



State of
North Dakota
Office of the Governor

Jack Dalrymple
Governor

September 2, 2015

BLM Washington Office
Attn: Director of the BLM
1849 C Street NW, Room 5665
Washington, DC 20240

Dear Director Kornze,

I am writing you in response to the attached BLM letter dated August 6, 2015, in which Montana-Dakotas BLM State Director Jamie E. Connell declined to adequately consider and address reasonable concerns and recommendations of North Dakota as detailed in my attached July 28, 2015 letter to you. Accordingly, North Dakota respectfully appeals State Director Connell's August 6, 2015 response, pursuant to 43 CFR 1610.3-2(e).

I respectfully request that you accept in full the recommendations of North Dakota, as noted in my July 28, 2015 letter, because these recommendations will provide for a reasonable balance between the national interest and the interest of North Dakota. As noted in my July 28, 2015 letter, the Proposed North Dakota Greater Sage-Grouse Resource Management Plan Amendment and Final Environmental Impact Statement (Proposed RMPA) as currently drafted does not lead to nor does it in any way provide for this necessary reasonable balance.

The Proposed RMPA is *per se* unbalanced. For example, the Proposed RMPA does not include adequate information on land use. Within the Proposed RMPA, adequate monitoring of all land uses does not consistently or satisfactorily take place. Further, the Proposed RMPA continues to be unclear whether new technologies and advancements in crude oil and natural gas production were adequately considered and the Proposed RMPA modified accordingly. Additionally, in our view, the Proposed RMPA is not adequately updated with recent relevant comprehensive and objective studies containing the best available science in relation to the North Dakota Greater Sage-Grouse (GRSG) in North Dakota.

The State of North Dakota and particularly the North Dakota Game and Fish Department has worked proactively with the BLM, other partner-states, state and local officials, landowners, conservationists, land developers, the energy industry, and many others for the past several years in developing prudent and effective Best Management Practices for a number of species in western North Dakota including the GRSG. The

BLM Proposed RMPA ignores these ongoing customized conservation programs, containing well-designed and implemented local practices, in favor of an apparent BLM attempt toward an inflexible federal macro-umbrella regulatory-oversight scheme. In our opinion, this misplaced BLM construct under the apparent guise and rather speciously stated objective of “regulatory certainty” does not best advance GRSG conservation efforts in North Dakota.

We in North Dakota have numerous concerns in relation to the Proposed RMPA. Some of these legitimate concerns include the following. For example, the No Surface Occupancy (NSO) stipulation on currently unleased BLM mineral acres is an unbending “one size fits all” approach that also does not provide adequate or improved protection for North Dakota GRSG. Consequently, its intended ulterior purpose seemingly appears to be an attempt to create a blanket prohibition on the leasing and development of North Dakota oil and gas resources on federal lands.

RMPA habitat designation does not sufficiently consider North Dakota mapping data and its soundly crafted site-specific case-by-case ground truthing. More to the point, in our view, GRSG conservation efforts should not be conducted based simply on land ownership but instead on identifying and managing lands cooperatively to ensure GRSG habitat remains. Additionally, the BLM should pragmatically remove its improper requirement contained within the RMPA that mitigation efforts produce a “net conservation gain.” Moreover, the term “tall structures” remains unworkable and ill-defined.

Finally, and perhaps most importantly, it is most critical that BLM provide the public a meaningful opportunity to comment on the Proposed RMPA and that BLM be fairly and objectively receptive to that resulting public input. Public participation during regulatory information gathering naturally results in better outcomes and better governance.

North Dakota respectfully requests a new and complete review of all of our concerns, comments, and recommendations as mentioned in our July 28, 2015 letter as well as all the subsequent BLM adjudicative comments and determinations mentioned in Director Connell’s August 6, 2015 letter. Both of these letters are incorporated into this appeal letter to you by reference, and are accordingly fully part of this appeal. In the view of North Dakota, this new and complete BLM appeal review should not be merely an expedient *pro forma* stage in the consistency review process. This appeal to you should be a *de novo* review, starting anew, and should not give any weight to any adjudicative comments or determinations previously made by State Director Connell or others.

In summary, North Dakota respectfully reasserts all its previous concerns, comments, and recommendations detailed in our July 28, 2015 letter. North Dakota

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respectfully disagrees with and contests all the adjudicative determinations mentioned in State Director Connell's August 6, 2015 response. North Dakota respectfully appeals all issues in its July 28, 2015 letter and all the BLM responses in State Director Connell's August 6, 2015 letter. There are no BLM adjudicative determinations and responses in State Director Connell's August 6, 2015 response that North Dakota does not contest and does not appeal.

During this new and complete review and long before any final BLM adjudication or determination, it would be highly beneficial for BLM and my office, as well as North Dakota Game and Fish Department, landowner, industry, and other stakeholder representatives to again meet together. I encourage you, and respectfully invite you, to participate in this meeting in the spirit of our continued joint cooperation, collaboration, and mutual trust maintaining, enhancing, and restoring of North Dakota GRSG habitat while concomitantly supporting the enjoyment of practical multiple uses of the land.

BLM may contact us at any time. As always, we are willing to answer or address any questions that BLM might have. Additionally, if BLM needs any additional information or other documentation, we will timely assist in any way that we can.

Along with BLM, North Dakota remains fully committed to all viable, tailored, and effective conservation measures in relation to our GRSG, specifically those rational measures that are reasonably balanced with prudent and responsible land management. Thank you, and I very much look forward to hearing from you.

Sincerely,


Jack Dalrymple
Governor

Enclosures

C: Jamie E. Connell, Montana-Dakota BLM State Director

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