

## Office of the Governor

March 7, 2013

Neil Kornze, Acting Director  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C Street NW, MS: 5613  
Washington, D.C. 20240

Re: Consistency Review Appeal to the Director of the Bureau of Land Management

Dear Acting Director Kornze,

I received the Bureau of Land Management's (BLM) February 6, 2013 response to the Governor's Consistency Review of the 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 (OSTS FPEIS). I respectfully appeal, under 43 C.F.R. §1610.3-2(e), the BLM's rejection of my recommendations to make the OSTS FPEIS consistent with state policy – specifically, Wyoming Executive Order 2011-5, Greater Sage-Grouse Core Area Protection (EO 2011-5). The BLM's rejection creates an unreasonable imbalance between national interests and the state's interests. The omission creates an inconsistency between Wyoming's management of its lands and the BLM's management of federal lands.

The process, guidelines, and stipulations detailed in EO 2011-5 are fundamental to protection of sage-grouse habitat in Wyoming to avert a listing of the bird by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act. In its 2011 approval of EO 2011-5, the USFWS wrote: "the Service believes that the core area strategy...if implemented by all landowners via regulatory mechanisms, would provide adequate protection for sage-grouse habitat in that State." The USFWS continued, "To be effective, State, Federal and private landowners must all implement this Executive Order." It is important that regulatory mechanisms be consistently applied across regulatory authorities.

To justify its rejection of my consistency review recommendation, the BLM writes: "the scope of the decision-making to be supported by the development of this PEIS is limited to an allocation decision. This land use allocation does not authorize any future lease or development proposal." An allocation of land – as identified in the OSTS FPEIS, intimates development is possible.


Acting Director Kornze  
March 7, 2013  
RE: Consistency Review Appeal  
Page 2

Further, the OSTIS FPEIS establishes its purpose as a reassessment of “the appropriate mix of allowable uses with respect to oil shale and tar sands leasing and potential development in light of Congress’s policy emphasis on these resources.” This national interest must be balanced with Wyoming’s interest in determining an appropriate mix of allowable uses within core areas.

I commented in May 2012 that the preferred alternative in the draft OSTIS PEIS did not allow development in sage-grouse core areas. I noted the omission was inconsistent with the EO 2011-05 which may allow mineral development in core areas if various conditions are met. The OSTIS FPEIS somewhat addresses my concerns by allowing development within core areas; however, it falls short by not addressing the policy in its entirety. Wyoming’s policy to review, approve (or not) and apply stipulations to development in core areas are inseparable from the core areas themselves. 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. This screening needs to be mentioned in the record of decision. 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.

The USFWS will look at existing regulatory mechanisms when it reviews the status of Greater Sage-Grouse in fiscal year 2015, including the regulatory mechanisms that the BLM has in its Resource Management Plans (RMP) and the state’s EO 2011-5. I understand the sage-grouse amendments to the RMP’s, the “Nine Plan,” will not address oil shale development. If the “Nine Plan” amendments to Resource Management Plans do not address oil shale development, then this OSTIS FPEIS must address sage-grouse stipulations. I look forward to this recommendation being incorporated into the record of decision. Revising the plan will demonstrate a balance between national and state interests and consistency with state policy. It will provide transparency for prospective lessees. Please let me know if you have any questions.

Sincerely,



Matthew H. Mead  
Governor

MHM:md

cc: The Honorable Michael B. Enzi, U.S. Senate  
The Honorable John Barrasso, U.S. Senate  
The Honorable Cynthia Lummis, U.S. House of Representatives  
Don Simpson, State Director, BLM Wyoming