



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

March 8, 2022

## MEMORANDUM

TO: Martha Williams, Director, U.S. Fish & Wildlife Service

FROM: Heather C. Gottry, Director, Departmental Ethics Office and  
Designated Agency Ethics Official HEATHER GOTTRY

SUBJECT: Limited Ethics Pledge Waiver Pursuant to Section 3, Executive Order 13989

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HEATHER GOTTRY  
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Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021) and as designated by the Acting Director of the Office of Management and Budget,<sup>1</sup> and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former employer, the Western Association of Fish and Wildlife Agencies (WAFWA) is a party or represents a party, provided that you did not previously participate personally and substantially in the same matter on behalf of WAFWA or any other party. Please be advised that this limited waiver replaces the limited waiver that I issued to you on October 1, 2021, and is being issued to cover your service as the Director of the U.S. Fish and Wildlife Service (FWS).

### I. Background

On January 20, 2021, President Biden signed Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (Ethics Pledge). The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the “former employer” restriction at Section 1, paragraph 2:

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<sup>1</sup> Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel,” U.S. Office of Government Ethics, Legal Advisory LA-21-04, (Feb. 18, 2021).

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.<sup>2</sup> Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver.

II. Your Prior Position with WAFWA and Current Position at the U.S. Fish and Wildlife Service

You entered federal service on January 20, 2021 as Senior Advisor to the Secretary, U.S. Department of the Interior (DOI or Department), and signed the Ethics Pledge on January 25, 2021. You served as Principal Deputy Director for the FWS from the time you entered federal service until you were confirmed by the U.S. Senate on February 17, 2022, to the position of Director of the FWS. Your commission for the position of Director was signed on February 18, 2022, by President Biden, and you were sworn in and appointed as Director of the FWS on March 8, 2022.

Prior to joining the Biden Administration, you most recently served as the Director of the Montana Department of Fish, Wildlife and Parks from 2017 to 2020. There, you led the Department and embraced the diversity of Montana's natural resources and outdoor recreational values and also incorporated public expectations and values into the agency's direction. In addition, from July 2020 until January 2021, you served on the WAFWA Executive Committee as Vice President. You have noted that you served in the role of Vice President of WAFWA for a short period of time and have confirmed that you did not make financial or substantive policy decisions during your tenure.

WAFWA is a 501(c)(4) non-profit organization consisting of 24 states and Canadian provinces with the mission of supporting sound resource management and building partnerships to conserve wildlife. The WAFWA Constitution and Bylaws provide that the President and Vice President are considered officers and are elected each year during the annual meeting. Additionally, the Constitution and Bylaws state that the WAFWA Executive Committee is composed of the President, Vice President, Chair of the Budget, Finance, and Compliance Committee, and four other at-large members appointed by the President. Further, WAFWA's Executive Committee is responsible for business matters, to include: making interim decisions for WAFWA; considering petitions for technical committees, workshops and other regional

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<sup>2</sup> See OGE Legal Advisory, LA-21-04 (Feb. 18, 2021).

coordination efforts within the domain of WAFWA; setting registration fees for the annual conference; reviewing and approving ideas, recommendations and decisions of other committees as appropriate; and overseeing all contracts.

As defined in E.O. 13989, a former employer is any person or entity for whom you have, within two years prior to your appointment, served as an employee, officer, director, trustee, or general partner.<sup>3</sup> You served as an officer of WAFWA via your Vice President position and based on your responsibilities as outlined by WAFWA's Constitution and Bylaws, your Vice President position involved fiduciary duties to WAFWA. Based on this information, the Departmental Ethics Office (DEO) has determined that WAFWA is a former employer for the purposes of the Ethics Pledge.

As the DEO determined that WAFWA is properly considered your former employer for purposes of the Ethics Pledge, ethics officials have advised you that you are required to recuse and not participate in certain particular matters involving specific parties that is directly and substantially related to WAFWA. You have confirmed that you sought guidance and recused, whenever appropriate, from participating in official actions affecting WAFWA from the date of your appointment until a limited waiver was issued to you on October 1, 2021. Absent a waiver of the applicable Ethics Pledge restrictions, you would have continued to be restricted from participating in any particular matter involving specific parties, including a meeting or other communication, that is directly and substantially related to WAFWA.

As FWS Director, your duties and responsibilities include advising senior leadership, including the Secretary and Deputy Secretary, and providing essential administration and expertise with regard to FWS programs and operations. As FWS Director, you are the most senior DOI official serving within the FWS and your participation in the review and direction of substantive policy and programmatic matters is critical to the effectiveness of the FWS mission.

You confirmed to the DEO that while serving as Principal Deputy Director of the FWS from January 20, 2021 through October 1, 2021, you properly recused yourself from all particular matters related to WAFWA in compliance with applicable ethics laws and regulations and sought guidance from the DEO. However, as reflected in the limited waiver issued on October 1, 2021, your recusal was no longer manageable as of that date and there was a critical need for your unique qualifications and participation in matters involving WAFWA. You have further confirmed to the DEO that you have complied with the terms of the limited waiver issued to you on October 1, 2021, from the date of issuance to present, and that the critical need for your participation in certain particular matters involving specific parties in which WAFWA is a party or represents a party remains the same.

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<sup>3</sup> OGE has advised that the definition of former employer includes non-profit organizations, as well as those in which an appointee served without compensation. The definition of former employer does not include purely honorific positions or unpaid positions as a member of an advisory board or committee of a non-profit organization unless the position involved fiduciary duties of the kind exercised by officer, directors, or trustees. Ethics Pledge: Revolving Door Ban--All Appointees Entering Government, OGE DO-09-011 (March 26, 2009) (emphasis added).

III. It is in the Public Interest to Grant a Limited Waiver of Ethics Pledge Paragraph 2 Restrictions Applicable to WAFWA

The FWS requires your engagement with WAFWA, particularly as related to special circumstances related to the environment. You and senior FWS career staff have indicated that a significant number of pending FWS matters involve and/or are related to WAFWA as that organization represents the interests of 24 states. Although other FWS employees currently serve in senior leadership roles within the agency, certain matters involving WAFWA either can only be approved by, or are only appropriate to be handled by, the most senior official within FWS. Additionally, your current WAFWA recusal has impaired the ability of FWS to interact with WAFWA as an important stakeholder and partner. Finally, the recusal has limited the ability of the FWS to engage with WAFWA leadership in nationally significant matters that require consensus building in order to advance Administration priorities related to resource conservation and management.

You are uniquely qualified to meet the government's needs and to engage with WAFWA. In addition to your above-referenced position role as the Director of the Montana Department of Fish, Wildlife and Parks, you were previously an Assistant Professor of Law at the Blewett School of Law at the University of Montana in Missoula, Montana, co-directed the university's Land Use and Natural Resources Clinic, and co-supervised the Public Land and Resources Law Review and the Environmental Law Group. You also previously served DOI as Deputy Solicitor for Parks and Wildlife for two years, providing counsel to the National Park Service and the Fish and Wildlife Service.

You have also previously served as agency legal counsel for the Montana Department of Fish, Wildlife & Parks, where you advised and represented the department on real estate transactions, Endangered Species Act policy and litigation, and on state and national environmental policy acts. During your tenure, you also taught continuing legal education classes on real property law and on public participation in government. You formerly served on the Boards of Directors for the National Conservation Leadership Institute and the Archie Bray Foundation and on the Advisory Board for the Franke School of Forestry and Conservation at the University of Montana.

As described above, your prior position was that of an officer with WAFWA, a nonprofit organization. You were requested by WAFWA to serve in this role, in part, because of your position with the Montana Department of Fish, Wildlife and Parks. You held an officer position with WAFWA, and were responsible for decisions to advance the WAFWA mission of representing 24 states and Canadian provinces, as well as supporting sound resource management, and building partnerships to conserve wildlife,

Finally, the purposes of the Ethics Pledge restriction with respect to your former position with WAFWA may be satisfied through the limitations contained in this limited waiver.

Particularly the limitations that you will continue to recuse from participating in any particular matter in which you participated in while at WAFWA, within two years before the date of your appointment.

Continuing your ongoing recusal with WAFWA would result in substantial limitations in your ability to perform the essential duties of your position and would significantly and negatively impact important FWS mission areas. Therefore, we have determined that it is within the public interest to grant a limited waiver for Ethics Pledge restrictions related to WAFWA. Absent this limited waiver, you would be required to continue to recuse yourself from participating in matters involving WAFWA which would impair your ability to perform the essential responsibilities of your official position to advance Administration priorities with respect to the environment. Further, FWS would be deprived of your particular credentials and expertise, for which a critical need exists within the agency.

#### IV. Conclusion

For the reasons set forth above, I have concluded that it is in the public interest to grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as FWS P Director and to advance the interests of the FWS and the Department. Pursuant to this limited waiver, you may participate in specific party matters arising at FWS or the Department where WAFWA is a party or represents a party, and you are permitted to participate in those specific party matters, including meetings or communications where WAFWA is present.

Please note that this waiver does not permit you to participate in any party-specific matters directly affecting the financial interests of WAFWA, including, but not limited to, contracts or grants. Further, this waiver does not permit you to participate in matters where you previously participated personally and substantially as board member for WAFWA or any other party. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, including other applicable recusals, as well as your own attorney bar obligations. Additionally, this limited waiver covers only your role as FWS Director and does not extend to any other position. In accordance with Section 3(b) of Executive Order 13989 and OGE LA-21-04, once issued, this waiver shall be publicly posted on the DOI website.

CC: Dana Remus, Counsel to the President