



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
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SEP 16 2015

The Honorable Brian Sandoval
Governor of Nevada
Carson City, Nevada 89701

Dear Governor Sandoval:

This letter is in response to your appeal of the response provided by the Acting Nevada State Director regarding your consistency review of Nevada and Northeastern California Sub-regional Greater Sage-Grouse Proposed Land Use Plan Amendment (referred to hereafter as the PRMPA). The Governor's consistency review process is a very important part of the Bureau of Land Management's (BLM's) land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this process. The partnership between the State of Nevada and the BLM is significant, and I believe our joint work to address the threats to Greater Sage-Grouse (GRSG) is a stellar example of what is possible when we work toward a common goal. Like you, I hope that these efforts will allow the U.S. Fish and Wildlife Service (FWS) to determine that the bird does not warrant listing under the Endangered Species Act (ESA).

As you know, the PRMPA is the result of an unprecedented west-wide effort to conserve GRSG and its habitat through detailed conservation measures and land use planning efforts at both the state and Federal levels. Because successful management of the western landscapes inhabited by GRSG is dependent on the actions of multiple parties, the conservation measures contained in the BLM plans are built to complement the specific commitments to GRSG conservation that have been made at the local and state levels. Of note, the BLM plan builds upon the foundation for GRSG conservation implemented by the State of Nevada, including the State's avoid, minimize, and mitigate strategy and the Conservation Credit System (CCS) as a means of mitigation. We are pleased to have developed the plan in close coordination with your staff, Nevada Department of Wildlife (NDOW), Nevada Sagebrush Ecosystems Technical Team (SETT), the Western Governors Association Sage-Grouse Task Force, the United States Forest Service (USFS), the FWS, and a wide range of other interested stakeholders.

The purpose of the National GRSG Planning Strategy is to identify and implement measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat. In order to avoid a potential listing and the effects it would have on every activity on millions of acres of public and private lands, the plans need to provide a high degree of regulatory certainty that those plans will be implemented and be effective. To help achieve that level of certainty, the BLM has included common elements across the range to address specific

threats to the species and its habitat. The purpose of these common elements is to provide for a net conservation gain for the GRSG. However, the plans also recognize that different circumstances exist across the range, which is why their development included state-based variations where different approaches or priorities were consistent with the overall conservation objectives.

The BLM was able to address many of the concerns outlined in your letter through clarification of the management direction provide by the final plans, in particular with regard to livestock grazing management decisions and the recognition of valid existing rights. These clarifications also recognize the Barrick Bank Enabling Agreement as an example of an approach to mitigation that achieves a net conservation gain. These clarifications are reflected in the Record of Decision and/or the Approved Resource Management Plan Amendment (ARMPA) – http://www.blm.gov/wo/st/en/prog/more/sagegrouse/final_eiss/nevada.html.

With the aforementioned context and goals in mind, the applicable regulations at 43 C.F.R. 1610.3-2(e), state that “[t]he Director shall accept the [consistency] recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state’s interest and the national interest.” As more fully described above and in the State Director’s response to your consistency review, there is a strong national interest in the implementation of an effective, range-wide GRSG strategy that reduces, minimizes or eliminates threats to GRSG habitat, including common range-wide elements that provide a high degree of certainty of effectiveness in order to potentially preclude a determination by the FWS that the species is warranted for listing under the ESA.

As you know, the PRMPA is the culmination of an extensive planning process, involving significant time and resources from numerous partners including the State of Nevada. I believe this has led to the creation of a strong, range-wide approach for the conservation of GRSG habitat on BLM lands and, for the reasons set forth more fully below, I find that the recommendations in your letter do not meet the standard described above for granting your appeal. Below is my review of the issues and recommendations presented in your appeal letter:

Inconsistencies between the BLM’s Nevada GRSG PRMPA and the State GRSG Plan

As you know, the BLM adopted much of the State GRSG Plan into the PRMPA. However, in addition to the measures in the State plan, the BLM is required under the applicable regulations to include in its land use plans goals, objectives, allocation decisions and management actions that help the BLM to specifically manage certain resources on public land. These components are also a critical part of BLM’s Special Status Species policy, under which disturbance-limiting land use plan allocation decisions are a key component. The State’s Plan does not contain such allocation decisions or management actions as it relies largely on cost-based incentives to implement an avoid, minimize, and mitigate strategy. In effect, if an applicant has sufficient funds to buy credits, a project could be allowed to be placed anywhere, even in the most important habitat. The BLM has found that this approach, especially before it has built an implementation track record, may not address the BLM’s land use planning requirements and does not provide the requisite level of regulatory certainty for a landscape-level species like the GRSG. As noted above, the allocation decisions presented in the BLM’s plans and amendments range-wide were designed to provide that level of certainty. Therefore, I concur with the Acting

Nevada State Director's response and respectfully deny your appeal on this issue because it is inconsistent with the goal of the BLM's GRSG conservation strategy.

Anthropogenic Disturbance Cap Will Hinder GRSG Conservation Efforts

Your letter states that the Disturbance Cap Protocol (DCP) would encourage habitat fragmentation because it provides an incentive to locate new disturbances in areas with little existing disturbance. The goal of the DCP has always been to encourage the co-location of new disturbances with existing disturbances if the activity cannot be avoided altogether within GRSG habitat in order to limit overall disturbance levels in these areas and the impact that they have on the species. The BLM Nevada State Director worked closely with your office to craft the DCP. Due to that close coordination and in recognition of the State's work and investment in the CCS, the BLM's plan in Nevada is the only one to include an exception to the cap. The ARMPA adopts a DCP with a 3% cap, except in situations where a biological analysis indicates a net conservation gain to the species, and the State of Nevada, the BLM, and FWS concur with that analysis.

With respect to the suggestion that the DCP will encourage disturbance in previously undisturbed areas, the Nevada ARMPA contains allocation decisions separate and apart from the DCP that will limit or preclude new disturbance in Priority Habitat Management Areas (PHMA) and minimize disturbance in General Habitat Management Areas (GHMA). The BLM believes that these protective allocation decisions (i.e. no surface occupancy for fluid mineral leasing in PHMA), will limit additional disturbance from occurring and causing habitat fragmentation, thereby maintaining disturbance under the 3% disturbance cap threshold.

In addition, the ARMPA has been clarified to provide for exceedance of the 3% disturbance cap within open designated utility corridors. This clarification has now been added to the BLM Nevada and Northeastern California's ARMPA in order to ensure co-location with existing disturbances. Based on best available science, when disturbance exceeds three percent at either the biologically significant unit or project scale, GRSG numbers are affected and tend to decline (derived from Holloran 2005, Walker et al. 2007, Doherty et al. 2008, Naugle et al. 2011).

Based on the foregoing, I therefore deny your appeal on this issue and concur with the Acting State Director's determination that this recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

Sagebrush Focal Areas Are Scientifically, Functionally And Administratively Flawed

As explained in the Acting BLM Nevada State Director's response, the BLM continues to rely on the FWS expertise as a cooperating agency in this planning effort. In that role, the FWS' provided the BLM with a memorandum identifying highly important landscapes. These areas represent the recognized "strongholds" for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species. By recognizing these areas and applying consistent management within them across the Great Basin, the BLM believes it is providing regulatory certainty to the FWS that these areas will be protected. Additionally, although the SFAs are a high priority for protection from anthropogenic disturbances, and disturbances from fire, invasives, and conifer encroachment, the protection of all other GRSG habitat is also a major component of the ARMPA, contrary to the suggestion in your appeal. The ARMPA contains numerous pages of protective decisions that apply to

PHMA, GHMA, and Other Habitat Management Areas; no habitat category is being ignored. I, therefore, respectfully deny your appeal on these issues and uphold the Acting State Director's determination that your recommendations are inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

Your letter also states that segregating the SFA lands from mineral entry for a two-year period would have a negative effect on investment in the region, to the detriment of local, state, and national interests. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, therefore a response is not required under the Governor's consistency review process. Nevertheless, it is important to note that the SFAs comprise less than 3% of the lands in Nevada. The withdrawal process, beginning with the temporary segregation, includes a public process to consider information provided by the states, stakeholders and others on mineral potential, as well as the importance of these areas as sage-grouse habitat. This information will be included in the analyses which the Secretary will use to make a decision about a potential withdrawal.

Nevada's Conservation Credit System (CCS) Assures Net Conservation Gain

The ARMPA does not deny the application of the State of Nevada's CCS or say that it will not provide for a net conservation gain. In fact, BLM recognizes that CCS will play an important role in mitigation efforts in Nevada. That said, the ARMPA also recognizes that there are other forms of mitigation that can result in a net conservation gain to GRSG and its habitat. As a result, the ARMPA commits to consideration of the CCS, as appropriate, and looks forward to utilizing the CCS as an important tool in mitigating the impacts of habitat disturbance. The relationship between BLM management of the public lands and the CCS is currently being negotiated through a Memorandum of Understanding (MOU) with the SETT. Working through the specific factors of how and when the BLM and applicants would use the CCS is not a planning decision, and is outside of the scope of the planning effort, and therefore is not subject to consistency review of appeal. The MOU reflects the plan decision to consider the CCS as a means of mitigation. The ARMPA includes language to clarify the relationship between the CCS and proposed uses in GRSG habitat. I therefore respectfully deny your appeal on this issue and uphold the State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

LUPA/FEIS Must Incorporate New Science and Data

Your letter indicates that BLM is not committed to using the best available science. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. The BLM will incorporate new science as it becomes available. New information, updated analyses, or new resource use or protection proposals may require amending or revising land use plans and updating implementation decisions. In this case, the primary requirement for considering new information is as follows:

The BLM planning regulations require evaluating whether there is new data of significance to the land use plan (see 43 CFR 1610.4-9) and whether plan amendments (see 43 CFR 1610.5-5) or revisions (see 43 CFR 1610.5-6) are required.

The BLM commends the State of Nevada for investing in updating mapping in cooperation with the U.S. Geological Survey and others. There are many factors that will need to be taken into consideration concerning new mapping efforts and how they will be used by the BLM. Although the BLM can take these new mapping changes into account when making implementation-level decisions, the BLM's authority to impose plan-level management changes is limited. The determination whether to amend or revise an RMP based on new proposals, circumstances, or information depends on (1) the nature of the new proposals, (2) significance of the new information or circumstances, (3) specific wording of the existing land use plan decision, including any provisions for flexibility, and (4) the level and detail of the NEPA analysis.

Finally, your letter also includes a concern regarding the leadership of the Western Association of Fish and Wildlife Agencies (WAFWA) Management Zone Greater Sage-Grouse Conservation Team. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. Nevertheless, I wish to clarify, as explained in the ARMPA, that this team will be led by State of Nevada and representatives from the appropriate Federal agencies.

Based on the foregoing, I find that the recommendations provided in your appeal letter do not meet the standard identified above for granting an appeal in accordance with 43 C.F.R. 1610.3-2(e). I, therefore, affirm the Acting BLM Nevada State Director's response to your Finding of Inconsistency and respectfully deny your appeal. The reasons outlined above for my decision on your appeal will be published in the Federal Register pursuant to the applicable BLM regulations.

Despite occasional points where we have not agreed, the input that you and your staff have provided into this process has been sincerely received and enormously productive. You have shaped the ARMPA in significant ways, and the plans are stronger as a result. I look forward to our continued coordination as our teams work together to implement these plans.

Sincerely,



Neil Kornze
Director

Handwritten signature or mark.