From:	Bush, Jodi
To:	Nicole Alt
Cc:	Michael Thabault; Pat Deibert; Matt Kales
Subject:	Re: GRSG: MT letter
Date:	Friday, October 03, 2014 11:59:34 AM
Attachments:	2014 10 03 LTR Bush_Baker MT EO GSG Conservation Strategy MTESO_Final Draft.docx

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Here it is for your final review (and Noreen's). We received very limited comments from the FMT. JB

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On Fri, Oct 3, 2014 at 11:44 AM, Nicole Alt <nicole_alt@fws.gov> wrote:

> Did the final letter go out or is it still percolating through review?
>
> Nicole Alt
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United States Department of the Interior

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File: M.20 FWP

February 25, 2016

Tim Baker, Natural Resources Policy Advisor
Governor's Office
State Capitol, Room 204
PO Box 200801
Helena MT 59620-0801

Dear Mr. Baker:

The U.S. Fish and Wildlife Service (Service) appreciates the considerable effort of the Montana Greater Sage-Grouse (GSG) Habitat Conservation Advisory Council (Council) members and the Governor's Office in preparing the GSG Habitat Conservation Strategy (Strategy) and the subsequent subject Executive Order 10-2014 (EO). We are pleased that Governor Bullock took the initiative to establish the Council and issue the EO establishing the Montana Sage-Grouse Oversight Team (MSGOT) and the Montana Sage-Grouse Habitat Conservation Program (Program). While we support the EO's overall reliance on a core habitat, landscape-based approach to GSG conservation, we offer the following comments in order to clarify remaining areas of Service concern regarding the State of Montana's GSG Program.

As you know, designated core areas in Montana include approximately 76% of the Montana GSG population; slightly lower than core-contained GSG population percentages of adjacent states. Further, core habitat in Montana often occurs in a fragmented private / government ownership pattern, complicating landscape-scale management. Over half of Montana's proposed core habitat occurs in private ownership, and while often well-managed, provides limited regulatory certainty for GSG conservation, depending on the regulatory scope associated with the EO in these areas. Maximizing conservation and regulatory certainty in core areas is therefore critical to maintaining GSG abundance and distribution in Montana, with general habitat and connectivity areas comprising highly important elements of the overall conservation and regulatory package. To maximize threat amelioration and conservation benefit, we therefore encourage the State to exercise all applicable regulatory authority relative to EO implementation in core and general habitats and connectivity areas.

In order to adequately understand and predict the efficacy of the EO, it is extremely important for the Service to understand the regulatory scope and extent to which the EO will apply. We therefore request State regulatory review to help establish and convey this regulatory context for the EO. While voluntary efforts and measures such as some of those included in the EO are valuable conservation tools, our certainty of conservation implementation and effectiveness is greater for measures applied through regulatory means.

Our comments below regard what we perceive to be primary EO strengths and primary areas of concern,

or for which additional detail would facilitate a more accurate evaluation.

We believe that the primary Montana EO strengths include the following:

- Establishment of a staffed Program and MSGOT to oversee Program implementation.
- Development and application of a quantitative, consistently repeatable surface disturbance calculation tool and process similar to Wyoming's Density and Disturbance Calculation Tool [DDCT] and process that considers fire and past disturbance to GSG habitat and is not restricted to an arbitrary baseline (start) date.
- Application of a fine-scale DDCT-based 5% disturbance cap in core habitat that may be effective in combination with other measures in the conservation "package", provided that concerns with No Surface Occupancy (NSO) lek buffers and other measures (discussed below) are addressed.
- We strongly support the addition of the Garfield/McCone County core area as an extremely important Program element.
- We are pleased that formerly proposed Special Management Core Areas (SMCAs) within existing core habitat, comprising up to 3% of total core habitat, are not designated without analysis in the EO and that any such future proposals for SMCAs would need to include a petition to the MSGOT and substantive supporting analysis to receive consideration. We also note and support that the EO removes the formerly proposed exemptions for coal and other mining from Program compliance in core or general habitat
- We support the stated avoidance of new land uses or activities in core habitat when possible, required application of GSG impact mitigation sequencing (avoid, minimize, reclaim, offset), vegetation removal restrictions (4-mile lek buffer timing restriction in core), the 1 disturbance per 640-acre oil and gas and mining density limitations, the directive for State Land Board consideration of prohibitions for native range sagebrush eradication and conversion to cropland agriculture, monitoring/adaptive response provisions (within 4 miles in core habitat), fire suppression and coordination prioritization in core and general habitats, prioritization of cheatgrass and Japanese brome control, reclamation targeted to benefit GSG, and the "no net conifer expansion" policy as critical Program elements.
- We strongly encourage and support funding (subject to legislative approval) of the proposed Sage-Grouse Stewardship and Conservation Fund designed to promote and fund voluntary incentive-based non-regulatory programs and practices on private land to conserve GSG habitat.
- We are pleased the Program acknowledges the importance of connectivity areas in addition to core and general habitats, includes the proposed Valley County connectivity area, and provides a placeholder for addressing future connectivity areas.

We believe that the following primary EO subjects need to be strengthened / addressed, or require additional detail in order for us to evaluate them accurately:

- Although the EO establishes the Program, MSGOT, and staffing, State agency adherence to and strict application of the stipulations and measures therein are currently voluntary and advisory. It is anticipated that a subsequent (second) EO will fully implement all aspects of the Program and transition to mandatory review and consultation (EO: #7, p. 3). An anticipated effective date for the subsequent EO and mandatory compliance is not specified, and we are increasingly concerned that the Service may be unable to fully consider the Montana EO and Program as a regulatory mechanism in the September 30, 2015 GSG listing decision. We recognize the tremendous complexity of the State's planning process and the hard work being done by the many dedicated partners, but it is imperative that all Program components and mechanisms be

finalized and in place as soon as possible so that we can give them full consideration. We therefore recommend that mandatory Program compliance be enacted as soon as possible.

- The EO charges the MSGOT with numerous science-based tasks and products, including proposed project review, stipulation adjustments based on emerging science, and a comprehensive mitigation program. We therefore recommend that the makeup of the MSGOT include additional agencies with GSG expertise including the Service and the Bureau of Land Management (BLM). We are also concerned with the measure in the EO (#12, p. 4) that MSGOT "consider recommending for adoption best management practices that could be self-implemented in place of MSGOT or Program review", and are uncertain of resulting regulatory or conservation implications. We recommend that this measure be removed or clarified.
- The EO decreases the Montana-specific core area NSO active lek buffer presented in the final Council Strategy from 1 mile to 0.6 mile. Many studies, including recent Montana research (Foster et al. 2014), have documented a high percentage of nesting within 4 miles of leks. Further, lek-related development effects are most severe near leks and discernable out to and beyond approximately 3-4 miles (Holloran 2005, Walker et al. 2007, Tack 2009, Harju et al. 2010, Johnson et al. 2011). We generally attribute increasing certainty of conservation effectiveness to lek buffers as they increase, and highest certainty to ≥4-mile buffers or equivalent measures. In combination with other proposed measures including a fine-scale 5% disturbance cap in core habitat, core-wide seasonal restrictions, (appropriate) noise restrictions, and 1 disturbance per 640 acre oil and gas and mining density limitations, the Service supported the original increase of the NSO buffer from 0.6 mile to 1 mile based on aggregate conservation benefit. The Service strongly recommends against the subsequent decrease of this buffer and believes it will diminish conservation value in Montana core areas by reducing protection for nesting hens. Similarly, we believe the proposed 0.25-mile buffer from active GSG leks in general habitat to be inadequate to achieve GSG lek protection (Holloran [2005], Walker et al. [2007], Harju et al. [2010]). We again recommend that the general habitat buffer match the original core habitat buffer of 1 mile, but at a minimum extend to 0.6 mile in order to reduce potential negative effects to breeding activities at leks in general habitat, a highly important component of GSG conservation in Montana.
- The approach to mitigation requires clarification in order to provide certainty that it will be implemented and effective in the context of the listing decision. We recommend that the EO "avoid when possible" (#24, p. 5) stipulation in core habitat include a requirement for rationale to be provided by authorizing agencies as to why a given proposed surface disturbance to GSG habitat is unavoidable. The EO should also consistently reference offset mitigation when discussing the mitigation sequence (the sequence discussion is occasionally truncated at reclamation) and provide clear, consistent direction as to when compensatory mitigation for proposed surface disturbance activities would be required. Our December 2013 comments provided additional substantive detail regarding mitigation. When completing the comprehensive mitigation strategy, we recommend that the MSGOT adhere to the mitigation principles, standards, and recommendations provided in the Service's September 3, 2014 *Greater Sage-Grouse Rangewide Mitigation Framework*.
- The EO specifies avoidance of wind energy projects in core habitats and recommends avoidance within 4 miles of leks in general habitat. We recommend that the EO exclude new wind energy projects from core habitat, require avoidance of these projects in general habitat, and also stipulate avoidance of wind projects within 4 miles of any active leks unless it can be demonstrated that no adverse impacts to GSG would result.
- The proposed noise stipulation is inclusive of existing anthropogenic activity, contains no overall limit, applies only from March 1-July 1, and may be superseded by a site-specific agreement. Given the caveats, we believe this is not sufficient to reliably achieve the desired conservation

effect. The Service recommends allowance of no more than 10 dB above ambient conditions measured at sunrise, or no more than a maximum of 34 dB at the edge of active leks (Blickely and Patricelli 2012).

- Although improved from the Council Strategy, we are concerned that the proposed core area stipulations for Power Lines and Communication Towers do not fully consider impact avoidance and minimization. We provided suggestions for a step-down evaluation process in our December 2013 comments and recommend that a similar step-down or standard screening process be considered in the next EO.
- For State Trust Lands, the EO directs DNRC to develop additional lease evaluation criteria consistent with maintaining and improving GSG habitat, and also to develop a corrective action program. We support this; however, because a timeline was not specified, we recommend that these be developed, described, and applied as soon as possible in order to receive maximum consideration during the listing decision process. We recommend application of objectives based on Connelly et al. (2000) and Hagen et al. (2007). Voluntary incentives to conserve sagebrush and grazing lands within core and general habitats on State and private lands (#17, p.4) can be very valuable conservation tools; however, required measures on State lands provide the highest degree of implementation certainty.
- The DDCT section states that wildfire would be included in disturbance calculations, which we support. As the effects to GSG are identical, we recommend that anthropogenic-caused fire also be included (if not already included as "wildfire"). The EO states that prescribed burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to GSG habitat. Our concerns relate to the distinction between GSG and their habitat (e.g., both should be protected), elements of risk associated with varying sagebrush types, and how determinations would be made. We recommend that prescribed burns be prohibited in sagebrush habitat, or allowed case-by-case if determined neutral or beneficial to GSG. The BLM and the Service have developed language addressing this issue in Resource Management Plans that we can provide for your consideration. We also recommend that invasive species be monitored/controlled for a minimum of 3 years post-fire.
- As the State wildlife experts, we recommend that the EO explicitly reference Montana Fish, Wildlife & Parks regarding lek monitoring selection and appropriate data collection (EO: #11, p.16).
- Finally,in order for the Service to understand and apply appropriate consideration to the EO in the listing decision, it will be important for future iterations of the EO to provide specific criteria, objectives, or other information regarding under what circumstances proposed waivers may or would be applied. We recommend that application of waivers be minimized to the maximum possible extent. Similarly, for existing rights that have not been developed prior to the EO effective date, it should be clarified that the Program stipulations would be applied to their legal extent.

Thank you again for your GSG conservation efforts. We again stress the urgency in the resolution, finalization, and full, mandatory implementation of all Program components, and look forward to our continued role and coordination with the State in this process. Please contact me or Jeff Berglund at (406) 449-5225 if you require clarifications or have any questions regarding these comments.

Sincerely,

Jodi L. Bush
Field Supervisor

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