



United States Department of the Interior



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In Reply Refer To:
1610 (NV930)

Honorable Brian Sandoval
Governor of Nevada
One Hundred One North Carson Street
Carson City, Nevada 89701

Dear Governor Sandoval:

This is in response to your letter dated July 29, 2015, which provided your consistency review of the Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (LUPA/FEIS). 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 (GRSG) and its habitat to potentially 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 taken by you and your staff on this important effort.

The Nevada and Northeastern California Proposed LUPA/FEIS is part of an unprecedented and proactive partnership to conserve GRSG and its habitat by incorporating conservation measures in the land use plans. The Nevada and Northeastern California Proposed LUPA/FEIS builds upon the foundation for GRSG conservation initiated by the State of Nevada's GRSG plan. The Proposed LUPA/FEIS also reflects guidance developed by the BLM to incorporate FWS feedback on the draft EISs. All of the Proposed Plans and FEISs were developed in coordination with a range of stakeholders and cooperators, including state fish and wildlife agencies and the Western Governors Association Sage-Grouse Task Force.

The purpose of the GRSG 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 that will hopefully support a finding that Endangered Species protection is not warranted. The plans were developed in collaboration with state officials to reflect local ecological conditions and resource needs by incorporating many measures recommended by the State. In order to provide a high degree of certainty for regulatory mechanisms, the BLM has included some common elements across the range to address specific threats to the bird and to provide for a net conservation gain for the GRSG and its habitat to reduce the need to list the species under the Endangered Species Act. The plans allow for state-based variations where difference approaches or priorities were consistent with the overall conservation objectives, and can continue to provide adequate regulatory certainty

The BLM is able to address some of the concerns outlined in your letter either through a change or a commitment to clarify our intent, particularly with regard to valid existing rights, habitat objectives, mitigation for anthropogenic disturbance, habitat map updates, and travel management. The BLM looks forward to continued collaboration with the state in the coming weeks to finalize that language. The standard for review and the specific responses to issues raised is 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 RMPs and amendments to RMPs “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).

Working in close collaboration with officials in the Nevada Department of Wildlife and your office, the BLM incorporated significant portions of the Nevada Greater Sage-Grouse Conservation Plan (State Plan) into the Nevada and Northeastern California Proposed LUPA/FEIS, including the concept of “avoid, minimize, and apply compensatory mitigation” at the project level in priority and general habitat management areas (PHMA and GHMA), future use of the Nevada Conservation Credit System (CCS), inclusion of the updated (August 2014) USGS habitat map, exclusion of the one per six hundred and forty acre disturbance density cap, and application of similar seasonal habitat objectives for GRSG.

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." IM 2012-044. In addition, the Approved RMP Amendment 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 sage-grouse 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 and 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 respectfully 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 consistency review are listed below, and are followed by the BLM's response. Please note that the BLM generally only responded to issues that you identified as being inconsistent with your State's (or other local and tribal) plans and not issues of disagreements with portions of the Proposed LUPA/FEIS. In addition, the BLM provides information to resolve several areas of disagreement and provide appropriate clarification to address concerns as we finalize the plans.

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)

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

Issue: Inconsistencies Poorly Identified and Inadequately Addressed

Governor's Recommendation: Reconsider the identified inconsistencies and either incorporate the State Plan, or provide legitimate responses for the inconsistencies. The State of Nevada is especially interested in specific responses regarding inconsistencies related to the issues detailed in their letter. Attached to this letter is correspondence and requests that I received from local jurisdictions, state agencies and other interested parties for your reconsideration and a more complete and legitimate response for the record. Please also identify, specifically, which federal laws are allegedly inconsistent with our state and local governments to resolve these inconsistencies, as opposed to simply dismissing them as the LUPA/FEIS does.

BLM Response: Your letter alleges that BLM has not followed the process of identifying or addressing inconsistencies with state or local plans, policies, or programs. Since it does not itself identify a particular inconsistency for BLM to resolve, it is not the proper subject of consistency review under 43 1610.3-2(e) and BLM respectfully declines to adopt your recommendation. Chapter 6 of the LUPA/FEIS provides a thorough discussion of the Consultation and Coordination process. Specifically, section 6.4 discusses coordination and inconsistency with State Plans, policies and procedures; inconsistencies with County Plans, policies, and procedures; and inconsistencies with Tribal Plans, policies, and procedures. In addition, section 6.6.2 discusses the public comment process on the Draft LUPA/FEIS. More specifically, there is a write-up on the comment analysis methodology. Every letter that was received was assigned an identification number, and logged into a Web-based database that allowed us to organize, categorize, and respond to comments. Each letter was carefully reviewed for substantive comments. Substantive comments from each letter were coded to appropriate categories based on content of the comment, retaining the link to the commenter. The BLM relied on the Council of Environmental Quality's regulations and BLM's NEPA handbook to determine what constituted a substantive comment. If substantive comments were received from the State, Counties or Tribes, they were responded to in *Appendix C, Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement*, in the Proposed LUPA/FEIS. Comments similar to each other were grouped under a topic heading, and the BLM drafted a statement summarizing the issues contained in the comments. The statements were crafted to respond to the comments, and, if warranted, a change to the FEIS was made.

The Proposed LUPA/FEIS identified known inconsistencies with officially-approved state or local plans, policies, or programs and how those issues were addressed. As described in the beginning of this letter, the BLM adopted several key components of the State Plan. However, through evaluation of the Draft EIS documents and draft plans with the FWS, the BLM determined that additional conservation measures were needed to provide additional regulatory certainty were necessary to meet the conservation objectives for the plan and . As a result, the BLM believes the Nevada and Northeastern California Proposed LUPA/FEIS provides the appropriate conservation measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat on BLM administered lands and provides regulatory certainty for the conservation of GRSG and its habitat so as to potentially avoid the need to list the species.

Issue: Sagebrush Focal Areas (SFAs)

Governor's Recommendation: SFAs should be eliminated as a component of the Proposed LUPA/FEIS. If SFAs must remain, BLM should work with the expertise of Nevada's conservation and wildlife staff to identify the true "best of the best," and must limit any moratorium, segregation or withdrawal of locatable minerals to a scientifically based time period that allows for re-entry or a lifting of any such moratorium at such time as science shows that relevant sage-grouse populations are stable or increasing.

BLM Response: The BLM respectfully declines to adopt this recommendation because it would not be consistent with the purposes, policies and programs of federal laws and regulations applicable to public lands, in particular 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.

On October 27, 2014, the USFWS provided the BLM a memorandum titled "Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes." The memorandum and associated maps provided by the USFWS identified areas that represent 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. In this memorandum, FWS Director Dan Ashe specifically stated that, "Strong, durable, and meaningful protection of federally-administered lands in these areas will provide additional certainty and help obtain additional confidence for long term sage-grouse persistence."

To ensure that these areas received the highest level of protection possible, to provide durable protection from further surface disturbance while recognizing valid existing rights, and consistent with the statement of the Director of the FWS and direction provided by the FWS in their October memorandum, the recommendations by the National Technical Team and Conservation Objectives Team, the PRMP identifies a subset of the Priority Habitat Management Areas as "Sagebrush Focal Areas" (SFAs), which are a portion of the FWS identified "strongholds" administered by the BLM. The PRMP applied the following conservation measures in SFAs, all of which were analyzed in the draft EIS: recommending these areas for withdrawal from the Mining Law of 1872, subject to valid existing rights, and applying a no surface occupancy (NSO) stipulation, without waiver, exception, or modification, for fluid mineral leasing.

In November 2014, the states were notified, through a conference call, of this additional recommendation for stronghold conservation by the FWS and on January 20, 2015, the BLM presented BLM's draft proposed management for these SFAs to the 11 state agencies in attendance at the WGA Sage Grouse Task Force meeting. In addition, the State, as a cooperating agency, was provided with the opportunity to review the administrative draft proposed LUPA in early May 2015, where these conservation measures for SFAs were outlined.

As to your specific request to limit the recommended withdrawal to a scientifically-based time period, it is important to note that modifying the timing of the withdrawal is outside the scope of the LUPA/FEIS. The withdrawal recommendation does not include a recommendation as to the possible duration of the withdrawal, as that will be considered in a future process not related to this planning effort. The Proposed LUPA recommends 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.

In light of the BLM's Greater Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the GRSG and its habitat so as to potentially avoid the need to list the species, the BLM finds it is essential to manage SFAs as presented in the Proposed LUPA/FEIS, and respectfully declines to adopt your recommendation to eliminate or reevaluate their recommended boundaries or specifically impose a recommended time limit.

Issue: Anthropogenic Disturbance Cap

Governor's Recommendation: The disturbance cap concept should be removed from the preferred alternative. The State of Nevada spent considerable time, resources, and funding to create the rigorous and scientifically based CCS. The CCS adequately accounts for the quality of habitat and the availability of seasonal habitat types both at the BSU level and the project level, and makes a disturbance cap unnecessary, even possibly counterproductive to achieving net conservation gain. If a disturbance cap remains in the LUPA, additional conditions should be inserted whereby the cap at the BSU level is a temporary backstop to give time for the CCS to prove its effectiveness. When the CCS is proven to be effective the disturbance cap would no longer be required. I also recommend that if a disturbance cap remains that the cap be calculated solely at the BSU level and not the project level.

BLM's Response: The BLM includes the Disturbance Cap Protocol in GRSG PHMAs in Nevada as per the Proposed LUPA/FEIS, Appendix F, *Greater Sage-Grouse Disturbance Cap Guidance*, to limit development in PHMA and ensure regulatory certainty that development will not impact the continued conservation of GRSG. Based on best available science, when disturbance exceeds three percent at either 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). Disturbance caps at both the BSU and the project scale are necessary to account for the amount of existing disturbance at both scales. Calculating disturbance for each additional anthropogenic disturbance placed on the landscape is particularly important at the project scale to ensure that GRSG numbers and habitat acreages remain stable or increase. Further, calculations at both of these scales are intended to encourage clustering of disturbance and discouraging development in undisturbed habitat.

BLM understands and supports the State of Nevada's efforts to implement and demonstrate the effectiveness of the CCS. The Proposed LUPA/FEIS provides numerous opportunities to allow that to occur, especially for new mining activities and future rights-of-ways. As the CCS is implemented, the BLM looks forward to utilizing the CCS as an important tool in mitigating the impacts of habitat disturbance on Greater Sage-Grouse survival. It is important to note that some flexibility was provided in the three percent disturbance cap because of the limited nature of certain habitat types in Nevada and the likelihood that Nevada's Disturbance Cap Protocol will adequately protect habitat. Thus, the BLM respectively declines to adopt this recommendation because it would not be consistent with the purposes, policies and programs of federal laws and regulations applicable to public lands, in particular 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.

Issue: Land Use Allocations that Create Exclusion Areas

Governor's Recommendation: Land use allocations that specifically close areas regardless of mitigation should be removed and the LUPA/FEIS should instead utilize the rigor of the State Plan's "avoid and minimize" process. Those disturbances that cannot be avoided or completely minimized should then run through the rigor of the CCS which identifies and recognizes the highest quality habitat, as mapped and verified on the ground and provides for a system through mitigation ratios, habitat quality, distance criteria and many other factors to ensure the protection and conservation of the habitat. If large areas of land use closures remain in the LUPA/FEIS there needs to be an exception allowing for some level of disturbance provided that a net conservation gain can be achieved.

BLM's Response: The Nevada and Northeastern California Proposed LUPA/FEIS clearly recognizes the "avoid and minimize" process and states it as Objective SSS 4 in the plan: "In PHMAs and GHMAs,

apply the concept of ‘avoid, minimize, and compensatory mitigation’ for all human disturbance not already excluded or closed, so as to avoid adverse effects on GRSG and its habitat. The first priority will be to avoid new disturbance; where this is not feasible, the second priority would be to minimize and compensate any unavoidable, new disturbance.” The proposed plan emphasizes avoiding new disturbance avoidance in the most important habitat through allocations that provide regulatory certainty to the FWS rather than defer decisions on protections to project-by-project authorizations.

In PHMA, commercial wind development is excluded specifically for the purpose of avoiding disturbance in the habitat most important for the bird. Although commercial wind development (20 megawatts or more) is excluded, the Proposed LUPA/FEIS still allows for wind facilities associated with existing industrial infrastructure to provide for on-site power generation, as well as wind facilities less than 20 megawatts, subject to a net conservation gain standard. These exceptions afford opportunities to work with the SETT on the CCS process.

It is important to note that the solar exclusion was established in the Programmatic Solar EIS completed in October 2012 and was not changed by this plan amendment. The Proposed LUPA/FEIS continues to allow for consideration of solar facilities on existing industrial infrastructure to provide on-site power generation (not commercial) subject to a net conservation gain. This exception provides opportunities to use the CCS when undergoing NEPA for such facilities.

The only other resource uses that are “closed” in PHMA are non-energy leasable minerals and salable minerals. Both of these allocations have exceptions to allow for expansion of existing mineral facilities, thus providing for some level of new disturbance that could be subject to the CCS, provided that a net conservation gain can be achieved. There are no closures or exclusions in GHMA except for commercial solar energy development, which was an allocation decision that was carried forward from the Programmatic Solar EIS, which was completed in October 2012.

The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies and programs of federal laws and regulations applicable to public lands, in particular 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.

Issue: Mineral Rights

Governor’s Recommendation: Work with the Nevada Division of Minerals and the SEP to clarify that sage-grouse measures will be implemented within existing surface management regulations, that questions of valid existing rights (VERs) in relation to locatable mineral rights are limited to potential withdrawal areas, and that, if implemented, the 3% anthropogenic disturbance cap does not apply to exploration and mining disturbance authorized under surface management regulations.

BLM Response: The recommendation does not identify an inconsistency with State or local resource related plans, policies, or programs; therefore a detailed response is not required under the Governor’s Consistency process. The BLM will seek to provide additional clarity regarding valid existing rights in the ROD and subsequent implementation direction.

Issue: Habitat Objectives and Associated Management Actions

Governor’s Recommendation: The Habitat Objectives in Table 2-2 and its associated management actions are inconsistent with existing Resource Management Plans, as well as state and local plans. The

BLM should incorporate the introductory language (text of Section 4.0) and the desired habitat conditions (Table 4-1) from the State Plan for consistency of application.

The FEIS implements unduly restrictive livestock grazing actions that do not include all available tools for proper range management to address site-specific concerns. The Proposed LUPA/FEIS should make the management actions for both the Livestock Grazing and Wild Horses and Burros sections consistent with state and local plans, and should ensure that the management actions are implemented according to federal law.

BLM Response: The habitat objectives will be incorporated into all activities, including grazing permit renewals, Allotment Management Plans, Herd Management Plans, as well as restoration and rehabilitation plans associated with permitted or authorized anthropogenic activities on BLM lands. The BLM will provide clarification on this in the ROD.

Your comment indicates that the GRSG habitat objectives are inconsistent with existing Resource Management Plans. It is important to note that Nevada and Northeastern California GRSG planning effort is a Plan Amendment, and therefore will amend any existing BLM Resource Management Plans for purposes of consistency. Table 2-2 provides habitat objectives for management of GRSG habitats that are based on the best available and local science. The table was developed in cooperation with NDOW, USGS, SETT, a Nevada and northeastern California RAC Subgroup, and USFWS. The management actions in the Proposed LUPA/FEIS related to Table 2-2 will be applied and determined at the local site specific/project level and will be based on Ecological Site Descriptions. The potential for each site will be determined on the ground with NRCS, NDOW, permittees and other state and federal agencies. The habitat objectives are not “one size fits all” objectives and many variables will be considered at the site specific/project level. As is specified in the introduction to Table 2-2, these habitat objectives may not be obtainable on every acre within the designated GRSG habitat management areas. Therefore, the application and determination of whether the objectives have been met will be based on the specific site's ecological potential to meet the desired condition identified in the table.

In addition, there are very few differences between BLM's Table 2-2 and Table 4-1 in the State Plan. The science used is the same for both tables. The State's introduction to the table is also very similar to the BLM's. However, the State's introduction contradicts the BLM's intent for use of the table by excluding the table for landscape level application and incorporation of the table while conducting rangeland health assessments. The State's introduction includes several specifics regarding the application of the table on the ground. These specifics will be developed by the BLM under its implementation plan and is not required in the Proposed LUPA/FEIS, as it is not a site specific/project level document. For these reasons, the BLM respectfully declines to adopt the recommendation to use the State's introduction and the State's Table 4-1 because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands.

With regard to your recommendation on livestock grazing actions, 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. 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 GRSG and its habitat so as to potentially avoid the need to list the species, the BLM finds it is essential to include these range management objectives and management decisions in the Proposed LUPA/FEIS and carry them forward into the Approved Resource Management Plan Amendment (ARMPA).

The majority of the livestock grazing management actions in the Nevada and Northeastern California GRSG LUPA are a clarification of our current grazing regulations, and therefore are not “unduly restrictive”, but are required by existing regulation. For purposes of clarification, however, the ARMPA grazing section will include minor edits to management decisions LG 1 and LG 5. Management decision LG 1 will add some supplementary management actions, and will make clear that “...Potential modifications include, *but are not limited to*, changes in the following grazing management practices to improve conditions:...” Management decision LG 5 will also include a qualifier that clarifies the management strategies “may include, *but are not limited to*, the following...” These minor edits should address the State’s concern about “available tools for proper range management to address site-specific concerns”.

By ensuring that the NEPA analysis associated with land-use activities, including, but not limited to, livestock grazing permit renewals and modifications, includes specific adaptive management thresholds and responses based on the GRSG habitat objectives table, Land Health Standards (43 CFR 4180.2), and ecological site potential, the BLM will be able to make adjustments to livestock grazing when necessary to respond to rangeland conditions that have already been analyzed under NEPA. This approach provides the FWS with the certainty that the BLM will take prompt action when any range-use, including wild horse and burro management, is not meeting, or moving toward meeting, a GRSG habitat objective or land health standard.

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.

For the reasons above, the BLM respectfully declines to adopt your recommendation to make the management actions for both the Livestock Grazing and Wild Horses and Burros sections consistent with state and local plans because it is not be consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands, in particular 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.

Issue: Mitigation for Anthropogenic Disturbance

Governor’s Recommendation: The rigor of the CCS should be set as the bar that other allowed mitigation systems must meet to ensure that they are equitable, comparable and consistently provide net conservation gain for GRSG. The LUPA/FEIS should also recognize and honor pre-existing, signed sage-grouse agreements such as the Barrick Bank Enabling Agreement.

The LUPA/FEIS does not require mitigation in OHMA and, as such, is not consistent with the State Plan and the best available science (Coates et al 2014). Mitigation in OHMA provides conservation on an additional 7,620,000 acres that are spatially important to sage-grouse as they maintain connectivity throughout the range in the sub-region.

BLM Response: The BLM is committed to working with the SETT in the application of the CCS, as identified in the Proposed LUPA/FEIS. Under our Mitigation section in Chapter 2, our first management action states: “In Nevada, coordinate with the SETT on the application of a compensatory mitigation program, such as the Nevada Conservation Credit System (**Appendix L**) for mitigating activities that result in habitat loss and degradation of GRSG habitat in Nevada, where the application of compensatory mitigation would occur on or the credit would be applied to disturbance on BLM-administered lands.”

Further, a management action under the Special Status Species section of Chapter 2 states: “In Nevada only, the BLM would consult with the Sagebrush Ecosystem Technical Team (SETT) for application of the “avoid, minimize, and compensatory mitigation” strategy and the Conservation Credit System developed by the Nevada Natural Heritage Program and the SETT (2014a, 2014b) or other applicable mitigation system such as outlined in Appendix I. This would be to ensure that a net conservation gain of GRSG habitat occurs when mitigation is required to address human disturbances in PHMAs and GHMAs (see **Appendix L**) on all agency-authorized activities. The specifics of the coordination will be identified in a MOU between the agencies.” The BLM looks forward to utilizing the innovative approach developed by Nevada during the implementation of the plan.

Chapter 2 and Appendix I of the Proposed LUPA/FEIS contain an overview of the Regional Mitigation Strategy that will be developed within the next year for each of the three WAFWA zones in the Nevada and Northeastern California GRSG planning area. The mitigation practices will follow the Departmental manual and guidance contained in S.O. 3330, regulations from the White House Council on Environmental Quality (CEQ) (40 CFR 1508.20; e.g. avoid, minimize, and compensate), as well as BLM Mitigation Policy (such as the Draft Regional Mitigation Manual MS-1794), which will serve as a framework for developing and implementing the Regional Mitigation Strategy. This mitigation strategy will include “additionality” (i.e., the conservation benefits of compensatory mitigation are demonstrably new and would not have resulted without the compensatory mitigation project), “durability” (i.e., the maintenance of the effectiveness of a mitigation site and project for the duration of the associated impacts, which includes resource, administrative/legal, and financial considerations), and other concepts essential to effective mitigation. As specified in the Regional Mitigation Strategy (Appendix I), a WAFWA Management Zone Greater Sage-Grouse Conservation Team will develop a WAFWA Management Zone Regional Mitigation Strategy to guide the application of the mitigation hierarchy for BLM/USFS management actions and third party actions that result in habitat loss and degradation. This team will include the State and the strategy will identify rigorous mitigation criteria, considering any State-level Greater Sage-Grouse mitigation guidance that is consistent with the requirements identified in this Appendix.

The BLM will ensure that any mitigation that is applied is rigorous and will accomplish a net conservation gain to GRSG and its habitat. Other types of mitigation, such as the Barrick Bank Enabling Agreement, are also allowed and consistent with the net conservation gain to GRSG and its habitat. The BLM will include a reference to the Barrick Bank Enabling Agreement in the ARMPA, as an example of an approach to achieving the net conservation gain standard.

Although application of the CCS mitigation and a net conservation gain standard was not a requirement in OHMA in the LUPA/FEIS, the BLM has the discretion to apply mitigation through the implementation (site specific) NEPA analysis process. During the implementation NEPA analysis for any new anthropogenic disturbances in OHMAs, any impacts to GRSG and its habitat will be analyzed, as required under BLM’s regulations and policies.

For the reasons outlined above the PRMP is not inconsistent with the State plan and the BLM therefore respectfully declines to adopt this recommendation. However, the BLM will make clarifications addressed above in the ROD.

Issue: Map Updating Process

Governor’s Recommendation: The BLM should use the process that was outlined in Appendix) of the Preliminary Proposed FEIS (CA Version) for future map updates. This process provides for the same framework and methods as were used to develop the maps in the LUPA/FEIS and specifically indicates that updates to the maps using these methods will be incorporated through plan maintenance not plan

amendment. At the very minimum, if adopting the above process is not possible, the LUPA/FEIS should adopt the final version of the State of Nevada Management Categories map due mid-august from USGS in the signing of the ROD to ensure that the plan has the most current science and data.

BLM Response: As new information becomes available about GRSG habitat, 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, in order to change the allocations and other management decisions associated with the current habitat maps, the BLM must make a determination, under BLM planning regulations and implementing guidance, as to what procedure is required to implement that change. The BLM cannot make that judgment until it is presented with the facts of a particular mapping change and it cannot modify its regulations governing that determination as part of this planning process.

Moreover, 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 provide the certainty that management actions will occur in the identified habitat management areas for the Greater Sage-Grouse. The BLM therefore respectfully declines to adopt this recommendation.

Issue: Comprehensive Travel and Transportation Management

Governor's Recommendation: Provide clarification on the comprehensive travel and transportation management section that clearly outlines the intent of this section. Also include a statement that any roads that currently exist will be assumed to have underlying valid existing rights. As a starting point, BLM should use each county's provided road inventory as roads that may have a right of way under RS 2477 and cannot have restrictions imposed on them.

BLM Response: While the recommendation does not identify an inconsistency with State or local resource related plans, policies, or programs, the ARMPA will clarify how this section will be implemented and clearly state that the future implementation travel management plans will be subject to valid existing rights. The BLM will not make any reference to RS 2477, however, as the planning decision in the GRSG plan is simply to assign an allocation decision to PHMA and GHMA of "limited to existing roads and trails." Until the implementation travel management plans are completed, the only restriction imposed by the LUPA/FEIS is to no longer allow cross-county motorized travel. All motorized travel will be limited to existing routes when the ROD is signed, and that decision, during this planning phase, does not involve RS 2477 assertions.

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. 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 my and BLM Nevada's continuing relationship and partnership with you and your State agencies as we work towards our mutual goal of Greater Sage-Grouse conservation in Nevada.

If you or your staff has any questions, please contact Lauren Mermejo at (775) 861-6580.

Sincerely,



John F. Ruhs
Acting State Director