



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
1610 (CO-910)

AUG 06 2015

The Honorable John Hickenlooper
Governor of Colorado
136 State Capitol Building
Denver, CO 80203

Dear Governor Hickenlooper:

Thank you for your letter dated July 29, 2015, which provided your consistency review of the Northwest Colorado Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (LUPA/FEIS). The Governor's consistency review is an important part of the BLM's land use planning process. The partnership between the State of Colorado and the BLM is an integral part of successful land management. Our partnership is particularly important as we work to address the threats to Greater Sage-Grouse GRSG and its habitat to conserve the species and to avoid the need for a determination by the Fish and Wildlife Service (FWS) that the species are warranted for listing under the Endangered Species Act (ESA). We greatly appreciate the time and attention you and your staff have spent on this important effort.

The Northwest Colorado Proposed LUPA/FEIS is part of an unprecedented and proactive partnership to conserve GRSG and its habitat by incorporating conservation measures in the land use plans to address identified threats to the GRSG. The Proposed Plans were developed in coordination with a range of stakeholders and cooperators, including Colorado Parks and Wildlife (CPW) and the Western Governors Association Sage-Grouse Task Force.

The purpose of the GRSG plans and plan amendments is to identify and incorporate conservation measures to conserve, enhance and restore GRSG habitat by reducing, minimizing or eliminating threats in a manner that provides sufficient regulatory certainty to the FWS to support a finding that protection under the ESA is not warranted. The plans were developed in collaboration with CPW and the State of Colorado to reflect local ecological conditions and resource needs and to incorporate State-recommended measures. In order to provide certainty of regulatory mechanisms, the BLM has included common elements to address specific threats to the bird and to provide a net conservation gain for GRSG and its habitat across the range to reduce the need to list the species under the ESA. The plans allow for state-based variations where different approaches or priorities were consistent with the overall conservation objectives and can continue to provide adequate regulatory certainty.

The BLM is able to address some of the concerns outlined in your letter either through a change or a commitment to clarify our intent, particularly with regard to habitat map updates, habitat objectives, and priority high voltage transmission lines. The BLM looks forward to continued collaboration with the State in the coming weeks to finalize that language. The standard for review and the specific responses to issues raised is found below.

Statutory and Regulatory Framework for Consistency Review

In considering your recommendations, I am guided by the BLM's planning regulations in 43 C.F.R. §1610.3-2. These regulations implement Section 202 (c)(9) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1712(c)(9), which states in part:

In the development and revision of land use plans, the Secretary shall...to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l-4 et seq. note], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The regulations state that RMPs and amendments to RMPs “shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein” of State and local governments and Indian Tribes “so long as the guidance and resource management plans [of the State and local government and Tribe] are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands....” 43 C.F.R. §1610.3-2(a). In the absence of such plans, RMPs and amendments shall “be consistent with officially approved and adopted resource related policies and programs” to the maximum extent possible and “so long as the guidance and resource management plans are

consistent with the policies, programs, and provisions of Federal laws and regulations applicable to public lands...” 43 C.F.R. §1610.3-2(b).

The BLM incorporated significant portions of the Colorado Greater Sage-Grouse Conservation Plan (2008) and the Colorado Package into the Northwest Colorado Proposed Plan. However, the BLM has determined that some of the State’s recommendations would not be consistent with the purposes, policies, and programs of federal laws applicable to public lands. Specifically, FLPMA generally requires the BLM to manage public lands for multiple-use and sustained yield, taking into account the long-term needs of future generations for renewable and non-renewable resources -- including fish and wildlife -- and to seek achievement and maintenance in perpetuity of renewable resources. 43 U.S.C. 1732(a); 1702(c), (h); 1701(a)(8). The BLM’s Special Status Species Manual sets forth BLM policy with respect to FLPMA’s consideration of wildlife and fish and renewable resources. In particular, the objectives of the special status species policy are A) to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species; and B) to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA, Manual No. 6840, Section .02(A)(B). Further policy is found in BLM’s IM 2012-044 (Dec. 27, 2011), which initiated the “BLM National Greater Sage-Grouse Land Use Planning Strategy” and provided guidance and direction for the agency’s consideration of GRSG conservation measures. The IM and the planning strategy were initiated in response to the FWS’ March 2010 decision finding, in part, that existing regulatory mechanisms found in the BLM’s LUPs were inadequate to protect the species. The IM states that “the BLM needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-wide use restrictions into land use plans” in order to “conserve sage-grouse and its habitat and potentially avoid an ESA listing.” In addition, the Approved RMP Amendment (ARMPA) will be consistent with the BLM’s 2004 National Sage-Grouse Habitat Conservation Strategy which calls for managing public lands in a manner that will maintain, enhance and restore sage-grouse and sagebrush habitats while continuing to provide for multiple uses of lands under BLM stewardship.

In accordance with FLPMA’s direction to manage the public lands pursuant to principles of multiple use and sustained yield and the policy direction set forth in IM 2012-044 and the BLM’s Special Status Species Manual, the BLM’s purpose for this planning effort is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. The goal of the BLM’s GRSG conservation strategy range-wide is to provide for the conservation of the GRSG and its habitat and to provide the FWS with regulatory certainty that in turn will potentially preclude a determination that the species is warranted for listing.¹ To the extent a particular recommendation is inconsistent with that goal or the policies identified above, the BLM has respectfully declined to adopt it. See 43 U.S.C. 1712(a)(9); 43 U.S.C. 1610.3-2.

¹ Notably, the chairs of the Sage Grouse Task Force recognized this goal in 2011 by making a commitment to develop an action plan that “prescribes near-term conservation measures, that when added to the body of past and current efforts would ensure a viable sage-grouse population in the West and preclude the listing of the species.” (Mead, Hickenlooper, and Pool Letter, June 2011)

To ensure that we have responded to your concerns, the issues you identified in your consistency review are listed below, and are followed by the BLM's response. The BLM has provided information to resolve several areas of disagreement and to clarify and address concerns as we finalize the plans.

State of Colorado's Recommendations and the BLM's Responses

Issue: Exceptions to No Surface Occupancy (NSO) Stipulations in Priority Habitat Management Areas (PHMA)

Governor's Concern: The Proposed LUPA delegates to the U.S. Fish and Wildlife Service (FWS) the ability to veto proposed exceptions to NSO stipulations generally required on oil and gas leases in PHMA, even if Colorado's Division of Parks and Wildlife (CPW) and BLM biologists find that the proposed exception is unlikely to harm Greater Sage Grouse. (See Appendix D and Table 2.2 at p. 2-21). With the exception of species listed under the Endangered Species Act (ESA), Colorado's Parks and Wildlife Commission and CPW have statutory authority over wildlife management in Colorado. Colo. Rev. Stat. §§ 33-1-101, 104, 33-9-103. As the greater sage-grouse has not been listed as endangered or threatened under the ESA (and the goal of the LUPA is to keep it that way) FWS does not have jurisdiction over management decisions concerning the greater sage-grouse or its habitat in Colorado.

BLM Response: The BLM has proposed that new fluid mineral leasing in Priority Habitat Management Areas (PHMA) would include an NSO stipulation to ensure surface disturbance is limited. In order to provide the greatest degree of certainty that this restriction would be followed, there would be no waivers or modifications allowed. An exception would be permitted only if it would provide a benefit to GRSG or its habitat. Your letter states that the Proposed LUPA delegates to the U.S. Fish and Wildlife Service (FWS) authority over exceptions to NSO stipulations in PHMA, but does not identify how such input from the FWS is inconsistent with state, local, or tribal resource-related plans (or policies or programs). The provision does not "delegate" authority to FWS; rather, it properly seeks input from an agency with expertise regarding the biology of the GRSG. This will provide the greatest certainty that proposed exceptions are consistent with the criteria and ensure that the conservation objectives identified in the plan are achieved.

The BLM has determined that adopting this recommendation would be inconsistent with the overall conservation objectives identified in the plan and described above. The BLM therefore respectfully declines to adopt this recommendation.

Issue: Priority High Voltage Transmission Lines

Governor's Concern: This decision is inconsistent with the priority and urgency that both Colorado and the federal government have placed on improving protections for the greater sage-grouse in this state. The FEIS discusses the many adverse environmental consequences of constructing and operating high voltage transmission lines in greater sage-grouse habitat. The impacts can be significant, including habitat loss, fragmentation and degradation, invasion of

noxious weeds, increased predation on grouse, direct mortality, changes in lek dynamics, lek abandonment, and avoidance and/or lower population growth rates near power lines.

BLM Response: The BLM is in the process of authorizing applications for two priority transmission projects affecting Colorado: The TransWest Express and portions of the route for the Gateway South transmission project, which is co-located with the proposed route for TransWest Express.

The BLM, working with the proponents, will seek to achieve net conservation gain by analyzing and including appropriate mitigation measures that aim to avoid, minimize, and provide compensatory mitigation for impacts to GRSG in the project specific NEPA document for these two lines. We will ensure that this is clarified in the Record of Decision for the LUPA.

Your letter does not identify any inconsistency between this decision and any state, local, or tribal resource-related plans (or policies or programs), other than a reference to the prioritization of sage-grouse conservation. However, in light of the BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-grouse and its habitat so as to potentially reduce the need to list the species, the BLM will partially accept this recommendation and seek to achieve net conservation gain as described above.

Issue: Habitat Objectives

Governor's Concern: Site-specific science should be used to establish habitat objectives. Specifically, the Proposed LUPA habitat objectives should be consistent with Colorado's Statewide Greater Sage-grouse Conservation Plan.

BLM Response: The GRSG Habitat Objectives as presented in the Proposed LUPA/FEIS provide vegetation objectives for all sage-grouse life history stages and are based on the habitat conditions within the planning area consistent with the best available science. These objectives will assist the BLM with meeting, or moving toward meeting, applicable land health standards in GRSG habitats through the establishment of measurable desired outcomes in the plan.

The BLM acknowledges that the table included represented range-wide data, not the state-specific table previously developed with the state and FWS. The BLM will include the Habitat Objectives Table in the Record of Decisions and Approved RMP Amendment that is consistent with Colorado's Statewide Greater Sage-Grouse Conservation Plan (2008).

Issue: Habitat Map Updates

Governor's Concern: The Proposed LUPA does not adequately commit to updating the maps to reflect Colorado's revisions. Revise the Proposed LUPA to provide that whenever CPW updates maps of PHMA and GHMA, the BLM will adopt the updates for the LUPA. When doing so, absent extraordinary circumstances, the BLM will treat the updates as plan maintenance rather than as a land use plan amendment.

BLM Response: As new information becomes available about GRSG habitat, the BLM, in coordination with the CPW and FWS, and based on best available scientific information, may revise the GRSG PHMA and GHMA maps and associated management decisions through plan maintenance or plan amendment, as appropriate and depending on the level of change. The BLM is committed to taking any changes in habitat maps into consideration when it makes future decisions in the planning area (e.g. where criteria for NSO exceptions may be met, determining appropriate RDFs/BMPs).

However, in order to change the allocations and other management decisions associated with the current habitat maps, the BLM must make a determination under BLM planning regulations and guidance regarding what procedure is required to implement that change, either plan amendment or maintenance. The BLM cannot make that decision until we are presented with the facts of a particular mapping change.

The BLM finds it is essential to provide the certainty that management actions will occur in the identified habitat management areas for the Greater Sage-Grouse. The BLM therefore respectfully declines to adopt this recommendation as inconsistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands described in more detail above.

Please note that you have the opportunity to appeal this response to the Director of the BLM pursuant to 43 CFR 1610.3-2(e). Such an appeal must be filed within 30 days of your receipt of this letter, by September 8, 2015. Please submit appeals to:

BLM Washington Office
Attention: Director of the BLM
1849 C Street NW, Rm. 5665
Washington DC 20240

Thank you for your thorough, comprehensive and thoughtful consistency review. I also appreciate the hard work your staff and the various state agencies and local governments have contributed to the consistency review and BLM's Sage-Grouse Planning Strategy. I look forward to continuing a productive and collaborative working relationship as we move forward to develop clarifying language where noted above and in implementing the Plans.

If you or your staff has any questions about the Northwest Colorado Greater Sage-Grouse Proposed LUPA/FEIS or the Governor's consistency review process, please contact Erin Jones at (970) 244-3008 or Bridget Clayton at (970) 244-3045.

Sincerely,



Ruth Welch
State Director