



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

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May 14, 2015

John Swartout  
Rural Policy and Outreach Coordinator  
Office of the Governor  
136 State Capitol Building  
Denver, Colorado 80203

Dear Mr. Swartout:

On April 29, 2015, you provided the Department of the Interior with a courtesy copy of the State of Colorado's draft *Executive Order Conserving Greater Sage-Grouse Habitat*, or the Executive Order and requested feedback. I am responding to you on behalf of the U.S. Fish and Wildlife Service (Service).

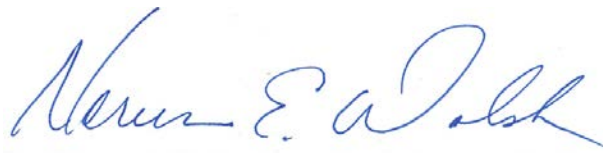
We appreciate the opportunity to review the draft and are pleased that an Executive Order has been drafted to strengthen Colorado's 2008 Conservation Plan. We provide the following comments for your consideration, which we believe would help strengthen the Executive Order, and provide greater certainty to the Service as we evaluate the status of the species and its threats, so that we can further show how impacts to sage-grouse and its habitat will be reduced in Colorado:

- Part II Section H states that Colorado's Department of Natural Resources will complete a thorough review of the 1200-series rules as well as any other relevant regulations by December 2015. We support this review to identify best management practices and opportunities to improve the protection of important wildlife habitats, particularly greater sage-grouse habitat, in Colorado. To strengthen this effort, we recommend that the Executive Order explicitly include a commitment to revise the regulations as needed to appropriately ensure conservation of sage-grouse and their habitat within a specified time period after the conclusion of the review.
- In Part II Section A, the Executive Order directs all state agencies whose operations affect the greater sage-grouse or its habitat to "...avoid, minimize and/or mitigate adverse impacts where practicable." Avoidance, minimization, and mitigation measures help to reduce impacts to sage-grouse. To provide clarity and certainty, we recommend that the Executive Order omit the term "where practicable" and provide direction regarding where and when these measures will be followed.

- Part II Section D (iv) states that “Under the Colorado Oil and Gas Conservation Commission’s 1200-series rules, the Exchange shall be made available to oil and gas operators who, through consultation with CPW, must meet compensatory mitigation requirements for greater sage-grouse.” It is unclear to the Service how the stated commitment will occur within the context of the 1200-series rules. We recommend that the Executive Order explicitly describe how the Exchange will implement this compensatory mitigation requirement.
- Part II Section G (i) states that the Colorado Oil and Gas Conservation Commission shall use the full range of its management authority to foster mitigation when minimization and avoidance are insufficient to offset impacts. Because a review of the applicable statute (Colo. Rev. Stat. § 34-60-100) and the existing rules (e.g., section 1202) would indicate that the Colorado Oil and Gas Conservation Commission already has authority to require, not simply foster, mitigation, we recommend that the Executive Order state that compensatory mitigation will be required when unavoidable impacts occur. We also recommend that the Order include stronger direction to ensure that mitigation will sufficiently offset any unavoidable impacts. Additionally, we recommend that the Executive Order explain how this section relates to the strong compensatory mitigation requirements of Section D (iv) of the Executive Order.

We respect and value our important working relationship with the Office of the Governor and the State of Colorado. We greatly appreciate the opportunity to review and provide comments on the draft Executive Order. If we can be of any additional assistance, or if a conversation would help clarify our recommendations, please do not hesitate to contact me at (303) 236-7920. We look forward to our continuing partnership as we work together to conserve the greater sage-grouse and the sagebrush habitat that supports many wildlife species in Colorado.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin E. Walsh". The signature is fluid and cursive, with the first name "Kevin" being the most prominent.

Regional Director