

# Wyoming Outdoor Council

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wyomingoutdoorcouncil.org  
262 Lincoln Street  
Lander, WY 82520  
t: 307.332.7031



Mike McGrady, Policy Advisor  
Office of Governor Matt Mead  
2323 Carey Avenue  
Cheyenne, WY 82002

November 9, 2018

Dear Mike,

Thank you for arranging the October 23<sup>rd</sup> stakeholders' meeting to discuss oil and gas leasing within ungulate migration corridors and crucial winter range. The Wyoming Outdoor Council appreciated the effort and the invitation to participate.

In response to your request for input regarding next steps, I write with two suggestions.

First, the state should formally request that the BLM defer proposed oil and gas leases within mule deer crucial winter range and the five priority mule deer migration corridors identified by the Wyoming Game and Fish Department in its Wyoming Action Plan, developed in response to Secretarial Order 3362, until a legally binding, science-based stipulation can be applied to leases sold.

Second, assuming leases are deferred, we suggest the state convene a task force of stakeholders willing to work quickly to craft a stipulation that BLM could apply to lease parcels that fall within migration corridors and update existing crucial winter range stipulations statewide.

## **Lease Deferral**

Requesting lease deferral for a small but vital set of proposed oil and gas lease parcels is imperative. Whatever stakeholder structure is created, any efforts taken to craft a stipulation will be meaningless unless there is certainty that the stipulation will apply to the habitat it seeks to protect. In other words—given the current pace of leasing and the fact that BLM is offering hundreds of thousands of acres for lease in Wyoming four times a year—if parcels in migration corridors and winter range continue to be leased even as the task force is working out the stipulation details, there may be little habitat left unleased that the stipulation would cover.

We disagree with the assertion that the WGFD's current non-science-based "strategy"—which relies on an unenforceable "lease notice" for parcels located as much as 90% within a migration corridor—is good enough. The BLM certainly doesn't believe it's sufficient: we all heard the agency say in the meeting on the 23<sup>rd</sup> that it's already developing a lease stipulation that will appear in the Rock Springs Resource Management Plan draft EIS next month. The Office of State Lands and Investments also decided to defer parcels in migration corridors until it developed its own science-based and legally-binding stipulation, which it recently published on its website.

Although we were happy to learn the BLM is drafting the much-needed stipulation, it is essential that the state request deferral of proposed parcels the stipulation would cover until that stipulation

is finalized. The Rock Springs RMP record of decision will not be finalized for at least a year. Until that point, the stipulation won't apply to leases in the corridor. Moreover, this stipulation will only apply to leases in the BLM's Rock Springs field office. We need a *statewide* stipulation (and a statewide RMP amendment process) to truly safeguard corridors such as the Platte Valley and Baggs/Atlantic Rim corridors managed by the Rawlins field office, as well as others that may be designated in other field offices.

There is nothing—except perhaps a lack of political will—standing in the way of Wyoming requesting lease deferral for migration corridor and crucial winter range parcels. We have been told by BLM State Director Mary Jo Rugwell, USFWS Senior Advisor to the Director of Western States Casey Stemler, and Deputy Director of the Department of Interior David Bernhardt that the BLM would welcome targeted requests from Wyoming for lease deferral where big game habitat—particularly migration corridors and winter range—is at risk.

Two formal policy statements from the Department of Interior make clear that big game migration corridors and winter range are priorities, and that deference to state wildlife management agencies is its desire. Attached for reference is Secretarial Order 3362 “Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors” (Feb. 9, 2018), and Secretary Zinke’s memo “State Fish and Wildlife Management Authority on Department of Interior Lands and Waters” (Sept. 18, 2018).

Highlights worth noting from the Secretarial Order explain that agencies within the Department, notably BLM, will: “work with our State partners and others to conserve and/or improve priority western big-game winter range and migration corridors in sagebrush ecosystems.” The Order also states the Department will: “take the initiative to work closely with Western States on their priorities and objectives as they relate to big-game winter range and migration corridors on lands managed by the Department.” Finally: “Consistent with the American conservation ethic, ultimately it is crucial that the Department take action to harmonize State fish and game management and Federal land management of big-game winter range and corridors.”

These policy statements, coupled with the memo’s acknowledgement that, “The Department [of Interior] recognizes States as the first-line authorities for fish and wildlife management and hereby expresses its commitment to defer to the States in this regard except as otherwise required by Federal law” should give Wyoming the confidence it needs to request that lease parcels not be offered for sale in priority migration corridors or crucial winter range until a legally binding, science-based lease stipulation can be developed.

Simply put, there is no downside to requesting deferral. If recent experience is any indication, Wyoming will likely get exactly what it seeks. Wyoming requested parcels in the Greater Little Mountain Area and four parcels wholly within the Red Desert to Hoback mule deer migration corridor be deferred from sale, and the BLM obliged.

The oil and gas industry is currently enjoying unprecedented access to new leases on public land in Wyoming through an “energy dominance” mandate from Washington. In the third and fourth quarter alone, more than 1 million acres are posted for lease sale in our state. Just a tiny fraction of these leases overlap with crucial winter range and migration corridors (four percent from the 3Q sale and 7.9 percent from the 4Q sale). Deferral does not mean these parcels are taken off the table permanently. It simply means that when they are leased, the BLM—via a legally binding stipulation—will have the authority to condition or deny development if operators fail to work with the WGFD on proper siting at the APD stage.

There is also no compelling economic argument for rushing to sell leases. Many parcels offered in September that were located in the Red Desert to Hoback corridor didn't receive bids. (These parcels will, however, stay on the market in a non-competitive bidding process for the next two years.) The ones that were bid on sold for between \$2 and \$9 per acre—*which generated just \$50,000 for the state*. Roughly 5,000 deer use this corridor. In other words, we've risked the integrity of this world-renowned mule deer herd for less than \$10 per deer. The WGFD has estimated the value of a single mule deer at \$3,000, and deer hunting in Sublette County alone brought in \$4.6 million in revenue in 2015. Besides adding substantially to our cultural identity and quality of life in Wyoming, mule deer are a renewable source of income if managed wisely. To continue leasing without adequate assurances that our deer herds will be protected is the opposite of wise management.

Perhaps the most important reason to request deferral is that we cannot leave to chance the survival of thousands of deer and other big game herds in Wyoming that may be affected by future oil and gas development. Thankfully, we don't have to. The WGFD's strategy is well intentioned, but not good enough. A new lease stipulation specific to migration corridors, and improved stipulations for winter range is the answer, and deferring leases until we can finalize these stipulations is the first step.

### **Task Force**

Assuming the sale of proposed oil and gas leases in these critical habitats are temporarily postponed, we support Governor Mead establishing a stakeholder task force to craft stipulation language for the BLM. In recent discussions with sportsmen, the Petroleum Association of Wyoming, and others, there was agreement that putting Wyoming in the "driver's seat" on this issue has numerous advantages. As with the successful sage-grouse implementation team, a task force or working group on this issue could provide an opportunity for Wyoming to lead the way in smart, science-based wildlife management and to set an example for other Western states.

We recommend an expedited time frame—no more than a year—within which the right stakeholders would work together to help craft the stipulation's language and reach. Buy in and participation from BLM would also be helpful—especially if the stipulation is designed to amend RMPs statewide. We also want the stipulations to be grounded in the best available science; the addition of a science advisory panel similar to the one that benefits members of the SGIT would be key.

We offer our participation in such a group or task force. As an organization whose staff have co-chaired Governor Mead's Outdoor Recreation Task Force and his Task Force on Forests, we believe deeply in the power of interested stakeholders coming together to find solutions.

Thank you, Mike for your work on this issue. I look forward to hearing from you soon.

Sincerely,



Lisa McGee  
Executive Director

ORDER NO. 3362

Subject: Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors

**Sec. 1 Purpose.** This Order directs appropriate bureaus within the Department of the Interior (Department) to work in close partnership with the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming to enhance and improve the quality of big-game winter range and migration corridor habitat on Federal lands under the management jurisdiction of this Department in a way that recognizes state authority to conserve and manage big-game species and respects private property rights. Through scientific endeavors and land management actions, wildlife such as Rocky Mountain Elk (elk), Mule Deer (deer), Pronghorn Antelope (pronghorn), and a host of other species will benefit. Additionally, this Order seeks to expand opportunities for big-game hunting by improving priority habitats to assist states in their efforts to increase and maintain sustainable big game populations across western states.

**Sec. 2 Authorities.** This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, as well as the Department's land and resource management authorities, including the following:

- a. Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701, *et seq.*;
- b. U.S. Geological Survey Organic Act, as amended, 43 U.S.C. 31, *et seq.*;
- c. National Wildlife Refuge System Improvement Act of 1997, as amended, 16 U.S.C. 668dd *et seq.*; and
- d. National Park Service Organic Act of 1916, as amended, 54 U.S.C. 100101, *et seq.*

**Sec. 3 Background.** The West was officially “settled” long ago, but land use changes continue to occur throughout the western landscape today. Human populations grow at increasing rates with population movements from east and west coast states into the interior West. In many areas, development to accommodate the expanding population has occurred in important winter habitat and migration corridors for elk, deer, and pronghorn. Additionally, changes have occurred across large swaths of land not impacted by residential development. The habitat quality and value of these areas crucial to western big-game populations are often degraded or declining.

The Bureau of Land Management (BLM) is the largest land manager in the United States (U.S.) with more than 245 million acres of public land under its purview, much of which is found in Western States. The U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS) also manage a considerable amount of public land on behalf of the American people in the West. Beyond land management responsibilities, the Department has strong scientific capabilities in the U.S. Geological Survey (USGS) that can be deployed to assist State wildlife agencies and Federal land managers. Collectively, the appropriate bureaus within the Department have an opportunity to serve in a leadership role and take the initiative to work closely with Western States on their priorities and objectives as they relate to big-game winter range and migration corridors on lands managed by the Department.

Consistent with the American conservation ethic, ultimately it is crucial that the Department take action to harmonize State fish and game management and Federal land management of big-game winter range and corridors. On lands within these important areas, if landowners are interested and willing, conservation may occur through voluntary agreements.

Robust and sustainable elk, deer, and pronghorn populations contribute greatly to the economy and well-being of communities across the West. In fact, hunters and tourists travel to Western States from across our Nation and beyond to pursue and enjoy this wildlife. In doing so, they spend billions of dollars at large and small businesses that are crucial to State and local economies. We have a responsibility as a Department with large landholdings to be a collaborative neighbor and steward of the resources held in trust.

Accordingly, the Department will work with our State partners and others to conserve and/or improve priority western big-game winter range and migration corridors in sagebrush ecosystems and in other ecotypes as necessary. This Order focuses on the Western States of: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. These States generally have expansive public lands with established sagebrush landscapes along with robust big-game herds that are highly valued by hunters and tourists throughout the Nation.

The Department has broad responsibilities to manage Federal lands, waters, and resources for public benefit, including managing habitat to support fish, wildlife, and other resources. Secretary's Order 3356, "Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories," (SO 3356) was issued on September 15, 2017. SO 3356 primarily focused on physical access to lands for recreational activities, particularly hunting and fishing. This Order is focused on providing access to big game animals by providing direction regarding land management actions to improve habitat quality for big-game populations that could help ensure robust big-game populations continue to exist. Further, SO 3356 includes a number of directives related to working with States and using the best available science to inform development of guidelines, including directing relevant bureaus to:

- a. Collaborate with State, tribal, and territorial fish and wildlife agencies to attain or sustain State, tribal, and territorial wildlife population goals during the Department's land management planning and implementation, including prioritizing active habitat management

projects and funding that contributes to achieving wildlife population objectives, particularly for wildlife that is hunted or fished, and identifying additional ways to include or delegate to States habitat management work on Federal lands;

b. Work cooperatively with State, tribal, and territorial wildlife agencies to enhance State, tribe, and territorial access to the Department's lands for wildlife management actions;

c. Within 180 days, develop a proposed categorical exclusion for proposed projects that utilize common practices solely intended to enhance or restore habitat for species such as sage grouse and/or mule deer; and

d. Review and use the best available science to inform development of specific guidelines for the Department's lands and waters related to planning and developing energy, transmission, or other relevant projects to avoid or minimize potential negative impacts on wildlife.

This Order follows the intent and purpose of SO 3356 and expands and enhances the specific directives therein.

**Sec. 4 Implementation.** Consistent with governing laws, regulations, and principles of responsible public stewardship, I direct the following actions:

a. With respect to activities at the national level, I hereby direct the BLM, FWS, and NPS to:

(1) Within 30 days, identify an individual to serve as the "Coordinator" for the Department. The Coordinator will work closely with appropriate States, Federal agencies, nongovernmental organizations, and/or associations to identify active programs focused on big-game winter range and/or migration corridors. The programs are to be organized and cataloged by region and other geographic features (such as watersheds and principles of wildlife management) as determined by the Deputy Secretary, including those principles identified in the Department's reorganization plan.

(2) Within 45 days, provide the Coordinator information regarding:

(i) Past and current bureau conservation/restoration efforts on winter range and migration corridors;

(ii) Whether consideration of winter range and corridors is included in appropriate bureau land (or site) management plans;

(iii) Bureau management actions used to accomplish habitat objectives in these areas;

(iv) The location of areas that have been identified as a priority for conservation and habitat treatments; and

(v) Funding sources previously used and/or currently available to the bureau for winter range and migration corridor conservation/restoration efforts.

(3) Within 60 days, if sufficient land use plans are already established that are consistent with this Order, work with the Coordinator and each regional Liaison (see section 4b) to discuss implementation of the plans. If land use plans are not already established, work with the Coordinator and each regional Liaison to develop an Action Plan that summarizes information collected in section 4 (a) (1) and (2), establishes a clear direction forward with each State, and includes:

(i) Habitat management goals and associated actions as they are associated with big game winter range and migration corridors;

(ii) Measurable outcomes; and

(iii) Budgets necessary to complete respective action(s).

b. With respect to activities at the State level, I hereby direct the BLM, FWS, and NPS to:

(1) Within 60 days, identify one person in each appropriate unified region (see section 4a) to serve as the Liaison for the Department for that unified region. The Liaison will coordinate at the State level with each State in their region, as well as with the Liaison for any other regions within the State. The Liaison will schedule a meeting with the respective State fish and wildlife agency to assess where and how the Department can work in close partnership with the State on priority winter range and migration corridor conservation.

(2) Within 60 days, if this focus is not already included in respective land management plans, evaluate how land under each bureau's management responsibility can contribute to State or other efforts to improve the quality and condition of priority big-game winter and migration corridor habitat.

(3) Provide a report on October 1, 2018, and at the end of each fiscal year thereafter, that details how respective bureau field offices, refuges, or parks cooperated and collaborated with the appropriate State wildlife agencies to further winter range and migration corridor habitat conservation.

(4) Assess State wildlife agency data regarding wildlife migrations early in the planning process for land use plans and significant project-level actions that bureaus develop; and

(5) Evaluate and appropriately apply site-specific management activities, as identified in State land use plans, site-specific plans, or the Action Plan (described above), that conserve or restore habitat necessary to sustain local and regional big-game populations through measures that may include one or more of the following:

(i) restoring degraded winter range and migration corridors by removing encroaching trees from sagebrush ecosystems, rehabilitating areas damaged by fire, or treating exotic/invasive vegetation to improve the quality and value of these areas to big game and other wildlife;

(ii) revising wild horse and burro-appropriate management levels (AML) or removing horses and burros exceeding established AML from winter range or migration corridors if habitat is degraded as a result of their presence;

(iii) working cooperatively with private landowners and State highway departments to achieve permissive fencing measures, including potentially modifying (via smooth wire), removing (if no longer necessary), or seasonally adapting (seasonal lay down) fencing if proven to impede movement of big game through migration corridors;

(iv) avoiding development in the most crucial winter range or migration corridors during sensitive seasons;

(v) minimizing development that would fragment winter range and primary migration corridors;

(vi) limiting disturbance of big game on winter range; and

(vii) utilizing other proven actions necessary to conserve and/or restore the vital big-game winter range and migration corridors across the West.

c. With respect to science, I hereby direct the USGS to:

(1) Proceed in close cooperation with the States, in particular the Western Association of Fish and Wildlife Agencies and its program manager for the Crucial Habitat Assessment Tool, prior to developing maps or mapping tools related to elk, deer, or pronghorn movement or land use; and

(2) Prioritize evaluations of the effectiveness of habitat treatments in sagebrush communities, as requested by States or land management bureaus, and identified needs related to developing a greater understanding of locations used as winter range or migration corridors.

d. I further hereby direct the responsible bureaus and offices within the Department to:

(1) Within 180 days, to update all existing regulations, orders, guidance documents, policies, instructions, manuals, directives, notices, implementing actions, and any other similar actions to be consistent with the requirements in this Order;

(2) Within 30 days, provide direction at the state or other appropriate level to revise existing Federal-State memorandums of agreement to incorporate consultation with State agencies on the location and conservation needs of winter range and migration routes; and



(3) Consult with State wildlife agencies and bureaus to ensure land use plans are consistent and complementary to one another along the entire wildlife corridor in common instances where winter range or migration corridors span jurisdictional boundaries.

e. Heads of relevant bureaus will ensure that appropriate members of the Senior Executive Service under their purview include a performance standard in their respective current or future performance plan that specifically implements the applicable actions identified in this Order.

**Sec. 5 Management.** I hereby direct the Deputy Secretary to take is responsible for taking all reasonably necessary steps to implement this Order.

**Sec. 6 Effect of Order.** This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provision of this Order and any Federal laws or regulations, the laws or regulations will control.

**Sec. 7 Expiration Date.** This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.

Secretary of the Interior

Date:

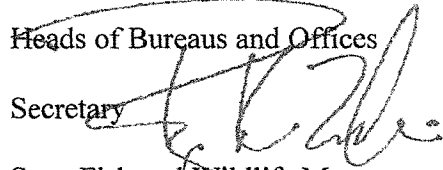


THE SECRETARY OF THE INTERIOR  
WASHINGTON

SEP 10 2018

Memorandum

To: Heads of Bureaus and Offices

From: Secretary 

Subject: State Fish and Wildlife Management Authority on Department of the Interior  
Lands and Waters

In 1983, the Department codified in the United States Code of Federal Regulations, 43 C.F.R. Part 24, establishing a policy that Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law. This 35-year-old rule is more relevant today than ever.

Therefore, I reaffirm the authority of the States to exercise their broad trustee and police powers as stewards of the Nation's fish and wildlife species on public lands and waters under the jurisdiction of the Department. Each of us must recognize the fundamental role of the States in fish and wildlife management, especially where States have primary authority and responsibility, foster improved conservation of fish and wildlife, and encourage a good neighbor policy with the States.

Because fish and wildlife are fundamentally dependent upon habitats on private and public lands managed or subject to administration by many Federal and State agencies, and because provisions for the protection, maintenance, and enhancement of fish and wildlife and the regulation for their use are established in many laws and regulations involving a multitude of Federal and State administrative structures, the effective stewardship of fish and wildlife requires the cooperation of the various States and the Federal Government.

The 50 State governments have extensive capacities and competencies to exercise their responsibilities to serve as trustees for fish and wildlife species resident in the respective States. These capacities and competencies are grounded in State constitutional and statutory laws, as well as an extensive body of administrative rules that collectively form a comprehensive legal underpinning to ensure that State governments effectively function as trustees of fish and wildlife resources with broad police powers to enforce those laws and regulations.

State governments have established fish and wildlife agencies that are charged with the responsibility and mandate to implement those statutes ensuring effective, appropriate, and efficient conservation and management of fish and resident wildlife species, including providing citizens with the opportunity to enjoy those fish and wildlife species through regulated hunting,

fishing, and trapping. Moreover, State governments have consistently demonstrated their commitment to sustaining fish and wildlife resources in perpetuity for the benefit of both current and future citizens. To that end, State governments have taken extensive measures to protect and conserve rare fish and wildlife species, including invertebrate species, and through the actions of State governments, they have sought additional funding to strengthen their capacity to implement management strategies at a landscape level. State governments practice sound fish and wildlife conservation and management focused on sustainable practices that protect the Nation's natural heritage, while providing for appropriate and highly regulated opportunities for citizens to enjoy fish and wildlife resources.

The States' fundamental responsibility for fish and wildlife management includes responsibility for appropriate regulation of public use and enjoyment of fish and wildlife species. The Department recognizes States as the first-line authorities for fish and wildlife management and hereby expresses its commitment to defer to the States in this regard except as otherwise required by Federal law.

In full recognition of the authority of the State fish and wildlife agencies to regulate fish and resident wildlife within their respective boundaries and jurisdiction, I request the following:

- Within 45 days of this Memorandum, all Bureaus and Offices complete a review of all regulations, policies, and guidance that pertains to the conservation and management of fish and wildlife species on lands and waters under their jurisdiction that are more restrictive than otherwise applicable State provisions for the management of fish and wildlife, including all such regulations, policies, and guidance that pertain to public recreational use and enjoyment of fish and wildlife species;
- Within 90 days, each Bureau and Office referenced provide the Deputy Secretary a report containing detailed recommendations for the respective Bureau or Office to better align its regulations, policies, and guidance with State provisions.
- After receiving the reports containing detailed recommendations, the Deputy Secretary shall appropriately consult with the State fish and wildlife agencies regarding the recommendations and deliver an implementation plan to me within 120 days of this Memorandum.

This Memorandum and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

cc: Deputy Secretary  
Assistant Secretaries