



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, DC 20240

<http://www.blm.gov>

FEB 6 2013

The Honorable Matthew Mead, Governor
State Capitol
200 West 24th Street
Cheyenne, Wyoming 82002-0010

Dear Governor Mead:

The Bureau of Land Management (BLM) has received and reviewed your January 8, 2013, Governor's Consistency Review response for 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 response expresses your support for requiring research, development and demonstration (RD&D) prior to commercial development of oil shale, but states that you do not support any of the alternatives presented in the FPEIS. You recommend first that the BLM refrain from excluding oil shale activities from areas identified by the BLM as having wilderness characteristics and second, that the BLM adopt, through this oil shale planning initiative, the measures identified for protection of habitat for the Greater Sage-Grouse (GSG) in Wyoming Executive Order 2011-5 (EO 2011-5). In addition, you include for our consideration letters from two Wyoming counties, Sweetwater and Lincoln, making additional recommendations.

I greatly appreciate your continued participation in the BLM land use planning process. I have carefully considered your comments and the communications from Lincoln and Sweetwater Counties. Pursuant to 43 CFR 1610.3-2 (e), this letter responds to your January 8 letter. As explained in more detail below, I have determined not to adopt your recommendations, or those of Sweetwater and Lincoln Counties. In particular, with respect to protection of Greater Sage-Grouse habitat, as explained below, I do not believe there is an inconsistency between the State of Wyoming's goals for land management and those of the BLM.

Statutory and Regulatory Framework for Consistency Review

In considering your recommendations, I am guided by the BLM's planning regulations in 43 CFR 1610.3-2. These regulations implement Section 202(c)(9) of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), 43 U.S.C. § 1712(c)(9), which states in part:

In the development and revision of land use plans, the Secretary shall...to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal

departments and agencies and of the States and local governments within which the lands are located...by among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical...assure that consideration is given to those State, local and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs...Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans...Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The regulations state that Resource Management Plan (RMP) amendments “shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian Tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands...” 43 CFR 1610.3-2(a). In the absence of such plans, RMP amendments shall “...to the maximum extent practical...” be consistent with officially approved and adopted State “resource related policies and programs...so long as the guidance and resource management plans are consistent with the policies, programs, and provisions of Federal laws and regulations applicable to public lands...” 43 CFR 1610.3-2(b). Prior to approving a proposed RMP amendment, the BLM must submit the plan to the Governor of the State involved, allowing the Governor the opportunity to identify any known inconsistencies with State or local plans, policies or programs. 43 CFR 1610.3-2(e). In turn, the Governor has 60 days in which to identify any inconsistencies and provide recommendations to the BLM. *Id.*

Below I address each of your recommendations, and those of the Counties.

Wyoming’s Recommendations and the BLM’s Responses

- 1) *Precluding development of oil shale resources within [lands with wilderness characteristics] at this programmatic level will unduly constrain the Rock Springs RMP range of alternatives. I ask the BLM not to do this. These decisions are best left to the qualified Federal, State, and local cooperators currently working through the Rock Springs RMP.*

This recommendation does not identify an inconsistency with State or local resource related plans, policies or programs.

- 2) *I recommend the BLM adopt in the OSTs FPEIS the permitting process and the stipulations for development outlined in Attachment B of EO 2011-5, 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. . . 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.

Your letter acknowledges that the BLM's proposed decision to allocate lands in southwest Wyoming as open for application for oil shale leasing within the GSG core area is consistent with Wyoming EO 2011-5. However, the letter states that the PRMP/FPEIS is inconsistent with Wyoming sage-grouse policy because the process, guidelines and stipulations for development that are a key part of the effectiveness of EO 2011-5 are not addressed in the PRMP/FPEIS.

As was the case with the 2008 OSTs PEIS, 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. The current experimental state of the oil shale and tar sands industries does not allow this PEIS to include sufficient specific information or cumulative impact analyses to support future leasing decisions within these allocated lands. As such, site-specific issues will be resolved at the lease sale and development stages of the process, and BLM managers retain authority to approve, modify or deny future lease and development proposals based on consideration of numerous factors, including, but not limited to, the specific technology proposed for use, the anticipated impacts on natural and cultural resources, economic viability, and community concerns. As part of the National Environmental Policy Act (NEPA) review process for any future oil shale lease, the BLM will consider the processes, guidelines and stipulations detailed in EO 2011-5.

Moreover, the BLM has recognized the Wyoming GSG Core Area Protection Strategy detailed in EO 2011-5 in its own Wyoming Instruction Memorandum (WY-IM-2012-019), and has directed that management in Wyoming of GSG core and priority habitat be consistent with that policy direction until the BLM has completed its sage-grouse planning effort.

The BLM declines to adopt this recommendation.

Lincoln County's Recommendations and the BLM Responses

- 1) *Select the No Action Alternatives as the preferred action because they are the only alternatives consistent with the purposes and provisions of the Energy Policy Act (EPAct).*

This recommendation relates to provisions of the Energy Policy Act of 2005, and does not address any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PRMP/Final PEIS and Federal law are not properly the subject of this Governor's Consistency Review process.

- 2) *Provide for and promote a commercial oil shale and tar sands leasing program without an RD&D first requirement.*

The BLM fully supports a commercial leasing program for oil shale and tar sands, consistent with Section 369 of the Energy Policy Act of 2005. As explained in section 2.3.3.1 of the PRMP/Final PEIS, it is precisely because the BLM is interested in the success of a commercial leasing program that it is taking a measured approach by requiring that potential commercial

developers of oil shale resources first prove the commercial viability of the technologies they intend to use. This approach is intended to ensure that commercial viability is proven, and the environmental consequences of technologies known, before any commitment is made to broad-scale development. Moreover, as also explained in section 2.3.3.1, the RD&D first requirement is intended to promote access by innovative small companies to the Federal oil shale resource, thereby increasing the likelihood that a robust commercial program can emerge. The BLM declines to adopt this recommendation of Lincoln County, Wyoming.

- 3) *Supplement the OSTs FPEIS 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 arbitrary deadlines.*

A recommendation that the BLM supplement the OSTs FPEIS to meet its statutory obligation under NEPA is unrelated to any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PRMP/Final PEIS and Federal law are not properly the subject of this Governor's Consistency Review process.

- 4) *Reconcile the Proposed RMP Amendments/OSTs FPEIS' differences with Lincoln County and other local governments' plans and policies.*

Lincoln County cites to its Public Lands Policy as support for its assertions that the BLM may not "lawfully close these lands to oil shale and tar sands development based on alleged wilderness characteristics" and that it supports "keeping all mineral and energy sources available to the greatest extent possible for the exploration and production of energy and other related products, unless the lands have been properly withdrawn pursuant to FLPMA." However, the only specific inconsistencies Lincoln County identifies with State or local resource related plans, policies, or programs, are instances in which these plans, policies, or programs are themselves characterizations of Federal law. Any perceived inconsistencies between the PRMP/Final PEIS and Federal law are not properly the subject of this Governor's Consistency Review process.

- 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.*

Lincoln County does not identify any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PRMP/Final PEIS with Federal law are not properly the subject of this Governor's Consistency Review process.

- 6) *Follow FLPMA Section 204 withdrawal procedures prior to issuance of the OSTs FPEIS and corresponding land use plan amendments.*

Lincoln County does not identify any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PRMP/Final PEIS with Federal law are not properly the subject of this Governor's Consistency Review process.

- 7) *Revise and supplement the OSTs FPEIS to (1) resolve the significant scientific controversies; (2) further analyze the new technologies and their corresponding environmental impacts; (3) reconcile the differences between state and local governments' plans, policies, and programs.*

Please see the response to Lincoln County's Recommendation #3 and #4.

- 8) *Rescind the moratorium on oil shale and tar sands leasing.*

There is no moratorium on oil shale and tar sands leasing. In settlement of litigation in 2011, the Department of the Interior agreed to temporarily refrain from initiating the commercial oil shale leasing process. That commitment expired on January 15, 2013.

Sweetwater County's Recommendation and the BLM Response

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 OSTs 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.

In making its recommendation, Sweetwater County cites to its 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.* The BLM does not believe the PRMP/Final PEIS to be inconsistent with this goal, for the reasons explained in the response to Lincoln County's Recommendation #2. The BLM therefore declines to adopt this recommendation of Sweetwater County.

Conclusion

The Governor's Consistency Review process is intended to highlight specific inconsistencies between proposed BLM land use plans and officially approved or adopted State resource related plans, policies, and programs. After careful consideration, and for the reasons outlined above, I am declining to adopt the State and local government recommendations. I appreciate your comments and thank you for your participation in the land use planning process for the Oil Shale and Tar Sands PEIS. This type of collaboration between the BLM and the State of Wyoming is important to me, to the success of our land management efforts and to the future of Wyoming. I hope that I have adequately addressed your concerns and that we will continue to communicate and cooperate on future issues.

Please note that you have the opportunity to appeal this response to the Director of the Bureau of Land Management pursuant to 43 CFR 1610.3-2(e). Such appeal must be filed within 30 days of your receipt of this letter. If you have any questions, please feel free to contact me or your staff

may contact Mitchell Leverette, Division Chief, Solid Minerals, at 202-912-7113, or Sherri Thompson, Project Manager, at 303-239-3758.

Sincerely,



Mike Nedd,
Assistant Director
Minerals and Realty Management