From:	Noreen Walsh
To:	Gary Frazer; Robert Dreher
Cc:	Dan Ashe
Subject:	FW: DRAFT briefing memo for Sec. meeting on Wed
Date:	Monday, October 20, 2014 9:54:37 AM
Attachments:	10_22_2014 Sec GSG Internal Briefing_DRAFT Bean Walsh edits and comments.docx

Gary and Bob, fyi, comments I shared this morning on Jim's draft briefing memo for the Secy.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: *We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Monday, October 20, 2014 7:53 AM
To: Michael Bean; James Lyons
Cc: Sarah Greenberger; Neil Kornze; Dan Ashe; Edwin Roberson; Bret Birdsong
Subject: RE: DRAFT briefing memo for Sec. meeting on Wed

I too offer a few edits and some questions, which I added directly to Michael's version.
Please let me know if you have questions for me,

Noreen

Noreen Walsh
Regional Director
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From: Bean, Michael [mailto:michael_bean@ios.doi.gov]
Sent: Sunday, October 19, 2014 4:08 PM
To: Lyons, James
Cc: Sarah Greenberger; Neil Kornze; Dan Ashe; Edwin Roberson; Noreen Walsh; Bret Birdsong
Subject: Re: DRAFT briefing memo for Sec. meeting on Wed

I offer a few, mostly minor, edits in the attached. Thanks for pulling this together, Jim.

On Sun, Oct 19, 2014 at 5:15 PM, Lyons, James <james_lyons@ios.doi.gov> wrote:
Attached is a draft memo for the Secretary's briefing on Wed.

The purpose of this meeting is the brief the Secretary on remaining issues associated with the completion of the sage grouse conservation plans.

Please get your edits/comments to me asap.

Thank you.

--
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INFORMATION MEMORANDUM FOR THE SECRETARY

DATE: October 22, 2014
FROM: James Lyons, Deputy Assistant Secretary for Lands and Minerals
Michael Bean, Counselor to the Assistant Secretary for Fish, Wildlife & Parks
Sarah Greenberger, Counselor to the Secretary
SUBJECT: Status of Greater Sage Grouse Planning Efforts and Key Issues Moving Forward

PURPOSE
This memo provides an update on the status of the Department's work on the Greater Sage Grouse (GSG) conservation strategy, remaining issues to be resolved, and a proposed schedule for completing the plans.

The agenda for Wednesday's briefing includes:

- Activities since our last briefing (Sept 22)
- Status of Plans
- Remaining Sage Grouse Conservation Issues
- Status of State Plans and State Concerns with BLM Plans
- Next Steps

DISCUSSION

Activities since our last briefing

Sept 23 -- Ed Roberson, Jim Lyons, and Noreen Walsh met with representatives of the state fish and wildlife agencies at the annual Association of Fish and Wildlife Agencies (AFWA) meeting to provide them with a briefing on the status of the federal planning process, the FWS decision analysis process, and to get status updates from the status regarding their sage grouse conservation plans.

Week of Sept 29 -- Webinars were held on September 30 (Great Basin states) and October 3 (Rocky Mountain states) with the states to review the status of development of the BLM and FS plans, explaining tentative land allocation decisions and other conservation actions in the administrative draft proposed plans (ADPPs) and issues remaining to be addressed. State representatives also provided updates on the status and content of their conservation plans. The webinars were planned to facilitate conversations regarding the status of all Greater Sage-Grouse (GRSG) plans planned for the following week in conjunction with the quarterly Sage Grouse Task Force meeting.

Oct 1 – A meeting of leadership from BLM (Neil Kornze, Steve Ellis, Ed Roberson), FWS (Dan, Bob Dreher, Gary Frazier, Noreen Walsh) and the Department (Sarah Greenberger, Michael Bean, Jim Lyons) was convened to review the status of BLM plans and identify issues remaining to be resolved.

October __ -- A letter was received from WGA (attached – NEED TO ATTACH) raising concerns regarding the process for developing final plans and expressing the states' concerns that their efforts were not getting adequate recognition. The states asked, in addition to meeting with them as a group in Denver (meeting held Oct 7-8) that individual meetings be convened between the federal partners and the states.

Oct 6 -- A response was sent to WGA by Steve Ellis (BLM) and Leslie Weldon (FS) (attached – NEED TO ATTACH) offering to meet individually with the states. In addition to the meetings and conference calls mentioned below,~~Wyoming, and Idaho and, by phone, with Nevada and Oregon. Meetings are scheduled for~~ a phone conversation with South Dakota and a face-to-face meeting with Utah is being arranged.

Oct 7 – BLM, FS, FWS and DOI staff participated in Sage Grouse Task Force Meeting in Denver. This is a regularly scheduled meeting with representatives of the governors' offices.

Oct 8 -- In response to the states' concerns, FWS, BLM, FS and Departmental representatives met in person with representatives of the governors' offices from Montana and Colorado.

Oct 14 – BLM, FS, FWS and Departmental staff met in Cheyenne with representatives of Gov. Mead~~e~~'s sage grouse team.

Oct 16 -- BLM, FS, FWS and Departmental staff met in Boise with representatives of Gov. Otter's sage grouse team. Phone call was held with Gov. Sandoval's sage grouse team.

Oct 17 – Phone conversation between BLM and Departmental staff with representatives of Gov. Kitzhaber's sage grouse team.

Oct 20 – BLM state directors will meet at the NCTC to review plans and discuss remaining issues.

Status of Plans

All BLM ADPPs and FS draft land and resource management plans (LRMPs) are being revised pending resolution of remaining issues. Our goal is to complete these within the next 3- 4 weeks in order to permit analysis of the cumulative effects of the plans for purposes of preparing final EISs ~~to begin~~.

Remaining Sage Grouse Conservation Issues

In our Oct 1 meeting, we identified the following remaining issues. (These same issues were presented to the governors' offices at our meeting in Denver on Oct 8th). Issues still in discussion and/or yet to be resolved are listed first, in order of priority:

1. Limiting Priority Habitat disturbance – NSO, closures, withdrawals
2. Prioritizing oil and gas development ("Smart from the start")
3. Managing "mixed" management landscapes
4. Lek buffers

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5. Mitigation
6. ROWs
7. Calculating disturbance and setting limits
8. Monitoring /Adaptive management
9. Coal suitability
10. Addressing improper grazing
11. Resolving PAC (Priority Habitat) boundaries
12. Resolving management direction across political boundaries for the same population

Limiting Priority Habitat disturbance – NSO, closures, withdrawals --
While the National Policy Team (NPT) guidance for limiting disturbance in priority habitat permitted the use of either No Surface Occupancy (NSO) or closure for this purpose, none of the BLM state directors elected to close these areas from oil and gas leasing. Instead, all opted to leave the areas open to leasing subject to an NSO stipulation. Exceptions and/or modifications to NSO will be permitted in PH in the BLM plans subject to strict standards to demonstrate no adverse impact to the GRSG and approval of the state director. However, the FWS has made clear that this management direction provides less certainty than closure for fluid minerals or withdrawal of locatable minerals ~~the areas from leasing and development~~ during the life of the plans and has cited the Conservation Objectives Team (COT) report direction to "stop the bleeding" as a rationale for closures or withdrawals.

The FWS has conducted an evaluation of the PACs or PHMAs to identify areas that may warrant closure or withdrawal. Areas are being reviewed and mapped and this analysis will be available shortly. FWS had also proposed that some or all PACs or PHMAs be considered for identification as Areas of Critical Environmental Concern (ACECs) in the final plans. Although this designation may be warranted by statute (FLPMA) and BLM handbook guidance, no areas of GRSG habitat were recommended for ACEC designation in the ADPPs.

Prioritizing oil and gas development ("Smart from the start") –
Analysis done by the BLM National Operations Center (NOC) and a report recently released by Western Ecosystems Technology, Inc. (WEST), a private consulting firm, have highlighted the fact that the greatest potential for energy development in sage brush ecosystems lies outside of PACs and sage grouse habitat. The most recent WEST report concluded the following:
"*The majority of federal lands and minerals identified as medium or high development potential for oil and gas, solar, and wind are located outside of the PACs. For oil and gas, approximately 73% of federal lands and minerals within the study area with medium to high development potential are located outside of the PACs. For solar, approximately 81% of federal lands with medium to high development potential are located outside of the PACs. And for wind, approximately 75% of federal lands with medium to high development potential are located outside of the PACs.*"

Consistent with a smart from the start approach to energy development, as well as the landscape mitigation concept, the BLM could (1) elect to restrict future development to areas outside of GRSG habitat; (2) elect to close all or a portion of these areas from development for this planning cycle; or (3) prioritize future leasing and development of oil and gas to areas outside of PACs or in non-habitat areas (i.e., outside of PACs, PHMA and PGMA).

The BLM has elected to include the following language in the ADPPs to guide future leasing and development of oil and gas resources, *"In order to avoid surface-disturbing activities in PHMAs, priority will be given to leasing and development of oil and gas and other mineral resources outside of PHMAs, subject to applicable stipulations and valid existing rights. When analyzing leasing and authorizing development of oil and gas and other mineral resources in PHMAs, subject to applicable stipulations for the conservation of greater sage-grouse, priority will be given to development in non-habitat areas first and then in the least suitable habitat for greater sage-grouse."*

A related issue raised at our September federal partners meeting in Denver was how to deal with current leases and deferred leases in PHMAs. BLM briefed all in attendance on leasing for oil and gas and noted that the large majority of leases are not developed. Current leases are subject to valid existing rights and while the BLM can impose requirements on these leases to provide more protection for the GRSG, it cannot require new stipulations (e.g., NSO) or restrictions that are inconsistent with the current lease or risk a taking. If a lease is not developed after the principle term (10 years), these leases may be made available again for leasing. FWS made clear its desire to minimize disturbance and development in GRSG habitat and a discussion was held regarding means to discourage leases from being developed in PHMA including (1) asking lease holders to voluntarily forfeit existing leases; (2) encouraging buy-outs of leases by 3rd parties; and (3) developing a means to permit current lease holders in PHMA to give up these leases in return for leases in non-habitat areas where the cost of development might be less and the probability that a lease can be developed with less delay might be greater. While FWS expressed an interest in BLM pursuing these approaches further to best ensure that PHMAs/PACs remain able to support healthy grouse populations, this issue has not been resolved. A complete analysis tally of pending leases and a schedule of expiring leases has not yet been compiled (although anecdotal evidence indicates they number in the thousands).

Comment [WN1]: My understanding has been that the BLM can impose Conditions of Approval, even those not contemplated at the time of leasing, as long as they are consistent with the best available science to limit impact to grouse, while allowing the exercise of the rights.

Managing "mixed" management landscapes—
The checkerboard land management/ownership pattern across the West creates challenges for managing~~ement~~ lands to avoid or minimize additional disturbance in priority habitat management areas. This is particularly true in Montana. For this reason, BLM has argued that applying a No Surface Occupancy (NSO) stipulation to BLM-administered lands would likely drive further oil and gas development to private lands where habitat may, in fact, be better than currently available on public lands. FWS has raised concerns regarding the potential to manage BLM lands in Montana with a different land allocation ("open" as opposed to "NSO") than in other parts of the region. Allowing this development on federal lands without certainty as to what will happen on non-federal lands does not fully support conservation objectives outlined in the COT report. Further confounding this issue is the pattern of subsurface rights in the area. The public owns the subsurface rights to much of the acreage in private surface ownership in the state – particularly where sage grouse priority and general habitat exists. Data on this pattern of subsurface public mineral rights ownership and private surface ownership is still being compiled which may provide some additional information for addressing this concern.

Lek buffers –

The distance between leks and development is one standard for reducing disturbance to GRSG. Buffer distances in the various sage grouse plans vary considerably. For example, 0.6 miles is the distance set between oil and gas (O&G) development and leks in the Wyoming core area strategy and the Montana Executive Order on sage grouse. Others have applied a standard of 4 miles. Still other buffers have been proposed for other types of disturbance with literature cited to justify some buffers and no scientific evidence cited to substantiate others.

In order to determine the appropriate (i.e., scientifically- supported) buffer widths for various types of disturbances affecting GRSG, we tasked the USGS to conduct a review of the relevant literature in order to develop scientifically-based recommendations. This literature review has been completed and will now be peer-reviewed. This information (available in early November) will guide final decisions on literature-supported buffer widths for finalizing the GRSG plans.

Mitigation –
The BLM and FS plans call for mitigation to achieve "no net unmitigated loss" for projects. Unfortunately, this is in conflict with the *Guidelines for Mitigation for Greater Sage Grouse* recently released by the FWS, which recommends a "net conservation benefit" for projects affecting the bird and states, "Projects with a goal of only no net loss will be evaluated more conservatively by the Service because they are likely to positively impact the conservation status of the species."

Comment [WN2]: Shouldn't this be "unlikely"?

BLM is attempting to resolve this issue by clarifying that the overall goal of mitigation is to achieve a net conservation benefit on a WAFWA zone basis (e.g., WAFWA zone #1 covers all of Montana and most of Wyoming). However, individual projects would still be subject to a no net unmitigated loss standard. In addition, while this standard applies to the Great Basin states, it does not apply to Wyoming.

Comment [WN3]: I thought it was a plan basis?

Right of Ways (ROWs) –
Criteria for ROWs will apply to all utility lines, pipelines, and other ROWs in the BLM plans. The National Policy Team guidance for ROWs is avoidance with limited exceptions based on explicit rationale that the exception avoids biological impacts to grouse. However, a number of plans are affected by Presidential priority transmission lines (Trans West Express, Gateway South, Gateway West, and Boardman to Hemingway). For these plans, exceptions are likely to be needed and mitigation provided for segments that pass through priority sage grouse habitat.

Calculating disturbance and setting limits –
All BLM and FS plans will have a disturbance limit of 3% with the exception of plans in WY which will have a 5% cap on disturbance, due to the rigorous nature of the disturbance calculation process, including a commitment to very fine scale mapping and analysis of disturbance. Montana seeks to adopt the 5% limit similar to WY and rationalizes this by noting that the Governor's recent executive order essentially adopts the core area strategy being implemented in Montana. In addition, how and at what geographic level disturbance will be calculated is still being discussed by a team of BLM, FS, and FWS experts. The goal is to develop a means of calculating disturbance that is scalable (i.e., from project to biologically-significant unit to regional scales). WY, MT, and CO will use the Density Disturbance

Calculation Tool (DDCT) – an online tool developed in WY to calculate disturbance of proposed projects – to guide decisions regarding what projects can go forward in their states.

Monitoring /Adaptive management –
Critical to the success of our strategy will be our ability to monitor habitat and population trends and to respond with conservation actions to reduce further declines in habitat quality and/or further limit disturbance in existing habitat should a population or habitat trigger be "tripped". The specifics of how these triggers will be set and what responses will result are still being worked out. We are challenged by the fact that the states monitor populations and the land management agencies manage the habitat. Also of concern is specifying what conservation actions will be implemented should a "hard" trigger -- i.e., a~~s~~ significant decline in habitat such as loss due to fire or a significant drop in population numbers – be hit. Finally, different states have taken different approaches and rectifying these to provide greater consistency remains difficult. We have encouraged the states to talk with each other and continue to work on this issue among BLM, FS, and FWS.

Addressing Improper Grazing --
While not a range-wide threat, improper grazing is a threat to GRSG in many areas. The BLM will prioritize for annual review allotments within GRSG habitat to ensure compliance with the terms and conditions within grazing permits. The BLM will prioritize the modification of grazing permits within GRSG habitat areas not meeting land use plan vegetation objective and/or Land Health Standards. When BLM conducts monitoring, at a minimum, actual use, utilization, and use supervision data will be collected. The NEPA analysis for proposed modification of livestock grazing permits/leases will include a range of alternatives that allows the authorizing officer to make adjustments to livestock grazing without conducting additional NEPA and issuance of a proposed/final grazing decision. The BLM and FS standards for rangeland health/vegetative standards will be based upon GRSG habitat needs and consistent across the range of the species.

Coal Suitability –
(b) (5) [redacted] The suitability determinations in the previous plan (existing management) – and any open/closed allocation decisions for coal leasing based on past determinations – would remain in place. BLM plans will include the following:
"At the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the application area is "suitable" or "unsuitable" for coal leasing. During this process, portions of the application area may not be considered for leasing if leasing is proposed in PHMAs or GHMAs and is likely to have a direct, indirect, or cumulative effect on GRSG or its habitat."

(b) (5) [redacted]

Resolving PAC (Priority Habitat) boundaries –
In Nevada and Utah, priority habitat management area (PHMA) boundaries don't align with the PAC map contained in the COT report.~~boundaries agreed to by the federal partners.~~ Nevada is in the process of revising their boundaries based on mapping being done by Dr. Coates (USGS) for the state. We've agreed to this approach. Utah has indicated that they will review and revise their PHMA boundaries.

Comment [WN5]: My understanding from the SGTF meeting is that the state of UT is not proposing to re-map areas.

In Utah, there has been debate over including "opportunity areas" as PHMA. These are areas that the state would propose to restore to priority habitat but are not in this condition yet. BLM would propose to map these as PHMA, and manage subject to PHMA guidelines, for purposes of the final Utah plan. In addition, BLM would include two additional areas as PHMA that Utah did not include – Anthro and West Tavaputs. With these changes, we would reach alignment in Utah.

Resolving management direction across political boundaries for the same population – Some differences remain in how states manage GRSG populations that cross state boundaries. We have encouraged the states to work together the resolve these differences and the state BLM plans will seek to do the same. This will provide greater consistency in the conservation of a given GRSG population regardless of the political jurisdiction responsible for its management and avoid the need to offer a complex explanation for what may appear to be inconsistent approaches ~~likelihood of an "arbitrary and capricious" finding in court when plans are challenged~~. We acknowledge that different circumstances (e.g. physical features of the landscape) may warrant different approaches to managing these populations, but have made clear that these differences must be justified on biological grounds.

Status of State Plans and State Concerns with BLM Plans

The states are in various stages of completing their GSG conservation plans and have taken divergent approaches to doing so.

Wyoming

- Has the Core Area Strategy
- Lander plan was completed and the ROD signed in late June
- Gov. Mead pleased to have the plan out and wants to defend WY approach and ensure it's applied in the remaining BLM Wyoming plans.

Montana

- Developing a plan modeled after the Wyoming core area strategy, Governor issued an Executive Order on September 9 initiating implementation. Also called for significant investment from the legislature in easements. FWS is in dialogue with the state, and is preparing formal comments about their EO.
- Generally want BLM to follow the Executive Order following the WY plan.
- Specifically, does not want BLM plans to close priority habitat to new mineral material developments as recommended by the NPT. County Commissioners believe these materials are needed for development (e.g., road to access oil and gas fields).
- They are also concerned about the use of the 3% disturbance threshold as their state plan calls for 5%.

Colorado

- The state strategy is focused on voluntary oil and gas requirements as well as easements.
- Colorado has indicated strong support for the BLM plan which has some unique elements
- However, 4 BLM RMPs with different standards for pending oil and gas leases (1208 in total affecting approximately 796,000 acres of which nearly 500,000 is in PHMA) will need to be signed in advance of the final CO plan.

Comment [WN6]: Further discussion of the treatment of those leases prior to the sage-grouse amendment seems warranted.

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Utah

- They have completed a plan that has no regulatory requirements and is not consistent with the COT report approach
- There are significant differences between the state's alternative and the BLM plan that have not been resolved to the state's satisfaction

Nevada

- Gov. Sandoval's plan for public lands is a mitigation plan that would use a market-based approach to disincentivize development of high quality habitats and permit, at lower cost for mitigation, development elsewhere
- This approach does not place hard restrictions on development in priority areas for protection for GSG or provide caps on the amount of disturbance that could occur in priority habitats
- The Governor does not want to place any areas off limits
- The Governor's staff has made clear their intent to move forward with a strategy that would implement their plan (which the FWS does not support) – in lieu of the current BLM state plan which the FWS favors – and proposes to establish a trigger for loss of habitat or GRSG population decline below which the BLM plan would kick in.

Oregon

- The state has been working on a border-border plan that would regulate certain land uses, establish a 3% cap for any future disturbance in priority habitats, and require that mitigation lead to a net conservation gain for the GSG
- The state is concerned with the BLM's approach of excluding wind energy development in the southeastern portion of the state. We are in conversations with them regarding ways to address this concern.

Idaho

- Idaho's plan for federal land has 3 categories of habitat instead of the 2 and the NPT guidance would not allow for this approach.
- Idaho has committed to develop a plan for private and state lands and is exploring approaches to accomplish this within the bounds of state authority.

Comment [B7]: Is this correct? I thought they only committed with respect to state lands.

Next Steps

Developing "final" ADPPs and EISs –
The current BLM schedule calls for completion of key land allocation decisions by the end of October (or soon after) in order to permit cumulative effects analysis to move forward. However, some key issues remain to be resolved and the relevant data are not yet completely compiled.
The schedule (attached) also provides only 2 weeks for review of the remaining 14 state BLM plans by Washington office staff – BLM, SOL, and ASLM staff. This seems a bit ambitious. While every effort needs to be made to complete final EISs by late spring, the proposed schedule will need to be reviewed in order to ensure that quality is not sacrificed in completing the plans.

Records of Decision –
Two RODs – one for the Great Basin and one for the Rocky Mountain plans will be completed in the spring/early summer of 2015 to complete the process. Our current thinking is that you (and

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possibly Secretary Vilsack for the FS plans) should sign these final RODs. If you agree, then we should reach out to USDA staff to discuss the timing and schedule for release as well as who would sign the final BLM and FS RODs.

Work with States—
A call with South Dakota is scheduled for this week. A meeting with Utah will also be scheduled. Dialogue with Nevada, Oregon, and Montana will continue.

Rangeland Fire Workshop –
A rangeland fire workshop is being organized by ASLM/BLM to bring together federal, state, and local officials as well as academicians, non-profit, and for-profit organizations to discuss was to improve efforts to prevent, suppression and restore rangelands impacted by fire. Since fire is the most significant threat to GRSG in the Great Basin, the goal of this workshop is to recommend new policies and program initiatives to help reduce the risk of rangeland fire and the associated threat to the viability of the GRSG. (A copy of the near final agenda is attached.)

Attachments:

- WGA letter and response
- Sportsman's letter to the Secretary
- Summary of WEST report on energy potential and GRSG habitat
- Draft BLM schedule for completing GRSG plans
- Rangeland fire workshop agenda

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