



STATE OF SOUTH DAKOTA  
DENNIS DAUGAARD, GOVERNOR

September 4, 2015

BLM Director  
BLM Washington Office  
Attention: Director of BLM  
1849 C Street NW, Rm 5665  
Washington, DC 20240

Subject: Appeal of the Bureau of Land Management's (BLM) Response to the state of South Dakota's Comment Provided through the Governor's Consistency Review to the 1610 (MT930) the United States Department of Interior, BLM Proposed Resource Management Plan/Final Environmental Impact Statements (PRMP/FEIS) for the South Dakota Field Office

Dear Director,

I am providing you my appeal to the Bureau of Land Management's response to the Governor's Consistency Review as submitted on July 29, 2015.

If you have any questions please contact Bill Smith with the South Dakota Department of Agriculture at 605.773.4351.

Sincerely,

Dennis Daugaard

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Enclosure

Cc: Jamie Connell, State Director  
Lori (Chip) Kimball, South Dakota Field Manager  
Mitch Iverson, RMP Project Manager

**SOUTH DAKOTA APPEAL OF BLM RESPONSE TO ITEMS OFFERED UP DURING THE GOVERNOR'S  
CONSISTENCY REVIEW DATED 7/29/2015**

**I. INTRODUCTION**

The Proposed Resource Management Plan/Final Environmental Impact Statement for the South Dakota Field Office seeks to revise the Resource Management Plan (RMP) for the Bureau of Land Management's (BLM) South Dakota Field Office. The RMP covers a broad range of resource issues on 274,239 surface acres and 1.72 million acres of federal mineral estates that are administered by the BLM in South Dakota. The plan also is a part of the BLM's National Greater Sage-Grouse Planning Strategy and attempts to incorporate sage-grouse conservation efforts.

The Federal Land Policy and Management Act requires that BLM guidance and management plans "be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State, and local governments and Indian tribes." 43 U.S.C. § 1712(c)(9); 43 C.F.R. § 1610.3-2. Accordingly, it is incumbent upon the BLM to seek consistency with the laws, policies, programs, and plans of the State of South Dakota (State) and other governments within the state. On July 29, 2015, the State submitted comments and recommendations to the PRMP/FEIS. On August 6, 2015, the State received a response from the BLM regarding these comments. Upon review of the BLM's August 6<sup>th</sup> response, the State wished to appeal the below items to the BLM Director:

**II. Appeal Items**

A. Governor's Concern and/or Recommendation as submitted on 7/29 raised the concern that South Dakota Codified Law (SDCL) 45-9-1 directs for the development of oil and gas resources of the state. The State contends that the current PRMP/FEIS is in conflict with this position and offered up suggestions that the BLM should restore the provisions from the 2013 draft RMP raft that contained waivers, exceptions, and modifications (WEMs) to the No Surface Occupancy (NSO) provisions in Priority Habitat Management Areas (PHMAs). The State wishes to appeal to the Director to restore the WEMs as contained in the 2013 draft RMP.

1. Background to support this appeal item

- a. Approximately 30 percent of South Dakota's existing natural gas patch is comprised of federal property within PHMAs.
- b. Unless the PRMP/FEIS includes reasonable WEMs, future development will be greatly curtailed, creating significant economic impacts at the local and state level.
- c. The WEM provisions would allow for local BLM staff, in concurrence with the State, to decide on a project-by-project basis what the potential impacts to sage-grouse would be and how best to avoid, minimize, or otherwise mitigate those impacts.
- d. In western South Dakota, most of the natural gas deposits are shallow and cannot be accessed through horizontal drilling.

- e. Removing meaningful oil and gas WEMs from PHMAs is arbitrary in that BLM's PRMP makes provisions for other common land uses within PHMAs that have similar or greater potential to impact GRSG habitat in northwest South Dakota, but fails to account for reasonable oil and gas development.
  - f. By using a "one-size-fits-all-states" directive, the Department of Interior's administration of the Endangered Species Act listing requirements is flawed and demonstrates an underlying bias against oil and gas development in this case.
  - g. By removing reasonable WEMs from under the PRMP/FEIS, essentially all of natural gas development across vast expanses of northwest South Dakota will not be accessible to development. Therefore, the PRMP/FEIS is inconsistent with South Dakota's statutory directive regarding development of oil and gas in the state.
2. BLM Montana State Office's Response to South Dakota's Consistency Review (dated 8/6/15): BLM's express intention to, "balance the protection of GRSG habitat and the need for regulatory certainty with regards to the development of oil and gas resources" does not balance the needs of sage grouse protection and other uses. The SD PRMP leaves South Dakota with a PRMP that is deeply inconsistent with South Dakota's statutory directive regarding development of oil and gas in the state.
- B. Governor's Concern and/or Recommendation as submitted on 7/29 raised the concern that the BLM did not use current data when they conducted analyses for the Reasonable Foreseeable Development (RFD) figures used throughout Chapter 4 of the PRMP/FEIS for oil and gas development within South Dakota. The BLM declined to accept this recommendation on the basis that the State "did not identify an inconsistency, or is not consistent with the purposes, policies, and programs of federal laws and regulations." BLM's RFD projections in the PRMP/FEIS are based on outdated data. The State wishes to appeal this decision and have the BLM reconsider the decision not to update the RFD within the PRMP/FEIS to use recent data supplied by the State.
- 1. Background to support this appeal item
    - a. In 2014, South Dakota provided more up-to-date data to the BLM. Upon reviewing South Dakota's more up-to-date data, BLM did modify their RFD figures; however, they did not revise their RFD projections from the ground up as should have been done in the PRMP/FEIS.
    - b. Instead, the BLM increased the price variable in their projection model. This occurred in late 2014, roughly coincident with the major downturn in petroleum prices. As a result, the PRMP/FEIS quantifies project impacts to oil and gas development based on outdated information and arbitrary manipulation of BLM's projection model variables.
    - c. Therefore, the PRMP/FEIS does not utilize best-available information for making decisions potentially leading to significant economic and social impacts within South Dakota.