From: Deibert, Pat
To: Berglund, Jeff
Subject: Re: MT plan comments
Date: Monday, September 23, 2013 4:47:15 PM
Attachments: WY11TA0044pd.doc

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smcra letter attached. Its not very helpful....

On Mon, Sep 23, 2013 at 4:22 PM, Berglund, Jeff <jeff_berglund@fws.gov> wrote:

> FYI, here's what I'll probably hand out tomorrow. Any red flags? Also - Pat, were you able to locate that SMCRA reg mechanism letter? Thanks all!
>
> Jeff
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> --
> Jeff Berglund
> Fish and Wildlife Biologist
> U.S. Fish and Wildlife Service
> Montana Field Office
> 585 Shepard Way, Suite 1
> Helena, MT 59601
> (406) 449-5225, ext. 206

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got leks?

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
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In Reply Refer To:
ES-61411/WY11TA0044

November 10, 2010

Mr. Ryan M. Lance
Deputy Chief of Staff
Office of the Governor
State Capitol
Cheyenne, Wyoming 82002

Dear Mr. Lance:

Thank you for your letter of September 20, 2010, regarding the refined core population area strategy developed and revised by the Governor's Sage Grouse Implementation Team (Implementation Team) for the conservation of the Greater sage-grouse in Wyoming (Revised Strategy). Governor Freudenthal requested the U.S. Fish and Wildlife Service's (Service) professional evaluation of the Revised Strategy, with particular focus on four questions discussed in detail below. We commend the work of the State of Wyoming and the Implementation Team in producing the Revised Strategy and for the continuing commitment to ensure the conservation of this iconic Wyoming species. This long-term, science-based vision for the conservation of greater sage-grouse has set the stage for similar conservation efforts across the species' range.

The Service believes the Revised Strategy can result in the long-term conservation of the Greater sage-grouse and thus reduce the need to list the species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.). If fully implemented, we believe the Revised Strategy can provide the conservation program necessary to achieve your goal of precluding listing of the Greater sage-grouse in Wyoming. The specific questions in your letter provide an opportunity to discuss aspects of implementing the Revised Strategy that are the key to its success and may determine if it fulfills your ultimate goal.

Your first specific question asks if the "…core population area strategy, as outlined in Executive Order 2010-4, remain a sound policy for manage sage-grouse populations in Wyoming. We believe the Implementation Team's June 28, 2010 letter to the Governor and the resulting Executive Order 2010-4 is a sound policy framework by which to conserve Greater sage-grouse in Wyoming. As we stated in our March 23, 2010 status determination for the Greater sage-grouse (Decision; 75 FR 13910) "the Service believes that the core area strategy … if implemented by all landowners via regulatory mechanisms, would provide

adequate protection for sage-grouse and their habitat in that State." This is a critical point and remains true for the Revised Strategy. To be effective State, Federal and private landowners must all implement this strategy.

Another concern for the long-term policy effectiveness of the Revised Strategy is that the core population areas reflect key breeding habitats only. As discussed at the Implementation Team meetings, the Service believes that the core population areas need to include other important seasonal habitats as they are identified. The Implementation Team actively engaged this topic throughout the revision process, but due to lack of information on the location of those habitats left the final resolution to local working groups once data become available. While we support the development of local solutions to address the protection of seasonal habitats as they are identified, these local solutions must be based on sound scientific data. It is also critical that the protections for seasonal habitats address the real conservation concerns for these potentially limiting habitat areas. As evidenced by recent scientific publications (e.g., see Carpenter *et al*. 2010), habitats other than breeding can in fact be limiting to sage-grouse populations, and thus the implementation of the Revised Strategy will need to keep current with the best available science in order to meet the information requirements of the Act (section 4(b)(1)(A)). Additionally, local solutions need to have mechanisms to ensure they will in fact be implemented, for example be regulatory in nature to the extent practicable. We are also concerned that there will be a diverse variety in solutions identified for the protection of seasonal habitats, which may be biologically appropriate, but confusing in application. Therefore, we encourage continued discussion of these solutions at the State level to minimize potential confusion and inconsistent application, and maximize conservation effectiveness.

The second question in your letter requested review of the transmission corridor management outlined in Executive Order 2010-4. Given the demand for increased electrical transmission capacity within and across Wyoming this is a very important topic. Specifically, you asked if we agreed "…with the State's premise that the best way to manage impacts to sage-grouse is to co-locate new transmission infrastructure with existing lines in the corridors set forth in the Executive Order". The Service does agree with this premise. As clearly defined in our Decision, habitat loss and fragmentation was the primary factor contributing to the Greater sage-grouse warranted status. Transmission corridors contribute to habitat fragmentation; therefore any efforts to consolidate that infrastructure, particularly new infrastructure, will minimize the effects of future transmission development on Greater sage-grouse. We urge you, and all partners on the Implementation Team, to insure that designated corridors through core areas do not increase in width beyond those designated in the Executive order (½-mile either side of existing 115 kV or larger transmission lines, or the designated 2-mile wide corridors in some core areas). Failure to contain these corridors will eventually result in the division of core areas (particularly if the size and capacity of transmission lines increase), compromising Greater sage-grouse habitat quality and population stability.

Your third specific question asked if permitting pursuant to the Surface Mining Control and Reclamation Act (SMCRA) is adequate to protect sage-grouse in core areas. The provisions for conservation of Federal trust species, including candidates such as Greater sage-grouse, under SMCRA and its implementing regulations, are sufficient for conservation of this species.

However, the implementation of the SMCRA provisions will determine their adequacy in relation to the Revised Strategy. The Office of Surface Mining (OSM), the Federal agency responsible for implementation and enforcement of SMCRA, has delegated authority to the Wyoming Department of Environmental Quality, Land Quality Division (DEQ), for regulating coal mine activities in the State. This delegation of authority places the burden on the State regulatory agency to meet the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.), including implementation of the provisions of the 1996 biological opinion between OSM and the Service. It will be important for DEQ to thoroughly implement all the provisions of SMCRA, associated implementing regulations, and the 1996 biological opinion. Since DEQ does not have a wildlife biologist on staff, they typically rely on other State and Federal agencies to address that need. However, we are concerned that this approach may not always sufficient to adequately address concerns that may affect the Greater sage-grouse. We encourage you to identify ways in which DEQ can ensure that they are able to adequately implement SMCRA provisions in relation sage-grouse conservation. One potential solution may be to include at least one wildlife biologist who is knowledgeable of SMCRA, the Act, and the 1996 biological opinion, in each of three regional DEQ offices.

Your final specific question regarded what the State of Wyoming could do outside the auspices of the Executive Order to ensure that the sage-grouse is removed from the candidate species list within this state. The Service encourages the State to continue to actively advocate for sage-grouse conservation, and perhaps more importantly, healthy sagebrush ecosystems. We recognize that the conservation of sage-grouse may involve difficult choices in prioritizing management objectives for a variety of needs within Wyoming. While we do not advocate for elimination or preclusion of any activity, we do encourage the State and project proponents to consider all alternatives that minimizes or removes impacts to the sagebrush ecosystem. We offer our assistance in these efforts if desired. Additionally, we encourage the State to continue to be active participants in the decision-making processes that affect sage-grouse and sagebrush that are conducted by land managers in Wyoming, including State agencies. We recognize the State of Wyoming's expertise in sage-grouse and encourage use of that information to inform these planning processes.

In summary, the Service believes the Core Population Area Strategy for the Greater sage-grouse provides an excellent model for meaningful conservation of sage-grouse if fully supported and implemented. We believe that when fully realized, this effort could ameliorate many threats to the greater sage-grouse. We fully recognize and appreciate your commitment and financial obligation to this important conservation effort. The Service again commends the State's leadership for your proactive and insightful efforts, and your commitment to the long-term conservation of this species.

We look forward to continuing in our participation with Wyoming in greater sage-grouse conservation. If you have any questions regarding the information provided here please do not hesitate to contact me at 307-772-2374, extension 231, or Pat Deibert of my staff at extension 226.

Sincerely,

/s/ Scott Hicks

Scott Hicks
Acting Field Supervisor
Wyoming Field Office

cc: BLM, Acting State Director, Cheyenne, WY (D. Simpson)
USFS, Regional Forester (H. Forsgren)
USFS, Regional Forester (R. Cables)
WGFD, Director, Cheyenne, WY (S. Ferrell)
Governor's Sage Grouse Implementation Team, Chair, Lander, WY (B.Budd)

Literature Cited:

Carpenter, J., C. Aldridge, and M. Boyce. 2010. Sage-grouse habitat selection during winter in Alberta. Journal of Wildlife Management 74: 1806-1814.