

SAGE-GROUSE UPDATE

SAGEGROUSE_UPDATE@EWYOMING.GOV, NO. 4

JUNE 21, 2011

GOVERNOR MEAD SIGNS NEW SAGE-GROUSE CORE AREA PROTECTION EXECUTIVE ORDER

On June 2, 2011 Governor Mead signed the State of Wyoming Greater Sage-Grouse Core Area Protection Executive Order 2011-5 to replace Executive Order 2010-4, which was issued by Governor Freudenthal last year. Before deciding to issue a new order, Governor Mead took time to talk to many people, organizations, and agencies about the existing order (2010-4) and the direction of greater sage-grouse conservation in Wyoming. He evaluated scientific facts concerning the status of sage-grouse habitat and trends of sage-grouse populations in the state and across its range, evaluated statewide development trends, and considered a spectrum of thoughts and opinions concerning the need for continuing to implement a statewide conservation strategy that crosses both public and private lands.

After extensive consultation and consideration, Governor Mead determined that reissuing an executive order to continue statewide sage-grouse conservation efforts was the best path forward for preventing the listing of the bird by the U.S. Fish and Wildlife Service under the Endangered Species Act.

Executive Order 2011-5 embodies the same core area protection strategy as the previous order, but offers some new language that is intended to add flexibility to development in designated sage-grouse core areas and also to clarify agency implementation of the strategy. So, although some of the content and wording has changed, the overall purpose and strategy has not.

The purpose of this issue of the newsletter is to outline and explain the changes that have been made. Executive Order 2011-5 is available on Governor Mead's website at :

<http://governor.wy.gov/Documents/Sage-Grouse%20EO.pdf>



Photo courtesy of Tom Christiansen



Photo courtesy of Wayne Zickeloose

EXECUTIVE ORDER 2011-5 CHANGES

EXECUTIVE ORDER 2011-5, PAGE 2, PARAGRAPH 3

The new Executive Order has added the following statement: “*WHEREAS, members of the Sixtieth Legislature of the State of Wyoming signed a Joint Resolution recognizing ‘the Greater Sage Grouse Core Area Strategy [then embodied under Governor’s Executive Order 2008-2] as the State of Wyoming’s primary regulatory mechanism to conserve sage-grouse and preclude the need for listing the bird as a threatened or endangered species pursuant to the Endangered Species Act of 1973.’*” This statement confirms the Wyoming State Legislature’s support for the core area strategy as a means for preventing the listing of the sage-grouse.

EXECUTIVE ORDER 2011-5, PAGE 2, PARAGRAPH 5

The new Executive Order has added the following statement: “*WHEREAS, on November 10, 2010, the U.S. Fish and Wildlife Service again confirmed that ‘This long-term, science-based vision for the conservation of greater sage-grouse has set the stage for similar conservation efforts across the species range,’ and that ‘the Core Population Area Strategy for the greater sage-grouse provides an excellent model for meaningful conservation of sage-grouse is fully supported and implemented.’*” These statements in a letter sent by the U.S. Fish and Wildlife Service confirm the Service’s support for the core area strategy as a means for preventing the listing of the sage-grouse.

EXECUTIVE ORDER 2011-5, PAGE 2, PARAGRAPH 6

The new Executive Order has added the following statement: “*WHEREAS, several western states have adopted or are considering adopting the Wyoming Core Area Strategy, thus making the concept consistent across the species range.*” This statement confirms that Wyoming’s science-based approach to sage-grouse conservation is a strategy that can be applied by other states in an effort to protect the species across its range.

EXECUTIVE ORDER 2011-5, PAGE 2, PARAGRAPH 8

The new Executive Order has added the following wording: “*NOW, THEREFORE...including those found in Title 9, Chapter 5, Article 3 of Wyoming State Statutes, otherwise cited as the Wyoming Regulatory Takings Act...*”

EXECUTIVE ORDER 2011-5, PAGE 2, NUMBER 2

The new Executive Order clarifies that existing land uses are those that were in place prior to the first Executive Order (2008-2) August 1, 2008, and clarifies examples of defined project boundaries of existing uses: “*...(such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.)...*” Activities within these boundaries may continue even if the stipulations outlined in Attachment B are exceeded.

EXECUTIVE ORDER 2011-5, PAGE 4, NUMBER 14

The new Executive Order has added the following statement: “*Only those activities occurring after August 1, 2008 which state agencies are required by state or federal statute to review or approve are subject to consistency review.*” This added language helps define what is considered an existing activity.

EXECUTIVE ORDER 2011-5, PAGE 4, NUMBER 15

The new Executive Order clarifies language concerning transmission lines by stating: “*...and within one half (1/2) mile either side of existing (prior to Governor’s Executive Order 2010-4) 115 kV or larger transmission lines creating a corridor no wider than one (1) mile.*” This language means that new transmission lines in sage-grouse core area must be located within a one mile corridor (1/2 mile on either side) of a 115 kV or larger transmission line that existed prior to August 18, 2010 to be consistent with the new Executive Order (in addition to the previously recommended timing stipulations for construction).

EXECUTIVE ORDER 2011-5 CHANGES, CONT'D

EXECUTIVE ORDER 2011-5, PAGE 4, NUMBER 17

The new Executive Order has broken this statement out from the previous paragraph (#16), and has expanded the statement to include new distribution and gathering lines, in addition to new transmission lines.

EXECUTIVE ORDER 2011-5, PAGE 4, NUMBER 18

The new Executive Order has added the following statement: *“State agencies shall strive to maintain consistency with the items outlined in this Executive Order, but it should be recognized that adjustments to the stipulations may be necessary based upon local conditions and limitations. The goal is to minimize future disturbance by co-locating proposed disturbances within areas already disturbed or naturally unsuitable.”* As stated throughout the new Executive Order, projects in core area are evaluated on a case-by-case basis, and this policy is not meant to be a one-size-fits-all approach. Collaborating with agencies, organizations, industry, and private landowners, as well as using common sense to minimize impacts to habitat and sage-grouse populations are key.

EXECUTIVE ORDER 2011-5, PAGE 4, NUMBER 19

The new Executive Order has added the following statement: *“The protective stipulations outlined in this Executive Order should be reevaluated on a continuous basis and at a minimum annually, as new science, information and data emerge regarding Core Population Areas and the habitats and behaviors of the Greater Sage-Grouse.”* The conservation strategy embodied in the Executive Order is based on what is scientifically known or unknown at this time. The policy should evolve as science evolves.

EXECUTIVE ORDER 2011-5, PAGE 5, PARAGRAPH 1

Governor Mead specifies that this Executive Order will remain in effect until August 18, 2015.

ATTACHMENT B

Permitting Process and Stipulations for Development in Sage-grouse Core Areas

EXECUTIVE ORDER 2011-5, PAGE 7, PARAGRAPH 2 (MAXIMUM DISTURBANCE PROCESS)

As discussed in the previous newsletter (Sage-Grouse Update #3), the Project Impact Analysis Area (PIAA) process is now being referred to as the Density and Disturbance Calculation Tool (DDCT). The new Executive Order uses DDCT instead of PIAA. The process is the same.

Previous Sage-Grouse Update newsletters are available on the WGFD website: http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/index.asp

EXECUTIVE ORDER 2011-5, PAGE 7, NUMBER 1

As with the previous Executive Order, this section describes how to delineate the analysis area using the DDCT and adds some clarifying language to ensure that proponents are using the DDCT to analyze the potential impacts of a proposed project on **occupied leks within the core population area**. Additionally, the following statement has been added: *“If there are no affected leks within the 4 mile boundary around the project boundary, the DDCT area will be that portion of the 4 mile project boundary within the core population area.”* This statement clarifies that the analysis should still be conducted even if no leks fall within the 4 mile buffer around the proposed area of disturbance.

EXECUTIVE ORDER 2011-5, PAGE 8, NUMBER 3

This section on Habitat Assessment has been modified in the new Executive Order to state: *“(a) A habitat assessment is not needed for the initial DDCT area provided that the entire DDCT area is considered suitable.”* and *“(b) A habitat assessment should be conducted when the initial DDCT*

EXECUTIVE ORDER 2011-5 CHANGES, CONT'D

indicates proposed project will cause density/disturbance thresholds to be exceeded, to see whether siting opportunities exist within unsuitable or disturbed areas that would reduce density/disturbance effects." In other words, if the entire analysis area is considered suitable sage-grouse habitat and the results of the DDCT do not exceed 5% surface disturbance and 1 disturbance per average of 640 acres, then a habitat assessment is not needed. However, if the 5% or 1/640 thresholds are exceeded, the proponent may consider conducting a habitat assessment to determine the amount and location of any unsuitable sage-grouse habitat within the analysis area, and whether the proposed project could be sited within the unsuitable habitat.

Additionally, when a habitat assessment is conducted the new Executive Order has added "(c)(ii) Disturbed habitat within the DDCT area" to the list of information that should be collected for a baseline survey.

EXECUTIVE ORDER 2011-5, PAGE 8, PARAGRAPH 1 (PERMITTING)

The new Executive Order has added the following statements: "Project proponents shall have access to all information used in developing recommendations. Where possible and when requested by the project proponent, state agencies shall provide the project proponent with development alternatives other than those contained in the project proposal."

EXECUTIVE ORDER 2011-5, PAGE 8, PARAGRAPH 2 (EXEMPT ACTIVITIES)

The new Executive Order has finalized a list of activities and land uses that do not require state agency review for consistency with the Executive Order (Attachment C), and refers to these as "exempt" or "de minimus" activities.

EXECUTIVE ORDER 2011-5, PAGE 9, NUMBER 3 (GENERAL STIPULATIONS—SEASONAL USE)

Seasonal stipulations for breeding, nesting, and early brood-rearing habitat and winter concentration areas have not changed, and new projects will continue to be

evaluated on a case-by-case basis. However, the new Executive Order recommends that seasonal stipulations for winter concentration areas be considered in non-core areas when used by sage-grouse that nest in core areas. Executive Order 2011-5 has added the following statements: "While the bulk of winter habitat necessary to support core sage-grouse populations likely occurs inside Core Population Areas, seasonal stipulations (December 1 to March 14) should be considered in locations outside of Core Population Areas where they have been identified as winter concentration areas necessary for supporting biologically significant numbers of sage-grouse nesting in Core Population Areas. All efforts should be made to minimize disturbance to mature sagebrush cover in identified winter concentration areas."

EXECUTIVE ORDER 2011-5, PAGE 9, NUMBER 6 (GENERAL STIPULATIONS—NOISE)

General noise level stipulations have not changed, but the new Executive Order language has been clarified and now states: "New noise levels, at the perimeter of a lek, should not exceed 10 dBA above ambient noise (existing activity included) from 6:00pm to 8:00am during the initiation of breeding (March 1—May 15). Ambient noise levels should be determined by measurements taken at the perimeter of a lek at sunrise."

EXECUTIVE ORDER 2011-5, PAGE 10, NUMBER 8 (GENERAL STIPULATIONS—SAGEBRUSH TREATMENT)

As discussed in the previous newsletter (Sage-Grouse Update #3), sage-grouse core areas in Northeast Wyoming (including North Gillette, Thunder Basin, Newcastle, Douglas, North Glenrock, and Buffalo core areas and those portions of the Natrona core area north of Highway 20/26 and north of Casper Mountain (Hat Six)) should be evaluated differently than those throughout the rest of the state largely due to different ecoregional conditions and previous sagebrush conversion (Figure 1). To this affect, the following statement has been added to the new Executive Order: "Northeast Wyoming, as depicted in Figure 1, is of particular concern

EXECUTIVE ORDER 2011-5 CHANGES, CONT'D

because sagebrush habitats rarely exceed 15% canopy cover and large acreages have already been converted from sagebrush to grassland or cropland. Absent some demonstration that the proposed treatment will not reduce canopy cover to less than 15% within the treated area, habitat treatments in Northeast Wyoming (Figure 1) should not be conducted. In stands with less than 15% cover, treatment should be designed to maintain or improve sagebrush habitat.” Sagebrush treatments that reduce canopy cover below 15% are still allowed—except in Northeast Wyoming—but will be considered disturbed unless in accordance with the other parameters outlined in this section, which have not changed in the new Executive Order.

EXECUTIVE ORDER 2011-5, PAGE 10, NUMBER 9
(GENERAL STIPULATIONS—MONITORING/
ADAPTIVE RESPONSE)

As sage-grouse leks in core area are often monitored annually by the BLM and Wyoming Game and Fish Department (WGFD), the new Executive Order clarifies

the procedure for proponent lek monitoring by adding the following statement: “Proponents of new projects are expected to coordinate with the permitting agency and local WGFD biologist to determine which leks need to be monitored and what data should be reported by the proponent. Certain permits may be exempted from monitoring activities pending permitting agency coordination.” The procedure for addressing declines in sage-grouse on the affected leks has not changed.

EXECUTIVE ORDER 2011-5, PAGE 13, NUMBER 5
(SPECIFIC STIPULATIONS—WIND ENERGY
DEVELOPMENT)

To date, wind energy development is still not recommended in sage-grouse core areas largely due to lack of scientific information regarding the impacts of this type of energy development on sage-grouse. The new Executive Order notes that wind energy development in core areas “...will be reevaluated on a continuous basis as new science, information and data emerges.”

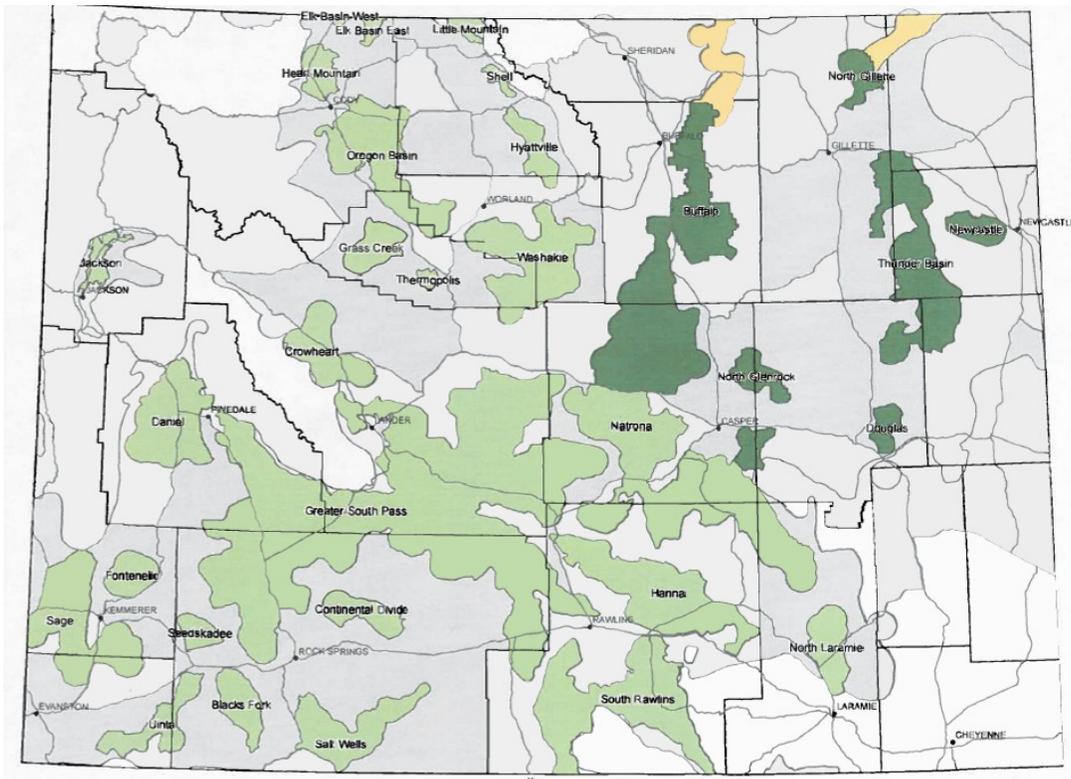


Figure 1—Northeast Wyoming Core Areas (dark green) that are evaluated differently according to Executive Order 2011-5 (figure found in Executive Order 2011-5 on page 11).

EXECUTIVE ORDER 2011-5 CHANGES, CONT'D

APPENDIX I

Suitable Sage-Grouse Habitat Definition

EXECUTIVE ORDER 2011-5, PAGE 14,
PARAGRAPH 3 (TRANSITIONAL SAGE-GROUSE
HABITAT)

The new Executive Order has added new language to this section to define “transitional sage-grouse habitat” to account for treatments or burns that occurred prior to 2011 that resulted in a reduction of sagebrush cover below 5%. The new definition and guidelines are as follows: *“Transitional sage-grouse habitat is land that has been treated or burned prior to 2011 resulting in <5% sagebrush cover but is actively managed to meet a minimum of 5% sagebrush canopy cover with associated grasses and forbs by 2021 (by analysis of local condition and trend) and may or may not be considered disturbed. Land treatments post 2010 must meet sagebrush vegetation treatment guidelines or the treatment will be considered disturbed. Following wildfire, land shall be treated as disturbed pending an implementation management plan with trend data showing the area returning to functional sage-grouse habitat.”*

Clarified guidelines for determining suitable habitat include: *“(c) There may be additional suitable habitat considered disturbed between two or more long term (greater than 1 year) anthropogenic disturbance activities with a footprint greater than 10 acres each if the activities are located such that sage-grouse use of the suitable habitat between these activities is significantly reduced due to the close proximity (less than 1.2 miles apart, 0.6 miles from each activity) and resulting in cumulative effects of these large scale activities. Exemptions may be provided.”*

Additionally, *“(d) Land in northeast Wyoming (Figure 1 of Attachment B) that has had sagebrush removed post-1994 (based on Orthophoto interpretation) and not recovered to suitable habitat will be considered disturbed when using the DDCT.”* This again refers to the sage-grouse core areas in Northeast Wyoming including North Gillette, Thunder Basin, Newcastle, Douglas, North Glenrock, and Buffalo core areas and those portions of the Natrona core area north of Highway 20/26 and north of Casper Mountain

(Hat Six). Orthophoto quad imagery from 1994 was determined to be the earliest, most accurate aerial imagery available for northeast Wyoming, and should be used when using the DDCT to analyze disturbance and suitable habitat.

ATTACHMENT C

Exempt (“de minimus”) Activities

Generally, the de minimus activities outlined in the previous Executive Order are the same as those in the new Executive Order. The only change made was to #4, which now exempts the *“Construction of agricultural reservoirs and habitat improvements less than 10 surface acres... more than 0.6 miles from the perimeter of a lek.”*

OTHER INFO

Although the PIAA process is now referred to as the DDCT process, the ftp site name hasn't changed.

FTP_PIAA SITE INSTRUCTIONS

1. Go to Windows Start button (screen bottom left), Left click and go to Computer.
2. Enter <ftp://gf.state.wy.us/> into the browser.
3. Type Username: ftp_piaa and Password: piaa123 into the dialogue box that pops up.

Now you will be able access GIS data (GISfiles), documents from the workshops (PIAA_Resources), and previous issues of the newsletter (Sagegrouse_Updates).

Tips/Reminders: Download documents to your desktop before opening or printing. Download the latest data from the ftp site each time you do a DDCT.

HAVE A QUESTION?

Email your questions to

SAGEGROUSE_UPDATE@EWYOMING.GOV