



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>



MAR 22 2013

The Honorable Matthew Mead
Governor of Wyoming
Cheyenne, Wyoming 82002

Dear Governor Mead:

Thank you for your continued willingness to work with the Bureau of Land Management (BLM) to identify Greater Sage-grouse (GRSG) concerns related to public lands across the State of Wyoming, and for providing us with an opportunity for ongoing dialogue to address those concerns.

The BLM has received and reviewed your March 7, 2013, appeal of the BLM Assistant Director for Minerals and Realty Management's response to your January 8, 2013, recommendation letter regarding the November 2012 *Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement (PRMP/FPEIS)*. Your appeal expresses your concern that the PRMP/FPEIS does not fully implement Wyoming Executive Order (EO) 2011-05. Specifically, your appeal states that the PRMP/FPEIS should, consistent with EO 2011-05, apply stipulations to development in GRSG core areas. Your letter states:

It is important that Wyoming screen lease nominations for compliance with EO 2011-5 during the presale NEPA process and incorporate in leases, as necessary management actions for development to protect sage-grouse habitat or deny a lease because of the inability to comply. The BLM may identify other lease conditions, but sage-grouse stipulations fundamental to Wyoming's sage-grouse strategy, must be documented and known outright by prospective lessees.

I greatly appreciate your comments and reiterate the belief expressed by the Assistant Director that with respect to protection of GRSG habitat, there is no inconsistency between the State of Wyoming's goals for land management and those of the BLM. Like the State of Wyoming, the BLM's objective is to conserve sage-grouse habitat and avoid a listing of the bird by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act. As we move forward with implementation of our oil shale program on the public lands, there will be opportunities for the State of Wyoming to assist the BLM in making the most informed decisions regarding development of this resource in a way that respects these twin goals of conserving the sage-grouse and its habitat.

First, under Section 369(e) of the 2005 Energy Policy Act, the Secretary is to consult with the Governors of Colorado, Utah, and Wyoming to determine if there is sufficient interest in the States in the leasing and development of oil shale resources. During that consultation, the State may suggest areas of public lands where leasing would be appropriate. This required consultation also provides the State with an opportunity to suggest possible mitigation measures that the BLM could analyze in the NEPA process. The Council on Environmental Quality's regulations implementing NEPA require agencies to include in their NEPA analyses appropriate mitigation measures not already included in the proposed action or alternatives (40 CFR 1502.14(f)).

Second, we anticipate that the State will be invited to be a cooperating agency on any NEPA document prepared for oil shale leasing and development in Wyoming. As a cooperating agency, the State will be able to identify any concerns – even non-GSG-related ones, provide information for preliminary (internal) draft documents, collaborate with the BLM to evaluate alternatives and estimate their effects through that process. And while the decisions on lease issuance and any subsequent development proposal, as well as the mitigation measures to be applied, remain the exclusive responsibility of the BLM, this opportunity for involvement in the analytical process supporting these decisions is consistent with the State of Wyoming's desire to screen lease nominations for compliance with EO 2011-5 during the presale NEPA process. Any management constraints developed through the NEPA process to mitigate impacts to other land uses or resource values would be attached to the lease as stipulations, which should satisfy Wyoming's concern that GRSg stipulations be documented and known by prospective lessees.

As you know, the land use allocation decision before us, and the analysis supporting it are quite narrow in scope; the decision does not authorize, and the analysis does not support approval of any future lease or development proposal. At this time, there is just not enough information regarding the technology that may be used to develop the oil shale resources, and the BLM cannot apply any protective stipulations to leases without appropriate analysis. If and when applications to lease are received and accepted, the BLM will conduct appropriate NEPA analyses, including consideration of direct, indirect, and cumulative effects, reasonable alternatives, and possible mitigation measures, as well as an assessment of the level of development that may be anticipated. This required analysis will provide the basis for the BLM to establish lease stipulations. Further, after a lease is authorized, actual development will require additional analysis to address the site-specific conditions of the proposed development and to develop additional mitigation measures.

As noted in both your recommendation and your appeal letters, the Wyoming BLM is currently engaged in a GRSg planning effort, which will not address oil shale resources. Just as with the Oil Shale PRMP/FPEIS, the current experimental state of the oil shale industry does not allow this GRSg-focused planning effort to include sufficient information or analysis to support adoption at this time of specific mitigation measures for future oil shale leases. Only when the BLM has a lease application in hand from a company with a proven technology, will we be able to undertake an environmental analysis that is specific enough to support the adoption of specific mitigation measures.

After careful consideration of the points raised in your appeal, I have concluded that the appeal has not identified any known inconsistencies with State or local plans, policies, or programs. Therefore, I affirm the Assistant Director for Minerals and Realty Management's response to your Finding of Inconsistency.

I appreciate your recommendations and your willingness to work through the Governor's Consistency Review process and to provide us with the opportunity to address your concerns. I hope we can continue our collaborative efforts to best manage our remarkable public lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Kornze", with a long horizontal flourish extending to the right.

Neil Kornze
Principal Deputy Director