Wyoming DEPARTMENT OF Agriculture

Mark Gordon, *Governor*
Doug Miyamoto, *Director*
2219 Carey Ave. • Cheyenne, WY 82002
Phone: (307) 777-7321 • Fax: (307) 777-6593
Web: agriculture.wy.gov • Email: wda1@wyo.gov

The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

May 1, 2019

Governor Mark Gordon
Idelman Mansion
2323 Carey Avenue
Cheyenne, WY 82002

Governor Gordon,

Following are the Wyoming Department of Agriculture (WDA) comments regarding your request for input on revisions/updates to the Greater Sage-grouse Core Area Protection Executive Order 2015-4 (EO 2015-4). Our comments are also specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. Changes to the EO 2015-4 could affect our industry, citizens, and natural resources in multiple ways that are not always immediately noticeable.

Per instructions at the February Sage Grouse Implementation Team (SGIT) meeting, we have limited our comments to large changes and have not provided specific linguistic changes to the EO. For this exercise, we have worked only from EO 2015-4 and have not considered the substance of EOs 2017-2 and 2018-3 or the Compensatory Mitigation Framework (Framework) to be part of this request for input. We discuss incorporation of these other EOs and the Framework but have not provided input on their substance. However, we feel Governor Gordon could consolidate all Executive Orders into a single EO. This would include EO 2015-4, EO 2017-2, EO 2018-3 and the Framework. EO 2015-4 has a placeholder for the Framework already built in (EO Attachment H) and EO 2018-3 may also fit well here; EO 2017-2 is a clarification and addition to existing direction in EO 2015-4 (see EO Attachment F) and could likely be easily incorporated. We would also suggest the Governor consider ways in which existing Memoranda of Understanding between the state and federal agencies regarding sage-grouse management and processes may be incorporated into the EO, if appropriate.

Specific comments on EO 2015-4 are included below in order of appearance:

1. "WHEREAS" Section
    a. We feel this section could be significantly shorter. When the EO was revised in 2015 the SGIT spent a significant amount of time developing these items in order to properly relay the history of management in Wyoming to the United States Fish and Wildlife Service (UWFWS) before the listing decision.[1] However, given changes to federal plans and the listing decision, we do not feel this level of detail is still needed.

[1] Federal Register Vol. 80, No. 191, 50 CFR Part 17. Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition to List Greater Sage-Grouse (Centrocercus urophasianus) as an Endangered or Threatened Species (2015)

Equal Opportunity in Employment and Services
BOARD MEMBERS
Jana Ginter, *District 1* • James Rogers, *District 2* • Shaun Sims, *District 3* • Amanda Hulet, *District 4* • Mike Riley, *District 5*
Bryan Brost, *District 6* • Kevin Schieffer., *District 7*
YOUTH BOARD MEMBERS
Kendall Roberts, Southeast • Jared Boardman, Northwest • John Hansen, Southwest • Cameron Smith, Northeast

b. In the event that all the WHEREAS statements are retained, we offer the following suggestions for review:
   i. WHEREAS #6 – sage-grouse as a candidate species; update to reflect October 2, 2015 Finding by USFWS.
   ii. WHEREAS #7 - WY plan(s) designed to conserve sage-grouse
      - We do not dispute the plans are a major factor, if the not the major factor, in avoiding a listing. However, the discussion of interaction and plans with regard to the US Fish and Wildlife Service may create some opportunity. Under Section 6 of the Endangered Species Act the USFWS can enter into "cooperative agreements" with a state that "establishes and maintains an adequate and active program for the conservation of endangered and threatened species" (ESA Sec. 6(c)(1). Clearly Wyoming has demonstrated this commitment over the last 10 plus years. This begs the question, given the current status of sage-grouse, can the Secretary enter into an agreement under Section 6? We encourage the Governor's Office to look further into potential use of this section of the ESA in order to maintain state primacy, leverage funds, and implement the ESA as Congress originally intended. We also suggest the Governor's Office review, Wildlife Issues Are Local- So Why Isn't ESA Implementation, *Stoellinger* (2017)[2] for an in depth discussion of Section 6 of the ESA. State primacy over sage-grouse is also discussed in WHEREAS #5 and #8 and the State's commitment to establishing and maintaining a plan for sage-grouse is highlighted in WHEREAS #9, #11, #15, #16, #17, #18, #19, #23, #26, #28 and is evidenced further by implementation of the plan as a whole. We would also note that the USFWS has reviewed and acknowledged the State's plan is sound (see WHEREAS #20, #21, and #22).
   iii. Additional WHEREAS statements to consider include:
      - Include a WHEREAS regarding invasive annual grasses and other noxious weeds that either exist, or may exist, in the State and where control should be emphasized.
      - Include a WHEREAS regarding feral horses and Appropriate Management Levels in Horse Management Areas in Wyoming that may be impacting Core Areas.
      - Consider moving paragraph the second paragraph from de minimis activity #15 (Attachment C) which starts with "It is Wyoming's primary premise that grazing activities are compatible with Greater sage-grouse conservation..." into a WHEREAS statement.

2. "THEREFORE" Section
   a. We would ask the Governor to leave THEREFORE 5 in place. We believe many will ask for new stipulations for things like Winter Concentration Areas but we do not feel there is adequate information, or a need, at this time to develop further stipulations on land uses or activities occurring within Core Areas.
   b. THEREFORE 18 could reference the existing MOU between the State and Federal Agencies regarding implementation of the Compensatory Mitigation Framework.
   c. Additional THEREFORE statements could include:
      - THEREFORE regarding Early Detection Rapid Response to invasive annual grasses and other noxious weeds that have the potential to or are impacting Core Areas.

---

[2] Temple Stoellinger, Wildlife Issues are Local – So Why Isn't ESA Implementation?, 44 Ecology L. A. 681 (2017)

- THEREFORE regarding proactive approaches to managing wild horse populations above AML in Wyoming HMAs. Language currently exists within the Wyoming BLM sage-grouse plans that may provide potential guidance and further consistency between State and Federal plans.

3. Attachment A
    a. No suggested changes

4. Attachment B
    a. This attachment's title has proven confusing in the past for some. We would suggest the Governor consider changing the title to more clearly describe the intent of this attachment and/or re-structure the attachment. It should be very clear to anyone reading this section that it does not apply to all activities or uses in Core.
    b. We suggest closely reviewing the use of "disruptive" in describing activities and ensure it is being used correctly and consider adding a definition of "disruptive activities".
    c. We believe there needs to be additional discussion on vegetation treatments, including prescribed fire, in Core Areas and a pragmatic approach clearly articulated regarding their use. We feel it may be beneficial to add a section that is specific to the use of prescribed fire to Attachment B and suggest working with Jill Randall from WGFD on a fire-specific section.
    d. Winter Concentration Areas
        i. We feel there is a need to explicitly state that WCAs do not and will not be delineated within Core Areas. WCAs were developed specifically due to the location of the only one known to exist which is outside of a Core Area. Other discussion on WCAs may be needed as well but we do not believe there is ample information or need to develop additional stipulations for WCAs at this time.
    e. Wind Energy Development in Core
        i. We would ask that solar power be discussed as well and suggest this section be changed to "Wind and Solar Energy Development in Core". The language within could read: "Wind and solar development are not recommended..."

5. Attachment C
    a. It is extremely important that this section stay in place. We do not suggest any major changes to this Attachment.
    b. We believe it would be beneficial to partially revise de minimis activity #13. Currently this item is limited to maintenance only. We suggest changing this to read "Maintenance or modification of existing fences."
    c. De minimis activity #15 was originally developed prior to the release of federal sage-grouse plans. We believe the processes outlined within this must be retained but may better fit a different Attachment (potentially in Attachment D) or be more appropriate at the beginning of Attachment C. We would be happy to work with the Governor's Office on this item.

6. Attachment D
    a. This may be a good place to include the MOU regarding State and federal coordination on projects.

7. Attachment E
    a. No suggested changes.

8. Attachment F
    a. Definition 2 under "Suitable" – this is likely the best place to include language from EO 2017-2 on riparian areas.

b. Discussion of habitat treatments under "Transitional" definition – this may fit better in Attachment B where vegetation treatments are discussed. We would also suggest the updated EO include a section that directly addresses the use of fire as tool in sagebrush systems. Discussion associated with restoration following fire could also be included in a fire-specific section.
c. Definition of "Unsuitable" – We agree with the definition and the footnote that states "unsuitable" is defined differently under the Habitat Assessment Framework (HAF; Stiver et al., 2015). The addition of a section regarding the HAF and the EO may be helpful and provide clarity regarding different definitions. Please note: we are not advocating for the use of numerical values associated with HAF definitions of habitat.
d. Definition of "Disturbed" – We feel part d. of this section should be reviewed. Given the ecological realities in Northeast Wyoming, the likelihood of ever returning sagebrush to some of these areas is low. We recognize that sagebrush re-establishment can occur but it requires significant inputs of time and money and the likelihood of natural re-establishment is extremely low. We suggest working with the Douglas Core Area Restoration Team to further expand this portion of the Disturbed definition to properly reflect conditions and ecological processes in NE Wyoming.

9. Attachment G
   a. No suggested changes, however, we recommend you contact Dr. Peter Stahl with the University of Wyoming to see if he has any updated recommendations for this section.

10. Attachment H
    a. This served as a placeholder for the Framework. We recommend the Framework be combined (along with other EOs) into a new EO.

11. Attachment I
    a. No suggested changes.

We thank you for the opportunity to comment. If you have any questions regarding our comments please reach out to the Natural Resource and Policy Division.

Sincerely,

Doug Miyamoto
Director

DM/jb

CC: Governor's Policy Office
Wyoming Board of Agriculture
Wyoming Association of Conservation Districts
Wyoming Farm Bureau Federation
Wyoming County Commissioner's Association
Wyoming Game and Fish Department
Wyoming State Grazing Board
Wyoming Stock Growers Association
Public Lands Council