



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, WY 82003-1828

www.blm.gov/wy



In Reply Refer To:
1610 (930)

AUG 06 2015

Honorable Matt Mead
Governor of Wyoming
State Capitol Building
Cheyenne, WY 82002

Dear Governor Mead:

This is in response to your letter dated July 29, 2015, which provided your consistency review of the Wyoming Sage-Grouse Amendment Proposed Resource Management Plan, Bighorn Basin Proposed Resource Management Plan and Buffalo Proposed Resource Management Plan (collectively referred to hereafter as PRMPs). The Governor's consistency review is an important part of the Bureau of Land Management's (BLM) land use planning process. Partnership between the State and the BLM is an integral part of successful land management. Our partnership is particularly important as we work to address the threats to Greater Sage-Grouse and its habitat to conserve the species and hopefully avoid a determination by the Fish and Wildlife Service (FWS) that the species is warranted for listing under the Endangered Species Act (ESA). We greatly appreciate the time and attention of you and your staff on this important effort as well as your personal leadership in this effort.

The PRMPs are part of an unprecedented and proactive partnership to conserve Greater Sage-Grouse (GRSG) and its habitat by incorporating conservation measures in the land use plans. The plan builds upon the foundation for sage-grouse conservation implemented by the state and codified in Wyoming's Greater Sage-grouse Core Area Protection strategy. The plans also reflect guidance developed by the BLM to incorporate FWS feedback on the draft plans. The PRMPs were developed in coordination with a variety of stakeholders and cooperators, including the State of Wyoming, Wyoming Game and Fish Department and Western Governors Association Sage-Grouse Task Force.

The purpose of the sage-grouse planning effort is to identify and incorporate conservation measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat in a manner that provides sufficient regulatory certainty to the FWS to support a finding that Endangered Species Act protection is not warranted. In order to

provide a high degree of certainty for regulatory mechanisms, the BLM has included common elements across the range to address specific threats to the bird and to provide for a net conservation gain for the GRSG. The plans allow for State-based variations where different approaches or priorities were consistent with the overall conservation objectives, including the need to provide adequate regulatory certainty.

The BLM is able to address many of the concerns outlined in your letter through clarification, particularly with regard to mitigation, the WAFWA GRSG Conservation Team, habitat map updates, Required Design Features, livestock grazing management, power line buffers, consideration of future possible mineral withdrawals, and the definition of energy and mining facilities. The BLM looks forward to continued collaboration with the State in the coming weeks to finalize that language. Specific responses to the issues raised in your letter are found below.

Statutory and Regulatory Framework for Consistency Review

In considering your recommendations, I am guided by the BLM's planning regulations in 43 C.F.R. §1610.3-2. These regulations implement Section 202 (c)(9) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1712(c)(9), which states in part:

In the development and revision of land use plans, the Secretary shall...to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601-4 et seq. note], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The regulations state that Resource Management Plans (RMPs) and amendments “shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein” of State and local governments and Indian Tribes “so long as the guidance and resource management plans [of the State and local Government and Tribe] are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands...” 43 C.F.R. §1610.3-2(a). In the absence of such plans, RMPs and amendments shall “be consistent with officially approved and adopted resource related policies and programs” to the maximum extent possible and “so long as the guidance and resource management plans are consistent with the policies, programs, and provisions of Federal laws and regulations applicable to public lands...” 43 C.F.R. §1610.3-2(b).

The BLM PRMPs are built upon the Core Area Protection strategy and implement its approach on BLM-managed lands. The BLM PRMPs manage GRSG seasonal habitat and maintain connectivity in identified areas in support of the population management objectives set by the State of Wyoming. This guidance is consistent with guidelines and recommendations provided for in the Wyoming Governor’s Sage-Grouse Implementation Team’s Core Population Area Strategy and the most recent Wyoming Governor’s Executive Order (EO) 2015-4 (WY EO 2015-4). Through this consistency review process, we have adopted many of the changes requested by the State through clarifying language. However, the BLM has determined that some aspects of the State’s recommendations would not be consistent with the purposes, policies, and programs of federal laws applicable to public lands.

Specifically, FLPMA generally requires the BLM to manage public lands for multiple-use and sustained yield, taking into account the long-term needs of future generations for renewable and non-renewable resources -- including fish and wildlife -- and to seek achievement and maintenance in perpetuity of renewable resources. 43 U.S.C. 1732(a); 1702(c), (h); 1701(a)(8). The BLM’s Special Status Species Manual sets forth BLM policy with respect to FLPMA’s consideration of wildlife and fish and renewable resources. In particular, the objectives of the special status species policy are A) to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species; and B) to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA. Manual No. 6840, Section .02(A)(B).

Further policy is found in BLM’s IM 2012-044 (Dec. 27, 2011), which initiated the “BLM National Greater Sage-Grouse Land Use Planning Strategy” and provided guidance and direction for the agency’s consideration of GRSG conservation measures. The IM and the planning strategy were initiated in response to the FWS’ March 2010 decision finding, in part, that existing regulatory mechanisms found in the BLM’s LUPs were inadequate to protect the species. The IM states that “the BLM needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-wide use restrictions into land use plans” in order to “conserve sage-grouse and its habitat and potentially avoid an ESA listing.” In addition, the Approved RMPs will be consistent with the BLM’s 2004 National Sage-Grouse Habitat

Conservation Strategy which calls for managing public lands in a manner that will maintain, enhance and restore GRSG and sagebrush habitats while continuing to provide for multiple uses of lands under BLM stewardship.

In accordance with FLPMA's direction to manage the public lands pursuant to principles of multiple use and sustained yield and the policy direction set forth in IM 2012-044, the BLM's 2004 National Sage-grouse Habitat Conservation Strategy, in addition to the BLM's Special Status Species Manual, the BLM's purpose for this planning effort is to identify and incorporate appropriate conservation measures in LUPs to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. The goal of the BLM's GRSG conservation strategy rangewide is to provide for the conservation of the GRSG and its habitat and to provide the FWS with regulatory certainty that in turn will potentially preclude a determination that the species is warranted for listing.¹ To the extent a particular recommendation is inconsistent with that goal or the policies identified above, the BLM has declined to adopt it. See 43 U.S.C. 1712(a)(9); 43 U.S.C. 1610.3-2.

To ensure that we have fully responded to your concerns, the issues you identified in your review as consistency topics with Executive Order 2015-4 are listed below, and are followed by BLM's response. We will respond to non-consistency comments on the plans under separate cover.

State of Wyoming's Recommendations and the BLM's Responses

Thank you for the thoughtful review of the plan in identifying potential inconsistencies between the BLM Sage Grouse Amendment and Executive Orders 2011-5, 2013-3 and 2015-4. Several of the items identified will be updated in the Approved Plans in an effort to achieve consistency with EOs 2011-5, 2013-3 and 2015-4. However, not all items were updated. Individual points which covered all PRMPs are discussed below.

1. Net Conservation Gain Standard

Governor's Concern: *BLM states that "the intent of the Proposed Plan is to provide a net conservation gain to the species." Wyoming strategy is mitigation. If a project conforms to the management prescriptions contained in EO 2015-4, no additional mitigation is required." To rectify this inconsistency, the BLM should add the following language: "in PHMAs that exceed the threshold of 5% disturbance and an average of 1 activity per 640 acres, the BLM will require and ensure mitigation that provides a net conservation gain to the species."*

BLM Response: The BLM recognizes the efforts of the State of Wyoming for GRSG and the Wyoming Strategy is reflected in the BLM Wyoming Plans. The exact language of the plan says: "...Mitigation will follow the regulations from the White House CEQ (40 CFR

¹ Notably, the chairs of the Sage Grouse Task Force recognized this goal in 2011 by making a commitment to develop an action plan that "prescribes near-term conservation measures, that when added to the body of past and current efforts would ensure a viable sage-grouse population in the West and preclude the listing of the species." (Mead, Hickenlooper, and Pool Letter, June 2011)

1508.20; e.g., avoid, minimize, and compensate), hereafter referred to as the mitigation hierarchy. If impacts from BLM and Forest Service management actions and authorized third party actions that result in habitat loss and degradation remain after applying avoidance and minimization measures (i.e., residual impacts), then compensatory mitigation projects will be used to provide a net conservation gain to the species.”

In this context, the term ‘mitigation’ is not restricted to only the application of compensatory mitigation, but also includes avoidance and minimization. The avoidance and minimization measures defined in the Core Area Protection strategy which BLM has adopted in these plans comprises the first two steps of the mitigation hierarchy defined in CEQ regulation 40 CFR 1508.20. Compensatory mitigation would only be needed if, after applying avoidance and minimization measures, residual impacts remain. As stated in Appendix H of EO 2015-4, “The State of Wyoming recognizes compensatory mitigation as a strategy that should be used when avoidance and minimization are inadequate to protect Core Population Area Greater sage-grouse.” In this context, the BLM recognizes that the Service has found “the core area strategy . . . if implemented by all landowners via regulatory mechanisms, would provide adequate protection for sage-grouse and their habitats in the state”. Further, the BLM’s standard for ‘net conservation gain’ for compensatory mitigation is consistent with the State of Wyoming’s standard of maintaining a landscape-scale result that is beneficial to the species. There is no specifically identified inconsistency between the State of Wyoming’s mitigation standards, as outlined in EO 2015-4 and BLM’s net conservation standard. The BLM therefore respectfully declines to adopt this recommendation.

2. Regional Mitigation

Governor’s Concern: *The document notes that “[t]he BLM and Forest Service will establish a WAFWA Management Zone Greater Sage-Grouse Conservation Team...to help guide the conservation of Greater Sage-Grouse, within 90 days of the issuance of the Record of Decision” and that “[t]he Team will develop a [WAFWA Management Zone] Regional Mitigation Strategy...” The Sage-Grouse Implementation Team serves as the oversight team in implementing Wyoming’s strategy and the Wyoming State Legislature established the Team as a statutory body (§ W.S. 9-19-101) to provide recommendations regarding regulatory actions necessary to maintain and enhance Greater sage-grouse populations in Wyoming. Both the BLM and FS serve on that team. Establishment of a new team is unnecessary and inconsistent with Wyoming’s strategy. Further, any regional mitigation strategy should be developed in consultation with the Sage-Grouse Implementation Team.*

BLM Response: In order to ensure consistency across the west and provide conservation of GRSG on a landscape scale in accordance with the BLM’s Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty so as to potentially reduce the need to list the species, the BLM is including actions which allow for regional and landscape management, including developing regional mitigation strategies. Moreover, there is no specifically identified inconsistency between the establishment of a team to

develop a Regional Mitigation Strategy and the State Plan. The BLM therefore respectfully declines to adopt this recommendation.

The BLM will add clarifying language that the WAFWA GRSG Conservation Team will be transient, serving on an ad hoc basis to advise on specific inter-state issues, such as developing regional mitigation strategies, and will work within existing coordination and management structures, such as the Wyoming Sage-Grouse Implementation Team.

3. Habitat Map Updates

Governor's Concern: *The State of Wyoming has implemented a Greater sage-grouse Core Area Protection strategy established by Governor's Executive Order (EO) since 2008. Wyoming's strategy is a state-led effort formally endorsed by the U.S. Fish and Wildlife Service (USFWS) and has served as a model for other states in adopting part of their plans. EO 2011-5 was supplemented by EO 2013-3; Greater Sage-Grouse Core Area—Grazing Adjustments. Starting December of 2014, the Sage-Grouse Implementation Team began evaluating the need for modifications to EOs 2011-5 and 2013-3. Based on the Team's recommendations I have executed EO 2015-4. I direct your attention to the modifications found in this EO, including mapping modifications.*

BLM Response: The BLM fully considered and evaluated its consistency with EO 2011-5 and 2013-3 throughout the planning process. It is not practicable or reasonable, at this date, for BLM to fully consider and evaluate its consistency with most of the new aspects of Executive Order 2015-4, issued on July 29, 2015, including in particular the modifications to the habitat maps and whether BLM should change its habitat management areas accordingly. However, the BLM will consider the State's map entitled "Additions to Wyoming Sage-Grouse Core Areas" included as Attachment A of Executive Order 2015-4, on a case by case basis as it evaluates proposed activities within habitat identified in those areas. In addition, the BLM will carefully consider authorizations in those areas and, as necessary, will develop the appropriate policy to provide further guidance on management considerations in those areas. The BLM may also consider whether to initiate an appropriate planning process to incorporate these mapping changes.

Further, as additional information becomes available about GRSG habitat after the planning process is complete, the BLM, in coordination with the state wildlife agency and FWS, and based on best available scientific information, may revise the GRSG habitat management area maps and associated management decisions through plan maintenance or plan amendment, as appropriate and depending on the level of change. The BLM is committed to taking any changes in habitat maps into consideration when it makes future decisions in the planning area (e.g. where criteria for NSO exceptions may be met, determining appropriate RDFs/BMPs).

However, the BLM will adopt the recommendation in part with respect to management of existing Greater Sage-Grouse Winter Concentration Areas that were identified in the PRMPs, utility corridors, and noise restrictions by including clarifying edits associated with those issues in the Approved Plans.

4. Exempt (“de minimis”) Activities—EO 2015-4; Attachment C

Governor’s Concern: *I have concerns regarding BLM and USFS treatment of recognized Exempt (“de minimis”) Activities outlined in Attachment C of the EO 2015-4 (see Attachment 1). These enumerated activities represent existing land uses and landowner activities that do not require state agency review for consistency with the management stipulations outlined under EO 2015-4. Explicitly recognizing these “de minimis” activities in the Records of Decision and removing any application of Greater sage-grouse stipulations attached to them is key to preserving public health, safety, and welfare.*

County roads are an example of a ‘de minimis ’ activity. They provide access to many of Wyoming’s rural communities. Emergency responders rely on properly maintained county roads as part of their job. Moreover, Wyoming’s agricultural, recreational; energy and commercial enterprises depend on a network of county roads, which supplement our highway infrastructure. The Records of Decision need to recognize “de minimis” activities.

BLM Response: In light of the BLM’s Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, the BLM finds it cannot treat all activities identified in Attachment C of the EO 2015-4 as “de minimis” activities. The BLM therefore respectfully declines to adopt these recommendations because they are not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands.

The Authorized Officer may grant an exception to those activities classified as ‘de minimis’ in EO 2015-4, if an environmental record of review determines that the action, as proposed or conditioned, will not impair the function or utility of the site for the current or subsequent seasonal habitat, life-history, or behavioral needs of Greater Sage-grouse. Seasonal restrictions only apply to surface disturbing and disruptive activities and as such do not include general maintenance activities, including road maintenance activities.

5. Required Design Features

Governor’s Concern: *The BLM and USFS propose to adopt Required Design Features (RDFs) from the National Technical Team (NTT) report titled A Report on National Greater Sage-Grouse Conservation Measures see, e.g., Appendix B 9 Plan). In some cases no documentation exists and in others no documentation is provided showing that these features have proved effective over time. The NTT is relying upon a one-size-fits-all approach. The NTT RDFs are needlessly restrictive, scientifically unfounded, and ignore specific cause and effect mechanisms. RDFs should be site specific. While some RDFs may be effective in*

certain instances, the blanket requirements fail to recognize valid existing rights and require RDFs that are not technically feasible, economic or appropriate (given the topography, local conditions, and practicality). Flexibility must be maintained so that regulators and operators can determine which design features and Best Management Practices (BMPs) make sense based on a site-level analysis. Reclassifying RDFs as BMPs ensures flexibility allowing innovation and excellence as technological advancements emerge. As currently classified, the RDFs are static with virtually no incentive for generating new ideas that could reduce impacts.

As presented these actions are onerous and stifle Wyoming's energy, agriculture and recreation economies. I incorporate, into these comments, specific points in the Tables within Attachments 3, 4, 6 and 7.

BLM Response: BLM has discretion in the application of Required Design Features (RDFs) and Best Management Practices (BMPs) on any proposal for which BLM issues a permit. Through the NEPA analysis, it may be determined that RDFs and/or BMPs should be incorporated into the respective permit as conditions of approval in order to avoid or reduce adverse impacts.

Given the flexibility inherent in the application of RDFs, there is minimal inconsistency, if any, between the Core Area Strategy and the PRMPs. To the extent there is an inconsistency, in light of the BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, the BLM finds it is essential to include these RDFs in Greater Sage-grouse habitat. To address your concern, the BLM will add clarifying language to include state-implemented conservation measures or protections as an alternative to consider in the application of RDFs.

The requested edits to specific RDFs and BMPs found in Appendix B of the FEIS will not be made, as these RDFs and BMPs were incorporated verbatim from the BLM National Technical Team Report (2012).

The BLM respectfully declines to adopt these recommendations because they are not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. However, the BLM will use the best available science, in coordination with the WGFD to help determine when an RDF is necessary to provide protection for GRS and its habitat as well as make clear that existing state or plan-level protections may be considered in determining whether an RDF is necessary to provide protection for GRS and its habitat.

6. Livestock Grazing Management

Governor's Concern: *It is scientifically accepted and also recognized in EO 2015-4 and by the USFWS that livestock grazing is compatible with enhancing or maintaining Greater sage-grouse and its habitat. The 9 Plan, Bighorn Basin and Buffalo FEISs each contain analysis flaws, create confusion and seem to be based on a misconception that livestock grazing poses a threat to Greater sage-grouse.*

The Alternatives descriptions, and subsequent analyses, of livestock grazing contained in each of the proposed plans ignores livestock grazing as a tool available to the BLM and USFS. The portrayals of livestock grazing as "surface-disturbing" or "disruptive" is not supported. Livestock grazing and improper grazing management are not distinguished and differences are not clearly articulated throughout the plans. This lack of clarity creates a clear inaccuracy when livestock grazing is identified as a threat to Greater sage-grouse conservation. As stated above, accepted science, the USFWS and my EO 2015-4 recognize that livestock grazing poses no threat to sage-grouse. The importance of livestock grazing as a tool is not discussed and the benefits of livestock grazing and proper management are ignored. Livestock grazing is often identified as a negative influence. In order to be consistent with EO 2015-4, the BLM and USFS must remove reference to livestock grazing as a surface-disturbing activity.

We continue to have serious concerns with the Desired Conditions Tables. Throughout the Plans, BLM includes language that implies desired conditions are requirements or will be applied as terms and conditions of permits (e.g., 9 Plan, Chapter.2, Sections 2.6.3, p. 2-14; Buffalo Revision, Chapter 2, Section 2.5.7, p. 81; and Bighorn Basin Revision, Chapter 2, Section 2.3.7, p. 2-33). These requirements, terms and conditions will have substantial social and economic impacts to the State and livestock producers in Wyoming. Local variability in ecology, site capability and conditions must be taken into account when developing site specific management. We request that the provision to add terms and conditions regarding actions needed to meet or progress toward meeting habitat objectives be limited to only apply to those allotments that are not meeting sage grouse habitat objectives.

BLM Response: Livestock grazing is an integral part of the BLM multiple-use mission and is authorized by the Taylor Grazing Act (1934), the Federal Land Policy and Management Act (1976) and the Public Rangeland Improvement Act (1978). While livestock grazing is not recognized as a widespread threat to GRSG habitat, improper range management can be a localized threat to GRSG habitats. However, in response to your concerns and those included in the protests, the BLM will provide clarifying information on the range management objectives in the RODs to make clear that appropriately-managed livestock grazing may continue under the plans.

In exercising its authority to modify terms and conditions of a permit or lease following completion of the NEPA analysis, the BLM will engage in close consultation, cooperation, and coordination with the affected lessees or permittees, the State agency managing lands or responsible for managing resources within the area, and the interested public. Also, please note that all applicable procedures that are required pursuant to the grazing regulations will be followed, including the right to protest and appeal.

In light of the BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, the BLM finds it is essential to include these range management objectives in the PRMPs. The BLM therefore respectfully declines to adopt the recommendation to modify or remove these objectives as inconsistent with the purposes, policies and programs of federal laws and regulations applicable to public lands. However, in response to your concerns and those included in the protests, the BLM will provide clarifying information on how desired conditions as described in the habitat objectives tables will be dependent upon site capability.

7. Power line Buffers in General Habitat (Buffalo RMP Revision)

Governor's Concern: MA # SS WL-4022 states: "*Within general Greater Sage-Grouse habitat (outside core population and connectivity areas) overhead power lines will be located at least 0.5 miles from Greater Sage-Grouse breeding and nesting grounds (PRB Final EIS).*"

EO 2015-4 does not establish a buffer for overhead power lines in non-core—it is our preference to sight transmission lines in non-core. I request that you remove this language to achieve consistency.

BLM Response: Based on several sources, including Walker et al. (2007)² and State Wildlife Agencies' Ad Hoc Committee for Consideration of Oil and Gas Development Effects to Nesting Habitat (2008)³, as well as findings from the U.S. Fish and Wildlife Service's Conservation Objectives Team report conclusion that the Powder River Basin population was overall an at-risk population being impacted by multiple stressors with future viability of the already small GRSG populations in northeast Wyoming being compromised (USFWS 2013)⁴, the BLM has determined that 0.5 miles is necessary to protect GRSG and its habitat.

² Walker, B.L., D.E. Naugle, and K.E. Doherty. 2007. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management* 71:2644-2654.

³ State Wildlife Agencies' Ad Hoc Committee for Sage-Grouse and Oil and Gas Development. 2008. Using the best available science to coordinate conservation actions that benefit greater sage-grouse across states affected by oil and gas development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming). Unpublished report. Colorado Division of Wildlife, Denver; Montana Fish, Wildlife and Parks, Helena; North Dakota Game and Fish Department, Bismarck; Utah Division of Wildlife Resources, Salt Lake City; Wyoming Game and Fish Department, Cheyenne.

⁴ U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Department of Interior, Fish and Wildlife Service.

In addition, Powder River Energy Corporation, the primary electric utility within the Powder River Basin, has adopted a 0.5 mile avoidance of sage-grouse leks into their standard operating procedures.

In light of the BLM's Greater Sage-Grouse Conservation Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, the BLM finds it is essential to include this restriction in GHMA within the Buffalo RMP. The BLM therefore respectfully declines to adopt this recommendation as inconsistent with the purposes, policies and programs of federal laws and regulations applicable to public lands. However, we have found that based upon current scientific recommendations, the language will be modified to state: "*Within general Greater Sage-Grouse habitat (outside core population and connectivity areas) overhead power lines will be located at least 0.5 miles from occupied Greater Sage-Grouse leks.*"

8. Locatable Mineral Withdrawals (Wyoming Sage –Grouse Amendment)

Governor's Concern: *The BLM has identified 252,070 acres for locatable mineral withdrawal and another 894,060 acres to be considered for withdrawal because of risk to Greater Sage-grouse and its habitat from conflicting locatable mineral location and entry. Wyoming regulates locatable mineral operations at both the exploration and extraction phases regardless of surface or mineral ownership (see Attachment 11 Wyoming Attorney General Memorandum). Much of the state's regulation of locatable mineral activity is through the Wyoming Environmental Quality Act and is administered through the Land Quality Division (LQD) and Water Quality Division (WQD) of the Wyoming Department of Environmental Quality. Regulated locatable mineral exploration and development actions include exploration by dozing, exploration by drilling, mining operations, small mining operations, limited mining operations, and storm water discharges.*

Additionally, by rule, mining operations must consult with the Wyoming Game and Fish Department (WGFD) and the United States Fish and Wildlife Service and address any concerns raised by these agencies as part of the permit application process (LQD Non-coal Rules and Regulations, Ch. 2, § 1(f)). The WGFD will analyze projects utilizing the Density Disturbance Calculation Tool (DDCT) and make stipulations and recommendations or deny the project consistent with the EO. A state agency with regulatory jurisdiction must require compliance with the EO.

Where locatable mineral activities occur on federal lands, the LQD works with BLM as part of the state application process. The BLM has its own requirements for approval. The BLM's Surface Management Regulations, 43 CFR § 3809, prevent unnecessary or undue degradation of the public lands by operations authorized under the mining laws. For a more detailed discussion of BLM's Surface Management Regulations from the American Exploration and Mining Association, see Attachment 12.

Collectively, these regulatory controls provide adequate protection of the Greater sage-grouse from the site-specific impacts of locatable mineral exploration and development. Wide-scale withdrawal of locatable mineral entry in these areas has little or no benefit to the species. The proposed action would, additionally, be contrary to EO 2015-4, which does not preclude locatable mineral activities, but instead, applies specific stipulations to mining activities.

BLM Response: Thank you for your comments and information on the role the State of Wyoming has with permitting locatable mineral activity. In light of the BLM's Greater Sage-Grouse Conservation Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, the BLM finds it is essential to include these recommendations for withdrawal from locatable mineral development in the ARMP. The BLM respectfully declines to adopt the recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. However, we will remove the statement identifying 894,060 acres for possible future consideration for withdrawal.

Please note, the Proposed RMPs recommend the withdrawal; the Secretary of the Interior reviews the recommendation and based on the proposal and subsequent processes, including a public comment period, can make a withdrawal subject to particular time limits imposed by FLPMA (usually 20 years). The Secretary has stated that through the separate withdrawal process to implement the BLM plan recommendations – which will be public and transparent – she will work closely with the states and the public at large to consider information on mineral potential, including rare earths, as well as the importance of these areas as sagebrush habitat in making the decision as to what lands will be withdrawn and for how long.

9. Use of the term 'facility' in density restrictions

Governor's Concern: *Facility/Activity* Existing language: "In PHMAs (core only), the density of disturbance of an energy or mining facility (Appendix D) would be limited to an average of one site per square mile (640 acres) within the DDCT, subject to valid existing rights. The one location and cumulative value of existing disturbances will not exceed 5 percent of suitable habitat of the DDCT area. Utilize the Greater Sage-Grouse density disturbance calculation tool as described in Appendix D." The use of the word "facility" allows more surface disturbance to occur and is inconsistent with WY EO 2015-4. To achieve consistency, replace the word "facility" with "activity."

BLM Response: The requested edit will not be made. However the glossary will include a definition for facility as:

"Energy or Mining Facility: Something such as a place, building or equipment used for a particular purpose or activity e.g., oil and gas well pads and associated infrastructure, active mining development areas with operating equipment or significant human activity.

10. Coal (Wyoming Sag-Grouse Amendment)

Governor's Concern: MA 75 Existing Language: "PHMA is essential habitat for maintaining Greater Sage-Grouse for purposes of the suitability criteria set forth at 43 CFR 3461.5(o)(1)." The word "essential" is not necessary as PHMA is managed for greater sage-grouse.

BLM Response: The requested edit will not be made. Upon further review of EO 2015-4, we have found the language to be consistent. Attachment B of EO 2015-4, page 13 states:

In Core Population Areas, to avoid significant "negative" impacts to Greater sage-grouse unsuitability criteria for state high sensitive species (i.e., Greater sage-grouse), will be applied to each coal lease application during the federal coal leasing process. This process includes consultation with the State to identify any lands within the application area that are essential for maintaining high priority wildlife (i.e., Greater sage-grouse). Where appropriate, BLM will find such lands to be unsuitable for further federal coal leasing consideration. Incorporation of new leases into existing mining operations is considered allowable by the State without further regulatory obligations under the Greater sage-grouse Core Area Protection strategy, beyond the current requirements under the WEQA and SMCRA.

However, the BLM will add clarifying language it will consider that FWS has found "the core area strategy...if implemented by all landowners via regulatory mechanisms, would provide adequate protection for sage-grouse and their habitats in the state" when it considers coal lease applications as set forth in 43 CFR 3461.5 (o)(1).

The remaining comments provided in Attachments 3, 6 and 7 of your July 29 letter have been reviewed and determined to not constitute consistency issues with any state or local plans. These comments will be responded to under a separate letter.

Please contact me if you have any questions concerning this BLM response to your consistency review.

Please note that you have the opportunity to appeal this response to the Director of the BLM pursuant to 43 CFR 1610.3-2(e). Such an appeal must be filed within 30 days of your receipt of this letter, by September 8, 2015. Please submit appeals to:

BLM Washington Office
 Attention: Director of the BLM
 1849 C Street NW, Rm. 5665
 Washington DC 20240

Thank you for your thorough, comprehensive and thoughtful consistency review. Wyoming has been a leader in Greater Sage-grouse conservation for more than a decade and your continued leadership in advancing efforts to conserve the species are greatly appreciated. I also appreciate the hard work your staff and the various state agencies and local governments have contributed to the consistency review and BLM's Sage-grouse Planning Strategy. I look forward to continuing a productive and collaborative working relationship as we move forward to develop clarifying language where noted above and in implementing the Plans.

Sincerely,



Mary Jo Rugwell
Acting State Director