

Tim,

Sorry for the delay in getting this to you, but better late than never I suppose. I have 3 general concerns with Revised Section 3 as currently written, and they are:

1. Avoidance. While the current version may capture the intent of the original strategy, I think it falls very short of the bar we need to meet for the conservation of the Sage-grouse. Essentially our only "avoid" mechanism at this time is the good will of the project developer. There are areas in this state, and projects that may occur in those areas, that would result in the extirpation of the local Sage-grouse population if developed. That is the whole reason behind the need for a true "regulatory mechanism". I simply don't think the current avoid strategy is adequate to meet the Fish and Wildlife Service's bar based on the documents I've read, the personal correspondence that I've had with their Sage-grouse experts at all levels, and their "Conservation Biology - ESA" mindset. To be completely frank, I personally don't think this approach is adequate. Simply stated, there are areas in the State and certain projects that simply cannot be mitigated to result in a true "no net loss" to the Sage-grouse, sometime avoidance isn't just the first option, it's the only option.

2. Given the discussion above, I believe at a minimum, we have to have a process in place to identify "avoid" areas early in the development process. If we aren't going to put "avoid" areas on a map, then the only other way to do it is via process. On page 2 (6 of 14) it states that "Any proposed action within an SGMA will trigger consultation with the SETT for assessment of impacts to sage-grouse and their habitat and compliance with SEC and other relevant agency policies. It goes on to talk about the determination of habitat and a "ground-truthing" of the project site." I believe this initial "ground-truthing" is essential; however, it cannot simply be conducted by the SETT. First, that is too much of a burden to the current staff. Second, NDOW is the only agency with staff that is knowledgeable about the local habits and habitats of the birds. NDOW is also the agency that the Fish and Wildlife Service is going to want to hear from in terms of assessing the potential impacts of a proposed development. So I believe this section needs to explicitly state that "the SETT and NDOW" will conduct the ground-truthing.

The ground-truthing should result in:

1. A preliminary assessment of what portions of the project area are recommended for avoidance and why;
2. What minimization actions are needed and why; and,
3. What viable mitigation options may be available for that particular site and population and why (you could even provide an initial range of potential mitigation costs through the credit system).
4. Additionally, if the project proponent wants to challenge the "habitat mapping" because maybe it's in an area of the map that doesn't have good existing data, then the preliminary assessment or "ground truthing" would identify the process for filling such a void (i.e. hang x number of VHF and x number of satellite collars for x months at the developer's expense to improve the understanding of sage-grouse use in that given area).

This approach would convey the preferred "avoid, minimize and mitigate" measures right up front, and provide a framework for improving the mapping in a given area if needed. At that point it's up to the developer as to how they want to proceed as they know up-front what the possible pitfalls of the site are, and if their project is denied or tagged with a huge mitigation price tag, then that is their assumed risk based on knowing upfront what the challenges were. It also provides documentation for the SEC in the event that the developer ultimately challenges the outcome of the avoid, minimize and mitigation process.

I think this process puts the best indigenous science right out front and doesn't allow the developer to dictate the process without an understanding of the potential consequences. In my experience as a consultant who has worked both for and against projects such as this, the biggest issue I see is a lack of initial communications. Developers will lock up rights-of-way, claims, etc. without conducting a constraints analysis and then when their project is denied, or is too expensive to develop, they get upset about the money they are out. If we flip the paradigm to communicate the issues right up front, then it becomes the contractors decision as to what level of risk and cost they are willing to assume moving forward.

3. Maximum allowable disturbance (MAD). I think using the "Wyoming DDCT" is going to be a huge burden on staff, and may unintentionally dilute the intent of the MAD concept. I think sticking with a 5% disturbance threshold within a given section (640 acres) of land is the cleanest and most efficient way of doing this. Perhaps this needs to fit into the initial "ground-truthing" evaluation.

I also think we run into an issue with simply saying development in an area with more than 5% disturbance will be assessed a higher mitigation rate. I think that locks us into one approach and doesn't give us adaptive management flexibility that we need. I think we'd be better off saying that "If the total disturbance is determined to be five percent or greater of sage-grouse habitat within the 640-acre evaluation area, then further development will not be allowed. An exemption to this may be allowed based on an evaluation conducted by the SETT and NDOW if additional disturbance is not deemed to be detrimental to the local population of Sage-grouse, or if additional disturbances can be adequately mitigated to result in no net loss of habitat."

I have probably been a little wordy on some of this, but I'm trying to capture my thoughts about this over the past two weeks. I really think we need to nail these three aspects or we're going to fall short of our intended goal. I truly believe we need to have faith in our State personnel and allow them to do their job and allow some degree of flexibility for judgment calls and process. I also think we need to be fair to industry by conveying issues and concerns early, to provide the degree of "certainty" that they have asked for. That being said, we need to do that in a way that does not result in the tail wagging the dog.

Please feel free to contact me with any questions or to discuss further.

Thanks,

Jeremy