



C.L. "BUTCH" OTTER

GOVERNOR

June 17, 2013

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C St. NW  
Mail Stop 7329  
Washington, DC 20240

**RE: Greater Sage-Grouse**

Dear Secretary Jewell,

Please accept my sincere congratulations on your confirmation as the 51<sup>st</sup> Secretary of the Interior. I have been pleased to hear of your commitment to work collaboratively with states and other stakeholders to develop commonsense management plans necessary to preclude the need to list the Greater sage-grouse (sage-grouse) under the Endangered Species Act (ESA). Idaho has such a management plan for the species, and your U.S. Fish and Wildlife Service (Service) recently concluded that the foundation of Idaho's plan and many of its individual components are "grounded in scientific concepts and approach important to both the Service and the Department of the Interior."

I am deeply concerned that Idaho's plan, as well as the plans of other western states, will be held hostage by a process mired in uncertainty and likely headed for an unmitigated disaster. By providing you the following perspective, I hope you will accept my invitation to personally engage and make the necessary course corrections to ensure state management plans will be the focus for this important species conservation effort.

Given Idaho's recent experiences with the ESA, I began Idaho's sage-grouse conservation process with cautious optimism. However, I became more skeptical when the Bureau of Land Management (BLM) announced it was embarking on an unprecedented land use planning effort ostensibly designed to keep the bird from being listed. As you know, the BLM is attempting to amend some 88 resource management plans (RMPs) to include sage-grouse-specific direction pursuant to the National Environmental Policy Act (NEPA) by September 2014. Even without being hamstrung by the crushing burden of this deadline, efforts such as this rarely result in an acceptable outcome for western states.

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Notwithstanding these initial concerns, I determined that my State needed to be at the table negotiating a mutually acceptable solution for both the species and the Idaho citizens who live, recreate and depend on this land to make a living. Moreover, Idaho has a successful track record of developing and delivering similar win-win solutions, including the Idaho Roadless Rule that was sustained on appeal by the Ninth Circuit Court of Appeals. Based on that model, I believe our sage-grouse framework has similar staying power. There is no more important model, in my view, than the challenging but proven path of collaboration.

However, in September 2012, my initial optimism waned based on a seemingly disparate piece of sage-grouse litigation in the Idaho. Following the court's decision finding that two "test case" RMPs – out of the 16 initially challenged – violated the Federal Land Policy and Management Act (FLPMA) and NEPA, U.S. District Judge Winmill declared that, "...the testimony at the evidentiary hearing established that it *contained the best available science concerning the sage grouse.*" (emphasis added).

That "best available science" referenced by Judge Winmill is a body of work known as the BLM National Technical Team (NTT) Report, released in its final form on December 21, 2011. The NTT Report is a self-described science document designed to dictate sage-grouse conservation activities on our public lands. While BLM publicly hedged on applying the NTT Report measures on an interim basis, there is little evidence to suggest the agency attempted to dissuade the court of this notion. This type of "presumptive validity" was of great concern to me and our efforts to develop a state-based plan.

Then last December, Secretary Salazar provided a written response to House Natural Resources Committee Chairman Doc Hastings regarding the BLM planning effort. While most of the responses were business as usual, the Department attached an outside scientific review of a draft of the NTT Report. That outside review was highly critical of the working assumptions that went into the Report and the process that was used by the Department of the Interior to assemble it. Other than the comments themselves, the most striking aspect was the fact that BLM would even conceive of releasing a scientifically flawed document – one that later was declared by a federal judge to be the "best available science."

These events compelled my Office of Species Conservation to take the unusual step of filing a Freedom of Information Act (FOIA) request for documents shedding further light on how the NTT Report came into existence. After several months of delay, BLM finally released over 2,000 pages of emails, meeting notes and draft documents relating to development of the NTT Report. Yet the Department has only partially responded to this request to date, claiming the majority of all documents preceding the release of the final report are either non-existent or "deliberative" in nature. We are left questioning this Administration's self-proclaimed commitment to transparency.

I have personally reviewed several of the FOIA documents. They evince, at best, a Department hopelessly divided and unable to successfully resolve this issue. At worst, the NTT Report represents a reverse-engineered process aimed at precluding new development in areas designated as "priority habitat" – an area spanning over 40 million acres. Even more shocking is the absence of anything in the scientific record warranting these draconian measures. In fact, one email reveals a career BLM employee expressing the following concern in the late stages of this process: "*But, does the NTT really want to recommend something that is blatantly illegal?*"

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As far as we know, this early warning sign from a public servant went unheeded. These types of communications do little to engender confidence that this effort will reach a successful conclusion.

Based on the materials made partially available through our FOIA request, coupled with the compressed timeframe, I am convinced this process will end in one of three ways. First, as I alluded to earlier and as with so many of these large-scale planning efforts, the BLM will fail to complete the NEPA analysis within the allotted time. Without those RMP revisions, it is difficult to imagine a situation where the species would not be proposed for full ESA listing by September 2015. I cannot understate the deleterious impacts on Idaho and other western states under that scenario.

Second, the BLM could gravitate to the lowest common denominator and select a top-down national alternative like the so-called NTT Report. Of note, and perhaps a harbinger of what is to come, the NTT Report is in *every* proposed RMP revision. While BLM must consider a range of alternatives pursuant to NEPA, imposition of the NTT Report would severely impact our country's energy independence and national security. Under this scenario, the purported cure is worse than the disease.

Third, BLM *may* select the states' plans as the preferred alternative. However, given the high likelihood of litigation coupled with the compressed timeframe, such a decision would require an unprecedented level of cooperation between the federal government, the state and other stakeholders. More importantly, it would require your personal commitment to fully rehabilitate a process you and your team did not originally endorse or develop. It is my sincere hope that you will make this commitment to cooperation sooner rather than later.

This is a watershed moment for the ESA. Failure of this process by imposition of an NTT-like national standard and/or the listing of this species will have unacceptable consequences and cannot be excused based on the truncated timeframe. I reiterate that you and your team did not originally set these events in motion, but on behalf of Idaho, I would like to begin an immediate and personal dialogue on potential solutions before this process becomes irretrievably lost.

Thank you for your timely consideration.

As Always – Idaho, “Esto Perpetua”



C.L. “Butch” Otter  
Governor of Idaho

Cc: Idaho Delegation  
Neil Kornze  
Dan Ashe  
Governor Herbert  
Governor Mead  
Governor Sandoval  
Governor Bullock  
Governor Hickenlooper  
Jim Ogsbury (WGA)