From:	Alt, Nicole
To:	Kate Norman
Cc:	Matt Kales; Michael Thabault
Subject:	Fwd: edits to Sage grouse QFRs
Date:	Monday, March 30, 2015 10:52:20 AM
Attachments:	Calvert Q1-4 Q9-10 Simpson Q4-8 Amodei Q1-6 Sage Grouse _sdg AES R6.docx

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Here is the most recent Secretary QFR responses. The Director's responses should be consistent.

Nicole Alt
Deputy ARD Ecological Services
Mountain-Prairie Region
nicole_alt@fws.gov

---------- Forwarded message ----------
From: **BalisLarsen, Martha** <martha_balislarsen@fws.gov>
Date: Thu, Mar 26, 2015 at 9:35 AM
Subject: Re: edits to Sage grouse QFRs
To: "Nolin, Chris" <chris_nolin@fws.gov>
Cc: Frazer Gary <Gary_frazer@fws.gov>, Jocelyn Hunn <Jocelyn_Hunn@fws.gov>, Nicole Alt <Nicole_Alt@fws.gov>, Robin NimsElliott <Robin_NimsElliott@fws.gov>

Attachment this time. I rushed too much earlier I guess!

Martha

Martha Balis-Larsen
Chief, Division of Budget & Technical Support
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On Thu, Mar 26, 2015 at 8:02 AM, BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> Chris, here's the revised responses to address Sarah Greenberger's comments and edits. Please let us know if there are any additional questions.
>
> Martha
>
> Martha Balis-Larsen
> Chief, Division of Budget & Technical Support
> Ecological Services Program

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On Wed, Mar 25, 2015 at 9:14 AM, Nolin, Chris <chris_nolin@fws.gov> wrote:

Can you take a look at these edits and suggestions, provide an edited document and flag anything you think we should push back on?

Thanks

---------- Forwarded message ----------
From: **Farrell, Steven** <steven_farrell@ios.doi.gov>
Date: Wed, Mar 25, 2015 at 9:09 AM
Subject: edits to Sage grouse QFRs
To: Chris Nolin <chris_nolin@fws.gov>, Jocelyn Hunn <jocelyn_hunn@fws.gov>

Good morning - attached are edits and questions from Sarah Greenberger for FWS to consider. FWS will need to review both to address the questions and for comfort with some of the suggested edits. Let me know if there are issues.
Steve

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Steve Farrell
Department of the Interior - Budget Office
202-208-6690

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Chris Nolin
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Sage-Grouse

In your January 26, 2015, letters to Governors Hickenlooper and Mead, you stated that the FY15 sage-grouse rider "does not affect the U.S. Fish and Wildlife Service's court-ordered obligation to make a determination by September 30, 2015, as to whether the greater sage-grouse does or does not warrant protection under the Endangered Species Act."

Calvert Q1: Would you like to take a moment to clarify that statement, particularly for those who may interpret it to mean that you are ignoring the law (the general provision included in the fiscal year 2015 Omnibus relating to sage grouse)? Are you?

The exact language of the settlement agreements is *not* to *make a determination*, but to submit to the Federal Register either a proposed rule or a not-warranted finding. By prohibiting the writing and issuance of a proposed rule, the rider prevents the submission of such rule to the Federal Register, thus overriding the Service's court-ordered obligation. This argument may seem like nuance to some, and it becomes moot if a listing is not warranted, but it could matter greatly as September 30 nears.

Answer: I assure you that we are not ignoring the General Provision in the fiscal year 2015 Omnibus relating to sage grouse.

The exact language of the stipulated settlement agreement is, ". . .the Defendants shall submit a Proposed rule or a not-warranted finding to the Federal Register for the following species no later than the end of the specified fiscal year: . . . greater sage-grouse, including any Distinct Population Segments, by FY 2015." We will comply with our obligation to the Court to make a determination by the end of fiscal year 2015 as to whether a listing proposal is still warranted, or not warranted. That determination does not involve writing or issuing a listing rule. If we find that listing is still warranted, the rider language and the Anti-Deficiency Act will prevent us from proceeding to write or issue a proposed listing rule, and I have made clear that we will not do so.

Calvert Q2: If necessary, would you exercise your authority under the terms of the 2011 settlement agreements to request a six-month extension on the deadline for the submission to the Federal Register of either a proposed rule or a not-warranted finding for greater sage-grouse?

Comment [GSD1]: I think there is confusion here that the answer does not fully address. The ESA gives the Service 12 months from a proposed listing to finalize the determination. The statute provides that the Service can delay that FINAL determination by 6 months under certain circumstances like substantial scientific disagreement. The settlement agreement allows that 6 month extension to be exercised but it only applies to FINAL determinations not proposals. I think an explanation along these lines would be appropriate for the start of the answer and then followed by we will make the determination by the 30th and seek an extension if we need to write a rule.

The explanatory statement accompanying the fiscal year 2015 appropriation states the following: "The Committees recognize the unprecedented collaboration regarding sage-grouse conservation. This provision is not intended to impede current conservation efforts; it is imperative that stakeholders continue on-the-ground conservation and monitoring activities. The Committees direct the Fish and Wildlife Service to include with its fiscal year 2016 budget submission an update on the status of all sage-grouse." My position has been and will continue to be that any future legislative intervention in the arbitrary September 30, 2015, deadline should depend upon the status of the species and evidence that conservation is continuing full steam ahead.

Answer: The Endangered Species Act gives the Service the option of delaying a final determination by six months under certain circumstances, such as substantial scientific agreement. However, under the settlement agreement the Service has agreed to submitting either

a proposed rule or a not warranted finding, not a final determination. ~~As explained in my response to the previous question, t~~The rider does not prevent us from making a not-warranted finding and submitting it to the Federal Register this fiscal year. If that is the outcome of our listing determination, we will be in full compliance with this element of the stipulated settlement agreement and will require no extension or relief.

If the outcome of our listing determination is that listing is still warranted, we will have no alternative but to seek to modify the settlement agreement to relieve us from the obligation to publish a proposed listing rule.

Calvert Q3: In your opinion, has the pace of local, state, and Federal conservation of sage-grouse slowed down in recent months?

Answer: No. It has been gratifying to see local, State, and Federal land managers and partners continue to develop and implement their sage-grouse conservation plans.

Calvert Q4: What is the status of sage-grouse populations?

Answer: As part of their ongoing status review, the FWS requested information from Federal, State, local and private entities regarding the species status, information from the States regarding population trends, conservation efforts and activities that are currently or will likely affect the species in the future. The FWS is currently evaluating the status of the greater sage-grouse as an integral part of the determination of whether listing the species is still warranted.

Calvert Q9: USDA's Natural Resources Conservation Service recently announced that it has worked with private landowners to restore 4.4 million acres of habitat for the sage-grouse over the past four years. More than 75 percent of these acres are in Priority Areas of Conservation. Altogether, NRCS and its partners and landowners have invested nearly $425 million in conserving sage grouse habitat. This is very good news and demonstrates the good things that can happen when we work together.

This information should inform the decision on listing on sage-grouse. Will it?

Answer: The FWS will consider and evaluate the best available information in its review of the species status. NRCS has been and will continue to be an important partner and collaborator in sage-grouse conservation and the information they have submitted to the FWS will be considered in the status review.

Calvert Q10: How will it factor into a decision to list or not list?

Answer: The FWS, in collaboration with USGS and other partners, developed the Conservation Efforts Database, an innovative approach to capturing and understanding on-the-ground conservation efforts. Projects completed and reported to the FWS will be considered in the

status of the species, and future commitments, if shown to be effective and likely to occur, will be considered in the evaluation of the future status of the species.

Sage Grouse

Simpson Q4: It is my understanding, from your comments, that the sage-grouse determination will still be made - regardless of the FY15 language included in the so called "cromnibus" - and the rule cannot be written with the language in place. Will the listing determination have any impact without the existence of a written rule and if so, what are the impacts of a determination without a rule that lists the species?

Answer: If the FWS determines that listing is not warranted, that will be a final agency action and obligations under the ESA and the stipulated settlement agreement will be fully satisfied.

If the FWS determines that the species warrants listing, the rider will preclude publication of a proposed listing rule and the species will remain a candidate species. There is no legal status or protection for candidate species under the ESA. However, an updated "warranted but precluded" determination would likely indicate where additional conservation work may need to be done to change the status of the species and inform future conservation efforts.

Simpson Q5: It is my understanding that Idaho has a good plan that has been commended by both BLM and USFWS. Does the state and private lands portion still need work and if so, what can be done to help them on those lands to prevent a listing?

Answer: The Idaho Department of Lands (IDL) has prepared a draft sage-grouse conservation plan for its 2.5 million acres of State endowment lands, half of which contain sage-grouse habitat. The FWS and BLM are actively engaged with the State to further revise its draft plan to achieve sage-grouse conservation. With regard to private lands, leadership from the Governor, via support for Rural Fire Protection Associations, ~~executive orders, and~~ other State resources, has been and will continue to be very important. Additionally, the FWS and the Natural Resource Conservation Service continue to engage private landowners in Idaho to raise awareness of and facilitate participation in Federal partnerships to conserve sage-grouse and sustain working landscapes. The State of Idaho has not provided the FWS a final plan to conserve sage-grouse on private land. A clear and timely indication of what measures and mechanisms the State of Idaho plans to utilize to promote sage-grouse conservation on private lands would be very beneficial.~~Therefore, we cannot comment on the merits of such a plan at this time.~~

Comment [GSD2]: It would be good to be able to describe what the order did, Is there any but the one creating the task force that developed a "state plan" that is implemented mostly through the BLM and USFS planning effort?

Comment [GSD3]: I am not sure what this refers to? The fact that the state has proposed no regulatory plan for private lands (only voluntary BMPs and the fire protection associations)? Or that the state plan for state/private lands is not final?

Simpson Q6: In the overall picture, what exactly has to happen at this point for you to decide that sage-grouse does NOT warrant a listing later this year? There are lots of players and lots of plans in the process. What needs to be done to prevent a listing?

Answer: The FWS completed, with our State partners, the Conservation Objectives Team report in 2013 (http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/COT/COT-Report-with-Dear-Interested-Reader-Letter.pdf). This report outlines the objectives that need to be met in

order to continue to have healthy sage-grouse populations. The FWS will be considering whether changes to Federal land management plans, other Federal initiatives, State regulations and strategies, and private land conservation efforts meet the conservation objectives identified in the report. The FWS continues to provide technical assistance to stakeholders regarding efforts and to support implementing measures to control impacts to the species and its habitat.

Simpson Q7: Your predecessor once told this committee that he was the defendant in 3,000 lawsuits. Clearly either way the sage-grouse decision is decided, there will be lawsuits. Can you explain the steps DOI is taking to prepare for this?

Answer: Endangered Species Act decisions are often controversial, and any final decision regarding listing of the greater sage-grouse will be no exception. The FWS has worked hard to put in place a transparent and scientifically defensible process to evaluate the status of the species. The FWS will be maintaining a comprehensive record of the information received and how it was used. Such a record will serve as the basis for defending any listing decision.

Simpson Q8: I was encouraged to read in the Washington Post on Monday, that the Western governors were somewhat optimistic about your meeting with them in regards to preventing a sage-grouse listing. I also understand that there is still work to do. However, if you are able to, can you explain the cause for optimism among western states, and some of the successful characteristics of state plans?

Answer: There is significant momentum occurring on the ground to conserve the sagebrush-steppe from the collaborative work to develop the foundational science guiding the planning and listing determination processes, to the many innovative conservation agreements coming into place with ranchers, mining and energy companies, to the steps states like Idaho are taking to combat rangeland fire and Utah took to strengthen its conservation measures on state and private lands. The BLM, FWS, USGS, USFS, NRCS, WAFWA and the States are collaborating in an unprecedented manner on rangeland fire assessments and planning that will make our efforts to prevent, suppress and restore after rangeland fires significantly more effective. We are putting a more effective rangeland fire strategy, built largely on these efforts into place. Once the strong BLM and USFS plans are in place and if states like Colorado, Idaho, Montana and Oregon finalize their plans to limit disturbance in sagebrush habitat, the landscape will have changed dramatically since the Service made its determination in 2010 and I am hopeful, though of course not certain, that based on continued progress the Service may reach a not warranted determination.

On the other hand, if momentum slows, and the sense of urgency dissipates, if plans are weakened or left incomplete, I fear we will have missed our window to act, and the landscape will only become more fragmented and the invasive/fire cycle more severe with devastating impacts not only to wildlife but to the way of life in the West.

Our relationship with affected States is collaborative, and it acknowledges the States' management authority for sage-grouse (and expertise in managing the species). We have engaged the States in every aspect of our sage-grouse work, including development of the BLM

land management plans, key technical products such as the Conservation Objectives Team Report and the Conservation Efforts Database.

We have also worked with the Western Association of Fish and Wildlife Agencies to fund important scientific research on invasive species and wildfire in the Great Basin and are members of various technical and policy-level teams led by the States, such as the Governors' Sage-Grouse Task Force. Lastly, we maintain a high degree of transparency in conducting our Endangered Species Act status review and provide regular updates to State wildlife agency leadership on this process.

Comment [GSD4]: This is good stuff, just not sure it answers the question.

Greater Sage-Grouse

Last year, the Secretary of Interior announced Secretarial Order 3336 to protect the sagebrush-steppe ecosystem in the Great Basin area from wildland fire and invasive species. The Department also plans to soon announce a National Seed Strategy and Implementation Plan to address invasive species, altered wildfire regimes, habitat fragmentation and ecological restoration in the West. Additionally, the Department of Agriculture recently announced a commitment to provide an additional $207 million to greater sage-grouse conservation bringing their total commitment under the Natural Resources Conservation Service's Sage-Grouse Initiative to $763 million.

Amodei Q1: Does the Department consider these combined efforts as an unprecedented commitment towards protecting and conserving the Greater Sage-Grouse and its ecosystem?

Answer: Yes, these investments are unprecedented and come at a critical time for a landscape that is under threat and play a significant role in two of the three central tenants of our approach to conserving the sagebrush-steppe and the wildlife and economic activity that depend on it.

The collaborative federal-state approach can be described as three-pronged:

1) Federal lands. Because about 60 percent of the Greater Sage-Grouse's 165 million acres of occupied range is on federally managed lands, Interior's BLM and the Department of Agriculture's U.S. Forest Service are currently analyzing amendments to existing land use plans to incorporate appropriate conservation measures to conserve, enhance and restore greater sage-grouse habitat by reducing, eliminating or minimizing threats to the habitat.

2) State and Private lands. Complementing federal efforts, 11 Western states are implementing plans to conserve and restore sagebrush-steppe landscapes on state and private lands, addressing the threats from development, invasive species and fire. About 40 percent of sage-grouse habitat occurs on privately owned lands. USDA's Natural Resources Conservation Service and its partners in the Sage-Grouse Initiative (SGI) have worked with private landowners to restore 4.4 million acres of habitat for sage-grouse while maintaining working landscapes across the West.

3) Fire. Building on the work of many states, the Interior Department is putting in place actions to immediately address the threat of rangeland fire to Western sagebrush-steppe landscapes in the Great Basin for the 2015 wildfire season and beyond. The actions are designed to reduce the size, severity and cost of rangeland fires; address the spread of cheatgrass and other invasive

species; and position wildland fire management resources for more effective rangeland fire response.

~~As stated in Secretarial Order 3336, under Section 7(b) of the Implementation Plan, Deliverables and Report, the Task Force is required to "provide the Secretary two reports that outline actions that can be accomplished prior to the onset of the 2015 Western fire season, actions that can be accomplished prior to the onset of the 2016 Western fire season, and actions that will require a longer period for implementation." Such actions include "establishing protocols for monitoring the effectiveness of fuels management, post-fire, and long-term restoration treatments and a strategy for adaptive management to modify management practices or improve land treatments when necessary." I would certainly agree that there has been a significant amount of investment in the sage-steppe ecosystem since the FWS concluded its warranted finding in 2010. These are investments that likely would not have occurred otherwise.~~

Amodei Q2: Is the Department concerned with the Fish and Wildlife Service issuing a listing determination for the Greater Sage-Grouse before monitoring of the effectiveness of the fuels management and habitat restoration policies outlined in the Secretarial Order is conducted?

Answer: The FWS has an obligation to review and evaluate the status of greater sage-grouse based on the best available scientific and commercial data available. The FWS expects that the information gleaned through monitoring and adaptive management will help guide our understanding and refinement of approaches and techniques for fuels management and habitat restoration in the sage-steppe ecosystem. The Secretarial Order and resultant reports are an important step forward and the Service will be able to consider immediately any policy changes that direct the prioritization and implementation of improved science-based methods for rangeland fire.

Amodei Q3: Would the Department prefer more time to monitor the results and effectiveness of its unprecedented rangeland management efforts and policies before issuing a listing determination?

Answer: The Endangered Species Act requires the use of the best available information in determining the status of a species. The FWS is considering the best information available, including input from partners and stakeholders. The FWS expects the best information available will support completion of a final listing determination within the time allowed under the court-ordered settlement.

Amodei Q4: To what extent will implementation of S.O. 3336 factor into the Fish and Wildlife Service's Greater Sage-Grouse listing determination?

Answer: The FWS 2010 status review and the 2013 Conservation Objectives Team report both identified wildfire and the spread of invasive species as important impacts that if not addressed, would continue to significantly negatively affect the species' habitat and ability to survive into the future. The FWS will evaluate S.O. 3336 and all other efforts in its decision regarding the current and future status of the species.

Amodei Q5: Is the Department concerned that if the Greater Sage-Grouse is listed, voluntary conservation efforts and financial commitments—from state and private landowners—to protect the species will decline?

Answer: The Department, through its respective agencies working in the sage-steppe landscape, is committed to using its authorities and working collaboratively with others to maintain working lands and the sage-steppe landscape. Our dedication to this landscape will continue regardless of the result of the status review, and we will continue to work with our partners to promote Federal, State and private conservation efforts.

Amodei Q6: If the Greater Sage-Grouse listing determination will occur September 30, 2015, why is the Fish and Wildlife Service requesting $5 million for 20 new full-time employees for conservation in the sagebrush-steppe ecosystem for FY2016?

Answer: The FWS is committed to working with our partners on long-term conservation in this largely intact landscape. There are many species that rely on this ecosystem and, regardless of the outcome of the greater sage grouse status review., ~~t~~These species include small mammals such as pygmy rabbits and sagebrush voles, reptiles like the sagebrush lizard, birds species such as sage sparrow, Brewer's sparrow, sage thrasher, and golden eagles, and game species such as pronghorn, mule deer and elk. Partners ranging from federal land management agencies to private landowners are increasingly coming together to identify and pursue strategies to arrest the decline of sagebrush and dependent species across the range. FWS is an active partner in these efforts and while much of the attention is currently focused on the greater sage-grouse, the larger issues underlying the status of the sage-grouse, namely the invasive species-wildfire nexus and the need to responsibly develop energy and other natural resources, affect a broad suite of wildlife and must be successfully managed if the sage-steppe ecosystem is to remain a vibrant and functional landscape. -FWS requested an increase of $4.0 million to continue investing in partnership efforts ~~such as Candidate Conservation Agreements with Assurances (CCAAs)~~ such as working with States like Wyoming and Nevada to implement and monitor the results of their conservation efforts, continuing to provide support and technical expertise to BLM and FS in the implementation of their plans, continue to leverage our partnership with NRCS and SGI, and continue provide assurances to landowners through the Partners for Fish and Wildlife Program and Candidate Conservation Agreements with Assurances.~~to benefit species that rely on this landscape, including migratory birds that are declining or at risk~~.

Comment [GSD5]: I would like to see some examples of the types of non-regulatory activities the funding could support.

Comment [RE6]: Can we give some examples of other species dependent upon this landscape?