



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

BLM Director's Response to the Wyoming Governor's Appeal of the BLM

Wyoming State Director's Governor's Consistency Review Determination for the Buffalo Field Office Proposed Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of response.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice of the reasons for the BLM Director's determination to reject the Governor of Wyoming's recommendations regarding the Buffalo Field Office Proposed Resource Management Plan Amendment (RMPA) and Final Supplemental Environmental Impact Statement (SEIS).

ADDRESSES: A copy of the Record of Decision and Approved RMPA is available on the BLM Website at: <https://eplanning.blm.gov/eplanning-ui/project/2021239/570>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief for Decision Support, Planning, and National Environmental Policy Act; telephone 303-239-3635; address P.O. Box 151029, Lakewood, CO 80215; email hbernier@blm.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Bernier. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On May 17, 2024, the BLM released the Proposed RMPA/Final SEIS for the Buffalo Field Office (89 FR 43431). In accordance with the regulations at 43 CFR 1610.3-2(e), the BLM submitted the Proposed RMPA/Final SEIS for the Buffalo Field Office to the Governor of Wyoming for a 60-day Governor's Consistency Review in order for the Governor to review the Proposed RMPA and identify any inconsistencies with State plans, policies, or programs. On July 16, 2024, the Governor of Wyoming submitted a response for the Buffalo Field Office planning effort to the BLM Wyoming State Director. After careful consideration of the concerns raised in the Governor's response, the State Director decided not to accept the Governor's recommendations. The BLM sent a written response to the Governor on August 16, 2024.

On September 12, 2024, the Governor of Wyoming appealed the State Director's decision to the BLM Director. In reviewing these appeals, the regulations at 43 CFR 1610.3-2(e) state that "[t]he Director shall accept the (consistency) recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state's interest and the national interest." On November 6, 2024, the BLM Director issued a response to the Governor detailing the reasons that the recommendations did not meet this standard. Pursuant to 43 CFR 1610.3-2(e), the basis for the BLM's determination on the Governor's appeal is presented below. The appeal response is being published verbatim.

"I am in receipt of your letter dated September 12, 2024, which contains the State of Wyoming's appeal to the Bureau of Land Management (BLM) Wyoming State Director response to the Governor's consistency review of the Buffalo Field Office Proposed Resource Management Plan Amendment (PRMPA) and Final Supplemental Environmental Impact Statement (FSEIS). The Governor's consistency review is an

important part of the BLM land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this effort.

The applicable regulations at 43 CFR 1610.3-2(e) provide you with the opportunity to appeal the State Director's decision to not accept the recommendations you made in your consistency review letter. These regulations also guide my review of the appeal, in which I must consider whether you have raised inconsistencies with State or local plans, policies, and or programs. If inconsistencies are raised, I would consider whether your recommendations address the inconsistencies and provide for a reasonable balance between the national interest and the State of Wyoming's interest.

I have completed my review of your appeal and determined that the recommendation you have provided does not meet this standard for reasons as detailed in the following paragraphs.

In your consistency review and subsequent appeal, you allege 11 inconsistencies with State or local plans, policies, and programs. Your alleged inconsistencies are as follows:

- The No Leasing Alternative interferes with the Wyoming Constitution's policy of supporting public services with severance taxes from Federal coal development.
- The No Leasing Alternative is inconsistent with State law requiring the optimization of its State trust lands.
- The No Leasing Alternative is inconsistent with Wyoming Energy Policy.
- The No Leasing Alternative is inconsistent with the Wyoming Environmental Quality Act.
- The No Leasing Alternative conflicts with the State's Interstate Compact Statute.

- The No Leasing Alternative is inconsistent with the Natural Resource Protection Act.
- The No Leasing Alternative is inconsistent with the Campbell County's Plan Principles.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Policy.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Goals.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Objectives.
- The No Leasing Alternative is inconsistent with the Johnson County Plan Objectives.

To address these inconsistencies, it is your recommendation that the BLM adopt the No Action Alternative (Alternative B) for the Buffalo PRMPA. Upon review, I find that your recommendation does not present a reasonable balance between the national interest and the State's interest, because Alternative B is inconsistent with national policy.

The Buffalo FSEIS/PRMPA was developed under the BLM's authority to manage coal under all the applicable statutes and regulations including, but not limited to; the Federal Land Policy and Management Act (FLPMA) of 1976, as amended; the Mineral Leasing Act of 1920, as amended; the Mineral Leasing Act on Acquired Lands of 1947, as amended; and all applicable regulations developed from these statutes found in 43 CFR 3000 and 3400.

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be based on "multiple use" and "sustained yield."

Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are used in the combination that will best

meet the present and future needs of the American people. FLPMA's multiple-use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses that involves tradeoffs between competing uses, and the BLM has discretion to allocate the public lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values.

As explained in the FSEIS/PRMPA, the BLM has determined that the economic benefits from coal leasing no longer balance with the adverse effects to other public land resources, including but not limited to, air quality and environmental justice, as well as social and economic considerations. In addition, the BLM has determined that continued coal leasing at any level in the planning area is no longer consistent with presidential executive orders and policies. For instance, continued coal leasing in the planning area is inconsistent with Presidential Executive Orders 13990, entitled, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, and 14008, entitled, *Tackling the Climate Crisis at Home and Abroad*, as well as Department of the Interior Secretary's Order 3399, entitled, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*. These executive orders and policies direct agencies to, among other things, work on confronting the climate crisis to improve public health and the environment, reduce greenhouse gas (GHG) emissions, increase renewable energy production on public lands and waters, and to review potential climate and other impacts from oil and natural gas development on public lands.

As explained in the Buffalo FSEIS/PRMPA, the mining of coal in the planning area would continue to contribute to GHG emissions, which in turn adds to ongoing impacts from climate change on human health and disease in numerous ways (Buffalo FSEIS/PRMPA section 3.5.1). The BLM also determined that the potential

environmental justice health-related impacts would be highest under Alternative B, and therefore, not in alignment with the Nation's interest in addressing climate-related public health concerns. Moreover, additional coal leasing in the planning area would not support the Nation's long term climate strategy (November 2021) of limiting global temperature rise and putting the U.S. on a pathway to net-zero GHG emissions by 2050. Coal production is in decline, both nationally and in the Wyoming Powder River Basin, where coal production has been declining since the late 2000's. As such, the Nation's energy market is moving away from coal towards natural gas and renewable energy, which are more aligned with the Nation's long term climate strategy, and continued coal leasing in the planning area would not support the national interest.

Regarding Campbell County's Plan, the BLM did determine that the previous version of the Buffalo *FSEIS/PRMPA* (2019) was consistent with the 2022 Campbell County Natural Resource Land Use Plan. However, since that time, Federal policy direction regarding continued coal mining has shifted, as discussed above. As such, the BLM determined in this current planning effort that the 2022 Campbell County Natural Resource Land Use Plan is not consistent with Federal policies and executive orders applicable to BLM-administered lands.

For these reasons outlined above, I find that your recommendation does not present a reasonable balance between the national interest and the State's interest.

Your consistency review and subsequent appeal also alleged 12 issues related to Federal laws, regulations, and policies including the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, Federal Coal Leasing Amendments Act of 1976, the Surface Mining and Coal Reclamation Act, the Federal Coal Screening regulations, and others. These Federal issues do not raise inconsistencies with State or local plans, policies, or programs and are outside the scope of the Governor's Appeal process.

Finally, the BLM has prepared the Buffalo PRMPA/FSEIS in accordance with all applicable Federal laws, regulations, and policies. The BLM did carefully review and consider applicable State, local, and other Federal agency plans, policies, and programs in the development of the Buffalo PRMPA/FSEIS. The BLM is consistent, to the extent practicable, with these plans as per the provisions of FLPMA and the planning regulations at 43 CFR 1610-3-2.”

(Authority: 43 CFR 1610.3-2(e))

Nada Wolff Culver,

Principal Deputy Director.

[FR Doc. 2024-31314 Filed: 12/27/2024 8:45 am; Publication Date: 12/30/2024]