

Office of the Governor

January 8, 2013

Mike Pool, Acting Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

RE: Governor's Consistency Review: 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

Dear Acting Director Pool,

I appreciate the opportunity to make Consistency Review comments on the Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management (BLM) in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement (OSTS FPEIS). My comments are specific to oil shale resources administered by the BLM in Wyoming. I have received comments from Lincoln and Sweetwater Counties, which I have included for your review and consideration (Attachments 1 and 2).

I support requiring research, development and demonstration (RD&D) prior to commercial development. The technologies used to recover oil shale resources have not been proven on a commercial scale. While I support the RD&D, I do not support any of the alternatives. The alternatives preclude full local and cooperater participation in the local Resource Management Plan (RMP) processes related to Lands with Wilderness Characteristics (LWC). The alternatives are inconsistent with Wyoming sage-grouse policy.

Lands with Wilderness Characteristics

The preferred alternative precludes oil shale development in areas designated as LWC. This action undermines local participation in land determinations made using the RMP process. The BLM Rock Springs Field Office is in the process of amending the Green River and Jack Morrow Hills Resource Management Plans under one RMP – Rock Springs. This process will not be

complete before a record of decision is signed on the OSTs FPEIS. Section 201 of the Federal Land Policy and Management Act requires BLM to maintain an inventory of all public lands and their resources. There is, however, no requirement that the BLM manage LWCs. In fact, no lands in the Rock Spring RMP planning area are managed as LWCs. Precluding development of oil shale resources within LWCs at this programmatic level will unduly constrain the Rock Springs RMP range of alternatives. I ask the BLM not do this. These decisions are best left to the qualified federal, state, and local cooperators currently working through the Rock Springs RMP.

Sage Grouse Core Areas

Your recognition of Wyoming's Greater Sage-Grouse Core Area Protection strategy is appreciated. Wyoming's strategy does not preclude mineral development; it establishes conditions designed to maintain and enhance Greater Sage-Grouse habitat. Your decision to designate areas in southwest Wyoming as open for application for oil shale leasing within Greater Sage-Grouse core area is consistent with Executive Order (EO) 2011-5. However, the process, guidelines, and stipulations for development are a key part of the effectiveness of the EO. The OSTs FPEIS is inconsistent with EO 2011-5 because it does not address these processes. I recommend the BLM adopt in the OSTs FPEIS the permitting process and stipulations for development outlined in Attachment B of EO 2011-5 (Attachment 3), which details specific management actions the BLM could apply prior to any oil shale leasing and in doing so achieve sage-grouse protection and consistency. These actions are fundamental to protect the Greater Sage-Grouse and prevent a need for it to be listed as a threatened or endangered species by the U.S. Fish and Wildlife Service under the Endangered Species Act.

Management actions for Greater Sage-Grouse should be included in a programmatic document such as the OSTs FPEIS. The OSTs FPEIS authorizes leasing, which creates a valid right and an expectation of development of oil shale resources. It is easier to apply stipulations, such as those provided in EO 2011-5, during the leasing process. Once a lease has been issued it becomes more difficult. To illustrate the importance of these stipulations, I have attached the Wyoming Department Game and Fish's letter which shows more leks than were identified by the BLM in the OSTs FPEIS (pp. 6-109) (Attachment 4).

If the BLM decides not to incorporate Greater Sage-Grouse management actions in the OSTs FPEIS, I ask the BLM to ensure those management actions are incorporated in the Greater Sage-Grouse "Nine Plan" amendment in Wyoming. Until the record of decision is finalized for the Nine Plan, the BLM should implement a mechanism (similar to the interim policy utilized by the BLM and State for oil and gas) to ensure the process, guidelines, and stipulations outlined in Attachment 1 are evaluated and applied to any oil shale lease offering in Greater Sage-Grouse core area. Potential oil shale leases that are evaluated and unable to comply with EO 2011-5 should be deferred pending completion of the Nine Plan amendment process. This will assure

Mike Pool, Acting Director
Bureau of Land Management
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compliance with EO 2011-5 for oil shale leasing until management stipulations can be incorporated through other mechanisms.

Thank you again for the opportunity to review this document. Please contact me if you have any questions.

Sincerely,



Matthew H. Mead
Governor

MHM:mdm

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
The Honorable John Hickenlooper, Governor, State of Colorado
The Honorable Gary Herbert, Governor, State of Utah
Don Simpson, State Director, BLM Wyoming

Encls. Attachment 1 – Board of Lincoln County Commissioners – Consistency Review
Attachment 2 – Sweetwater County Board of County Commissioners
Attachment 3 – Summary of EO2011-5, Attachment B
Attachment 4 – Wyoming Game and Fish Department Greater Sage-Grouse Lek data



Board of Lincoln County Commissioners

Kent Connelly, Chairman
Kemmerer, Wyoming 83101

Paul C. Jenkins
Thayne, Wyoming 83127

T. Deb Wolfley
Fairview, Wyoming 83119

925 Sage Avenue, Suite 302, Kemmerer, WY 83101 Phone: 307-877-2004 Fax: 307-877-4237
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December 11, 2012

Governor Matt Mead
State Capitol, 200 West 24th Street
Cheyenne, WY 82002-0010

RE: Governor's Consistency Review of Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands (OSTS) Resources on Lands Administered by the Bureau of Land Management (BLM) and Final Programmatic Environmental Impact Statement (PFEIS).

Honorable Governor Mead:

Lincoln County has jurisdiction over lands in Wyoming impacted by the alternatives analyzed in the OSTs PFEIS. Counties have broad authority to protect the public health and welfare of county residents and this includes providing for transportation, land use and zoning, building codes, and assuring a supply of water for agriculture, municipal and industrial purposes. Wyo. Stat. §§18-5-102, 18-5-105, 18-5-201 (zoning commission authority under board of county commissioners). Many of the companies and businesses that rely on public land uses are located near or based in Lincoln County. Lincoln County has adopted land use plans and policies addressing various public land uses, including oil and gas development. Ex. 2, Lincoln County, Wyoming, Comprehensive Plan, Public Lands Policy (Lincoln County Plan), Appendix 3 (Nov. 16, 2006)

The BLM's Preferred Alternative is inconsistent with local government land use plans in violation of the Federal Land Policy and Management Act (FLPMA). BLM failed to resolve the inconsistencies even though the local government plans are not contrary to federal law, and FLPMA requires BLM to make every effort to resolve such inconsistencies. BLM Comment Response Doc. at 35-37, 155; 2012 OSTs PFEIS at App. M-3 to M-4.

The proposed land use amendments to the RMPs, which describe those areas that will be closed to application for commercial leasing, exploration, and development of oil shale and tar sands resources in the Wyoming study area, adversely affect and interfere with Lincoln County's authority to implement land use plans and regulations concerning the natural resources within their borders. The ability to plan for and regulate the natural resource development in the proposed areas would directly benefit the local governments' economy and provide for the welfare of its citizens. Oil shale and tar sands rental and royalty payments would contribute directly to the U.S. Treasury with half of such revenues distributed to the State of Wyoming and local government boards pursuant to state law.

Lincoln County supports keeping all mineral and energy sources available to the greatest extent possible for the exploration and production of energy and other energy related products, unless the lands have been properly withdrawn pursuant to FLPMA, 43 U.S.C. §1714, or other controlling mineral development laws. Lincoln County, Wyoming, Comprehensive Plan, Public Lands Policy at Appendices 3-32-3-34 (Nov. 16, 2006).

The Lincoln County Public Lands Policy opposes any recommendations made under a statutory requirement to examine the wilderness option during the revision of land and resource management plans, or other methods unless it is clearly demonstrated that the development of mineral resources is not affected by the recommendations. Lincoln County Public Lands Policy, Pg 16. BLM may not lawfully close these lands to oil shale and tar sands development based on alleged wilderness characteristics. BLM's actions in developing the OSTs PFEIS based on lands with wilderness character violates County policies and Congress's prohibition. Just changing the label from S.O. 3310 to LWCs does not relieve BLM of honoring the funding restriction, and BLM has admitted the funds allocated to implement S.O. 3310 were applied to the OSTs PFEIS. To manage public lands for "Wilderness Characteristics" circumvents the statutory wilderness process and is inconsistent with the multiple-use and sustained-yield management standard that applies to all Bureau of Land Management lands that are not wilderness study areas. Lincoln County Public Lands Policy, Pg 16.

Lincoln County also passed a resolution opposing the Preferred Alternatives in the OSTs PDEIS. Ex.10, Lincoln County Resolution 2012-07; The resolution finds that BLM violated the Congressional Spending Moratorium and the EP Act, failed to consider the new technology and corresponding decrease in environmental impacts, and entirely ignored the cooperating agencies input and land use policies and plans. Based on these reasons, Lincoln County declared its' opposition to the Preferred Alternatives in the OSTs PDEIS and requested BLM to cease and desist all activities related to the proposed RMP Amendments.

The OSTs PFEIS Preferred Alternatives is inconsistent with Counties' local plans, policies, and resolutions. These alternatives do not support the full development of oil shale and tar sands but instead greatly decrease the amount of lands available for leasing and development. BLM did increase the amount of lands available in Utah and Wyoming for application for oil shale and tar sands leasing since the OSTs PDEIS, but lands available for oil shale and tar sands leasing were still reduced in these states by about 61% and 70% respectively from the 2008 PFEIS. The Preferred Alternatives also slow down, if not halt, the issuance of commercial leases by first requiring companies to meet RD&D lease requirements.

In 2008, in compliance with the EP Act, the DOI expressly adopted Alternative B for both oil shale and tar sands development and designated a total of 1,991,222 acres as available for application for commercial oil shale leasing and 431,224 acres available for commercial tar sands leasing. 42 U.S.C. §15927(c), (d); 2008 OSTs PFEIS at ES-5. Alternative C for oil shale and tar sands, which allowed for commercial leasing on more lands than are currently being proposed, was not selected, because it was not consistent with the EP Act or FLPMA's multiple-use mandate. 2008 OSTs ROD at 22, 35-36. Alternative C "would not make the 'most geologically prospective lands in Colorado, Utah and Wyoming' as available for application for leasing" as required by the EP Act. *Id.* The ROD concluded that Alternatives C "unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored, leased, or developed," creating an "impediment to sound and rational development of the resource." *Id.* Lincoln County supported DOI's reasoning, which was consistent with the land use plans and policies and allowed for potential commercial development based on project specific environmental analyses.

Now, DOI proposes to designate even fewer acres and smaller parcels for both oil shale and tar sands than those provided in Alternatives C in 2008. 76 Fed. Reg. at 21004. By limiting the size of parcels and the acres available, DOI is imposing unnecessary restraints for potential commercial development in violation of the EP Act and FLPMA. BLM responds that this is necessary to protect resources, which are already protected by other federal statutes and regulations, such as lands with wilderness characteristics, the Adobe Town VRUA, core sage-grouse habitat, ACECs, and other areas excluded by Alternatives C in 2008. 76 Fed. Reg. at 21004; *see also* 2008 OSTs ROD at 22, 35-36. Such restrictions on available land "unnecessarily speculates upon the nature and degree of impacts" prior to site-specific analyses which will include factors not now known. 2008 OSTs ROD at 22, 35-36.

BLM made no attempt to reconcile the differences with Lincoln Counties' plans and policies. Instead, BLM asserts that a RD&D focus is necessary in order to obtain more information about the technologies and associated environmental consequences before committing to broad-scale development. BLM is not only failing to consider quality, new information on oil shale and tar sands development, but it is also violating federal law by supporting alternatives that are contrary to state and local plans and policies, and failing to make any attempt to reconcile these differences. 43 U.S.C. §1712(c)(9); 40 C.F.R. §§1502.16(c), 1506.2(d); 43 C.F.R. §1610.3-2(a). No federal law contradicts the County and Conservation Districts local plans, so BLM's failure to reconcile does not conform to FLPMA.

Based on the foregoing, Lincoln County requests that the BLM Director set aside and remand the Proposed RMP Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming and OSTs PFEIS with the following direction to BLM:

- (1) Select the No Action Alternatives as the preferred action because they are the only alternatives consistent with the purposes and provisions of the EP Act;
- (2) Provide for and promote a commercial oil shale and tar sands leasing program without an RD&D first requirement;
- (3) Supplement the OSTs PFEIS to meet its statutory obligation under NEPA to take the requisite hard look at the new technologies and environmental impacts, rather than justifying a decision already made, due to its premature commitment to the Preferred Alternatives and to arbitrary deadlines;
- (4) Reconcile the Proposed RMP Amendments/OSTs PFEIS' differences with Lincoln County and other local governments' plans and policies;
- (5) Comply with FLPMA and the congressional funding freeze in not protecting LWCs and restore the affected land to leasing for oil shale and tar sands;
- (6) Follow FLPMA's Section 204 withdrawal procedures prior to issuance of the OSTs PFEIS and corresponding land use plan amendments; and
- (7) Revise and supplement the OSTs PFEIS to (1) resolve the significant scientific controversies; (2) further analyze the new technologies and their corresponding environmental impacts; and (3) reconcile the differences between state and local governments' plans, programs, and policies; and
- (8) Rescind the moratorium on oil shale and tar sands leasing.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY


Kent Connelly, Chair


Paul C. Jenkins


T. Deb Wolfley

**RESOLUTION 11-06-CC-03
(AMENDING RESOLUTION 08-12-CC-03)**

WHEREAS,

The County Commission adopted Resolution 06-11-CC-04, 07-02-CC-02, and 08-12-CC-03 regarding the proposal to designate an area of private, state, and federal lands depicted on various maps as the Adobe Town area and including the Adobe Town Wilderness Study Area (WSA) in Sweetwater County as Very Rare or Uncommon;

WHEREAS,

The Environmental Quality Commission of the State of Wyoming identified the area as Very Rare and Uncommon pursuant to Wyo. Stat. §35-11-112(a)(v), with the limited legal impact of prohibiting non-coal surface mining activities, but not prohibiting oil and gas leasing activities, wind energy generation or rights-of-way development, or other land uses;

WHEREAS,

The state law designation of Very Rare and Uncommon cannot by itself change the management objectives of federal land, which are also governed by federal laws and also subject to the mandate to be consistent with other state and local land use plans and objectives;

WHEREAS,

On December 23, 2010, the Secretary of the Department of the Interior issued Secretarial Order 3310 requiring the Bureau of Land Management (BLM) to inventory all public lands to determine if they met the criteria for wilderness and to manage all such lands to protect and preserve the wilderness character; and BLM further adopted manuals to implement Secretarial Order 3310;

WHEREAS,

The BLM Manuals implementing Secretarial Order 3310 provide that lands nominated by the public for wilderness protection will be verified and if found to meet the criteria set forth in the manual shall then be managed to protect the wilderness character;

WHEREAS,

The Wilderness Society, the Biodiversity Conservation Alliance, Center for Native Ecosystems, and Colorado Environmental Coalition described an area called Greater Adobe Town encompassing more than 1,228,610 acres located primarily in Sweetwater County and a portion in Northwestern Colorado to BLM officials as having wilderness character and further nominated it as an area to be closed to oil and gas development activities in a petition governing Master Lease Planning in September 2010;

WHEREAS,

The area known as Adobe Town has significantly increased in scope and size since the date of the County Commission's original consideration of the issue and with these changes there is also a significant change in the nature of the impacts due in part to the increase in the size of the identified area and the adoption of Secretarial Order 3310, which would impose wilderness type management on the identified areas and the wilderness type management will further interfere with projects important to Sweetwater County, its citizens and its economy, including continuation of agriculture, transmission lines and renewable energy projects;

WHEREAS,

The general area described as the Adobe Town area includes a significant portion of private and state lands and has significant resource potential, not only for oil and gas but is needed for transmission line rights-of-way, wind energy development, motorized recreation, and livestock grazing;

WHEREAS,

The private and state lands are currently devoted to various important land uses including agriculture, rights-of-way, and oil and gas development and the public lands are managed for multiple use and sustained yield pursuant to Green River Resource Management Plan adopted by BLM in 1997;

WHEREAS,

The BLM designated as a wilderness study area more than 85,710 acres of public land known as the Adobe Town WSA and these lands remain closed to all development pursuant to Section 603 of the Federal Lands Policy and Management Act and the Mineral Leasing Act and is managed to protect its wilderness character unless and until Congress makes a final determination;

WHEREAS,

The Adobe Town WSA is largest Wyoming WSA, featuring Skull Creek Rim and Monument Valley, as well as colorful badlands, buttes, and spires created by thousands of years of erosion. The area has numerous surface fossils of extinct mammals and reptiles and a high density of prehistoric human occupation sites;

WHEREAS,

The BLM conducted an extensive study of wilderness character on public lands managed by BLM within Sweetwater County and based on that study determined the boundaries of the area to be protected based on private and state lands as well as the sites worthy of protection;

THEREFORE, the Sweetwater County Commission resolves as follows:

Resolution 06-11-CC-04 is amended to apply only to the Adobe Town WSA consistent with the terms of 07-02-CC-02; and Resolution 08-12-CC-03 is repealed in its entirety.

NOW, THEREFORE, BE IT RESOLVED THAT THIS Resolution is APPROVED by the Sweetwater County Board of County Commissioners.

Dated this 21st day of June, 2011.

THE BOARD OF COUNTY COMMISSIONERS
OF SWEETWATER COUNTY, WYOMING



Wally Johnson, Chairman



Gary Bailiff, Member



Reid West, Member

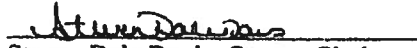


Donald Van Matre, Member



John K. Kolb, Member

ATTEST:


Steven Dale Davis, County Clerk

- o **WALLY J. JOHNSON, CHAIRMAN**
- o **JOHN K. KOLB, COMMISSIONER**
- o **GARY BAILIFF, COMMISSIONER**
- o **REID O. WEST, COMMISSIONER**
- o **DON VAN MATRE, COMMISSIONER**

80 WEST FLAMING GORGE WAY, SUITE 109
GREEN RIVER, WY 82935
PHONE: (307) 872-3890
FAX: (307) 872-3992

Wednesday, December 12, 2012

Governor Matthew H. Mead
State Capitol
Cheyenne, WY 82002

RE: Sweetwater County comments regarding the Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management (BLM) in Colorado, Utah and Wyoming and Final Programmatic Environmental Impact Statement (PRMP Amendments/FEIS).

Dear Governor Mead,

Sweetwater County and the Coalition of Local Governments (CLG) have reviewed the BLM's PRMP Amendments/FEIS, and within this document, they have identified inconsistencies with local plans and policies and have made recommendations to address these inconsistencies. These inconsistencies and recommendations are stated in the protest submitted by the CLG and on behalf of Sweetwater County to the BLM Washington Office, which is attached to this letter by email. The primary inconsistencies of the PRMP Amendments/FEIS with Sweetwater County's Comprehensive Plan and the recommendations for addressing these inconsistencies are outlined below:

Inconsistencies with Sweetwater County's Comprehensive Plan and Recommendations

Comprehensive Plan Goal: *Encourage and support environmentally responsible resource exploration/development within the region. This includes encouraging associated industries and businesses to locate with Sweetwater County communities.*

This goal calls for Sweetwater County to proactively encourage and support environmentally responsible resource exploration and development and to encourage industries to locate within the County to develop these resources. To implement this goal, Sweetwater County depends on available private and public lands containing marketable resources for exploration and development by industries that are willing to invest in Sweetwater County and the State. If there is an insufficient amount of land with economically viable resources available, industries will not invest in resource development in our region.

Sweetwater County accepts the resource development scenario, where a resource industry chooses not to locate in the County when there isn't a natural marketable supply of a particular resource for development. For example, since there is a very small amount of acreage suitable for timber in



Sweetwater County, the likelihood of the timber industry establishing itself, except on a very limited basis, is unlikely. But conversely, Sweetwater County cannot accept the development scenario where an industry is discouraged from developing a prospective resource, like oil shale, due to a shortage created by administrative decisions of the BLM - especially when there is a vast supply of the resource (oil shale) located within public lands in the County. When this happens, the result is the economy of Sweetwater County the State suffers.

Sweetwater County believes that the BLM's Proposed Plan or Preferred Alternative (Alternative 2a with RD&D only) creates this latter development scenario by administratively limiting the acreage open to oil shale leasing and discouraging investment in oil shale development, on the remaining scattered lands, by limiting applications to Research Development and Disposition (RD&D) leasing only.

In the BLM's Proposed Plan, the BLM proposes to limit applications for oil shale leasing only 293,299 acres within Wyoming, which predominantly located in Sweetwater County. This acreage represents a reduction of the 707,275 acres from the 1,000,574 acres that were approved for lease in the 2008 Oil Shale and Tar Sands Record of Decision and are now a part of the proposed NO Action Alternative in the PRMP Amendments/FEIS. These 1,000,574 acres are considered as a part of the "most geologically prospective oil shale... areas administered by the BLM".

The BLM justifies this 707,275 acre reduction in the area available for applications for oil shale leasing, not by the geologic character of the oil shale, but by administrative exclusions that remove valuable oil shale resources from leasing in favor of protecting lands with wilderness characteristics, sage grouse core areas, the Adobe Town Very Rare or Uncommon Area, and ACEC's. Sweetwater County strongly objects to these proposed administrative exclusions, especially the Adobe Town Very Rare and Uncommon Area (see attached Resolution 11-06-CC-03). The County believes that if the Proposed Plan and its proposed exclusions are adopted and 707,275 acres of public lands are removed from application for oil shale lease, Sweetwater County and the State of Wyoming will suffer a direct economic loss. This would constitute an economic taking by the Bureau of Land Management.

In addition to the direct economic loss due to the Proposed Plans removal 707,275 acres from application for oil shale leasing, the removal of this acreage fragments remaining 293,299 acres into isolated parcels with a scattered ownership pattern. This fragmented ownership pattern combined with the Proposed Plans preferred option of "open only to applications for oil shale Research, Development and Demonstration (R&DD) leases" creates an uncertain environment for investment in oil shale development by industry, which further limits the future economic development potential of Sweetwater County and the State of Wyoming.

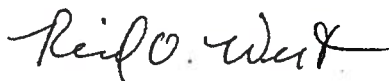
Due to the BLM's Proposed Plan's intent to remove vast acreage oil shale removed from development potential, and due to the uncertain development and investment environment created by the BLM's Proposed Plan, Sweetwater County believes that the BLM's proposed action is inconsistent the County's Comprehensive Plan Goal to: *"Encourage and support environmentally responsible resource exploration/development within the region. This includes encouraging associated industries and businesses to locate with Sweetwater County communities."*



To remedy this inconsistency and for the economic benefit of Sweetwater County and the State of Wyoming, the County strongly recommends that the Governor's Office advise the BLM to drop its current Proposed Plan (Alternative 2a with RD&D only) and select the No Action Alternative as the BLM Preferred Alternative. By selecting the No Action Alternative, the BLM will maintain consistency with the balanced 2008 OSTIS PEIS Record of Decision and maintain maximum allowable oil shale leasing while ensuring environmentally responsible exploration and development through the review of each lease for compliance with the National Environmental Protection Act.

If you have any questions regarding this letter, please contact me at 307-972-3897.

Sincerely,



Reid O. West, Acting Chairman
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 11-06-CC-03

cc Jerimiah Rieman, Natural Resource Policy Advisor, Governor's Office
Don Simpson, Director, BLM Wyoming State Office
John Ruhs, District Manager, BLM High Desert District
Lance Porter, Manager, BLM Rock Springs Field Office
Jeromy Caldwell, Manager, BLM Kennerer Field Office
Dennis Carpenter, Manager, BLM Rawlins Field Office
Sweetwater County Board of County Commissioners
Temple Stoellinger, Natural Resource Attorney, WCCA
Kent Connelly, President, Coalition of Local Governments
Connie Brooks, Attorney, Coalition of Local Governments
Mary Thoman, President, Sweetwater County Conservation District
Eric Bingham, Director, Sweetwater County Land Use Department



Attachment 3
Summary of Greater Sage-Grouse Process, Guidelines, and Stipulations
(Attachment B, Executive Order 2011-5)
Page 1 of 8

Process/Stipulation	Page #	Language
Density/Disturbance Calculation Tool Process	Pg. 7-8	Maximum Disturbance Process: All activities will be evaluated within the context of maximum allowable disturbance (disturbance percentages, location and number of disturbances) of suitable sage-grouse habitat (See Appendix I for definition of suitable sage-grouse habitat and disturbance of suitable sage-grouse habitat) within the area affected by the project. The maximum disturbance allowed will be analyzed via a Density/Disturbance Calculation Tool (DDCT) process conducted by the Federal Land Management Agency on federal Land and the project proponent on non-federal (private, state) land. Unsuitable habitat occurring within the project area will not be included in the disturbance cap calculations.
General Stipulations		
Surface Disturbance	Pg. 8-9	Surface disturbance will be limited to 5% of suitable sage-grouse habitat per an average of 640 acres. The DDCT process will be used to determine the level of disturbance. Distribution of disturbance may be considered and approved on a case-by-case basis. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the 0.6 mile buffer around leks. This will incentivize proponents to locate projects in unsuitable habitat to avoid creating additional disturbance acres. Acres of development in unsuitable habitat are not considered disturbance acres. The primary focus should be on protection of suitable habitats and protecting from habitat fragmentation. See Appendix I for a description of suitable, unsuitable habitat and disturbance.
Surface Occupancy	Pg. 9	Within 0.6 miles of the perimeter of occupied sage-grouse leks there will be no

Attachment 3
Summary of Greater Sage-Grouse Process, Guidelines, and Stipulations
(Attachment B, Executive Order 2011-5)
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Process/Stipulation	Page #	Language
		<p>surface occupancy (NSO). NSO, as used in these recommendations, means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected. For example, underground utilities may be permissible if installation is completed outside applicable seasonal stipulation periods and significant resource damage does not occur. Similarly, geophysical exploration may be permissible in accordance with seasonal stipulations.</p>
<p>Seasonal Use</p>	<p>Pg. 9</p>	<p>Activity (production and maintenance activity exempted) will be allowed from July 1 to March 14 outside of the 0.6 mile perimeter of a lek in core areas where breeding, nesting and early brood-rearing habitat is present. In areas used solely as winter concentration areas, exploration and development activity will be allowed March 14 to December 1. Activities in unsuitable habitat may also be approved year-round (including March 15 to June 30) on a case-by-case basis (except in specific areas where credible data shows calendar deviation). Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. While the bulk of winter habitat necessary to support core sage-grouse populations likely occurs inside Core Population Areas, seasonal stipulations (December 1 to March 14) should be considered in locations outside Core Population Areas where they have been identified as winter concentration areas necessary for supporting biologically significant numbers of sage-grouse nesting in Core Population Areas. All efforts should be made to minimize disturbance to mature sagebrush cover in identified winter</p>

Attachment 3
Summary of Greater Sage-Grouse Process, Guidelines, and Stipulations
(Attachment B, Executive Order 2011-5)
Page 3 of 8

Process/Stipulation	Page #	Language
		concentration areas.
Transportation	Pg. 9	Locate main roads used to transport production and/or waste products >1 .9 miles from the perimeter of occupied sage-grouse leks. Locate other roads used to provide facility site access and maintenance > 0.6 miles from the perimeter of occupied sage-grouse leks. Construct roads to minimum design standards needed for production activities.
Overhead Lines	Pg. 9	Bury lines when possible, if not; locate overhead lines at least 0.6 miles from the perimeter of occupied sage-grouse leks. New lines should be raptor proofed if not buried.
Noise	Pg. 9	New noise levels, at the perimeter of a lek, should not exceed 10 dBA above ambient noise (existing activity included) from 6:00 p.m. to 8:00 am. during the initiation of breeding (March 1—May 15). Ambient noise levels should be determined by measurements taken at the perimeter of a lek at sunrise.
Vegetation Removal	Pg. 9	Vegetation removal should be limited to the minimum disturbance required by the project. All topsoil stripping and vegetation removal in suitable habitat will occur between July 1 and March 14 in areas that are within 4 miles of an occupied lek. Initial disturbance in unsuitable habitat between March 15 and June 30 may be approved on a case-by-case basis.
Sagebrush Treatment	Pg. 10	Sagebrush eradication is considered disturbance and will contribute to the 5% disturbance factor. Northeast Wyoming, as depicted in Figure 1, is of particular concern because sagebrush habitats rarely exceed 15% canopy cover and large acreages have already been converted from sagebrush to grassland or cropland. Absent some demonstration that the proposed treatment will not reduce canopy cover to less than

Attachment 3
Summary of Greater Sage-Grouse Process, Guidelines, and Stipulations
(Attachment B, Executive Order 2011-5)
Page 4 of 8

Process/Stipulation	Page #	Language
		<p>15% within the treated area, habitat treatments in northeast Wyoming (Figure 1) should not be conducted. In stands with less than 15% cover, treatment should be designed to maintain or improve sagebrush habitat. Sagebrush treatments that maintain sagebrush canopy cover at or above 15% total canopy cover within the treated acres will not be considered disturbance. Treatments that reduce sagebrush canopy cover below 15% will be allowed, excluding northeast Wyoming (Figure 1), if all such treated areas make up less than 20% of the suitable sagebrush habitat within the DDCT, and any point within the treated area is within 60 meters of sagebrush habitat with 10% or greater canopy cover. Treatments to enhance sagebrush/grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment.</p>
Monitoring/Adaptive Response	Pg. 10	<p>Proponents of new projects are expected to coordinate with the permitting agency and local WGFD biologist to determine which leks need to be monitored and what data should be reported by the proponent. Certain permits may be exempted from monitoring activities pending permitting agency coordination. If declines in affected leks (using a three-year running average during any five year period relative to trends on reference leks) are determined to be caused by the project, the operator will propose adaptive management responses to increase the number of birds. If the operator cannot demonstrate a restoration of bird numbers to baseline levels (established by pre-disturbance surveys, reference surveys and taking into account regional and statewide trends) within three years, operations will cease until such numbers are achieved.</p>
Reclamation	Pg. 10	Reclamation should re-establish native

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		<p>grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage-grouse and replace or enhance sage-grouse habitat to the degree that environmental conditions allow. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass. Rollover credit, if needed, will be outlined in the individual project reclamation plan. Credit may be given for completion of habitat enhancements on bond released or other minimally functional habitat when detailed in a plan. These habitat enhancements may be used as credit for reclamation that is slow to establish in order to maintain the disturbance cap or to improve nearby sage-grouse habitat.</p>
Existing Activities	Pg. 12	<p>Areas already disturbed or approved for development within Core Areas prior to August 1 , 2008 are not subject to new sage-grouse stipulations with the exception existing operations may not initiate activities resulting in new surface occupancy within 0.6 mile of the perimeter of a sage-grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity and rollover credit may exceed 5%.</p>
Exceptions	Pg. 12	Any exceptions to these general or specific

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		stipulations will be considered on a case by case basis and must show that the exception will not cause declines in sage-grouse populations.
Specific Stipulations		
Oil and Gas	Pg. 12	Well pad densities not to exceed an average of one pad per square mile (640 acres) and suitable habitat disturbed not to exceed 5% of suitable habitat within the DDCT. As an example, the number of well pads within a two mile radius of the perimeter of an occupied sage-grouse lek should not exceed 11, distributed preferably in a clumped pattern in one general direction from the lek.
Mining	Pg. 12	<p>a. For development drilling or ore body delineation drilled on tight centers, (approximately 100'X100') the disturbance area will be delineated by the external limits of the development area. Assuming a widely-spaced disturbance pattern, the actual footprint will be considered the disturbance area.</p> <p>b. Monitoring results will be reported annually in the mine permit annual report and to WGFD. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.</p> <p>c. The number of active mining development areas (e.g., operating equipment and significant human activity) are not to exceed an average of one site per square mile (640 acres) within the DDCT.</p> <p>d. Surface disturbance and surface occupancy stipulations will be waived within the Core Area when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground</p>

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		<p>mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.</p> <p>e. Coal mining operations will be allowed to continue under the regulatory and permit-specific terms and conditions authorized under the federal Surface Mining Control and Reclamation Act.</p>
Connectivity	Pg. 12	<p>a. The suspension of federal and state leases in connectivity corridors (Figure 1) is encouraged where there is mutual agreement by the leasing agency and the operator. These suspensions should be allowed until additional information clarifies their need. Where suspensions cannot be accommodated, disturbance should be limited to no more than 5% (up to 32 acres) per 640 acres of suitable sage-grouse habitat within connectivity corridors.</p> <p>b. For protection of connectivity corridors (Figure 1), a controlled surface use (CSU) buffer of 0.6 miles around leks or their documented perimeters is required. In addition, a March 15 to June 30 timing limitation stipulation is required within nesting habitat within 4 miles of leks.</p>
Process Deviation or Undefined Activities	Pg. 13	<p>Development proposals incorporating less restrictive stipulations or development that is not covered by these stipulations may be considered depending on site-specific circumstances and the proponent must have data demonstrating that the alternative development proposal will not cause declines in sage-grouse populations in the core area. Proposals to deviate from standard stipulations will be considered by a</p>

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		<p>team including WGFD and the appropriate land management and permitting agencies, with input from the U.S. Fish and Wildlife Service. Project proponents need to demonstrate that the project development would meet at least one of the following conditions:</p> <ul style="list-style-type: none"> a. No suitable habitat is present in one contiguous block of land that includes at least a 0.6 mile buffer between the project area and suitable habitat; b. No sage-grouse use occurs in one contiguous block of land that includes at least a 0.6 mile buffer between the project area and adjacent occupied habitat, as documented by total absence of sage-grouse droppings and an absence of sage-grouse activity for the previous ten years; c. Provision of a development/mitigation plan that has been implemented and demonstrated by previous research not to cause declines in sage-grouse populations. The demonstration must be based on monitoring data collected and analyzed with accepted scientific based techniques.
Wind Energy Development	Pg. 13	Wind development is not recommended in sage-grouse core areas, but will be reevaluated on a continuous basis as new science, information and data emerges.

Attachment 4
Wyoming Department of Game and Fish Greater Sage-Grouse Leks Data
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Attachment 2 - Greater Sage-Grouse Leks Data

Page 6-109 states, “Three current and historic sage-grouse leks have been identified in Wyoming in areas overlapped by the Alternative 2 lease areas in that state.” This is inconsistent with Wyoming Game and Fish Department (WGFD) lek data. Current WGFD data shows 10 occupied core area leks and 4 occupied non-core area leks in the Alternative 2 lease areas (Table 1), and several other leks within close proximity (<1mi) to Alternative 2 lease areas.

Location	Core Area	Lek Name
T27N R109W Section 23	Greater South Pass	East Buckhorn Canyon
T24N R109W Section 8	Greater South Pass	Buckhorn Flowing Well
T22N R107W Section 9	Greater South Pass	Starvation Wash
T22N R107W Section 22	Greater South Pass	Starvation Divide
T22N R107W Section 32	Greater South Pass	Lockman
T22N R106W Section 30	Greater South Pass	Chindgren
T21N R111W Section 26	Seedskadee	Yellow Point North
T18N R108W Section 36	Non-core	Peru
T14N R112W Section 3	Uinta	Big Hollow Bench
T14N R111W Section 5	Non-core	Box Spring
T14N R100W Section 22	Salt Wells	6 Chicken Creek
T14N R100W Section 22	Salt Wells	Crooked Wash
T13N R98W Section 20	Non-core	Muir Reservoir
T13N R99W Section 17	Non-core	Alkali Bench

Table 1 – Occupied Leks in Wyoming that are within the Alternative 2 Oil Shale Lease Areas.