

Bjornsen, Alan

From: Bob Budd [bbudd@state.wy.us]
Sent: Wednesday, May 19, 2010 9:22 AM
To: Brian Rutledge; Bill Hill; Chris Keefe; Mark Winland; Jonathan Madill; Paul Ulrich; Clint McCarthy; Peter McDonald; Brian Kelly; Pat Deibert; Rene Braud; Doug Thompson; Helen Jones; Jason Fearnelyhough; Ryan Lance; John Andrikopoulos; Donna Wichers; John Emmerich; Penny Bellah; Xavier Montoya; Carol Bilbrough; John Corra; Susan Child
Cc: Bob Harshbarger; Charley Dein; Dave Applegate; Tom Clayson; Gregg Bierei; Wendy Hutchinson; Sandy DaRif; Barbara Dilts; Sherlyn_Kaiser@Barrasso.senate.gov; Barbara Chase; Bruce Lawson; Bob Green; Jessica Baldwin; Lyndon Bucher; Dru Bower-Moore; Nick Agopian; Sandy Tinsley; Nate Ferguson; Alan Edwards; Lauren Furtney; Scott Benson; Jennifer Hartman; Lesley Roth; Jack Palma; Alan Rabinoff; Bill Vetter; Karyn Coppinger; Jackie King; Johnnie Burton; Bjornsen, Alan; Mark Tallman; Matt Grant; Cheryl Sorenson; Mike Smith; Dave Lockman; Jay Jerde; Jon Kehmeier; Garry Miller; Renee Taylor; Bobbie Frank; Charles Kelsey; Paul Goss; Wayne Heili; Marion Loomis; Lynn Welker; Richard Zander; Dan Heilig; Daryl Lutz; Mary Flanderka; Tom Christiansen; Brian Reilly; Hollis Wold; Ken Hamilton; Christy Hemken; Don McKenzie; Dick Loper; Jim Magagna; Scott Streeter; Mike Fraley
Subject: Fwd: Please circulate to the SGIT
Attachments: Simpson Connectivity.pdf; WY2010TA0262_WY Gov_Wind_PCW.pdf

Please see the attached information from the Governor.

Bob Budd, Executive Director
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Wildlife and Natural Resource Trust
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>>> Ryan Lance 5/17/2010 11:20 AM >>>
Bob,

During my time on leave, several big happenings actually happened on the grouse front. Would you kindly forward the attached to the SGIT members for their consideration. Both offer significant - if only interim - guidance on questions of wind and connectivity.

Ryan Lance
Deputy Chief of Staff
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EX.6
EX.6
G/48

Office of the Governor

May 7, 2010

Don Simpson
Director, BLM Wyoming State Office
5353 Yellowstone Road
Cheyenne, WY 82009

Dear Director Simpson:

I write to you concerning oil and gas development in the Powder River Basin. In particular, I write to inquire about the status of over 2,600 Applications for Permit to Drill (APDs), which are currently the subject of varying stages of National Environmental Policy Act (NEPA) analysis in 75 pending Plans of Development (PODs).

Recent research findings indicate that some of these PODs are located, in whole or part, in potential sage grouse "connectivity habitats". The remaining APDs are the subject of ongoing NEPA analysis in the Fortification Creek area. Knowing that "connectivity" has proven to be a difficult concept to incorporate into state and federal planning, I have asked my Sage Grouse Implementation Team (Team), in conjunction with the state's sage grouse Local Working Groups (LWGs), to provide recommendations on the subject and finally address one of the remaining issues raised by the US Fish and Wildlife Service in its endorsement of the Core Area Strategy. In the meantime, however, I would ask that you process those PODs that are clearly located outside of the "connectivity" zone and Fortification Creek Planning Area as soon as possible. Following my receipt of the Team's and LWG's recommendations, both in terms of what constitutes "connectivity" and what should be done in terms of management to protect these migration routes (i.e. spacing, density and other restrictions), the BLM should move expeditiously to issue the remaining APDs consistent with those recommendations.

The enclosed map identifies habitat that the BLM and Wyoming Game and Fish Department believe to constitute "connectivity" areas. For my part, I will say that it seems overly expansive, particularly on the northeastern edge of the sage grouse Core Area, which is commonly referred to as the "key-shaped" Core Area (particularly with the inclusion of certain

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portions of T51N R79W, T51N R78W, T50W R79W and T49N R79W). I appreciate the BLM's efforts to protect sage grouse leks in that area, as they may prove to be essential to precluding Endangered Species Act listing in the future. This said, I cannot support any de facto expansion of core area protections in the name of "connectivity protection." In this regard, I understand that density limitations could be set as low as three well pads per section to protect "connectivity." Given the nature of the well densities needed for effective coal bed natural gas production and the ineffectiveness of directional drilling in this sort of play, drawing the line for "connectivity" protection could practically expand the core area simply as a function of geology and hydrology. While this may be the intent of some, the BLM should be deliberate in whatever decision is made. The history of this "key shaped" core area dictates thoughtfulness from both industry and BLM and I have great confidence that a workable solution can be achieved.

In terms of timing, I would hope that the BLM could start issuing APDs and approving PODs outside of the identified interim "connectivity zone," with standard sage grouse and other stipulations where appropriate, as soon as is practicable. For those APDs within the interim zone, I have asked the Team, and by extension the LWGs, to have recommendations to me no later than July 1, 2010 in terms of mapping and interim management. Following my receipt of those recommendations, BLM should be able to proceed with the immediate processing – consistent with these recommendations - of all remaining APDs located outside of the Fortification Creek planning area. In any case, the interim mapping of connectivity zones should not be cemented in any way, including in any drafts of the Buffalo Resource Management Plan, until the final recommendations from the Team and LWG are available. Even then, I would hope that an adaptive approach could be adopted.

As I understand the current status of the Fortification Creek Environmental Assessment, a draft should be released sometime this Fall, which should add some clarity to the status of those APDs that have been requested in that area. I will say that I have very little sympathy for industry with regard to development within Fortification Creek. Had industry taken heed of my early requests and guidance to complete an Environmental Impact Statement – as opposed to an Environmental Assessment – I dare say those APDs would have been issued long ago.

As efforts proceed to approve PODs and APDs within and outside of the interim "connectivity" zone, I would ask that BLM continue to press industry to identify those APDs that have already been issued but that are not likely to be drilled. Once these permits have been identified, I would hope that arrangements could be made to encourage industry to forego drilling – whether through the return of the APD fee or some other incentive. In the same vein, I would ask that industry be actively encouraged to accelerate its plug and abandon program in those areas of the Powder River Basin that are no longer in active production. By foregoing the development of APDs that are no longer essential to industry operations, and placing a premium

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on thoughtful reclamation, we can start to achieve some degree of equilibrium in the Basin and hopefully start into a phase where we are adding more habitat than we are taking away. Until industry can see its plug and abandon program as an avenue to enhance certainty with regard to future permitting and development, we will continue to experience apathy in capital allocation toward the effort. I would offer the support of the University of Wyoming College of Agriculture Reclamation and Restoration Center, in terms of providing scientific and technical assistance, as we collectively move into this new phase of coal bed natural gas development in the Powder River Basin.

Thank you for your time and attention to this important matter. I look forward to continue working with the BLM to advance both sage grouse conservation and natural gas production. Going forward, I hope that the BLM will work with industry to review the APDs that have been requested and seek voluntary measures that will maximize sage grouse protections, beyond those required to protect "connectivity," while still observing the overt policy directives of the Core Area Strategy to protect core areas and enhance development outside of these core populations.

Best regards,



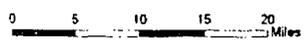
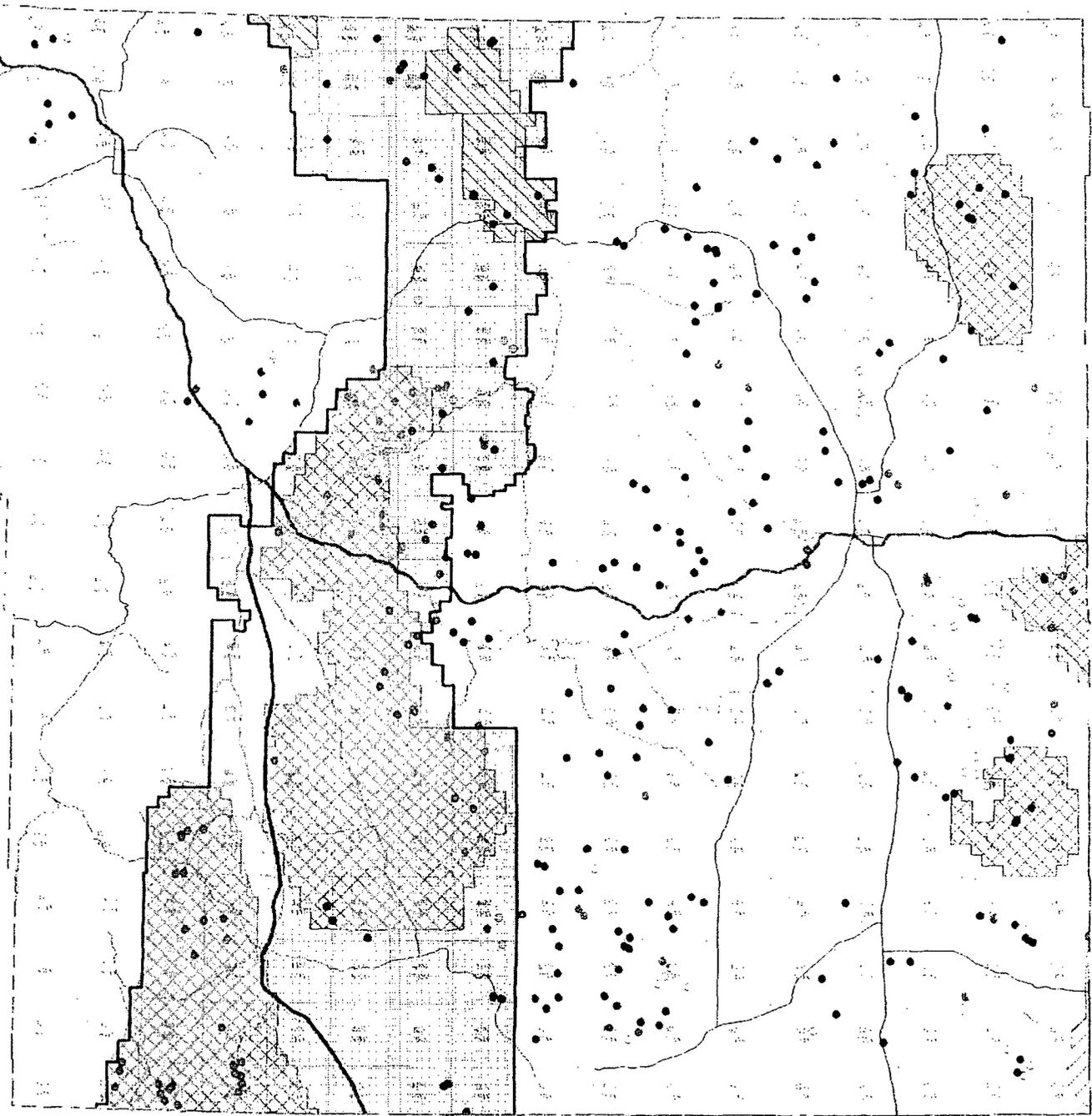
Dave Freudenthal
Governor

DF:pjb

Stephanie Connolly, High Plains District Manager
Duane Spencer, Buffalo BLM Field Manager
Director Steve Ferrell, Wyoming Game and Fish
Dean Frank Galey, UW College of Ag & Nat Resources

Proposed Connectivity Area

- Proposed Connectivity Area
- BFO Focus Areas
- WQFD Core Areas
- SS Lake by WQFD Categories of Impact (April 2019)
- No wells within 2 mi
- Low (<1 per sq mi)
- Moderate (>1 and <2 per sq mi)
- High (2-3 per sq mi)
- Extreme (>3 per sq mi)





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

In Reply Refer To:
ES/61411/2010-TA-0262 WY

MAY 12 2010

Honorable Dave Freudenthal
Governor of Wyoming
State Capitol
200 West 24th Street
Cheyenne, Wyoming 82002

Dear Governor Freudenthal:

Thank you for your letter of April 16, 2010, requesting that we provide a "clear and concise" description of the U.S. Fish and Wildlife Service's (Service) views toward wind development in core sage-grouse habitat; in particular regarding the efforts of the Power Company of Wyoming (PCW) to develop a wind farm in core habitat near Rawlins, Wyoming. I would like to first express my appreciation for the efforts of your staff and the Wyoming Game and Fish Department for working collaboratively on this issue under our Memorandum of Agreement. I likewise appreciate your acknowledging that our involvement in this effort, as a matter of protocol, has deferred decisions to the State of Wyoming, as authority remains with the State for Greater sage-grouse management and not with the Service. Please accept the following response to your inquiry in this context and spirit. While our counsel to you is what we judge at this time to be the best path to help preclude listing under the Endangered Species Act (ESA) in the future, we also recognize that approaches can vary but achieve the same end—conservation of sage-grouse over time that can help preclude listing. In addition, please be aware that we will soon be responding to PCW directly regarding the Candidate Conservation Agreement with Assurances (CCAA) application you mentioned.

In July of last year an exchange of letters between me and Game and Fish Director Steve Ferrell illustrates the type of coordination that has been ongoing on this topic. In that letter, in response to specific questions from Director Ferrell, I endeavored to be as clear and concise as possible with respect to the Service's view of how best to sustain the integrity of the core area. In my July 7, 2009, letter I stated the following:

The Service feels that the greatest threats to the integrity of the core areas are: (1) not adhering to science-based conservation measures associated with development, and (2) allowing mitigation for impacts to core population areas as an option if the proposed development is counter to accepted conservation measures or when impacts are not known.

At the time of my July 7 letter, research from myriad sources showed that sage-grouse require large intact expanses of sagebrush to be sustained. Since then our recent warranted but precluded finding included additional science that indicated fragmentation of intact habitat was the primary biological threat to the species and was one of the two factors that were the basis for our listing determination. The second being inadequate regulatory mechanisms. The State's Core Area Strategy, Executive Order 2008-2 (State Strategy) is a significant, albeit not yet complete, effort to address these issues for Wyoming and is setting a National example of a logical path forward on this complex issue.

In regards to the proposal by PCW, while their effort is significant and commendable, it does not include conservation measures specific to wind development (point #1 in my July 7, 2009 letter) because they do not currently exist. Instead PCW proposes to undertake mitigative actions to offset losses expected (modeled) by the construction of the proposed wind farm (point #2 in my July 7, 2009 letter). Therefore, if the State's Industrial Siting Council (ISC) were to accept and permit such a proposal, the State would permit an activity that the Service, in response to an inquiry from Director Ferrell, advised would compromise the integrity of the State Strategy. Based on the current science, permitting such activities in core area would at best minimize the value of the State Strategy in our annual review of the species to determine if it should be listed under the ESA; and as indicated below, in response to question # 3, would not meet the CCAA standard.

Additionally, as you are aware, in August of 2009, the Wyoming State Board of Land Commissioners withdrew the approximately 1 million acres of state land within core area from wind development, citing "...the lack of applicable research, specific to potential impacts of wind energy development to sage-grouse..." The Service cited this significant action by Wyoming in our 2010 warranted but precluded finding as an example of an adequate regulatory mechanism.

Your letter specifically asked a series of questions to elucidate further clarity on this important issue to the State and the conservation of this species:

1. *The Executive Order specifically states that "New development or land uses within Core Population Areas should be authorized or conducted only when it can be demonstrated by the state agency that the activity will not cause declines in Greater Sage-Grouse populations." PCW has developed a Habitat Equivalency Analysis (HEA) model that they believe clearly "demonstrates" that their proposal will not cause declines in sage grouse populations. Is the HEA an appropriate tool for modeling both negative and positive impacts in sage-grouse core area and for "demonstrating" that a development will not cause declines in sage-grouse populations? If not, is there another model that can be used?*

Until research can identify if and how wind development can occur that does not cause sage-grouse declines such as currently exists for oil and gas development, neither the HEA approach nor other modeling approaches are consistent with the State Strategy in

our view. All models rely on untested assumptions that must be tested over time. Testing such assumptions in core area is contrary to the State Strategy in our judgment (see response to #4 and introductory comment regarding our primary concerns regarding integrity of core area)

2. *Does the Service allow for the use of CCAA's to avoid, minimize and mitigate wildlife impacts from existing and proposed land uses and to provide conservation benefits to the covered species?*

Although the Service has approved CCAAs that allow new and ongoing land uses for which there are established conservation measures, it has not heretofore considered any proposed CCAAs that incorporate mitigation plans in lieu of specific conservation measures. The CCAA standard that we must adhere to is included below from the CCAA policy. Although not as concise as might be desirable, I believe it is necessary for the clarity you seek.

"...the Services will enter into an Agreement with assurances when they determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species."

"The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species."

In essence, therefore, meeting the CCAA standard requires conservation measures that when applied to all necessary properties would preclude listing the covered species. CCAAs could, in some situations, employ aspects of avoidance, minimization or mitigation to meet this standard; but that would depend on the threats, habitat, species in question, and scale of the CCAA. In general, however, we have not used or planned to use CCAAs to mitigate impacts to species from new land uses lacking established conservation measures.

3. *Does a CCAA constitute an appropriate mechanism by which a landowner conducting ranching operations and developing a wind farm in sage-grouse core area may comply with the core area strategy? If not, is there a mechanism or strategy that the Service recommends wind developers to pursue?*

The State Strategy acknowledges the potential use of CCAAs as a voluntary incentive and or assurance option for private landowners. Likewise, the SGIT has discussed how CCAAs could potentially help preclude listing if enough private landowners chose to enroll in CCAAs. However, in our judgment they are not the appropriate vehicle for developing wind power, and currently will not meet the CCAA standard. The State Strategy is ultimately a State matter. Therefore, we believe the State ISC is the best regulatory mechanism for permitting wind development in core area once the science is available to inform how it can be done. The Service recommends two general approaches: (1) develop outside core areas, where greater than 80% of the state's developable wind occurs, and (2) support the wind research cooperative that has been established to determine if and how wind development may be done where integrity of the habitat can be maintained for this landscape scale species.

4. *Does the Service support the use of preconstruction predictive assessment of impacts to sage-grouse in core area, confirmed by post-construction monitoring, with adaptive management being used to address any unforeseen differences?*

In the absence of reliable information on the likely effects of proposed land uses and of proposed conservation measures, this approach functionally describes a research project whose elements were identified as the Service's greatest concerns in my July 7, 2009, letter in response to Director Ferrell. For the State Strategy to work and provide the intended benefit to the State and the species, research should occur outside of core area. The Service supports adaptive management of the State Strategy if new research from outside core informs new approaches in core area or if monitoring of actions within core does likewise. So, in summary, no, we do not support this approach to developing core area.

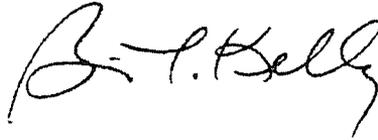
5. *PCW has suggested that the HEA model is used in other regional and local Service offices to justify certain activities. Is the HEA model used elsewhere in the Service and, if so, how?*

I cannot speak to the HEA model specifically, but various impact mitigating or offsetting approaches similar to the HEA concept are relied on by the Service where such a standard is appropriate (e.g., Habitat Conservation Plans (HCP)).

The Service commends the State and citizens of Wyoming for their leadership in developing and implementing the State Strategy. My office has appreciated the opportunity to serve on the Sage-Grouse Implementation Team. We have supported the effort from the outset because it provides a strategic conservation approach consistent with our own that will help ensure Wyoming can maintain its: (1) open spaces, (2) economy, and (3) conservation of at-risk species in a manner that hopefully helps to preclude an ESA listing. With respect to the latter, the Service remains ready to assist how and where we can as that goal also underlies our fundamental mission as an agency on behalf of the American taxpayer.

Thank you again for your inquiry. If I have failed in any way to be as clear as you desire, please do not hesitate to contact me at the address on this letterhead or at 307-772-2374 x234.

Sincerely,

A handwritten signature in black ink, appearing to read "B. T. Kelly". The signature is fluid and cursive, with the first name "B." and last name "Kelly" clearly legible.

Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: Assistant Secretary, Fish Wildlife and Parks (T. Strickland)
Counselor to the Assistant Secretary, (M. Bean)
Acting Director, U.S Fish and Wildlife Service, (R. Gould)
Assistant Director, U.S. Fish and Wildlife Service, Endangered Species (G. Frazer)
Regional Director, U. S. Fish and Wildlife Service, Region 6 (S. Guertin)