



**United States Department of the Interior**



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IN REPLY REFER TO:  
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**AUG 06 2015**

The Honorable Gary Herbert  
Governor of Utah  
350 North State Street, Suite 200  
Salt Lake City, Utah 84114-2220

**RE: The Bureau of Land Management Response to the Governor's Consistency Review:  
Utah Greater Sage-Grouse Proposed Land Use Plan Amendment**

Dear Governor Herbert:

This is in response to your letter dated July 29, 2015, which provided your consistency review of the Utah's Greater Sage-Grouse Proposed Land Use Plan Amendment (PLUPA). The Governor's consistency review is an important part of the Bureau of Land Management (BLM) land use planning process. Partnership between the State and the BLM is an integral part of successful land management. Our partnership is particularly important as we work to address the threats to Greater Sage-Grouse (GRSG) and its habitat to conserve the species and hopefully avoid a potential determination by the Fish and Wildlife Service (USFWS) that the species is warranted for listing under the Endangered Species Act (ESA). We greatly appreciate the time and attention of you and your staff on this important effort.

The BLM Utah Greater Sage-Grouse PLUPA is part of an unprecedented and proactive partnership to conserve GRSG and its habitat by incorporating conservation measures in the land use plans. The PLUPA builds upon the foundation of the Greater Sage-Grouse conservation strategy initiated by the State of Utah in the Conservation Plan for Greater Sage-Grouse in Utah (Conservation Plan) and the Sage-Grouse Management Areas (SGMAs) and other conservation actions identified in the Conservation Plan. The PLUPA also reflects guidance developed by the BLM to incorporate USFWS feedback on the draft plans. The PLUPA was developed in coordination with a range of stakeholders and cooperators, including State fish and wildlife agencies and the Western Governors Association Sage-Grouse Task Force.

The purpose and need of the GRSG plans is to identify and incorporate conservation measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat in a manner that provides sufficient regulatory certainty to the USFWS to support a

finding that ESA protection is not warranted. In order to provide the highest degree of certainty for regulatory mechanisms, the BLM has included common elements across the range to address threats to the bird and provide for a net conservation gain for GRSG. The plans allow for state-based variations where different approaches or priorities are consistent with the overall conservation objectives, including the need to provide adequate regulatory certainty.

The BLM is able to address some of the concerns outlined in your letter either through a change or a commitment to clarify our intent, particularly with regard to the Western Association of Fish and Wildlife Agencies (WAFWA) GRSG Conservation Team, future interaction with State agencies, and land exchanges. The BLM looks forward to continued collaboration with the State in the coming weeks to finalize that language. The standard for review and the specific responses to issues raised is found below.

#### Statutory and Regulatory Framework for Consistency Review

In considering your recommendations, I am guided by the BLM's planning regulations in 43 C.F.R. §1610.3-2. These regulations implement Section 202 (c)(9) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 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, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601-4 et seq. note], and of or for Indian tribes 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, keep apprised of State, local, and tribal land use plans; 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, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. 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 guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. 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 plans (RMPs) and amendments to RMPs “shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein” of State and local governments and Indian Tribes “so long as the guidance and resource management plans [of the State and local government and Tribe] are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands...” 43 C.F.R. §1610.3-2(a). In the absence of such plans, RMPs and amendments shall “be consistent with officially approved and adopted resource related policies and programs” to the maximum extent possible and “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 C.F.R. §1610.3-2(b)).

The BLM incorporated portions of the State's Conservation Plan into the BLM Utah's Greater Sage-Grouse PLUPA, including the strategy of improving GRSG habitat through vegetation treatments to increase GRSG habitat and reduce threats from wildfire. Also, like the Conservation Plan, the PLUPA establishes conservation measures for protecting GRSG and also focuses conservation and restoration within key areas deemed most valuable to GRSG. Most notably, the PLUPA provides additional flexibility for development in General Habitat Management Areas (GHMA) because monitoring indicates that 96% of the breeding GRSG in Utah are within Priority Habitat Management Areas (PHMAs). The proposed plan also applies conservation measures at the project-implementation stage, such as net conservation benefit, lek buffers, and required design features. Furthermore, within GHMA, the Utah PLUPA allows for wind energy and high voltage transmission right-of-way (ROW) development, as well as oil and gas development, like the Conservation Plan. However, the BLM has determined that some of the State's recommendations would not be consistent with the purposes, policies, and programs of federal laws applicable to public lands.

Specifically, FLPMA generally requires the BLM to manage public lands for multiple-use and sustained yield, taking into account the long-term needs of future generations for renewable and non-renewable resources -- including fish and wildlife -- and to seek achievement and maintenance in perpetuity of renewable resources. 43 U.S.C. 1732(a); 1702(c), (h); 1701(a)(8). The BLM's Special Status Species Manual sets forth BLM policy with respect to FLPMA's consideration of wildlife and fish and renewable resources. In particular, the objectives of the special status species policy are A) to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species; and B) to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA (Manual No. 6840, Section .02(A)(B)).

Further policy is found in BLM's Instruction Memorandum (IM) 2012-044 (Dec. 27, 2011), which initiated the “BLM National Greater Sage-Grouse Land Use Planning Strategy” and provided guidance and direction for the agency's consideration of GRSG conservation measures. The IM and the planning strategy were initiated in response to the USFWS' March 2010 decision finding, in part, that existing regulatory mechanisms found in the BLM's land use plans were inadequate to protect the species. The IM states that “the BLM needs to incorporate explicit

objectives and desired habitat conditions, management actions, and area-wide use restrictions into land use plans" in order to "conserve sage-grouse and its habitat and potentially avoid an ESA listing" (IM 2012-044). In addition, the Approved RMP Amendment (ARMPA) will be consistent with the BLM's 2004 National Sage-Grouse Habitat Conservation Strategy which calls for managing public lands in a manner that will maintain, enhance and restore sage-grouse and sagebrush habitats while continuing to provide for multiple uses of lands under BLM stewardship.

In accordance with FLPMA's direction to manage the public lands pursuant to principles of multiple use and sustained yield and the policy direction set forth in IM 2012-044 and the BLM's 2004 National Sage-Grouse Habitat Conservation Strategy, in addition to the BLM's Special Status Species Manual, the BLM's purpose for this planning effort is to identify and incorporate appropriate conservation measures in land use plans to conserve, enhance and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. The goal of the BLM's GRSG conservation strategy rangewide is to provide for the conservation of the GRSG and its habitat and to provide the USFWS with regulatory certainty that in turn will potentially preclude a determination that the species is warranted for listing.<sup>1</sup> To the extent a particular recommendation is inconsistent with that goal or the policies identified above, the BLM has respectfully declined to adopt it (see 43 U.S.C. 1712(a)(9); 43 U.S.C. 1610.3-2).

To ensure that we have fully responded to your concerns, the issues you identified in your consistency review are listed below, and are followed by the BLM's response. Please note that the BLM generally only responded to issues that you identified as being inconsistent with your State's (or other local and tribal) plans and not issues of disagreements with portions of the PLUPA/Final Environmental Impact Statement (FEIS). In addition, the BLM provides information to resolve several areas of disagreement and provide appropriate clarification to address concerns as the plans are finalized.

### **State of Utah's Recommendations and the BLM's Responses**

#### **Issue: Conservation within a Multi-Ownership Landscape**

**Governor's Recommendation:** The proposed plan amendments by the BLM do not fully support the framework for conservation of greater sage-grouse established by the State's Conservation Plan. The State's Conservation Plan is based upon an "all-lands" review, and is successful by responding to localized threats to the species, and by conserving the populations which exist.

**BLM Response:** The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. The BLM planning area boundary includes all lands regardless of jurisdiction; however, the BLM only can make decisions on lands that fall within its jurisdiction (BLM

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<sup>1</sup> Notably, the chairs of the Sage Grouse Task Force recognized this goal in 2011 by making a commitment to develop an action plan that "prescribes near-term conservation measures, that when added to the body of past and current efforts would ensure a viable sage-grouse population in the West and preclude the listing of the species." (Mead, Hickenlooper, and Pool Letter, June 2011)

surface estate and federal split estate – see 43 U.S.C. § 1702(e) and § 1712(a)). The BLM Utah GRSG proposed plan provides measures to conserve, enhance and restore GRSG habitat by avoiding, minimizing, or compensating for threats to that habitat on BLM administered lands and provides regulatory certainty for the conservation of the GRSG and its habitat to reduce the potential need to list the species. As described above, the BLM has incorporated portions of the State's Conservation Plan into the BLM Utah's Greater Sage-Grouse PLUPA. Finally, chapter five of the FEIS includes a disclosure of cumulative impacts from the proposed federal action on adjacent non-federal lands, including some alternatives where the effect of some alternatives may be a loss of GRSG habitat quality on adjacent private lands.

**Issue: The Role of the United States Fish and Wildlife Service in the Utah Greater Sage-Grouse Land Use Planning Process**

Governor's Recommendation: The BLM should eliminate deference to unnecessary and overbroad conditions imposed by the USFWS.

BLM Response: The recommendation relates to provisions of FLPMA and the National Environmental Policy Act (NEPA), and does not address any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PLUPA/Final EIS and Federal law are not properly the subject of the Governor's Consistency Review process. Management decisions in the proposed plan include those that the BLM has determined best respond to the purpose and need and resolve the pertinent planning issues.

Nevertheless, it is worth noting that, in accordance with 43 CFR 1601.0-5, 43 CFR 46.225, and 40 CFR 1501.6, the USFWS has participated as a cooperating agency throughout the land use planning process. BLM's land use planning regulations provide a role for cooperating agencies at most steps of the planning process. In addition to participating as a cooperating agency, the BLM's planning regulations require that RMPs be consistent with officially approved plans, policies, and procedures of other federal agencies, as well as State and local governments, and Indian tribes (43 CFR 1610.3-2(a)).

In accordance with the above-mentioned planning regulations, the BLM has coordinated with the USFWS throughout this planning process. While the BLM recognizes the important role that all cooperating agencies have in the land use planning process, including the USFWS, the decision to select a preferred alternative, publish the proposed RMP, and prepare the Record of Decision (ROD) are actions reserved for the BLM (43 CFR 1610.4-8).

**Issue: Specific and Measurable Goals and Objectives**

Governor's Recommendation: Adjust the proposed plan by adopting the management goal and five specific objectives consistent with those contained in the State's Conservation Plan.

BLM Response: The BLM respectfully declines to adopt this recommendation because the PLUPA includes specific management objectives where the BLM has management jurisdiction and discretion. Though not exactly the same as the metrics identified in the Conservation Plan, Objective GRSG-3 in the FEIS identifies specific habitat objectives for GRSG. These were

developed collaboratively with the State of Utah and are based on the range of characteristics found in the Utah Sub-region. In addition, BLM Utah proposed plan Objective GRSG-4 includes quantitative treatment targets that are similar to the Conservation Plan Objectives 3 and 4. Furthermore, the BLM Utah PLUPA Objective GRSG-4 also commits to *maintaining or improving corridors for migration or movement between seasonal habitats, as well as for long-term genetic connections between populations*, which is similar to State Conservation Plan qualitative Objective 5 – Distribution, specifically 2.0.5.1: *Ensure a path for birds to migrate within SGMAs on a seasonal basis, and ensure a long-term genetic connection between populations as needed.*

The BLM PLUPA does not include a population objective (equivalent to State Conservation Plan Objective 1 – Population) because the BLM does not have the authority to manage wildlife populations. Similarly, the BLM PLUPA does not contain annual targets for protecting private or School and Institutional Trust Lands Administration lands (State Conservation Plan Objective 2 – Habitat) because the BLM does not have authority to require conservation covenants, leases, easements, etc. for these land ownership types.

#### **Issue: Research Specific to Utah – Lek Information**

Governor's Recommendation: Adjust the proposed plan amendments to use Utah lek counts as the primary source of population information, and adopt the rolling ten year average employed by the State as the best indicator of population trends.

- BLM Response: The recommendation does not relate to an inconsistency with State or local resource related plans, policies, or programs. The BLM has worked closely with State officials and used lek counts provided by the State of Utah throughout the PLUPA/FEIS process. Further, the BLM will continue to use the current information from the GRSG research in Utah, including the most up-to-date lek counts, as one of the factors when making GRSG decisions in the future.

The FEIS Glossary specifically notes that “regional planning will use the appropriate definition [of a lek] provided by the state of interest” (FEIS pg. Glossary-15). The BLM has adopted the ten-year standard for lek occupancy as a basis for determining whether an area is a lek, and will continue to do so. The trends in the FEIS Appendix B (Adaptive Management) identify that GRSG populations generally fluctuate on a ten-year cycle and discusses the information from all of the data collected from the leks within Utah. The adaptive management strategy, like the rest of the PLUPA, was based on the information gathered from all of the lek counts in Utah. Finally, on page 2-70 of the FEIS (Section 2.7.2 – Monitoring for the Greater Sage-Grouse Planning Strategy) the BLM recognizes that the State fish and wildlife agencies have primary responsibility for monitoring populations and those efforts will continue in partnership with the BLM and U.S. Forest Service.

The BLM will not be making a change in the PLUPA, as there is no inconsistency to resolve.

**Issue: Creation and Management for the Proposed General Habitat Category**

Governor's Recommendation: Eliminate the existing proposed provisions for GHMA and adopt provisions from the no-action alternative (Alternative A) of the FEIS directly linked to each geographic region.

BLM Response: The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands, in particular BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species. The BLM identified general habitat consistent with IM 2012-044, where general habitat was defined as "areas of occupied seasonal or year-round habitat outside of priority habitat." Identification and mapping of such areas is also consistent with BLM policy for the administration of agency sensitive species identified in Manual 6840 section .2B and .2C. These agency policies are consistent with direction in FLPMA to manage public lands in a manner "that will provide food and habitat for fish and wildlife..." (FLPMA Section 102(a)(8)). While the BLM has identified GHMA consistent with applicable laws and agency policies, the agency has recognized the lower conservation values in these areas in comparison to PHMA and has developed management accordingly.

Similar to the State's Conservation Plan, the BLM PLUPA is based upon management from existing land use plans in GHMA. However, existing management varies throughout the state (see FEIS Appendix I for a detailed description of the No Action Alternative), with existing plans being completed between 1985 and 2008, which include a variety of GRSG protective measures. The proposed plan includes management actions applicable to GHMA throughout Utah to provide consistent conservation that meet the purpose and need for the sage grouse planning effort and that would otherwise be absent if existing land use plans were the sole source of management direction. The proposed GHMA management does not include broad land use plan allocations, like in PHMA, but instead includes site-specific conservation measures to be considered and applied during implementation, such as lek buffers and required design features.

**Issue: Application of the Federal Mining Law (Mineral Withdrawal)**

Governor's Recommendation: Eliminate the proposal for the locatable minerals withdrawal, and substituting provisions which provide for flexibility to address disturbance of a specific mine through mine plan approval and disturbance cap provisions, accompanied by mitigation.

BLM Response: The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands, in particular BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species. The filing of mining claims is authorized by the Mining Law of 1872 (as amended) and does not require federal approval. The BLM may only reject a mining plan if the mining claim is invalid or if the proposed operation would cause unnecessary or undue degradation of public lands. Federal regulations under 43

CFR 3809.0-5(k) defined "unnecessary or undue degradation" as surface disturbing activities that are not conducted in "...usual, customary, and proficient operations of similar character..."

The USFWS has identified areas as "strongholds" for GRSG; the BLM has labeled these areas as Sagebrush Focal Areas (SFAs) in the proposed plan, and has identified additional management to provide certainty for protection. Because current mining practices continue to affect GRSG within SFAs, and the Director of the USFWS has made clear that, "Strong, durable, and meaningful protection of federally-administered lands in these areas will provide additional certainty and help obtain additional confidence for long term sage-grouse persistence," and the BLM finds it is essential to recommend areas for mineral withdrawal. The Secretary has stated that through the separate withdrawal process to implement the BLM plan recommendations – which will be public and transparent – she will work closely with the states and the public at large to consider information on mineral potential, including rare earths, as well as the importance of these areas as sagebrush habitat in making the decision as to what lands will be withdrawn.

#### **Issue: Disturbance Cap and Estimation of Disturbance**

Governor's Recommendation: Adopt the State's 2013 baseline maps as the best available information for this purpose, and as the baseline for disturbance cap calculations.

BLM Response: The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. The recommendation relates to the type of data used during implementation and monitoring. The BLM's proposed plan does not preclude use of the State's baseline maps, nor does it require that the State's 2013 maps be used for calculations in the future. Instead, the proposed plan is consistent with the BLM's guidelines for implementing the Information Quality Act, applying the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses..." (BLM Handbook H-1790-1, p. 55). FLPMA requires the BLM to prepare and maintain, on a continuing basis, a current inventory of the public land and its resources (43 U.S.C. 1701 § 201 (a)). Appendix L in the FEIS outlines the baseline disturbance inventory used for the purpose of analyzing the various alternatives. The data addressed in that appendix use the best sources available when the analysis was conducted, and is limited to those types of disturbances that the BLM will consider when applying the disturbance cap. In contrast, the State's 2013 data is limited to the SGMAs, so it couldn't be used to analyze impacts for all the alternatives (e.g., other alignments of PHMA in Alternatives B and C). The State's data also includes disturbance categories the BLM does not include in the disturbance cap (e.g., fire, agriculture, treatments, cheatgrass/invasive weeds). While the BLM did not use the State's 2013 data in the analysis for the FEIS, it can be used to help identify disturbance during implementation of the ARMPA.

The BLM's guidance for implementation of the disturbance cap specifically notes that "...the best available information should be used to map existing disturbance" (FEIS Appendix E page 2) and locally collected disturbance data "will be used to determine if the disturbance cap has



been exceeded for project authorizations, and, as available, may also be used to calculate the amount of disturbance in the biologically significant unit." The appendix concludes by clarifying that "locally collected disturbance data should identify the actual areas of disturbance to the extent possible, and are not required to rely on the 'Direct Area of Influence' estimates in Table E.3." As such, the proposed plan allows for use of the best available information, so long as it is limited to the specific activities included as disturbance.

### **Issue: Livestock Grazing Influence on the Range**

Governor's Recommendation: Reflect support for grazing as a positive influence on the range. Additionally, adjust the proposed plan amendments to adopt the vegetation standards collaboratively generated by the State, the BLM, the USFWS and academia statewide, and follow the normal schedule for the review and reauthorization of allotment permits, rather than prioritizing in SFAs.

BLM Response: The recommendation does not relate to an inconsistency with State or local resource related plans, policies, or programs. Moreover, in light of the goal of this effort to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species, in addition to the applicable policies identified above, including the BLM's Greater Sage-Grouse Conservation Strategy, its Special Status Species Policy, the BLM finds it is essential to include these range management objectives in the PLUPAs.

While livestock grazing is not identified as a wide - spread threat to GRSG habitat, improper range management can be a localized threat to GRSG habitats. Regarding the State's concerns on the BLM's prioritization process, FEIS management actions MA-GRA-2, MA-GRA-4, and MA-GRA-6 provide criteria for the prioritization of permit renewals and how the BLM will focus monitoring and management activities. As noted in the FEIS, the emphasis is on allotments containing riparian areas and wet meadows, areas not meeting Utah's Rangeland Health Standards where livestock is identified as the causal factor, as well as areas that have the best opportunities for conserving, enhancing or restoring habitat for GRSG. Further, the USFWS has identified areas as "strongholds" for GRSG; the BLM has labeled these areas as SFAs in the proposed plan. A variety of monitoring efforts and activities have been prioritized in these areas to ensure protection of these sensitive GRSG habitats. This prioritization has been set to reflect the importance of this habitat to GRSG conservation, not because the BLM views grazing as an inconsistent use or elevated threat in these areas. MA-GRA-4 also describes how Ecological Site Descriptions will factor into decision making.

Regarding the recommendation to adopt the vegetation standards collaboratively generated by the State, the BLM, the USFWS and academia, the BLM's proposed plan incorporates the standards in the GRSG habitat objectives table (see FEIS Objective-GRSG-3). The habitat objectives will be incorporated into all activities, including grazing permit renewals, Allotment Management Plans, Herd Management Plans, as well as restoration and rehabilitation plans associated with permitted or authorized anthropogenic activities on BLM lands. The BLM will provide clarification on this in the ROD. Additionally, in response to your concerns and those

included in the protests, the BLM will provide clarifying information on the range management actions in the ROD to make clear that appropriately-managed livestock grazing may continue under the plans.

There is no inconsistency to resolve.

**Issue: Best Available Science**

Governor's Recommendation: Use the best available science by basing the proposed plan amendments on the research discussed within the Utah Science Narrative. Remove all references to unsupportable, or less relevant research and substitute scientific research based on the Utah Science Narrative.

BLM Response: The recommendation relates to provisions of NEPA, FLPMA, and the Data Quality Act, and does not address any potential inconsistencies with State or local resource related plans, policies or programs. Any perceived inconsistencies between the PLUPA/Final EIS and Federal law are not properly the subject of the Governor's Consistency Review process. The Utah Science Narrative was not available until after the BLM's Draft and Final EISs were released, as well as after the State's plan was finalized. However, many of the references cited in the report were used in developing the Draft and Final EIS. The Utah Science Narrative, as well as other new credible science regarding issues affecting the conservation and management of the GRSG, will be considered and incorporated, as appropriate, during implementation of the proposed plan and consistent with adaptive management principles and the BLM's commitment to use "best available science."

The BLM has made a reasonable effort to collect and analyze all available data. The BLM NEPA Handbook directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). Throughout the sage-grouse planning process, the BLM has sought and used the most up-to-date peer-reviewed resources. The BLM and Forest Service consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the USFWS, the State of Utah Governor's Public Lands Policy Coordination Office, and the State of Wyoming, and relied on numerous data sources and scientific literature to support its description of baseline conditions (FEIS, Chapter 3) and impact analysis (FEIS, Chapters 4 and 5). A list of information and literature used is contained in Chapter 7 of the FEIS.

As a result of these actions, the BLM gathered the necessary data to make a reasoned choice among the alternatives analyzed in detail in the FEIS and provided a robust analysis that led to an accurate disclosure of the potential environmental consequences of the alternatives (FEIS, Chapters 4 and 5). There is no inconsistency to resolve.

**Issue: Military Operations in Utah**

Governor's Recommendation: Adjust the terms of the proposed plan amendments to reflect the provisions in the State's Conservation Plan addressing the operations of the Department of Defense in Utah.

BLM Response: The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands, in particular BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species. The proposed plan amendments do not apply to aircraft activities that are under the jurisdiction of the Federal Aviation Administration or the Department of Defense (FEIS 1.6.3 Issues Considered but Not Further Analyzed).

The BLM maintains management discretion of public lands under military airspace. The BLM has determined that it is necessary to incorporate measures to conserve, enhance and restore GRSG habitat by avoiding, minimizing, or compensating threats to that habitat in a manner that provides sufficient regulatory certainty to the USFWS to support a finding that ESA protection is not warranted.

In accordance with 43 CFR 1601.0-5, 43 CFR 46.225, and 40 CFR 1501.6, the Department of Defense has participated as a cooperating agency throughout the land use planning process. Coordination efforts with the Department of Defense are discussed in the FEIS, Section 6.3.4.

**Issue: Western Association of Fish and Wildlife Agencies Management Zones**

Governor's Recommendation: Eliminate the use of WAFWA Management Zones in Utah. All mitigation and other management provisions should be limited to the State's SGMAs.

BLM Response: The recommendation does not relate to an inconsistency with State or local resource related plans, policies, or programs. In order to ensure consistency across the west and provide conservation of GRSG on a landscape scale in accordance with the BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty so as to potentially reduce the need to list the species, the BLM is including actions which allow for regional and landscape management, including developing regional mitigation strategies. Moreover, there is no specifically identified inconsistency between the establishment of a team to develop a Regional Mitigation Strategy and the State's Conservation Plan. The BLM therefore respectfully declines to adopt this recommendation.

As part of this range-wide planning strategy, planning efforts have been coordinated under two administrative planning regions that correspond with the threats identified by the USFWS in the 2010 listing decision, along with the WAFWA management zones framework. However, state-based variations have been included in the BLM Utah GRSG proposed plan where different approaches are warranted given the existing management situation and the need to provide for regulatory certainty. An example is the vegetation objectives collaboratively developed by the

State, the BLM, and the USFWS in the BLM's proposed plan. The proposed plan considers both the need to provide consistency across the range and the diversity and discontinuity of sagebrush habitats in Utah.

As part of the proposed plan the BLM has committed to develop a regional mitigation strategy that will be implemented at the state level. Development of the regional mitigation strategy will provide the BLM with the ability to consider the effectiveness of mitigation on landscape basis. The WAFWA Greater Sage-Grouse Conservation Team, which will include interested Federal, State, and Tribal partners, will provide advice on the development of the regional mitigation strategy. Because the mitigation strategy will be implemented at the state level, the BLM Utah will retain its decision making authority for where mitigation would occur, in coordination with the WAFWA groups, as well as state and local partners. The BLM will add clarifying language that the WAFWA GRSG Conservation Team will be transient, serving on an ad hoc basis to advise on specific inter-state issues, such as developing regional mitigation strategies and will work within existing coordination and management structures.

Nothing in this plan will preclude the BLM from continuing to work with the State of Utah in identifying priorities and successfully implementing projects that conserve and enhance sage-grouse habitat. The BLM Utah is committed to continuing to work with the State of Utah and other stakeholders to restore sagebrush health using successful programs such as the Watershed Restoration Initiative. There is no inconsistency to resolve.

#### **Issue: Interaction with State Agencies**

Governor's Recommendation: Use the term "the state" whenever consultation or communication is proposed with the state, state agencies, or state personnel.

BLM Response: To address this inconsistency, the BLM will change the terms in the plan to reference coordination with "the appropriate State of Utah agency" rather than calling out particular agencies or positions.

#### **Issue: Alton Coal Lease-by-Application**

Governor's Recommendation: Eliminate the priority habitat designation for the Panguitch Population Area. Adopt the State's Conservation Plan with respect to the Alton Coal Lease-by-Application (LBA) and do not recognize the habitat within the area encompassed by the LBA as either "essential" or "priority" or anything similar.

BLM Response: The BLM respectfully declines to adopt the recommendation to eliminate priority habitat in the Panguitch population area or the Alton LBA area.

Although the State Conservation Plan identifies Alton LBA area as part of the SGMA, the plan also provides for continued evaluation of the pending LBA "without recourse to the provisions of this Plan." Activities that are planned or initiated before an RMP amendment but authorized or permitted after the amendment is completed must conform to the approved RMP. In this instance, during the ongoing Utah Greater Sage-Grouse planning process the BLM has continued

to prepare an activity-level or project-specific EIS for the Alton LBA. Depending on the timing of the two decisions, the Alton LBA could be required to conform to the decisions contained in the BLM Utah Greater Sage-Grouse plan.

Further, the BLM respectfully declines to adopt the State's recommendation to eliminate the Alton LBA area from management as PHMA. In evaluating whether this area should be PHMA or GHMA, the BLM reviewed a variety of information and determined that the conditions on the ground warrant PHMA. The area in and around the Alton LBA tract was identified as a Priority Area for Conservation (PAC) in the U.S. Fish & Wildlife Service's Conservation Objectives Team Report. The identification of this area as a PAC is also consistent with the State's designation of the area as a SGMA. The area includes the southernmost known occupied lek in the species' range. Loss of the lek could result in range contraction, so management actions to prevent that were an important consideration. Recent monitoring also indicates this area is used by local birds for year-long habitat, as well as by birds from farther north using the area for corridors to winter habitats farther south. As such, land uses in this area may affect bird populations beyond the immediate area.

Another important consideration was the existing fragmented habitat interspersed with potential habitat in and around the southern portions of the Panguitch population area. Juniper reduction projects on public lands restored habitat which local GRSG populations are using. Managed as GHMA, additional opportunities for treatments in this area would be prioritized behind PHMA areas, losing the potential to continue to improve GRSG habitat in this area.

Based on these considerations and the evaluation of impacts presented in the FEIS, the BLM proposed plan identifies the Alton LBA and surrounding area as PHMA. This is consistent with Instruction Memorandum No. 2012-044, where priority habitat was defined as "areas that have been identified as having the highest conservation value to maintaining sustainable GRSG populations. These areas would include breeding, late brood-rearing, and winter concentration areas." The area that includes and surrounds the Alton LBA includes all these types of habitat, as well as providing conservation value for larger populations. Protection of such areas is consistent with the BLM's sensitive species policies in Manual 6840 and direction in FLPMA to manage public lands in a manner "that will provide food and habitat for fish and wildlife..." (FLPMA Section 102(a)(8)).

The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands, in particular BLM's Sage-Grouse Strategy, its Special Status Species Policy, and its goal to provide regulatory certainty for the conservation of the Greater Sage-Grouse and its habitat so as to potentially reduce the need to list the species.

**Issue: Lands and Realty Actions (State Trust Lands Exchanges and Selections)**

Governor's Recommendation: LAR-9 should be modified to recognize the special relationship between the United States and the state with regard to state trust lands, as contrasted with realty

actions applicable to private parties. For consistency with the State Resource Plan and applicable law, the state suggests the following modification [*in italics*] to LAR-9:

Land Tenure

Lands classified as PHMA and GHMA for GRSG will be retained in federal management unless (1) the agency can demonstrate that disposal *or exchange* of the lands will provide a net conservation gain to the GRSG; (2) the agency can demonstrate that the disposal of the lands will have no direct or indirect adverse impact on conservation of the GRSG; *or (3) with respect to state trust land exchanges and selections, there will be no significant adverse impact on conservation of the GRSG, and scenic, wildlife, cultural resource, recreation or wilderness values will be enhanced.*

BLM Response: The BLM respectfully declines to adopt this recommendation because it is not consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands. It is important to note that the proposed action does not preclude land exchanges involving GRSG habitat. Rather, it identifies the conditions under which such exchanges would be considered, consistent with direction in the BLM's land use planning policies (BLM-H-1601 Appendix C, II, E, 1) and special status species policies (BLM-M-6840 .06). The BLM will include language to make this clear in the plan. Further, consistent with the purpose and need of this planning effort and BLM special status species policies, land exchanges that would result in a net conservation gain to the GRSG would be in the national interest (FLPMA Section 102(a)(1)) and consistent with BLM policy to manage Bureau sensitive species to promote their conservation and to minimize the likelihood and need for listing under the ESA.

**Issue: Support a Cooperative Solution for Eastern Utah**

Governor's Recommendation: Build upon the State's Compensatory Mitigation Program to support a Landscape Cooperative Management Agreement among the State, the energy industry and the federal agencies.

BLM Response: The recommendation does not relate to an inconsistency with State or local resource related plans, policies, or programs. The proposed plan does not preclude such cooperative solutions. The BLM Utah GRSG proposed plan recognizes that the compensatory mitigation program will be implemented at a State-level, in collaboration with our partners (e.g. federal, tribal, and State agencies) (FEIS, Section 2.7.2). There is no inconsistency to resolve.

**Issue: Other Consistency Issues**

Governor's Recommendation: Adjust the proposed plan amendments to resolve all other issues raised within this Consistency Review letter not reflected in these recommendations, and for all issues raised in the State's Protest Letter of June 29, 2015 and the State's Administrative Draft letter dated May 13, 2015.

August 6, 2015

**BLM Response:** The recommendation does not identify an inconsistency with State or local resource related plans, policies, or programs. As described in BLM's planning regulations, "Governor(s) shall...identify inconsistencies and provide recommendations in writing to the State Director" (43 CFR 1610.3-2(e)). The regulations further note that "State Directors...shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency" (43 CFR 1610.3-2(c)). The consistency issues and recommendations raised in your consistency letter have been addressed.

As described above, the BLM adopted several key components of the State's plan. However, through evaluation of the Draft and Final EIS documents, the BLM determined that measures that provided additional regulatory certainty were necessary to meet the conservation objectives of the plan. As a result, the BLM believes the Utah PLUPA provides the appropriate conservation measures to conserve, enhance and restore GRSG habitat by reducing, minimizing, or eliminating threats to that habitat on BLM administered lands. There is no inconsistency to resolve.

### **Conclusion**

Please note that you have the opportunity to appeal this response to the Director of the BLM pursuant to 43 CFR 1610.3-2(e). Such an appeal must be filed within 30 days of your receipt of this letter, by September 8, 2015. Please submit appeals to:

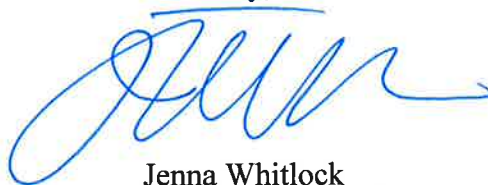
BLM Washington Office  
Attention: Director of the BLM  
1849 C Street NW, Rm. 5665  
Washington DC 20240

Thank you for your thorough, comprehensive and thoughtful consistency review. I also appreciate the hard work your staff and the various State agencies and local governments have contributed to this consistency review and the Utah sub-regional planning process.

I look forward to continuing a productive and collaborative working relationship as we move forward in implementing efforts to conserve GRSG.

If you or your staff has any questions, please contact Quincy Bahr of this office at (801) 539-4122.

Sincerely,



Jenna Whitlock  
Acting State Director, Utah