

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

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**BLM Director's Responses to the Appeals by the Governors of Idaho, Nevada, North Dakota, South Dakota, and Utah Governors of the BLM State Directors' Governor's Consistency Review Determination**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Approved Resource Plan Amendments and Approved Resource Plan/Records of Decision (RODs) for the Great Basin Region and Rocky Mountain Regions were signed by the BLM Director and the Assistant Secretary, Lands and Minerals Management, on September 21, 2015. The RODs constitute the final decision of the BLM and the Approved Plan Amendments and Approved Plan were effective immediately upon their signing. In accordance with its regulations, the BLM is publishing the reasons for rejecting the recommendations of the Governors of Idaho, Nevada, North Dakota, South Dakota, and Utah regarding Idaho, Nevada, North Dakota, and Utah Greater Sage-Grouse (GRSG) Proposed Resource Management Plans Amendments (PRMPAs) and Final Environmental Impact Statements (FEISs) and the South Dakota Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) which were published on May 29, 2015.

**FOR FURTHER INFORMATION CONTACT:** Brian Amme, Acting Division Chief for Decision Support, Planning and NEPA, telephone 202-912-7289; address 1849 C Street NW., Room 2134LM, Washington, DC 20240; email [bamme@blm.gov](mailto:bamme@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You (Governor) will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The RODs amend and revise Resource Management Plans (RMPs) across the range of the Greater Sage Grouse (GRSG), including RMPs in the states of Idaho, Nevada, North Dakota, South Dakota, and Utah. The RODs

incorporate conservation measures to conserve, enhance and restore GRSG and its habitat.

In accordance with the regulations at 43 CFR 1610.3-2(e), the BLM submitted the Proposed Plan Amendments (Idaho, Nevada, North Dakota, and Utah) and Proposed Plan (South Dakota) for a 60-day Governors' Consistency Review. The 60-day review period ended on July 29, 2015. The relevant BLM State Directors (State Directors) received letters from the Governors of Idaho, Nevada, North Dakota, South Dakota, and Utah identifying alleged inconsistencies with State and local plans, policies, and programs and identifying recommendations to address those potential inconsistencies. These letters are available at [http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents\\_and\\_resources.html](http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html). After careful consideration of the concerns raised by the five States, the State Directors decided not to adopt the recommendations made by the Governors. Copies of the August 6, 2015, letters from the State Directors to the Governors are also available at [http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents\\_and\\_resources.html](http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html).

By September 11, 2015, the BLM Director had received appeals from the Governors of Idaho, Nevada, North Dakota, South Dakota, and Utah on the State Directors' decisions on their recommendations.

In reviewing these appeals, the regulations at 43 CFR 1610.3-2(e) state that "[t]he Director shall accept the (consistency) recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state's interest and the national interest." On September 16, 2015, the BLM Director issued final responses to the Governors detailing the reasons that the recommendations did not meet this standard. Copies of both the incoming appeal letters from the Governors and the outgoing responses are available at [http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents\\_and\\_resources.html](http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html). Pursuant to 43 CFR 1610.3-2(e), the basis for the BLM's determination on the Governors' appeals is presented below. Appeal responses are grouped by state and issues area and are being published verbatim.

**Idaho**

*Overall Consistency With Idaho State and Local Plans*

Your (Governor's) 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. 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 (BLM Director) 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 Sagebrush Focal Area (SFAs). These actions demonstrate how the PRMPA has adopted the fundamental tenets of the State plan.

*Multiple Use in the Proposed Plan*

Your (Governor's) 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 (Governor) 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. 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 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 (Governor's) 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 (Governor's) 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 withdrawal from the 1872 Mining Law. These actions and recommendations do not constitute an ACEC designation under the applicable regulations.

#### *Disturbance Caps*

Both your (Governor's) 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 (BLM Director) 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 (Governor's) 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 ARMPA 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 (Governor) identified numerous concerns with the livestock grazing

management actions in the amendment in your (Governor's) 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 (Governor) 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 (Governor) 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 (BLM Director) 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 GRSG 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 GRSG conservation strategy range-wide.

#### *Lek Buffers*

In your (Governor's) 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 GRSG 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 (BLM Director) 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.

#### *Required Design Features*

In your (Governor's) appeal, you request that I (BLM Director) 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.

#### **Nevada**

##### *Inconsistencies Between the BLM's Nevada GRSG PRMPA and the State GRSG Plan*

As you (Governor) know, the BLM adopted much of the State GRSG Plan into the PRMPA. However, in addition to the measures in the State plan, the BLM is required under the applicable regulations to include in its land use plans goals, objectives, allocation decisions and management actions that help the BLM to specifically manage certain resources on public land. These components are also a critical part of BLM's Special Status Species policy, under which disturbance-limiting land use plan allocation decisions are a key component. The State's Plan does not contain such allocation decisions or management actions as it relies largely on cost-based incentives to implement an avoid, minimize, and mitigate strategy. In effect, if an applicant has sufficient funds to buy credits, a project could be allowed to be placed anywhere, even in the most important habitat. The BLM has found that this approach, especially before it has built an implementation track record, may not address the BLM's land use planning requirements and does not provide the requisite level of regulatory certainty for a landscape-level species like the GRSG. As noted above, the allocation decisions presented in the BLM's plans and amendments range-wide were designed to provide that level of certainty. Therefore, I (BLM Director) concur with the Acting Nevada State Director's response and respectfully deny your (Governor's) appeal on this issue because it is inconsistent with the goal of the BLM's GRSG conservation strategy.

##### *Anthropogenic Disturbance Cap Will Hinder GRSG Conservation Efforts*

Your (Governor's appeal) letter states that the Disturbance Cap Protocol (DCP) would encourage habitat fragmentation because it provides an incentive to locate new disturbances in areas with little existing disturbance. The goal of the DCP has always been to encourage the co-location of new disturbances with existing disturbances if the activity cannot be avoided altogether within GRSG habitat in order to limit overall disturbance levels in these areas and the impact that they have on the species. The BLM Nevada State Director worked closely with your office to craft the DCP. Due to that close coordination and in recognition of the State's work and

investment in the CCS, the BLM's plan in Nevada is the only one to include an exception to the cap. The ARMPA adopts a DCP with a 3% cap, except in situations where a biological analysis indicates a net conservation gain to the species, and the State of Nevada, the BLM, and FWS concur with that analysis.

With respect to the suggestion that the DCP will encourage disturbance in previously undisturbed areas, the Nevada ARMPA contains allocation decisions separate and apart from the DCP that will limit or preclude new disturbance in PHMA and minimize disturbance in GHMA. The BLM believes that these protective allocation decisions (*i.e.* no surface occupancy for fluid mineral leasing in PHMA), will limit additional disturbance from occurring and causing habitat fragmentation, thereby maintaining disturbance under the 3% disturbance cap threshold.

In addition, the ARMPA has been clarified to provide for exceedance of the 3% disturbance cap within open designated utility corridors. This clarification has now been added to the BLM Nevada and Northeastern California's ARMPA in order to ensure co-location with existing disturbances. Based on best available science, when disturbance exceeds three percent at either the biologically significant unit or project 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).

Based on the foregoing, I (BLM Director) therefore deny your (Governor's) appeal on this issue and concur with the Acting State Director's determination that this recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

#### *SFAs Are Scientifically, Functionally and Administratively Flawed*

As explained in the Acting BLM Nevada State Director's response, the BLM continues to rely on the FWS expertise as a cooperating agency in this planning effort. In that role, the FWS' provided the BLM with a memorandum identifying highly important landscapes. These areas represent the 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. By recognizing these areas and applying consistent management within them across the Great Basin, the BLM believes it is providing regulatory certainty to the FWS that these areas will be protected.

Additionally, although the SFAs are a high priority for protection from anthropogenic disturbances, and disturbances from fire, invasives, and conifer encroachment, the protection of all other GRSG habitat is also a major component of the ARMPA, contrary to the suggestion in your (Governor's) appeal. The ARMPA contains numerous pages of protective decisions that apply to PHMA, GHMA, and Other Habitat Management Areas; no habitat category is being ignored. I (BLM Director), therefore, respectfully deny your appeal on these issues and uphold the Acting State Director's determination that your recommendations are inconsistent with the goal of the BLM's range-wide GRSG conservation strategy.

Your letter also states that segregating the SFA lands from mineral entry for a two-year period would have a negative effect on investment in the region, to the detriment of local, state, and national interests. 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. Nevertheless, it is important to note that the SFAs comprise less than 3% of the lands in Nevada. The withdrawal process, beginning with the temporary segregation, includes a public process to consider information provided by the states, stakeholders and others on mineral potential, as well as the importance of these areas as sage-grouse habitat. This information will be included in the analyses which the Secretary will use to make a decision about a potential withdrawal.

#### *Nevada's Conservation Credit System (CCS) Assures Net Conservation Gain*

The ARMPA does not deny the application of the State of Nevada's CCS or say that it will not provide for a net conservation gain. In fact, BLM recognizes that CCS will play an important role in mitigation efforts in Nevada. That said, the ARMPA also recognizes that there are other forms of mitigation that can result in a net conservation gain to GRSG and its habitat. As a result, the ARMPA commits to consideration of the CCS, as appropriate, and looks forward to utilizing the CCS as an important tool in mitigating the impacts of habitat disturbance. The relationship between BLM management of the public lands and the CCS is currently being negotiated through a Memorandum of Understanding (MOU) with the SETT. Working through the specific factors of how and when the BLM and applicants would use the CCS is not a planning

decision, and is outside of the scope of the planning effort, and therefore is not subject to consistency review of appeal. The MOU reflects the plan decision to consider the CCS as a means of mitigation. The ARMPA includes language to clarify the relationship between the CCS and proposed uses in GRSG habitat. I (BLM Director) therefore respectfully deny your (Governor's) 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.

#### *LUPA/FEIS Must Incorporate New Science and Data*

Your (Governor's) appeal letter indicates that BLM is not committed to using the best available science. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. The BLM will incorporate new science as it becomes available. New information, updated analyses, or new resource use or protection proposals may require amending or revising land use plans and updating implementation decisions. In this case, the primary requirement for considering new information is as follows:

*The BLM planning regulations require evaluating whether there is new data of significance to the land use plan (see 43 CFR 1610.4-9) and whether plan amendments (see 43 CFR 1610.5-5) or revisions (see 43 CFR 1610.5-6) are required.*

The BLM commends the State of Nevada for investing in updating mapping in cooperation with the U.S. Geological Survey and others. There are many factors that will need to be taken into consideration concerning new mapping efforts and how they will be used by the BLM. Although the BLM can take these new mapping changes into account when making implementation-level decisions, the BLM's authority to impose plan-level management changes is limited. The determination whether to amend or revise an RMP based on new proposals, circumstances, or information depends on (1) the nature of the new proposals, (2) significance of the new information or circumstances, (3) specific wording of the existing land use plan decision, including any provisions for flexibility, and (4) the level and detail of the NEPA analysis.

Finally, your letter also includes a concern regarding the leadership of the Western Association of Fish and Wildlife Agencies (WAFWA) Management Zone Greater Sage-Grouse

Conservation Team. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process.

Nevertheless, I (BLM Director) wish to clarify, as explained in the ARMPA, that this team will be led by State of Nevada and representatives from the appropriate Federal agencies.

#### **North Dakota**

##### *Balanced Land Use*

Your (Governor's) consistency review and appeal letter expressed concern that the PRMPA does not include adequate information on land use. This concern does not identify an inconsistency with State or local resource related plans, policies, or a program, therefore a response is not required under the Governor's consistency review process. I (BLM Director) do, however, concur with the response from the BLM Montana/Dakotas State Director that the purpose of the plan amendment is to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to the habitat of GRSG in accordance with the BLM's multiple-use and sustained yield mandate. Management direction in the amendment is specific to those activities on BLM land in southwestern North Dakota which may impact GRSG. Other programs/uses outside of GRSG habitat that are not addressed in the ARMPA are carried forward from the existing North Dakota Resource Management Plan (1988) and are not altered by this decision.

##### *New Technology*

The North Dakota Governor's consistency review and appeal letter states that the proposed amendment is unclear about new technologies. The appeal does not raise an issue of inconsistency to resolve in this regard. I (BLM Director) do, however, concur with the response from the Montana/Dakotas State Director Jamie Connell which noted that the majority of the southwestern area of North Dakota is already leased and predominately developed using one well per pad. I would also note that the amendment includes flexibility for oil and gas development and location, such as collocation of wells on well pads and directional drilling from outside of habitat, and therefore is not inconsistent with modern drilling technologies and approaches.

##### *Case-by-Case Analysis*

In your (Governor's) consistency review and appeal letter, you expressed a need for case-by-case management decisions. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. Nevertheless, I (BLM Director) concur with the response from the BLM Montana/Dakotas State Director that the BLM's planning regulations require that we use land use plan allocation decisions to specifically manage certain resources on public land. Disturbance-limiting allocation decisions are the keystone to the BLM's Special Status Species Policy. In contrast, the North Dakota State Plan is voluntary, and does not contain allocation decisions. Such an approach does not provide the necessary level of regulatory certainty necessary to achieve the goals of the BLM's range-wide GRSG conservation strategy for a landscape-level species such as GRSG. It is important to note that the BLM will continue to work with the State of North Dakota and proponents on a case-by-case basis on all future project level implementation activities, to ensure that they utilize the best available science and local information, in conformance with the decisions in the ARMPA. Also, please note that all of the management decisions in the ARMPA are subject to valid existing rights.

With respect to your concerns about new information and mapping data, the BLM will consider and incorporate new information and habitat mapping, when applicable, and as it becomes available. New information, updated analyses, or new resource use or protection proposals may require subsequent plan maintenance, revision, or amendment, as appropriate.

##### *Net Conservation Gain*

You state that the net conservation gain mitigation standard put forth in the PRMPA is inconsistent with FLPMA. This statement does not identify an inconsistency with State or local resource related plans, policies, or a program, therefore a response is not required under the Governor's consistency review process. I (BLM Director) do, however, concur with the response provided the BLM Montana/Dakotas State Director that included an extensive explanation of how this landscape-scale goal is consistent with the BLM's GRSG Strategy as well as Federal policy.

##### *Tall Structures*

Your (Governor's) consistency review and appeal letter state that the management actions for "tall structures" are unworkable. As noted in the response from the BLM Montana/Dakotas State Director, this statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. It should be noted, however, that tall structures are a concern because they can provide habitat for predators of GRSG. Therefore, managing the placement and mitigating impacts of tall structures is an important aspect of the BLM's range-wide conservation strategy. The management approaches in the amendment, such as required design features and application of lek buffer distances, allow for the development and use of appropriately designed and mitigated tall structures.

##### *Comment Periods*

The North Dakota Governor's consistency review and appeal letter state that there was not adequate opportunity for public review and comment. As noted in the response from the BLM Montana/Dakotas State Director, this statement does not identify an inconsistency with State or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process. It should be noted, however, that the BLM provided full opportunity for public comment and involvement in accordance with applicable law and regulations. More details on this can be found in Chapter 6 of the Final Environmental Impact Statement, as well as in the ARMPA and Record of Decision, found at <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>.

#### **South Dakota**

##### *Waivers and Modifications for No Surface Occupancy Stipulations*

In both your Governor's consistency review letter and in your (Governor's) appeal letter, you recommend that the BLM provide more flexibility regarding fluid mineral development to allow for the development of oil and gas resources in South Dakota. I (BLM Director) concur with the assertion of Montana/Dakotas State Director Jamie Connell that adoption of the recommendation offered, namely allowing waivers and modifications to no surface occupancy stipulations in Priority Habitat Management Areas, is not consistent with the goals of the

BLM's range-wide GRSG conservation strategy. The FWS identified energy development, mining, and infrastructure as major threats to the GRSG populations in the Dakotas in its 2010 listing determination and in the 2013 Conservation Objectives Team Report. The BLM has determined that allowing limited exceptions and no modification or waivers to the development of future fluid mineral resources with No Surface Occupancy stipulations is necessary to address these threats in Priority Habitat Management Areas. I, therefore, respectfully deny your appeal on this issue and uphold the State Director's determination.

#### *Reasonable Foreseeable Development Analysis*

You state that you wish the BLM to reconsider the decision not to update the Reasonable Foreseeable Development (RFD) analysis in the Final Environmental Impact Statement. This statement does not identify an inconsistency with State or local resource related plans, policies, or programs; therefore, a response is not required under the Governor's consistency review process. I (BLM Director) do, however, concur with the response from the BLM Montana/Dakotas State Director that, while the RFD may not have utilized the 2014 data provided by South Dakota, the analysis provides adequate information with regard to overall potential development and serves as an appropriate basis for the BLM's planning process.

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

#### **Utah**

##### *WAFWA Management Zone GRSG Conservation Team*

You (Governor) expressed concern about the use of the WAFWA Management Zone GRSG Conservation Team in your Governor's Consistency Review and reiterate the concern in your (Governor's) appeal. This concern does not identify an inconsistency with state or local resource related plans, policies, or programs, and therefore a response is not required under the Governor's consistency review process.

I (BLM Director) understand that the State of Utah is in a unique position, with habitat in four WAFWA Zones, and agree that the WAFWA Management Zone GRSG Conservation Teams should utilize existing approaches and constructs to the fullest extent possible in connection with their work. The ARMPA and the ROD include language to reflect this direction. It should also be remembered that the primary purpose of these teams are to advise on cross-state issues, such as regional mitigation strategies and adaptive management monitoring and response. In connection with these efforts, I am confident that the BLM Acting Utah State Director will ensure that the good work the State of Utah has done, including the State's mitigation plan, is considered as the PLUPA is implemented. Notably, the State of Utah has done outstanding work on vegetation treatments to improve habitat condition, including its conifer removal implementation plans.

##### *Conservation Activities for the Department of Defense*

Your (Governor's) Consistency Review and appeal letters recommend that the BLM adopt planning provisions in the amendment which provide equivalent protections for the activities of the Department of Defense as those found in the State's Conservation Plan. The Department of Defense has been a partner throughout the GRSG planning process and has worked with us to address the potential impacts of the amendment on base readiness across the range. Therefore, I (BLM Director) respectfully deny your (Governor's) appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy range-wide and the applicable legal authorities.

##### *Livestock Grazing*

The BLM was able to provide clarifying information in the ROD to

make clear that appropriately managed livestock grazing may continue under the GRSG plans. However, the additional changes you recommend in your (Governor's) appeal letter are beyond the scope of the appeal process and do not relate to 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. That said, I (BLM Director) remain committed to working with the state and other stakeholders to ensure that these plans are implemented in a manner that demonstrates well-managed grazing practices are compatible with long-term sage-grouse conservation.

##### *Alton Coal Lease-By-Application*

In the Governor's Consistency Review and the appeal, you recommended that the BLM identify the Alton Coal Lease-By-Application (LBA) tract as GHMA, as opposed to a PHMA. Based on data collected by the State, the company, FWS, and the BLM, the area in and around the Alton tract contains active dancing and strutting grounds, and may contain the southernmost lek in the United States. Based on this data, the FWS, working with the State and others, identified the area as a priority area for conservation in the FWS Conservation Objectives Team Report, which led to the BLM identifying it as PHMA. After carefully reviewing the available information related to GRSG in and around the Alton Coal tract and the response by the BLM Acting Utah State Director, I (BLM Director) am upholding the decision to retain this area as PHMA and deny your recommendation because it is inconsistent with the goal of the BLM's GRSG conservation strategy range-wide.

##### *State Authority Concerning Management of Wildlife*

Your consistency review and appeal letter express concern about the provision which requires agreement by the State and FWS prior to approving exceptions to the NSO stipulation for fluid mineral development in PHMA. This does not raise an issue of inconsistency with State or local resource or related plans, policies or programs; therefore, a response is not required under the Governor's consistency review process. Moreover, the involvement of FWS in the determination as to whether there would be direct, indirect, or cumulative impacts to GRSG does not unlawfully or unconstitutionally infringe on state authority or unlawfully delegate BLM's authority over the public lands. Rather, in order to provide the most protection

to GRSG in PHMA, the areas of highest importance for the species, the BLM is implement a structure whereby it will seek the input of local and national experts on GRSG—the FWS and the Utah Division of Wildlife Resources—before making decisions regarding whether to grant an exception to an NSO Stipulation to allow surface-disturbing fluid mineral development.

#### *Inconsistency With State Law School Trust Land Obligations*

The appeal letter requests that I (BLM Director) reconsider the decision of the Acting Utah State Director related to land tenure adjustments involving lands owned and managed by the School and Institutional Trust Lands Administration. I have reviewed the response, as well as the clarifying language that we have added to the amendment in response to your consistency review letter, which allows for disposal *or exchange* if there is a net conservation gain or no direct or indirect adverse impact to GRSG and its habitat. I believe that the state trust land exchanges and selections can be completed under this management direction and assure you that we will work with the State of Utah to complete such actions as appropriate. Therefore, I respectfully deny your (Governor's) appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's GRSG conservation strategy range-wide.

#### *Management of Habitat Outside of PHMA*

The State of Utah has recommended that the BLM eliminate the management actions in its plans for areas outside of PHMA. After having reviewed the information provided with your recommendation, I (BLM Director) respectfully deny your (Governor's) appeal and uphold the decision of the Acting Utah State Director that your recommendation is inconsistent with the goal of the BLM's GRSG range-wide conservation strategy. GHMA provides important connectivity and restoration areas and its protection is an essential aspect of the BLM's GRSG conservation strategy. Additionally, as stated above, the PLUPA amendment already incorporates additional flexibility for GHMA in the state of Utah because of the limited number of birds in GHMA.

#### *SFA Exemption*

In your (Governor's) appeal letter, you request that I (BLM Director) reconsider the request to exempt Utah from SFAs. I have reviewed your prior comments on

the development of the SFAs and while I understand these concerns, I uphold the determination of the Acting Utah 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" receives the attention it deserves. In addition to the recommended mineral withdrawal and the fluid mineral NSO stipulation without waivers, exceptions, or modifications, these areas will be prioritized for vegetation management, review of livestock grazing permits and leases, habitat restoration, and fire and fuels actions. Therefore, I respectfully deny your (Governor's) appeal on this issue and uphold the Acting Utah State Director's determination that your recommendation is inconsistent with the goal of the BLM's range-wide GRSG conservation strategy range-wide.

**Authority:** 43 CFR 1610.3-2(e).

#### **Byron Loosle,**

*Acting Assistant Director, Renewable Resources & Planning.*

[FR Doc. 2015-25973 Filed 10-9-15; 8:45 am]

**BILLING CODE 4310-22-P**

## **DEPARTMENT OF JUSTICE**

### **Antitrust Division**

#### **United States v. Cox Enterprises, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Cox Enterprises, Inc., et al.*, Civil Action No. 1:15-cv-01583 (TFH). On September 29, 2015, the United States filed a Complaint alleging that Cox Automotive's proposed acquisition of Dealertrack Technologies, Inc.'s automobile dealership inventory management solution (IMS) business would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest Dealertrack's IMS business to DealerSocket, Inc. or to another buyer approved by the United States. The proposed Final Judgment also: (1) Requires Defendants to enable the continuing exchange of data and content between the divested IMS business and

other data sources, Internet sites, and automotive solutions that they control; and (2) prevents Defendants from unreasonably using their ownership interest in Chrome Data Solutions, LP, a company that compiles and licenses vehicle information data used by IMSs and other solutions and Web sites.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7100, Washington, DC 0530 (telephone: 202-307-6200).

#### **Patricia A. Brink,**

*Director of Civil Enforcement.*

### **IN THE UNITED STATES DISTRICT COURT**

#### **FOR THE DISTRICT OF COLUMBIA**

*UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7100, Washington, DC 20530, Plaintiff, v. COX ENTERPRISES, INC., 6205 Peachtree Dunwoody Road, Atlanta, GA 30328, COX AUTOMOTIVE, INC., 3003 Summit Blvd., Suite 200, Atlanta, GA 30319, and DEALERTRACK TECHNOLOGIES, INC., 1111 Marcus Ave, Suite M04, Lake Success, NY 11042, Defendants.*

Case No. 1:15-cv-01583  
Judge: Thomas F. Hogan  
Description: Antitrust  
Filed: September 29, 2015

### **COMPLAINT**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition by Defendants Cox Enterprises, Inc. and Cox Automotive, Inc. (collectively, "Cox") of Defendant Dealertrack Technologies, Inc. ("Dealertrack"). The United States alleges as follows: