



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Reston, Virginia 20192

In Reply Refer To:
Mail Stop 300

JUN 08 2016

Kent Holsinger
Holsinger Law, LLC
1800 Glenarm Pl., Suite 500
Denver, CO 80202

Dear Mr. Holsinger,

This letter responds to your Information Quality Act (Data Quality Act, or DQA) Request for Correction (Request) dated September 14, 2015, submitted by Holsinger Law, LLC on behalf of various Petitioners, regarding the November 21, 2014, United States Geological Survey (USGS) *Conservation Buffer Distance Estimates for Greater Sage-Grouse –a Review* (Buffer Report or Report).¹ Documentation about the Request may be viewed on our Web page at https://www2.usgs.gov/info_qual/conservation_buffer_distance_estimates_greater_sage-grouse.html.

The Department of the Interior (DOI) Guidelines to which your Request refers acknowledges that “The Department conducts a substantial amount of business through processes which involve a structured opportunity for public review and comment on proposed documents prior to their issuance in final form. These activities include but are not limited to, rulemakings and analyses conducted under the National Environmental Policy Act (NEPA).” (DOI Guidelines, III., at page 5). They further provide: “If the bureau or office determines that the requester had the opportunity to comment on the issue at the draft [or proposed] stage and failed to do so, it may consider the request to have no merit” (DOI Guidelines, III., at page 5). In this regard, the DOI Guidelines are consistent with the Principles enunciated by the Office of Management and Budget (OMB) in the Preamble to its Guidelines.² The OMB emphasizes that its Guidelines are designed in order that “agencies can apply them in a common-sense and workable manner,” and while the OMB Guidelines do not specifically address instances in which the DQA Request for Correction process might be spurious, in view of the transparent character of agency decision-making processes, the OMB “encourages agencies to incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes” 66 Fed. Reg. 49718, 49719 (Sept. 28, 2001). Indeed, under the Council on

¹ The Report, *Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review*, is available at <http://pubs.usgs.gov/of/2014/1239/pdf/ofr2014-1239.pdf>.

² We refer to the principles enunciated in the Preamble, as OMB’s Guidelines, themselves, do not direct agencies to a specific course of action when the DQA Request for Correction process is duplicative of existing resource management and administrative practices.

Environmental Quality (CEQ) regulations implementing NEPA, it has long been the case that the information used by agencies in the NEPA process supporting agency decision-making “must be of high quality.”³ (40 CFR 1500.1(b)).

In this instance, the Buffer Report was developed during the pendency of the NEPA process supporting the revision or amendment of several resource management plans (RMPs), by the Bureau of Land Management (BLM) under the authority of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1701, *et seq.*. These RMPs were amended or revised in order to identify and incorporate appropriate conservation measures for the Greater Sage-Grouse (GRSG) in order to conserve, enhance, and restore the species and its habitat on public lands and thereby hopefully avoid the Fish and Wildlife Service’s (FWS) need to list the species under the Endangered Species Act (ESA). During the pendency of this land-use planning process the Buffer Report, as the Report itself states, “was prepared at the request of the U.S. Department of the Interior,” as “a compilation and summary of published scientific studies that evaluate the influence of anthropogenic activities and infrastructure on [GRSG] populations.”⁴ (Buffer Report, Introduction, at 1). The Buffer Report does not present new experimental evidence, nor were data generated in the production of the Report. All references cited in the Report are publically available, and the Report includes a list of the literature cited.

The USGS does not, itself, make land management decisions, but serves as the DOI Secretary’s scientific expert, upon whose insight and expertise the Secretary has the discretion to rely upon in decision-making, and the decision-making of the DOI bureaus and offices which she oversees. The Buffer Report does not make recommendations for policy or management decisions. Indeed, the stated purpose of the Buffer Report “is to provide a convenient reference for land managers and others who are working to develop biologically relevant and socioeconomically practical buffer distances around sage-grouse habitats.” (Buffer Report, Introduction, at 1). Each of the final environmental impact statements (FEIS) supporting the respective GRSG RMPs includes management direction based on the Buffer Report and specific discussion of the Buffer Report. In general under the RMPs, the buffers identified in the report will be applied as specified in the RMPs in General Habitat Management Areas (GHMA) and Priority Habitat Management Areas (PHMA) for site-specific proposed activities unless justifiable departures are determined to be appropriate. The buffers specified in the RMPs will be analyzed as projects are proposed through the NEPA process. For example, in the FEIS accompanying the Proposed RMP Amendment for Nevada and Northeastern California at page 2-3, the BLM explains:

USGS Buffer Study—Included a management action to incorporate the lek buffer-distances identified in the USGS report titled Conservation Buffer Distance Estimates for Greater Sage Grouse— A Review: USGS Open File Report 2014-1239 (Manier et al.

³ The CEQ regulations also state: “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.” (40 CFR 1502.24).

⁴ FLPMA, too, includes the requirement that the Secretary “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences,” in the development and revision of land use plans. (43 U.S.C. 1712(c)(2)).

2014) during NEPA analysis at the implementation stage. Although the buffer report was not available at the time of the DEIS release, applying these buffers was addressed in the DEIS and is qualitatively within the spectrum of alternatives analyzed. Specifically, (Alternatives C and F) identified and analyzed allocation restrictions such as closure to fluid minerals, recommendation for withdrawal, and elimination of grazing. For example, Alternative C proposed closure to fluid, salable, and non-energy leasable minerals in all GRSG habitat. It also included elimination of grazing in all habitat. In Alternative C, all GRSG habitat was excluded for ROW development. Alternative D proposed exclusion for solar and wind development in PHMA and GHMA and also proposed closures for salable and non-energy leasable minerals. Alternative F proposed closure to fluid and salable minerals in PHMA and GHMA. Alternative F also proposed exclusion areas in PHMA and GHMA for solar, wind, and all ROWs. The management decision to require lek buffers for development within certain habitat types is within the range of alternatives analyzed. Alternative D proposed a seasonal 4-mile lek buffer RDF consistent with applicable law (Appendix D) along with 1.2-mile fencing restriction RDF consistent with applicable law (Appendix D) and a 0.5 mile riparian restriction (Action D-LG 20). For any surface disturbing activity, proponents were also required to survey within a 3-mile buffer of a lek (Appendix D).⁵

While the Buffer Report, itself, was not available as part of the Draft NEPA/FLPMA documents for the GRSG RMPs, in general, the various studies of which the Buffer Report is a summary and review were available to the public (and many of these studies were cited in the Draft NEPA/FLPMA documentation). Further, the issues pertaining to buffers, including effects of development within or near GRSG populations or habitats were certainly presented in the Draft NEPA/FLPMA documents and available for review as part of a “structured opportunity for public review and comment on proposed documents prior to their issuance in final form.”⁶ (DOI Guidelines, III., at 5). The role of the Buffer Report, then, was to provide a convenient reference for the land managers as they formulated the final versions of the NEPA/FLPMA documents, and as they responded to public comments regarding the use buffers in the Draft NEPA/FLPMA documents. Likewise, land managers will be able to refer to the Buffer Report—including any updates, revisions, or critiques—while developing further NEPA analyses and other evaluation documentation when considering future, site-specific actions implementing the RMPs.

Essentially, the information regarding buffers was available for public review during the pendency of the NEPA process. This is the case for both the scientific information pertaining to buffers, as well as the land management decisions about their implementation then under consideration. The Buffer Report, as completed and published, was available as part of a “structured opportunity for public review and comment on proposed documents prior to their issuance in final form.” (DOI Guidelines, III., at 5). Specifically, all of the GRSG FEIS/Proposed RMPs were made available during the 30-day period required under the BLM’s FLPMA implementing regulations at 43 CFR Part 1600, in order that the public could review and protest

⁵ The *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final EIS* (June 2015), is provided as an example. Each of the NEPA/FLPMA documents associated with the GRSG land use planning initiative includes similar language. These documents may be found at (http://www.blm.gov/wo/st/en/prog/more/sagegrouse/final_eiss.html).

⁶ See *id.*

the Proposed GRSG RMPs. (43 CFR 1610.5-2(a)(1)). This 30-day protest period runs concurrent to the 30-day “wait” period required under CEQ’s NEPA regulations for public review of an FEIS before an agency may issue a Record of Decision on the proposed action. (40 CFR 1506.10(b)(2)). In this respect, the Buffer Report was available for a public review, both as to the substance of its contents, as well as to its published form, structured by both the NEPA and FLPMA public processes. For your convenience, responses to the protests received may be found in the BLM Director’s Protest Resolution Reports (http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html). You will find that several of the protests received and responded to by the BLM specifically address the Buffer Report, the studies to which it refers, as well as the concept of buffers more generally.

In instances such as these, where such opportunities for public review of the information under consideration by the agency in reaching its management decisions are ample, the DOI Guidelines provide the following: “If the bureau or office determines that the requester had the opportunity to comment on the issue at the draft [or proposed] stage and failed to do so, it may consider the request to have no merit.” (DOI Guidelines, III., at page 5).

For the reasons expressed, the USGS does not find merit in your Request for corrective action; therefore no corrective action related to the Request will be taken. Nor is any appeal of this determination available as it does not constitute a decision on your Request.

We appreciate your continued interest in our work regarding the important issue of the GRSG across the West, and your assistance in highlighting the critical role of sound information.

Sincerely,



William Lellis, Acting Associate Director for Ecosystems