

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

October 23, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff – Steve Peterson, Will Layden
Subcommittee on Federal Lands (x6-7736)

Hearing: Oversight hearing on “*Empowering State Based Management Solutions for Greater Sage Grouse Recovery*”
October 25, 2017 at 10:00 AM; 1324 Longworth HOB.

The Committee on Natural Resources will hold a hearing on “*Empowering State Based Management Solutions for Greater Sage Grouse Recovery*,” on **Wednesday, October 25, 2017 at 10:00 a.m.** in 1324 Longworth House Office Building. The hearing will examine the success of Western State sage grouse management plans and will emphasize the need for continued local control over sage grouse management.

Policy Overview

- In 2015, citing the major increase in both state and federal regulations, U.S Fish and Wildlife Service (FWS) determined that the listing the greater sage grouse (sage grouse) as threatened or endangered under the Endangered Species Act (ESA) was not warranted.
- Western States’ sage grouse management plans have been the primary driver of improvements to the species range-wide. Utah, for example, spends an average of \$5 million a year protecting sage grouse habitat and in 2016, surveyed 5,183 male sage grouse within its borders. This number is over 1,000 birds higher than the prescribed total of 4,100 males established by its sage grouse management plan-
- FWS acknowledged in its 2015 “no listing” decision that the agency would be required under the terms of the ESA to conduct a status review of sage grouse in 2020. Ensuring that the agency appropriately recognizes the successes of the Western States management plans in its future review is crucial to protecting both the species gains and the investments made by the Western States involved.
- Along with the 2015 “no listing” decision, the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) released amendments to 98 resource management plans throughout the West. This process was criticized as rushed, and concerns were raised that the federal actions resulted in a legally imperfect and overly-restrictive product. The current administration is taking steps to reverse these plan amendments, and many have called on the federal government to ensure state primacy in grouse management decisions going forward.

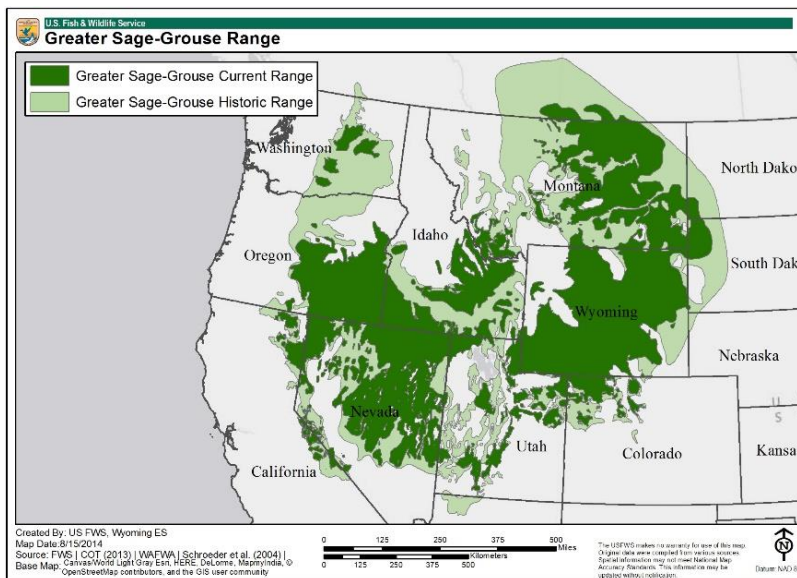
Invited Witnesses

The Honorable Scott Bedke
Speaker of the House
Idaho House of Representatives
Oakley, ID

Mr. Darin Bird
Deputy Director
Utah Division of Natural Resources
Salt Lake City, UT

The Honorable J.J. Goicoechea, DVM
Chairman
Board of Eureka County Commissioners
Eureka, NV

Mr. John Tubbs
Director
Montana Department of Natural Resources and Conservation
Helena, MT



Source: Fish and Wildlife Service Conservation Objectives Team Final Report (2013)

Background

The Greater Sage Grouse (*Centrocercus urophasianus*) is a chicken-sized game bird of the Phasianidae family, and the largest member of the North American grouse species. Male and female sage grouse both feature dark gray and brown plumage accented with small gray and white speckles. Adult male sage grouse range in length from 26 to 30 inches and weigh between 4 and 7 pounds. Adult females are smaller, ranging in length from 19 to 23

inches and weighing between 2 and 4 pounds. Notorious for a peculiar mating ritual, this ground nesting species is reliant upon large, treeless areas known as sagebrush steppe or sagebrush shrublands for both food and nesting cover.¹

¹ Natural Resource Conservation Service, "Greater Sage-Grouse Field Indicator Guide," U.S.D.A Sage Grouse Initiative, May, 2010. http://www.sagegrouseinitiative.com/wp-content/uploads/2013/07/SGI_SageGrouse_FieldGuide.pdf

There are approximately 200,000 to 500,000 sage grouse spread across 165 million acres in 11 Western States, including California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Across the acreage, 64 percent of the species' range is managed by BLM, USFS, and other federal agencies, 31 percent is privately owned, and 5 percent is managed by states.² Greater sage grouse population estimates vary widely due to the lack of a comprehensive survey methodology, along with the size and remoteness of sage grouse habitat.³ The statistics currently available are primarily generated by state wildlife agencies counting the number of male sage grouse during the aforementioned mating ritual.

Due to the difficulty determining both an accurate current and historical population count, it is hard to estimate the actual rate and magnitude of sage grouse decline.⁴ FWS estimates that sage grouse currently occupy 56 percent of their historical range, and have experienced up to a 30 percent decline in total population since 1985. However, FWS also estimates that the rate of population decline has slowed somewhat as compared to historical rates.⁵

Threats to the Greater Sage Grouse

According to FWS, the primary threat to the sage grouse population is habitat loss and habitat fragmentation. The factors driving habitat loss and fragmentation vary greatly across the species' range. Generally, wildfire, infrastructure development, and invasive species contribute significantly to the population decline.⁶ Catastrophic wildfires destroy thousands of acres of sagebrush annually, eradicating critical habitat and allowing invasive plant species such as cheatgrass to establish a foothold in the landscape. As an invasive species, cheatgrass throttles naturally occurring sagebrush, lacks the nutrition and ground cover needed to sustain sage grouse, and is immensely more flammable than native species. Additionally, other factors such as habitat encroachment by native pinion-juniper trees, predation, and West Nile virus contribute to local population decline.⁷

Chronology of Greater Sage Grouse Action

Controversy surrounding the sage grouse has existed for the better part of 18 years, starting with the first petition to list the sage grouse as an endangered species in 1999, and continuing to present day. Major events in the history of sage grouse conservation are listed below:

² U.S. Fish and Wildlife Service, "Beginner's Guide to Greater Sage-Grouse," U.S.F.W.S. Greater Sage-Grouse -- Documents, last modified November 17, 2016. <https://www.fws.gov/greatersagegrouse/factsheets/Primer1-SGBeginnersGuide.pdf>

³ Ibid, Page 4.

⁴ Ibid, Page 5.

⁵ U.S. Fish and Wildlife Service, "The Greater Sage-grouse, facts, figures and discussions," U.S.F.W.S. Greater Sage-Grouse -- Documents, last modified November 17, 2016. https://www.fws.gov/greatersagegrouse/factsheets/GreaterSageGrouseCanon_FINAL.pdf

⁶ U.S. Fish and Wildlife Service, "Greater Sage-Grouse, 2015 Not Warranted Finding Under the Endangered Species Act," U.S.F.W.S. Greater Sage-Grouse -- Findings, September 2015. https://www.fws.gov/greaterSageGrouse/PDFs/GrSG_Finding_FINAL.pdf

⁷ U.S. Fish and Wildlife Service, "Why Care about America's Sagebrush?," U.S.F.W.S. Mountain Prairie Region External Affairs – Fact Sheets, February 2014. https://www.fws.gov/mountain-prairie/factsheets/Sage-steppe_022814.pdf

- Between 1999 and 2004, eight petitions were filed to protect sage grouse in all or portions of the species' range. While several petitions were rejected, in 2004, FWS found that three of the petitions presented substantial evidence to examine the species.⁸
- Starting in 2004 with California and Nevada, individual Western States began developing their own sage grouse management plans, with the goals of both addressing the different sage grouse conservation challenges unique to each state and preventing restrictive federal management plans or a species listing.
- In 2005, FWS determined that listing sage grouse as threatened or endangered was not warranted.⁹ This determination was immediately challenged in court by Western Watersheds Project.
- In a 2007 court decision, the U.S. District Court for the District of Idaho held that FWS did not utilize the best available science as part of the 2005 review, and the case was remanded to the agency for further review.¹⁰
- In 2010, FWS determined that listing sage grouse as threatened or endangered was “warranted, but precluded by higher priority listing actions.” This decision, according to FWS, was based around the “inadequacy of existing regulatory mechanisms” for protecting sage grouse habitat.¹¹ This decision was again immediately challenged in court by Western Watersheds Project and other organizations.
- In May 2011, as part of a separate mega-legal settlement with WildEarth Guardians, FWS agreed to make a final determination whether to list sage grouse by the end of FY2015.¹²
- In December 2011, the BLM and USFS, citing the inadequacy of existing regulatory mechanisms noted in FWS' 2010 “warranted, but precluded” listing determination, publicly noticed the intent to amend a number of Western resource management plans to better protect sage grouse habitat.¹³
- Also in December 2011, Wyoming Governor Matt Mead and Secretary of the Interior Ken Salazar co-hosted a meeting to address the coordinated conservation of sage grouse across its range. This meeting resulted in the creation of both a Sage-Grouse Task Force (Task Force), and a FWS-led Conservation Objectives Team (COT). The Task Force,

⁸ U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; 90-day Findings for Petitions To List the Greater Sage-Grouse as Threatened or Endangered,” 69 *Federal Register* 21486, April 21, 2004.

⁹ U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; 12-Month Finding for Petitions To List the Greater Sage-Grouse as Threatened or Endangered,” 70 *Federal Register* 2243-2282, January 12, 2005.

¹⁰ Western Watersheds Project v. Fish and Wildlife Service, 535 F. Supp. 2d 1173 (D. Idaho 2007)

¹¹ U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; 12-Month Finding for Petitions To List the Greater Sage-Grouse as Threatened or Endangered; Proposed Rule,” 75 *Federal Register* 10218-10219, March 23, 2010.

¹² In RE: Endangered Species Act Section 4 Deadline Litigation, No. 10-377 (D.D.C. July 12, 2011). Page 17.
https://www.fws.gov/endangered/improving_esa/joint_motion_re_settlement_approval_filed.pdf

¹³ Bureau of Land Management, “Notice of Intent To Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements To Incorporate Greater Sage-Grouse Conservation Measures Into Land Use Plans and Land Management Plans,” 76 *Federal Register* 77008-77011, December 9, 2011.

chaired by Wyoming Governor Mead, Colorado Governor Hickenlooper, and Obama Administration's BLM Director Neil Kornze, focused on developing recommendations on how to coordinate a multi-state, overarching conservation strategy for sage grouse. The COT, comprised of both FWS and state fish and wildlife agency representatives, was tasked with setting objectives and recommending strategy for sage grouse conservation.¹⁴

- In February 2013, the COT released their final report, which set objectives for sage grouse conservation. FWS Director Dan Ashe indicated that the report would be used to make a final listing decision on sage grouse, and thus encouraged state, private, and federal agencies to utilize the report when making management decisions.¹⁵ Central to the report was the identification of Priority Areas of Conservation and the recommendation of steep land-use restrictions within those areas.¹⁶ The COT report was later challenged as failing to meet Data Quality Act standards, including failing to include independent data or analyses, omitting accounting for major causes of decline for sage grouse, including hunting and drought.¹⁷
- In May 2015, BLM and USFS released their final Environmental Impact Statements, amending 98 Western resource management plans. While the amended plans did not mandate any specific on-the-ground conservation activities, they identified both 'priority habitat management areas' and 'sagebrush focal areas' on federal land and imposed significant land-use restrictions within those areas.¹⁸ This decision was met with substantial opposition. Nine states (Colorado, Idaho, Montana, North Dakota, Nevada, Oregon, South Dakota, Utah, and Wyoming) requested a consistency review of the decision, and five States (Idaho, Nevada, North Dakota, South Dakota, and Utah) eventually appealed the decision outright.¹⁹ Additionally, the States of Idaho, Nevada, and a handful of private companies challenged the decision in court.
- In October 2015, citing the multitude of state and federal conservation plans, FWS determined that listing the species as threatened or endangered was not warranted. With the decision, however, FWS announced that it would continue to actively monitor the sage grouse population trends, and would reevaluate the status of the species in 2020.²⁰
- In March 2017, the U.S. District Court for the District of Nevada held that BLM and USFS failed to comply fully with the National Environmental Policy Act when amending

¹⁴ U.S. Fish and Wildlife Service, "Greater Sage- grouse Conservation Objectives: Final Report," U.S.F.W.S. Conservation Objectives Team, February 2013. <https://www.fws.gov/greatersagegrouse/documents/COT-Report-with-Dear-Interested-Reader-Letter.pdf>

¹⁵ Ibid., see preface (p.ii)

¹⁶ Ibid., p. 36 – p. 52

¹⁷ <https://www.westernenergyalliance.org/sites/default/files/15.08.12%20FWS%20COT%20Appeal.pdf>

¹⁸ Bureau of Land Management, "Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-Grouse Sub-Regions of Idaho, and Southwestern Montana, Nevada, and Northeastern California, Oregon, Utah," U.S. Department of the Interior, September 2015. https://eplanning.blm.gov/epl-front-office/projects/lup/21152/63385/68727/Great_Basin_ROD_9.21.15_508.pdf

¹⁹ Bureau of Land Management, "Greater Sage-Grouse Documents and Resources; Governor's Appeals," U.S. Department of Interior. <https://www.blm.gov/learn/blm-library/subject-guides/greater-sage-grouse-subject-guide/greater-sage-grouse-subject-guide-documents-and-resources>

²⁰ U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Greater Sage-Grouse as an Endangered or Threatened Species," 80 *Federal Register* 59857, October 02, 2015.

their respective resource management plans in 2015, and ordered the agencies to develop supplemental Environmental Impact Statements for the affected resource management plans. This decision has been appealed to the Ninth Circuit Court of Appeals.²¹

- In June 2017, Secretary Zinke issued Secretarial Order 3353, establishing a sage grouse review team and directing the team to review the 2015 BLM and USFS amendments to the Western resource management plans. Specifically, the Secretary directed the review team to identify “provisions [of the 2015 plans] that may require modification or rescission, as appropriate, in order to give appropriate weight to the value of energy and other development of public lands within BLM’s overall multiple-use mission.”²² This secretarial order was followed by a Department of the Interior memorandum, which made specific policy recommendations for implementing the order.²³

State Management Plans

Beginning in 2004, individual Western States began developing their own sage grouse management plans, attempting to head off the creation of a restrictive and economically damaging federal sage grouse management plan and address the different management concerns unique to each state. To date, all 11 affected Western States have issued either individual state, or joint state management plans. These plans have driven the increases in sage grouse range-wide.²⁴ Four examples of individual state success are further examined below.

- Utah spends an average of \$5 million a year protecting sage grouse, and has seen the state population of sage grouse steadily increase since 1990. Utah’s conservation strategy focuses on four major threats: wildfires, pinon-juniper encroachment, urbanization, and oil and gas development. The State has been especially successful at mitigating the threat of catastrophic wildfire within sage grouse management areas. Through the reduction of hazardous fuels and invasive cheatgrass, along with the creation of natural fire breaks, the State reported only 73 wildfires in sage grouse management areas in 2016. Further, despite 2017 being a record fire year, total sage grouse habitat burned in Utah has been relatively low in comparison to other Western States. For example, less than 80,000 acres of sage grouse habitat has burned in Utah, as compared to the nearly 950,000 acres of sage grouse habitat burned in Nevada.²⁵

²¹ W.Expl., LLC v. United State DOI, No. 3:15-cv-00491-MMD-VPC, 2017 U.S. Dist. LEXIS 49422 (D. NEV. Mar 31, 2017).

²² Secretary Zinke, “Greater Sage-Grouse Conservation and Cooperation with Western States,” U.S. Department of Interior, June 07, 2017. https://www.doi.gov/sites/doi.gov/files/uploads/so_3353.pdf

²³ Secretary Zinke, “Improving the BLM’s 2015 Sage-Grouse Plans,” U.S. Department of Interior, August 04, 2017. https://www.doi.gov/sites/doi.gov/files/uploads/so3353_memo_coverletter_report_080717.pdf

²⁴ See generally: <https://www.wildlife.ca.gov/Regions/6/Greater-Sage-Grouse-Conservation>; <http://cpw.state.co.us/learn/Pages/GreaterSagegrouseConservationPlan.aspx>; <https://idfg.idaho.gov/wildlife/sage-grouse/>; <https://sagegrouse.mt.gov/>; http://www.ndow.org/Nevada_Wildlife/Sage_Grouse/; <https://gf.nd.gov/wildlife/id/grassland-birds/greater-sage-grouse/>; <http://www.dfw.state.or.us/wildlife/sagegrouse/>; <http://gfp.sd.gov/hunting/small-game/sage-grouse.aspx>; <https://wildlife.utah.gov/learn-more/greater-sage-grouse.html>; http://wdfw.wa.gov/conservation/research/projects/grouse/greater_sage-grouse/; <https://wgfd.wyo.gov/Habitat/Sage-Grouse-Management>.

²⁵ National Interagency Fire Center, “2017 Fires Burned in Greater Sage-grouse Habitat,” September 22, 2017. https://www.nifc.gov/fireandsagegrouse/docs/SG_SMA_Jurisdictional.pdf

- Montana, which protects sage grouse through a series of competitive conservation management grants, leveraged \$7.8 million in conservation funds in 2016 alone. This led to the restoration of over 1,000 acres of critical sage grouse habitat, and permanently protected 43,000 additional acres. As a result, counts of male sage grouse are up 153% as compared to 2014 numbers. Additionally, a process is underway to create a mitigation marketplace, which will allow developers to purchase credits funding sage grouse management to offset any new impact on sage grouse habitat.
- Nevada, which developed one of the earliest sage grouse management plans jointly with the State of California, currently spends approximately \$1.3 million a year protecting the species. The State Management Plan focuses chiefly on mitigating wildfire and anthropogenic disturbances, primarily livestock grazing and infrastructure development. Numbers of male sage grouse have rebounded since a low in 2008, with the State reporting a 16% increase in total population in 2016.
- Colorado, another early adopter of state sage grouse management, has spent upwards of \$10 million in conserving the species across the State. Colorado has invested heavily in conservation easements, protecting nearly 130,000 acres of critical habitat through its programs. Additionally, much like Montana, Colorado is currently developing a mitigation marketplace, which will allow developers to buy and sell conservation credits, to offset any future impact on sage grouse habitat.

Current legislation and future action

Actions regarding federal management of sage grouse is still ongoing. The FWS is required under terms of the ESA to review the species' conservation status again in 2020. Many have expressed concern that the ongoing threat of a listing not only disregards the extensive progress achieved by the states, but also jeopardizes the massive investments Western States have made to preserve the species. Many argue until action is taken to alter the underlying Endangered Species Act to more adequately recognize State conservation efforts, litigation and controversy will continue to divert scarce resources away from the States' demonstrated productive efforts to actually protect and conserve the species.

The current administration is taking steps to reconsider portions of the 98 BLM and USFS resource management plan amendments made by the prior administration. While removing the overly-restrictive components of these amendments is viewed by many as important, these administrative actions must follow the Administrative Procedures Act, take years to take effect, and are subject to likely litigation. State involvement and recognition in the future administrative decision-making process is paramount. The original amendments were rushed, and state and local input was largely ignored. As a result, the final product was overly restrictive and procedurally flawed. Preventing that flawed process from repeating itself is crucial.

Several bills in the 115th Congress address sage grouse management. They are listed briefly below:

- **H.R. 527 (Rep. Rob Bishop), “Greater Sage Grouse Protection and Recovery Act of 2017”**
 - Prevents FWS from altering the 2015 ‘no listing’ decision for sage grouse until 2027, and prohibits DOI and USDA from amending any federal resource management plan in a state that has an existing sage grouse management plan.
 - Related bill: S. 273.

- **H.R. 1054 (Rep. Mike Quigley), “Botanical Sciences and Native Plant Materials Research, Restoration, and Promotion Act”**
 - Directs the Department of the Interior (DOI) to create a multi-agency botanical science research program, with the goal of incorporating locally-adapted native plant material in land management activities, including the management of sage grouse.

- **H.R. 3354 (Rep. Ken Calvert), “Make America Secure and Prosperous Appropriations Act, 2018”.**
 - Prevents DOI from allocating funds towards the listing of sage grouse as endangered or threatened.