



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



SEP 16 2015

The Honorable Dennis Daugaard
Governor of South Dakota
Pierre, South Dakota 57501-5070

Dear Governor Daugaard:

This letter is in response to your appeal of the response provided by the State Director regarding your consistency review of the South Dakota Resource Management Plan (referred to hereafter as the PRMP or plan). 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 that exists between the State of South Dakota and the BLM is significant, and I believe our joint work to address resource issues and the management of BLM lands in South Dakota, including 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 bird does not warrant listing under the Endangered Species Act (ESA).

As you know, the PRMP incorporates 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 South Dakota. We are pleased to have developed the plan in close coordination with your staff, South Dakota Game, Fish and Parks, 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 some of the concerns outlined in your letter through a clarification of the management direction, particularly with regard to updating habitat maps. These clarifications are reflected in the Record of Decision and/or the Approved Resource Management Plan (ARMP) –http://www.blm.gov/wo/st/en/prog/more/sagegrouse/final_eiss/south_dakota.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 PRMP represents the culmination of an extensive planning process, involving significant time and resources from numerous partners including the State of South 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:

Waivers and Modifications for No Surface Occupancy Stipulations

In both your Governor’s consistency review letter and in your appeal letter, you recommend that the BLM provide more flexibility regarding fluid mineral development to allow for the development of oil and gas resources in South Dakota. I concur with the assertion of Montana/Dakotas State Director Jamie Connell that adoption of the recommendation offered, namely allowing waivers and modifications to no surface occupancy stipulations in Priority Habitat Management Areas, is not consistent with the goals of the BLM’s range-wide GRSG conservation strategy. The FWS identified energy development, mining, and infrastructure as major threats to the GRSG populations in the Dakotas in its 2010 listing determination and in the 2013 Conservation Objectives Team Report. The BLM has determined that allowing limited exceptions and no modification or waivers to the development of future fluid mineral resources with No Surface Occupancy stipulations is necessary to address these threats in Priority Habitat Management Areas. I, therefore, respectfully deny your appeal on this issue and uphold the State Director’s determination.

Reasonable Foreseeable Development Analysis

You state that you wish the BLM to reconsider the decision not to update the Reasonable Foreseeable Development (RFD) analysis in the Final Environmental Impact Statement. 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. I do, however, concur with the response from the BLM Montana/Dakotas State Director that, while the RFD may not have utilized the 2014 data provided by South Dakota, the analysis provides adequate information with regard to overall potential development and serves as an appropriate basis for the BLM's planning process.

In connection with the development of the PRMP, the BLM reviewed the RFD Scenario for Oil and Gas Activities on Bureau Managed Lands in the South Dakota Study Area (RFD; BLM, 2009) and the report reviewed by the Wyoming Reservoir Management Group, which includes BLM technical experts. The BLM also reviewed information provided by the State of South Dakota and data on drilling that has occurred in the first 4 years and 10 months of the analysis period for the 2009 RFD. Based on a review of this data, the BLM has determined that the current drilling rate does not support the projections offered by the State of South Dakota. Additionally, the reviewers determined that the 2009 RFD adequately accounted for variables such as increased gas prices. While the RFD is not able to accurately predict the exact locations of future wells, the reviewers determined that in aggregate, it still provides the best available information with regard to overall potential development. Therefore, I respectfully deny your appeal on this issue.

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 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 ARMP 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,

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

Neil Kornze
Director

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