From:	Berglund, Jeff
To:	Deibert, Pat
Cc:	Jodi Bush; Brent Esmoil
Subject:	Re: MT plan comments
Date:	Monday, September 23, 2013 5:40:32 PM
Attachments:	Initial Plan Main Comments.doc

Thanks! Here's the revised version of our comments. I weasled a bit more on the NSO question - but feel much better about it since the comment is data-based and essentially leaves it to them to wrangle an NSO that could work for them. Let me know what you think.
Thanks,

Jeff

On Mon, Sep 23, 2013 at 4:43 PM, Deibert, Pat <pat_deibert@fws.gov> wrote:

> smcra letter attached. Its not very helpful....
>
> On Mon, Sep 23, 2013 at 4:22 PM, Berglund, Jeff <jeff_berglund@fws.gov> wrote:
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> > 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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> > --
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> got leks?

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Preliminary FWS Comments on Major Plan Elements:
September 20th, 2013 Preliminary Draft MT Greater Sage-Grouse Habitat Conservation Strategy
September 24, 2013

Initial Points:

- The writing team did a great job assembling a readable document that touches upon most of the issues of concern identified to date (no major gaps were noted).

- The MT conservation strategy is a sum of all components and is not directly comparable with the WY EO. The WY EO applies to most state activities, WY core contains 84% of their GSG population, WY GSG habitat primarily occurs in contiguous blocks, WY core areas were "over drawn" to accommodate private agricultural impacts, etc. We have to look at how the MT plan components fit and work together, including regulatory applicability, core area designation, % disturbance, disturbance density limitations, buffers, connectivity area / general habitat considerations, offset mitigation, etc.

We Generally Agree with These Major Components (not comprehensive):

Disturbance Cap: We agree that the 5% disturbance cap in core may be sufficient in combination with 1/640 oil & gas and mining density limitations if: a) the NSO is adequate (see concern below) and b) the baseline date for "disturbance" calculation is defensible (see concern below). Other state disturbance caps range between 3-5%.

Core Stipulations: We **a**gree with the proposed 4-mile active lek buffer for: 1) main production/waste product transportation roads, 2) tall structures (new transmission/distribution lines and communication towers), and 3) vegetation removal (timing). We also agree with core area new activity seasonal prohibition March 1-June 15 (breeding, nesting, early brood-rearing) and new activity seasonal prohibition December 2-February 29 in winter concentration areas, noise stipulations, wind exclusion, prohibition on agricultural conversion, and monitoring within 4 miles. Additional clarification is needed, but concepts are on the right track.

General Habitat Stipulations: We agree that the stipulations for connectivity / general habitat areas should be included in this plan, subject to NSO and agricultural conversion comments (see below), etc. These areas are necessary for long-term GSG Conservation in MT.

Core Area Addition: We agree with the addition of the Garfield County core area to increase the GSG population encapsulated by core as much as possible, especially considering the potential use of Special Management Core Areas that may result in relaxed GSG management stipulations in some core areas.

We Have Primary Concerns with These Major Components (not comprehensive):

Regulatory Scope: In order to adequately understand and predict the efficacy of the EO, it is important to understand the regulatory scope and extent to which the EO will apply. We suggest that a review of this scope be provided to help establish context for the EO (not necessarily within the EO itself). The regulatory authority should be cited up-front in the document.

NSO Buffer: The NSO applies in addition to the stipulations mentioned above. The current 0.6-mile NSO in core and connectivity/general habitat is based on old data and likely inadequate (particularly in areas of discontinuous public ownership/habitat). Numerous recent studies document a large percent of nesting, as well as adverse effects of development, out to approximately 4 miles from leks. We recommend that the NSO

be increased from 0.6 mile to the extent possible to minimize potential impacts to nesting habitat and breeding activities in core and general habitat. The increased NSO should apply consistently throughout the plan where 0.6 miles is indicated, including connectivity / general habitat stipulations, exempt activities, etc.

Surface Disturbance Baseline: As in WY, there should not be an arbitrary 2005 "baseline date" after which disturbance would be counted toward the 5%. The birds in the present are subject to habitat loss associated with past disturbance. We recommend that the WY approach (no specified baseline date) be applied. Further, we do not agree that existing uses should not be included in surface disturbance calculations, unless this simply means that they are not subject to surface disturbance limitations. If so, this should be reworded.

Special Management Core Areas: To understand and evaluate the ramifications of Special Management Core Areas (SMCAs), we need to know where these are specifically proposed and the proportion of core habitat (pop) they involve. This is not currently defined other than the Cedar Creek Anticline. It is not clear to us whether one conservation plan would be prepared for each SMCA, or for each development within each SMCA. It is also not specified as to when these would be prepared, and what the requirements would be for these areas in the interim. We recommend that the EO apply to such areas until such time as SMCA-specific conservation plans are approved.

Coal Mining: According to WGFD, coal mining is not exempt from the WY EO. SMCRA requires WDEQ to handle permitting, and WDEQ requests comments from WGFD. Both WDEQ and WGFD have to comply with the EO. The WY EO actually applies, in effect, through SMCRA. SMCRA does not supersede the EO, and the EO does not supersede SMCRA.

In WY core habitat, we understand that coal projects must comply with the WY EO except for: a) existing operations, which are allowed to continue under SMCRA-authorized permit terms and conditions; and b) minimal impacts associated with modified mine plans and/or new leases under existing mine operations / plans, for which exceptions to the EO are allowed.

The MT plan appears to exempt coal mining from the MT EO. We recommend that the MT plan follow the WY approach as described above.

Agricultural Conversion: We recommend that this be prohibited on public lands in general / connectivity areas as well as core (currently proposal in general / connectivity areas is to discourage).

Range Management: Range management (grazing, range structures, fences) measures are depicted as voluntary management practices on public lands, providing essentially no certainty of implementation. We recommend that these practices be required on public lands.

Prescribed Fire: Prescribed fire in sagebrush habitat is voluntarily "opposed" under the current plan. We recommend that such prescribed fire be precluded on public lands unless substantive justification is provided.

Offset Mitigation Requirement: It is important to clearly convey under what circumstances Offset Mitigation would be required, that mitigation should be established and functional prior to impact (particularly for impacts projected to exceed the disturbance threshold), and that functionality should be demonstrated by bird use.