



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>



The Honorable Jack Dalrymple
Governor of North Dakota
Bismarck, North Dakota 58505-0001

SEP 16 2015

Dear Governor Dalrymple:

This letter is in response to your appeal of the response provided by the State Director regarding your consistency review of the North Dakota Proposed Resource Management Plan Amendment (referred to hereafter as the PRMPA or amendment). 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 effort. The partnership that exists between the State of North Dakota 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 together. Like you, I hope that these efforts will allow the U.S. Fish and Wildlife Service (FWS) to determine that the species 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 in the State of North Dakota. We are pleased to have developed the amendment in close coordination with your staff, the North Dakota Game and Fish, the Western Governors Association Sage-Grouse Task Force, 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 they 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 state-specific 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 a clarification of the management direction, particularly with regard to habitat map updates and mitigation. These clarifications are reflected in the Record of Decision (ROD) and/or the Approved Resource Management Plan Amendment (ARMPA) – <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.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 represents the culmination of an extensive planning process, involving significant time and resources from numerous partners including the State of North Dakota. 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:

Balanced Land Use

Your consistency review and appeal letter expressed concern that the PRMPA does not include adequate information on land use. This concern does not identify an inconsistency with State or local resource related plans, policies, or a program, therefore a response is not required under the Governor’s consistency review process. I do, however, concur with the response from the BLM Montana/Dakotas State Director that the purpose of the plan amendment is to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to the habitat of GRSG in accordance with the BLM’s multiple-use and sustained yield mandate. Management direction in the amendment is specific to those activities on BLM land in southwestern North Dakota which may impact GRSG. Other programs/uses outside of GRSG habitat that are not addressed in the ARMPA are carried forward from the existing North Dakota Resource Management Plan (1988) and are not altered by this decision.

New Technology

The North Dakota Governor’s consistency review and appeal letter states that the proposed amendment is unclear about new technologies. The appeal does not raise an issue of inconsistency to resolve in this regard. I do, however, concur with the response from the Montana/Dakotas State Director Jamie Connell which noted that the majority of the southwestern area of North Dakota is already leased and predominately developed using one well per pad. I would also note that the amendment includes flexibility for oil and gas development and location, such as collocation of wells on well pads and directional drilling from

outside of habitat, and therefore is not inconsistent with modern drilling technologies and approaches.

Case-by-Case Analysis

In your consistency review and appeal letter, you expressed a need for case-by-case management decisions. 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 concur with the response from the BLM Montana/Dakotas State Director that the BLM's planning regulations require that we use land use plan allocation decisions to specifically manage certain resources on public land. Disturbance-limiting allocation decisions are the keystone to the BLM's Special Status Species Policy. In contrast, the North Dakota State Plan is voluntary, and does not contain allocation decisions. Such an approach does not provide the necessary level of regulatory certainty necessary to achieve the goals of the BLM's range-wide GRSG conservation strategy for a landscape-level species such as GRSG. It is important to note that the BLM will continue to work with the State of North Dakota and proponents on a case-by-case basis on all future project level implementation activities, to ensure that they utilize the best available science and local information, in conformance with the decisions in the ARMPA. Also, please note that all of the management decisions in the ARMPA are subject to valid existing rights.

With respect to your concerns about new information and mapping data, the BLM will consider and incorporate new information and habitat mapping, when applicable, and as it becomes available. New information, updated analyses, or new resource use or protection proposals may require subsequent plan maintenance, revision, or amendment, as appropriate.

Net Conservation Gain

You state that the net conservation gain mitigation standard put forth in the PRMPA is inconsistent with FLPMA. This statement does not identify an inconsistency with State or local resource related plans, policies, or a program, therefore a response is not required under the Governor's consistency review process. I do, however, concur with the response provided the BLM Montana/Dakotas State Director that included an extensive explanation of how this landscape-scale goal is consistent with the BLM's GRSG Strategy as well as Federal policy.

Tall Structures

Your consistency review and appeal letter state that the management actions for "tall structures" are unworkable. As noted in the response from the BLM Montana/Dakotas State Director, 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. It should be noted, however, that tall structures are a concern because they can provide habitat for predators of GRSG. Therefore, managing the placement and mitigating impacts of tall structures is an important aspect of the BLM's range-wide conservation strategy. The management approaches in the amendment, such as required design features and application of lek buffer distances, allow for the development and use of appropriately designed and mitigated tall structures.

Comment Periods

The North Dakota Governor's consistency review and appeal letter state that there was not adequate opportunity for public review and comment. As noted in the response from the BLM Montana/Dakotas State Director, 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. It should be noted, however, that the BLM provided full opportunity for public comment and involvement in accordance with applicable law and regulations. More details on this can be found in Chapter 6 of the Final Environmental Impact Statement, as well as in the ARMPA and Record of Decision, found at <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>.

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). Therefore, I affirm the Montana/Dakotas 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 also 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 plan is stronger as a result. I look forward to our continued coordination as our teams work together to implement these plans.

Sincerely,



Neil Kornze
Director

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