



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Washington, DC 20240  
<http://www.blm.gov>

SEP 16 2015

Honorable C.L. "Butch" Otter  
Governor of Idaho  
Boise, Idaho 83720

Dear Governor Otter:

This letter is in response to your appeal of the response provided by the Idaho State Director regarding your consistency review of the Idaho and Southwestern Montana Sub-regional Greater Sage-Grouse Proposed Land use Plan Amendment (referred to hereafter as the PRMPA or amendment). The Governor's consistency review process is a very important part of Bureau of Land Management's (BLM's) land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this effort. The partnership that exists between the State of Idaho and the BLM is significant, and I believe our joint work to address the threats to Greater Sage-Grouse (GRSG) is an excellent example of what is possible when we work toward a common goal. Like you, I hope that these efforts will allow the U.S. Fish and Wildlife Service (FWS) to determine that the GRSG does not warrant listing under the Endangered Species Act (ESA).

As you know, the amendment is the result of an unprecedented west-wide effort to conserve GRSG and its habitat through detailed conservation measures and land use planning efforts at both the state and Federal levels. Because successful management of the western landscapes inhabited by the 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 Idaho. Of note, the BLM plan includes a three-tier habitat mapping and management approach that works in conjunction with state-specific approaches to measuring disturbance, prioritizing management actions, and responding to rangeland fire. We are pleased to have developed the amendment in close coordination with your staff in the Office of Species Conservation, the Idaho Department of Fish and Game, the Western Governors Association Sage-Grouse Task Force, the United States Forest Service (USFS), the FWS, and a wide range of other interested stakeholders.

The purpose of the National GRSG Planning Strategy is to identify and implement measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat. In order to avoid a potential listing and the effects it would have on every activity on millions of acres of public and private lands, the plans need to provide a high degree of regulatory certainty that those plans will be implemented and be effective. To help achieve that level of certainty, the BLM has included common elements across the range to address specific

threats to the species and its habitat. The purpose of these common elements is to provide for a net conservation gain for the GRSG. However, the plans also recognize that different circumstances exist across the range, which is why their development included state-based variations where different approaches or priorities were consistent with the overall conservation objectives.

The BLM was able to address some of the concerns outlined in your letter through a clarification of the management direction in the amendment, particularly with regard to prioritization of grazing management actions in Sagebrush Focal Areas (SFAs). These clarifications are reflected in the Record of Decision and/or the Approved Resource Management Plan Amendment (ARMPA) <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>.

With the aforementioned context and goals in mind, the applicable regulations at 43 C.F.R. 1610.3-2(e), state that “[t]he Director shall accept the [consistency] recommendations of the Governor(s) if he/she determines that 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 PRMPA represents the culmination of an extensive planning process, involving significant time and resources from numerous partners including the State of Idaho. 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.

In your appeal, you request reconsideration and acceptance of the recommendations that were identified in your July 28, 2015 Consistency Review letter. Specifically, you assert that the BLM has not met its consistency obligations under the Federal Land Policy and Management Act (FLPMA) and that Idaho’s recommendations provide for a reasonable balance between the state’s interest and the national interest. You request that the BLM adopt your recommendations, submit a Proposed Rule to the Office of Management and Budget (OMB), and remand the consistency review to the State Director. Below is my response to those issues and recommendations:

#### **Overall Consistency with Idaho State and Local Plans**

Your appeal letter states that the BLM responses to the Idaho Consistency Review letter failed to follow section 202(c)(9) of FLPMA, which states that land use plans be consistent with state and local plans to the maximum extent the Secretary of the Interior finds consistent with Federal law. As noted above, a cornerstone of the BLM’s sage grouse planning process has been coordination and collaboration with the affected states, as demonstrated by the detailed consideration and, in many cases, adoption of the strong GRSG conservation approaches put in place by or suggested by the states, including those put in place by or suggested by the State of

Idaho. However, in order to provide the necessary regulatory certainty, the BLM found it necessary to ensure that there are consistently strong approaches to the management of BLM-managed lands range-wide. 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 the plans have allowed for flexibility where appropriate in the sub-regional plans, such as the three-tier mapping and management approach adopted as part of the Idaho plans. As such, I must respectfully disagree with your contention that the ARMPA is materially inconsistent with the Governor's Plan. The three-tier approach in the Governor's Plan is the basis of the Idaho/Southwest Montana ARMPA. The BLM has also worked with the State of Idaho to tailor many of the "range-wide" management actions in the Idaho ARMPA, such as the recent inclusion of prioritization actions for grazing management in SFAs. These actions demonstrate how the PRMPA has adopted the fundamental tenets of the State plan.

#### **Multiple Use in the Proposed Plan**

Your appeal letter states that the BLM erroneously relied on Manual 6840, Special Status Species Management, in the development of the PRMPA and the response to the Governor's Consistency Review letter. 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. The purpose of the amendment is the conservation of a special status species, the GRSG, and the management actions in the amendment are limited to those which will conserve, enhance, and restore GRSG and its habitat consistent with the agency's multiple-use and sustained yield mission. The management actions are consistent with all of the applicable BLM regulations and policies and allow for continued multiple-use of the lands. Most uses may still occur on the lands included in the amendment, with stipulations and conditions which conserve, enhance, and restore GRSG and its habitat. Allowable resource uses of the BLM lands which are not addressed in this amendment remain in the current land use plans. Therefore, I concur with the BLM Idaho State Director's statements about the applicable purposes, policies, programs, Federal laws, and regulations applicable to BLM-managed public lands, including BLM Manual 6840.

#### **Alleged Improper Delegation**

You also assert that the BLM has improperly delegated authority to the FWS by permitting that agency to effectively veto land management decisions for an unlisted species. 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.<sup>1</sup> That said, I would note that the BLM is not and has not delegated its authority. Rather, the BLM has focused on making its planning decisions based on input from local and national experts on these issues. For example, in order to provide the most protection to GRSG in Priority Habitat Management Areas (PHMA), the areas of highest importance for the species, decisions on allowing surface occupancy during fluid mineral development will be made with the Idaho Department of Fish and Game and the FWS, the local and national experts on GRSG, respectively. The BLM is not delegating authority, but ensuring that all experts evaluate

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<sup>1</sup> Your letter claims, without explanation, that this is a "per se" imbalance. I find this to be insufficiently specific to constitute identification of an inconsistency under 43 C.F.R. 1610.3-2(e).

whether there would be direct, indirect, or cumulative effects on GRSG before allowing surface-disturbing fluid mineral development in areas of important habitat. While the BLM retains the final decision-making authority for decisions on the public lands, this input is critically important.

### **SFAs Exemption**

In your appeal letter, you request that I reconsider the request to exempt Idaho from SFAs. I have reviewed your prior comments on the development of the SFAs and I understand that your office is strongly opposed to them. While I understand these concerns, I uphold the determination of the BLM Idaho State Director that the SFAs are consistent with the BLM's range-wide GRSG conservation strategy. I also want to reiterate that the SFAs are a subset of PHMA, with limited additional management actions to ensure that the "best of the best" habitat receives the attention it deserves. In addition to the recommended mineral withdrawal and the fluid mineral no surface occupancy (NSO) stipulation without waivers, exceptions, or modifications, the ARMPA clarifies (in response to your Governor's consistency review letter) that these areas will be prioritized for a broader group of activities, including vegetation management, wild horse and burro management, habitat restoration, fire and fuels actions, as well as the review of livestock grazing permits and leases, consistent with the State of Idaho Plan.

You also assert in your appeal that in developing the SFAs the BLM has created Areas of Critical Environmental Concern (ACECs) without following the proper regulatory process. This concern does not identify an inconsistency with state or local resource or related plans, policies or programs, and therefore, a response is not required under the Governor's consistency review process. It should be noted that the SFAs are not ACECs – they are a subset of PHMAs with additional management protections, all of which were fully analyzed in the Draft and Final EISs for the Idaho plan. These additional measures include NSO without waiver, exception, or modification for fluid mineral development and a recommendation for mineral withdrawal from the 1872 Mining Law for solid minerals. These actions and recommendations do not constitute an ACEC designation under the applicable regulations. .

### **Disturbance Caps**

Both your consistency review and appeal letter requested the removal of the project level disturbance caps. The BLM included the project-level disturbance cap to ensure that disturbance is limited at both a local and landscape scale and to encourage co-location of disturbance. 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. This is a critically important aspect of the GRSG strategy, and therefore, I respectfully deny your appeal on this issue and uphold the State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

It should be noted that based upon further review across the Great Basin region, the BLM is including an exception to the project-level disturbance cap for designated utility corridors, to ensure that these areas are used to the fullest extent possible as intended for utility lines and associated disturbance. This modification is consistent with BLM's goal of encouraging co-location of disturbance.

### **Net Conservation Gain Standard**

Your appeal notes that the Governor's "... strategy is in many ways in and of itself a mitigation plan," and as a result, you expresses concern that the BLM mitigation standard of net conservation gain is in conflict with this. I respectfully disagree with this statement. Based on the way the ARPMA is structured, the Idaho State Plan, especially the three-tier approach, will serve as a key component of the BLM's mitigation strategy, and therefore the AMPRA is not in conflict or inconsistent with the state strategy. Additionally, as noted in the State Director's response, the mitigation standard in the amendment is consistent with numerous national policies, including Secretarial Order 3330 and BLM's Draft - Regional Mitigation Manual Section (MS)-1794. As a result, I deny your appeal on this issue and uphold the State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

I would also note that going forward it will be critical for BLM and its partners to work together to develop and implement effective mitigation on the ground. This mitigation will be developed working with existing and developing mitigation approaches that are being utilized in individual states and west-wide. To do this, the BLM will utilize the expertise of state and Federal partners, through WAFWA Management Zone conservation teams, to develop mitigation strategies. Participation of your Office of Species Conservation and the Idaho Department of Fish and Game will be critical to this effort.

### **Livestock Grazing**

You identified numerous concerns with the livestock grazing management actions in the amendment in your Consistency Review and appeal. As a result of the Governor's consistency review process, the BLM included a refinement of the prioritization strategy for livestock grazing management. The revised language states that:

"Management and conservation action prioritization will occur at the Conservation Area (CA) scale and be based on GRSG population and habitat trends: Focusing management and conservation actions first in SFAs followed by areas of PHMA outside SFA."

Under this refined language, vegetation management actions, including but not limited to the review of grazing permits, are prioritized in SFAs. In light of the agency's limited resources, we will focus our management actions first in SFAs, as these are the areas which hold the best contiguous habitat and populations. Specifically, our actions will focus on those allotments or permits not meeting land health standards in areas where the sage-grouse populations are in decline.

You also express concerns with the habitat objectives table, that the management direction associated with its use is vague and subjective. The use of the metrics in the table will be site-specific. Specifically, the habitat objectives table sets forth the desired habitat condition for permitted uses. The metrics in the table will be used, as appropriate, based on ecological site potential, in the development of land use authorizations, including but not limited to livestock grazing permits, and land health assessments. Please note, the BLM creates and uses habitat objectives for many special status species and includes them in land health assessments it prepares routinely across the west.

Finally, you expressed concern about the BLM's statement that "current grazing management will not change as a result of the SFA designation." Specifically, with respect to your statement that prioritization of grazing permit renewals in SFAs "...is really a subterfuge for elevating the activity [(i.e., grazing)] to primary threat status," I would like to clarify the intent of BLM's approach. The plans prioritize grazing permit renewals and field checks within SFAs because of the habitat quality in those areas, not because of some unstated concern about the level of threat posed by current grazing activities. As stated above, maintenance of habitat quality within SFAs is a key component of the BLM's plans. Moreover, it should be noted that the BLM, under current authority and plans, is responsible for ensuring that grazing is undertaken in an appropriate manner and that uses are meeting or moving towards meeting applicable land health standards. The amendment does not change this underlying obligation. They do however inform the applicable land health standards and place a higher focus on meeting or moving toward meeting land health standards and GRSF habitat objectives in SFAs.

Based on the foregoing, I respectfully deny your appeal on these grazing issues and uphold the State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSF conservation strategy range-wide.

#### **Lek Buffers**

In your Consistency Review, you recommended that the BLM remove the uniform lek buffers from the plans. The BLM Idaho State Director's response explained that the buffers are not uniform and that local data and regulations can be considered in their application at the project development stage. The application of buffers also varies according to habitat type, with more exceptions provided in General Habitat Management Areas (GHMA) than in PHMA. Additionally, the use of the buffers identified in the Governor's Plan is allowed under the considerations put forth in the amendment, provided they provide the same level of protection for GRSF and its habitat in any particular circumstance. Again, the use of buffers will be determined on a site- and project-specific basis, during project development. Based on the foregoing, I respectfully deny your appeal on this issue and uphold the State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSF conservation strategy.

#### **Required Design Features**

In your appeal, you request that I consider removing the Required Design Features (RDFs) which are not contained in the Governor's Plan. I agree with the Idaho State Director that the RDFs are an important aspect of the BLM strategy and respectfully deny your request. Similar to the buffers, there is flexibility in the application of the RDFs, such that if there is a Best

Management Practice in the Governor's Plan which provides equal protection for GRSG and its habitat, it may be used instead, and therefore the RDFs do not create an inconsistency with state or local resource related plans, policies, or programs.

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 Idaho State Director's response to your Finding of Inconsistency and respectfully deny your appeal, including your request to withdraw the proposed amendment and adopt the Governor's Plan in its entirety. As you are aware, through a strong partnership and significant engagement between our teams, many aspects of the Governor's Plan have been incorporated into the BLM's plan. 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 ARMPA 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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