Act. There was much spirited discussion and we worked hard to come to agreement. It was perhaps at that moment that I started to understand the power of WGA and its commitment to bipartisan principles. Indeed, that Resolution (No. 13-08) provides on page 3:

“After working through their own strongly-held differences in how the Act should be renewed, Western Governors believe that the ESA can only be reauthorized through legislation developed in a consensus fashion that results in broad bipartisan support and maintains the intent of the Act.”

That continues to be our position today.

Our state holds our fish and wildlife resources in trust for all Montanans, and it's a responsibility we take seriously. We're proud of our wildlife heritage – one that includes almost every wildlife species that was present at the time Europeans were first observed on our landscape by Native Americans.

When the management of a wildlife species is taken over by the federal government, there are costs and responsibilities that are born by the state and its citizens – and the impacts to our economy, jobs, and way of life can be significant. But we also feel as if we've lost something that was ours, or maybe even failed at something we should have done better.

Governor Mead has outlined an ambitious initiative for the WGA, but it's not solely focused on the track record of the Endangered Species Act – it starts where any discussion of species management should start: by examining how the states are doing now in the management of those species. Starting there, my goal is to make sure we consider how we can promote and improve species conservation efforts, before the ESA comes into play.

In this discussion we can't lose sight of the fact that with species management an ounce of prevention is often worth a pound of cure. Funding proactive work now relating to species conservation can often head off expensive fights later over the status or needs of that species, and there are several examples in Montana where relatively small expenditures of money up front prevented major conflicts later on.

For example, in 2009 the USFWS was petitioned to list the northern leopard frog under the ESA. There wasn't a lot of information available regarding abundance. Montana conducted surveys, by matching an estimated \$25,000 of state funds with \$50,000 federal from the State Wildlife Grants Program, monies that are allocated by Congressional appropriation. As a result of those surveys, in 2011, the USFWS made a not warranted finding.

In Montana we've had a lot of experience with species management and subsequent federal involvement under the ESA that will be helpful as this discussion moves forward. But one recent experience stands out above the rest.

Last week's announcement by the Secretary of the Interior that the Greater Sage-Grouse should not be considered for listing under the ESA as a big victory for Montana's private property owners and our school trust, since over 70% of sage grouse habitat is on private or state land.

As good as that decision is, there's much behind it that could point the way to stronger state/federal partnerships and more resources for species conservation. Former Interior Secretary Salazar invited the western states to the table to try and build a collective effort by the state and federal agencies, as partners, that would keep the bird from being listed. My colleagues Governors Mead and Hickenlooper had the good sense to take him up on it. Montana came late to that effort, and I can tell you it was difficult and grueling work.

In the end the process was not perfect. I was frustrated with the land use plans from the Bureau of Land Management, and a few of my colleagues feel like they were not adequately heard. But it offers promise as a new model for greater state involvement, leveraging shared resources, and getting ahead of species management issues before they become problems we can't solve together. And let's remember that the end result is that the sage grouse doesn't need to be listed in significant part because the federal government trusts the state's management plans will work. That is success.

Last week, as I joined with fellow Governors Mead, Hickenlooper, and Sandoval as Secretary Jewell made her historic announcement regarding sage grouse, I couldn't help but think how logical it was for WGA to tackle these issues and attempt to build a regional consensus, as Governor Mead has proposed.

It's worth remembering that the Endangered Species Act was signed by President Richard Nixon in 1973, who recognized the Act as an important commitment by our nation to conserve and protect the rich diversity of animal and plant life for future generations. That noble responsibility still holds true today.

Thank you again for this opportunity.