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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

<p>WILDWEST INSTITUTE, CONSERVATION CONGRESS, and FRIENDS OF THE BITTERROOT,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>GOVERNOR of the State of Montana, THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, an agency of the State of Montana, and DIRECTOR of the Montana Department of Natural Resources and Conservation,</p> <p style="text-align: center;">Defendants.</p>	<p>Cause No. _____</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY RELIEF</p>
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INTRODUCTION

1. This is a civil action for declaratory relief, declaring that Governor Steve Bullock and the other named Defendants' meetings with a select collaborative group to develop a proposal for the Governor's nominations to the United States Forest Service for landscape-level expedited logging "treatments" were held in violation of the public's right to know and right to participate protected by the Montana Constitution and implementing statutes, and declaring that the group's and DNRC's decision and Governor's nomination is void and setting the decision aside, and directing the Defendants to hold meetings and make any new or

amended decision in accordance with the fundamental rights of the public to know and to participate in government actions.

PARTIES

2. Plaintiff WildWest Institute (WildWest) is a Montana non-profit, grassroots environmental organization based in Missoula, Montana. Its mission is to protect and restore forests, wildlands, watersheds and wildlife in the Northern Rockies. WildWest helps craft positive solutions that promote sustainability in our communities through advocating policies that restore naturally functioning ecosystems and protect communities from wildfire. It also works to ensure that the government follows the law and best science when managing public forests by regularly participating in the public decision process and through on-the-ground monitoring.
3. The WildWest Institute has members in Montana and throughout the United States. Members of the WildWest Institute hike, hunt, bike, camp, fish, backpack, gather non-timber forest products and generally appreciate public National Forest lands and native wildlife in Montana, including in some of the public National Forest lands nominated for priority fast-track logging by Montana's Governor.
4. Plaintiff Conservation Congress is a grassroots non-profit conservation organization that includes individual members and organizations dedicated to protecting and preserving National Forests and native wildlife in western states, including in Montana. It is organized in the State of California, with an office and staff in Montana. The Conservation Congress and its members comment on federal projects on National Forest lands and state wildlife management plans with the goal of alleviating harmful impacts to wildlife habitat and wildlife communities, hold government agencies accountable to environmental laws and regulations, participate in forest and wildlife management planning processes, and when necessary utilize administrative appeals processes and litigation to enforce laws and protect natural resources.
5. Plaintiff Friends of the Bitterroot is a non-profit conservation organization with a decades long record of participation in the management of public lands. Friends of the Bitterroot has over 300 members, some of whom hike, hunt, fish and

otherwise recreate on federal public lands. Friends of the Bitterroot has a record of insisting on legal and proper democratic public process in managing public lands.

6. Plaintiffs' interests in conservation and democratic process have been and will continue to be harmed by the Defendants' actions and decisions if their rights to participate and know are not declared and protected.
7. Steve Bullock is the duly elected Governor of the State of Montana, and is responsible for overseeing executive agencies and executive and ministerial officers of the State.
8. The Montana Department of Natural Resources and Conservation is an agency of the executive branch of the State of Montana.
9. John Tubbs is the Director of the Department of Natural Resources and Conservation.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this case pursuant to Article II, Sections 8 and 9 of the Montana Constitution, and Mont. Code Ann. §§ 27-8-101, *et seq.*, §§ 3-5-301, *et seq.*, § 2-3-114, and § 2-3-213; and the inherent power of this Court to review state agency decisions and actions.
11. Venue is proper in Lewis and Clark County pursuant to Mont. Code Ann. §§ 25-2-125 and 25-2-126, as that is where the cause arose.

FACTS

12. On February 7, 2014, the President signed into law the Agricultural Act of 2014, Public Law Number 113-79, commonly referred to as the "Farm Bill."
13. The Farm Bill contained a number of controversial provisions regarding management of and public participation in decision-making for lands managed by the United States Forest Service, which provisions were and are of concern to the Plaintiffs and other members of the public.
14. One such provision, at Section 8204 of the Farm Bill, provided for designation of "treatment areas" that would allow logging and other management activities with reduced public participation and scrutiny over the next 15 years. This provision required the Secretary of Agriculture to designate as part of an insect and disease

- treatment program 1 or more landscape-scale areas, in at least 1 national forest in each state experiencing an insect or disease epidemic, *if requested by the Governor of the State*. State Governors were given 60 days from the date the 2014 Farm Bill was enacted to make such requests to the Forest Service.
15. Governor Bullock nominated approximately 5.1 million acres of forest lands in Montana for “treatment” or expedited logging, in a letter to the Forest Service dated April 7, 2014.
 16. Press began to appear on April 8, 2014, referring to a “collaborative group” which had been formed to determine the lands to be nominated.
 17. No specific information was provided in the Governor’s letter, press releases, or press statements about how the collaborative group was formed, whether and how notice of its formation and meetings were provided to the public, or other such information.
 18. Only after Plaintiffs requested information of DNRC in response to the press reports regarding the collaborative group, did Plaintiffs and the public learn that the Governor’s recommendations were based upon the work of a small group whose members were selected by Bob Harrington and Tim Baker and which was formed to advise Bob Harrington, and in turn the Governor, during the process of identifying priority landscape national forests for nomination for expedited logging.
 19. The first request for this information was sent to DNRC on April 9, 2014, and a response was provided by DNRC on April 14, 2014.
 20. On information and belief, the DNRC response confirmed that a group had been formed to identify landscapes for nomination, and that five meetings were held between February 28, 2014 and April 4, 2014, by telephone conference with some members of the group meeting together in the same room and some calling in individually.
 21. On information and belief, the group consisted of Bob Harrington, Montana State Forester; Bruce Farling, Montana Trout Unlimited; Barb Cestero, Greater Yellowstone Coalition; Carol Brooker, Sanders County Commissioner; Julia Altemus, Montana Wood Products Association; Keith Olson, Montana Logging

Association; and Gary Burnett, Blackfoot Challenge and Southwest Crown Collaborative. Tim Baker, the Governor's Natural Resource Policy Advisor, John Tubbs, DNRC Director, and Christine Dawe, United States Forest Service, participated on conference calls with the group when requested.

22. There was no public notice for any of the meetings.
23. There were no minutes recorded and made publicly available for any of the meetings.
24. No agendas for the meetings were provided to the public before the meetings were held. Only one agenda was prepared for the first meeting, which was only provided to the public on April 14, 2014 in response to Plaintiffs' public information request.
25. The agenda for the first meeting reflects an initial intention to provide the decision or recommendation to the Governor by April 1, 2014 "after broader input/review", but no such input or review was ever sought or obtained.
26. No opportunities were provided for the public – other than the few individuals selected for the collaborative group – to participate, or to submit data, views, or arguments before the group made its decision advising DNRC and the Governor of lands to nominate, or before DNRC and the Governor decided to nominate those lands.
27. The issues discussed and the landscapes evaluated by the group are of substantial interest and importance to the Plaintiffs. The Plaintiffs are all involved in forest planning processes and issues, and if they had known that meetings were to be held to discuss and develop the Governor's recommendations, they would have observed the deliberations of the government and would have participated in the decision-making process to the extent possible and afforded by law.

CLAIMS FOR RELIEF

COUNT ONE – VIOLATION OF RIGHT TO KNOW / OPEN MEETINGS REQUIREMENTS

28. The preceding paragraphs are realleged as though set forth in full hereunder.
29. Article II, Section 9 of the Montana Constitution protects the right of the public to observe the deliberations of all public bodies or agencies of state government,

except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

30. The rights protected under Article II, Section 9 are commonly referred to as the “right to know”, which is implemented in part by the Open Meetings Act, Mont. Code Ann. §§ 2-3-201, *et seq.* The right to know is a fundamental right.
31. The right to know is inextricably linked with the right to participate protected in Article II, Section 8 of the Montana Constitution, which provides the public must be afforded reasonable opportunity to participate in the operation of state agencies prior to such agencies making any final decision. The right to participate is implemented in part by Mont. Code Ann. §§ 2-3-101, *et seq.*
32. The Montana Supreme Court has broadly construed the right to know and right to participate, and implementing statutes.
33. The collaborative group was a public or governmental body organized for a governmental or public purpose.
34. The collaborative group held meetings of a quorum of its membership to conduct public business.
35. The group’s meetings were not open to the public, in violation of the constitutional right to know and Mont. Code Ann. § 2-3-203.
36. No individual privacy concerns are at stake, and the meetings were not closed based on any other legitimate statutory exception.
37. Appropriate minutes from the meetings were not kept and made available for inspection by the public, in violation of the constitutional right to know and Mont. Code Ann. § 2-3-212.
38. Plaintiffs were denied their right to know and to observe the deliberations of the government in its decision-making process, in violation of Article II, Section 8 of the Montana Constitution.
39. Plaintiffs request a declaration, pursuant to the Declaratory Judgment Act, that their right to know was violated, and an order declaring the committee’s decision and Governor’s nomination of landscapes to the US Forest Service void, pursuant to Mont. Code Ann. § 2-3-213.

COUNT TWO – VIOLATION OF RIGHT OF PUBLIC PARTICIPATION

40. The preceding paragraphs are realleged as though set forth in full hereunder.
41. Article II, Section 8 of the Montana Constitution protects the right of citizens to have a reasonable opportunity to participate in the operations of government agencies prior to any agency decision. This is a fundamental right.
42. The right of participation is implemented, in part, by Mont. Code Ann. §§ 2-3-101, *et seq.* The right of participation is inextricably linked with the right to know protected by Article II, Section 9 of the Montana Constitution, and implemented in part by Mont. Code Ann. §§ 2-3-201, *et seq.*
43. The Department of Natural Resources and Conservation is an agency of the state.
44. The collaborative group was comprised of representatives from the DNRC and other state officials, and was organized for a governmental or public purpose.
45. The DNRC and the collaborative group made a final decision identifying lands for the Governor to nominate, including approximately 5.1 million acres of public lands in Montana for “expedited logging” and other “treatments,” and the Governor nominated these lands in his letter to the Forest Service.
46. Plaintiffs and other citizens were not afforded a reasonable opportunity to participate in the operation of the DNRC or the collaborative group prior to a final decision being made, in violation of Article II, Section 9 of the Montana Constitution and Mont. Code Ann. §§ 2-3-101, *et seq.*
47. No public notice was provided for the meetings, no assistance was provided for public participation, no agendas for the meetings were provided to the public (and only one agenda was prepared for the first meeting), and no public comment was allowed, all in violation of Mont. Code Ann. § 2-3-103.
48. The action and deliberations were and are of significant interest to the public.
49. Interested persons, including Plaintiffs, were not afforded a reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to the DNRC and group making a final decision and prior to the Governor’s nomination to the Forest Service, in violation of Mont. Code Ann. § 2-3-111.
50. No exceptions apply to the decision and process at issue in this case, which might otherwise excuse the DNRC and its collaborative group from compliance with the

public participation provisions of the Montana Constitution and implementing statutes.

51. Plaintiffs request a declaration, pursuant to the Declaratory Judgment Act, that their right to participate was violated, and an order setting aside the DNRC and group's decision and Governor's nomination to the US Forest Service, pursuant to Mont. Code Ann. § 2-3-114.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiffs request the following relief:

1. An order declaring Defendants' meetings were held in violation of Plaintiffs' right to know under the Montana Constitution and Open Meetings Act;
2. An order declaring the group's and DNRC's decision, and the Governor's nomination based upon the group's/DNRC's decision, void under Mont. Code Ann. § 2-3-213;
3. An order declaring Plaintiffs' right to participate under the Montana Constitution and implementing statutes was violated;
4. An order setting aside the group's and DNRC's decision, and the Governor's nomination based upon the group's/DNRC's decision, under Mont. Code Ann. § 2-3-114;
5. An order directing the Governor and DNRC to hold meetings in accordance with the law, including providing public notice and agendas, and affording reasonable opportunities for the public to participate before making any additional or new nominations as the Governor may have opportunity to make;
6. Costs;
7. Attorneys fees pursuant to Mont. Code Ann. § 2-3-221, and the private attorney general theory; and
8. For such other relief as the Court deems just and proper, or as Plaintiffs may later request.

DATED this 7th day of May, 2014.

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