



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



SEP 16 2015

The Honorable Gary Herbert  
Governor of Utah  
Salt Lake City, Utah 84114-2220

Dear Governor Herbert:

This letter is in response to your appeal of the response provided by the Acting Utah State Director regarding your consistency review of the Utah Proposed Land use Plan Amendment (referred to hereafter as the PLUPA or the 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 Utah and the BLM is significant, and I believe our joint work to address the threats to Greater Sage-Grouse (GRSG) is an excellent 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 GRSG does not warrant listing under the Endangered Species Act (ESA).

As you know, the PLUPA 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 Utah. We are pleased to have developed the amendment in close coordination with your staff, the Utah Division of Wildlife Resources, the Utah Public Land Policy Coordination Office, 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. For example, recognizing the limited populations found in General Habitat Management Areas (GHMA) in Utah, the PLUPA includes less restrictive allocations for wind energy, fluid mineral, and major right-of-way (ROW) development in GHMA in Utah relative to the allocations found in other states for GHMA.

The BLM was able to address many of the concerns outlined in your Consistency Review letter through a clarification of the management direction, particularly with respect to the Western Association for Fish and Wildlife Agencies (WAFWA) Management Zone GRSG Conservation Team, future interactions with State agencies, and use of State of Utah lek and disturbance data. 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.

In your appeal letter, you asked me to reconsider the Acting Utah State Director’s decisions on the recommendations made during your consistency review. As you are aware, the PLUPA represents the culmination of an extensive planning process, involving significant time and resources from numerous partners, including the State of Utah. 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, therefore, I find that the recommendations in your letter do not meet the standard described above for granting your appeal. Below is my review of issues and recommendations presented in your appeal letter:

**WAFWA Management Zone GRSG Conservation Team**

You expressed concern about the use of the WAFWA Management Zone GRSG Conservation Team in your Governor’s Consistency Review and reiterate the concern in your appeal. This concern 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.

I understand that the State of Utah is in a unique position, with habitat in four WAFWA Zones, and agree that the WAFWA Management Zone GRSG Conservation Teams should utilize existing approaches and constructs to the fullest extent possible in connection with their work. The ARMPA and the ROD include language to reflect this direction. It should also be remembered that the primary purpose of these teams are to advise on cross-state issues, such as regional mitigation strategies and adaptive management monitoring and response. In connection with these efforts, I am confident that the BLM Acting Utah State Director will ensure that the good work the State of Utah has done, including the State's mitigation plan, is considered as the PLUPA is implemented. Notably, the State of Utah has done outstanding work on vegetation treatments to improve habitat condition, including its conifer removal implementation plans.

#### **Conservation Activities for the Department of Defense**

Your Consistency Review and appeal letters recommend that the BLM adopt planning provisions in the amendment which provide equivalent protections for the activities of the Department of Defense as those found in the State's Conservation Plan. The Department of Defense has been a partner throughout the GRSG planning process and has worked with us to address the potential impacts of the amendment on base readiness across the range. Therefore, I respectfully deny your appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy range-wide and the applicable legal authorities.

#### **Livestock Grazing**

The BLM was able to provide clarifying information in the ROD to make clear that appropriately managed livestock grazing may continue under the GRSG plans. However, the additional changes you recommend in your appeal letter are beyond the scope of the appeal process and do not relate to 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. That said, I remain committed to working with the state and other stakeholders to ensure that these plans are implemented in a manner that demonstrates well-managed grazing practices are compatible with long-term sage-grouse conservation.

#### **Alton Coal Lease-By-Application**

In the Governor's Consistency Review and the appeal, you recommended that the BLM identify the Alton Coal Lease-By-Application (LBA) tract as General Habitat Management Area (GHMA), as opposed to a Priority Habitat Management Area (PHMA). Based on data collected by the State, the company, FWS, and the BLM, the area in and around the Alton tract contains active dancing and strutting grounds, and may contain the southernmost lek in the United States. Based on this data, the FWS, working with the State and others, identified the area as a priority area for conservation in the FWS Conservation Objectives Team Report, which led to the BLM

identifying it as PHMA. After carefully reviewing the available information related to GRSG in and around the Alton Coal tract and the response by the BLM Acting Utah State Director, I am upholding the decision to retain this area as PHMA and deny your recommendation because it is inconsistent with the goal of the BLM's GRSG conservation strategy range-wide.

#### **State Authority Concerning Management of Wildlife**

Your consistency review and appeal letter express concern about the provision which requires agreement by the State and FWS prior to approving exceptions to the No Surface Occupancy (NSO) stipulation for fluid mineral development in PHMA. This does not raise an issue of inconsistency with State or local resource or related plans, policies or programs; therefore, a response is not required under the Governor's consistency review process. Moreover, the involvement of FWS in the determination as to whether there would be direct, indirect, or cumulative impacts to GRSG does not unlawfully or unconstitutionally infringe on state authority or unlawfully delegate BLM's authority over the public lands. Rather, in order to provide the most protection to GRSG in PHMA, the areas of highest importance for the species, the BLM is implement a structure whereby it will seek the input of local and national experts on GRSG – the FWS and the Utah Division of Wildlife Resources – before making decisions regarding whether to grant an exception to an NSO Stipulation to allow surface-disturbing fluid mineral development.

#### **Inconsistency with State Law School Trust Land Obligations**

The appeal letter requests that I reconsider the decision of the Acting Utah State Director related to land tenure adjustments involving lands owned and managed by the School and Institutional Trust Lands Administration. I have reviewed the response, as well as the clarifying language that we have added to the amendment in response to your consistency review letter, which allows for disposal *or exchange* if there is a net conservation gain or no direct or indirect adverse impact to GRSG and its habitat. I believe that the state trust land exchanges and selections can be completed under this management direction and assure you that we will work with the State of Utah to complete such actions as appropriate. Therefore, I respectfully deny your appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's GRSG conservation strategy range-wide.

#### **Management of Habitat Outside of PHMA**

The State of Utah has recommended that the BLM eliminate the management actions in its plans for areas outside of PHMA. After having reviewed the information provided with your recommendation, I respectfully deny your appeal and uphold the decision of the Acting Utah State Director that your recommendation is inconsistent with the goal of the BLM's GRSG range-wide conservation strategy. GHMA provides important connectivity and restoration areas and its protection is an essential aspect of the BLM's GRSG conservation strategy. Additionally, as stated above, the PLUPA amendment already incorporates additional flexibility for GHMA in the state of Utah because of the limited number of birds in GHMA.

### **Sagebrush Focal Areas (SFA) Exemption**

In your appeal letter, you request that I reconsider the request to exempt Utah from SFAs. I have reviewed your prior comments on the development of the SFAs and while I understand these concerns, I uphold the determination of the Acting Utah State Director, that the SFAs are consistent with the BLM's range-wide GRSG conservation strategy. I also want to reiterate that the SFAs are a subset of PHMA, with limited additional management actions to ensure that the "best of the best" receives the attention it deserves. In addition to the recommended mineral withdrawal and the fluid mineral NSO stipulation without waivers, exceptions, or modifications, these areas will be prioritized for vegetation management, review of livestock grazing permits and leases, habitat restoration, and fire and fuels actions. Therefore, I respectfully deny your appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy range-wide.

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 BLM Acting Utah 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 PLUPA in significant ways, and the approved amendment is stronger as a result. I look forward to our continued coordination and partnership as our teams work together to implement these plans. Of paramount importance is our continued work on the Watershed Restoration Initiative and addressing issues associated with fire and invasive annual grasses.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Kornze", with a long horizontal flourish extending to the right.

Neil Kornze  
Director

الفاصل