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Sage Grouse Conservation: The Proven Successful Approach

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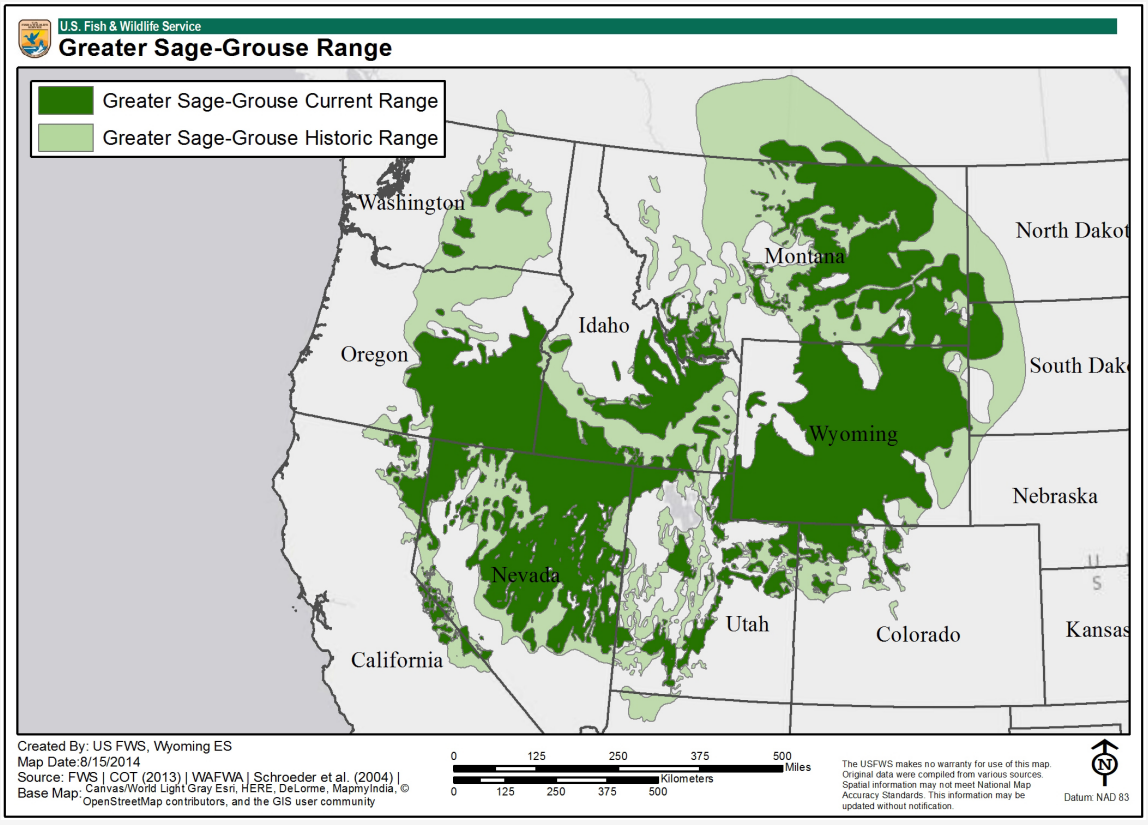
Introduction

The Department of the Interior is engaged in what it describes as "the largest and most complex landscape-scale land management planning effort in US history—and the most ambitious conservation experiment under the ESA [Endangered Species Act]."[1] The object of this extraordinary attention is the greater sage grouse, a large ground-dwelling bird that inhabits 165 million acres in 11 western states.

Figure 1: Range of Greater Sage Grouse



Source: U.S. Fish and Wildlife Service (http://www.fws.gov/greatersagegrouse/maps.php)

The Interior Department has a September 30, 2015 deadline to decide whether to propose listing the greater sage grouse under the Endangered Species Act. However, the Department has strongly suggested—and it has also been reported—that listing could be precluded by 15 amended federal plans governing the use of 61.5 million acres of federal land located in sage grouse habitat.[2] This aspect of the sage grouse story, in which 98 land use plans have been combined into 15 "mega" sage grouse-specific plans, is very significant but has generally received less attention than a potential listing under the Endangered Species Act.

Communities, landowners, ranchers, states and businesses are very worried that they will be restricted by penalties and severe controls on land and resource use. Two separate studies commissioned by the Western Energy Alliance estimate the effects of sage grouse regulations, due to a potential listing under the Endangered Species Act and the 15 amended federal plans, on annual economic losses (revenues, taxes, earnings and economic output) and annual jobs losses:

- Endangered Species Act listing (oil and gas industry): $5.5 billion and 18,000 jobs[3]
- 15 amended federal plans (all sectors of the economy): $7.7 billion and 31,000 jobs[4]

With the stakes so high, a closer look at the sage grouse, its population status and conservation measures taken to help the species is warranted.

Part 1

Sage Grouse Population Status

The greater sage grouse currently has a *minimum* population of almost 425,000 and a positive population growth rate of 0.78% annually from 2005–2015, according to a recent report by the Western Association of Fish and Wildlife Agencies.[5] Longer term, it appears that the range-wide sage grouse population trend is similar to that in Wyoming. From when data collection began in the 1950s and 60s, the sage grouse population in Wyoming initially declined but have experienced "a general leveling off since the mid-1990s," according to Tom Christiansen, sage grouse coordinator for Wyoming's Game and Fish Department.[6]

Despite this trend, along with the increase over the past decade, there is controversy over whether sage grouse populations are increasing or decreasing, much of which is due to the time frame, or frames, used to evaluate the population. There are widespread claims of long-term sage grouse decline, which tend to rely on a single declining trend, beginning at the 1960s or 1980s, to the present. A more accurate method to evaluate the population is to look at the three chronological trends within the past 50 years: decline, stabilization, and increase over the past ten years.

The larger point is the greater sage grouse is doing well and does not meet any reasonable standard for listing under the Endangered Species Act, or for amending land use plans for 61.5 million acres of federal land to give sage grouse considerations primacy in the management of these lands.

The greater sage grouse's population has stabilized and then gradually increased over the past two decades due primarily to more favorable weather conditions.[7] Sage grouse populations naturally fluctuate on roughly 10-year cycles, most notably in response to rainfall: when there is more rain, populations tend to increase; when there is less rain, populations tend to decrease.[8] Successful conservation efforts have likely been a secondary contribution to the increase in sage grouse population. Given that weather conditions were not changed by federal agency actions, the relevant issue is what conservation efforts helped the sage grouse population stabilize and increase over the past two decades.

Part 2

Successful Sage Grouse Conservation

A look at successful sage grouse conservation efforts reveals that a number of key factors helped the sage grouse population increase. These successful conservation efforts are based on a cooperative approach led by states, in partnership with landowners, counties, energy companies and universities. These efforts have several key characteristics:

A. Holistic, "All Lands" Approach

States take a holistic "all lands" approach that focuses on the two "halves" of the proverbial conservation coin:

- *The entire biophysical environment*, which consists of state, federal and private lands.
- *The social "environment."* All too often conservation focuses solely on the biophysical environment. However, the other side of the conservation "coin" is the social environment, otherwise known as people. Successful sage grouse conservation depends on incorporating all of the people, levels of government (federal, state and county), and private businesses that live and work in the sage grouse's range.

B. Cooperative and Incentive-Based

Successful sage grouse conservation is based heavily on cooperative extension, or "extension" as it is commonly known. Extension provides technical assistance and cost sharing to help landowners improve the health and productivity of their lands. Extension is the ideal model for conservation because it is incentive-based rather than penalty-based. Extension depends on gaining the willing cooperation of landowners rather than opposing them with compulsion. States have based much of their conservation efforts on the extension model because landowners, who own, live and work in sage grouse habitat will cooperate with incentive-based approaches. An illustrative example of this successful

approach is the Sage Grouse Initiative, started by the U.S. Department of Agriculture in 2010. According to the Department:

> *The Sage Grouse Initiative is a new paradigm for conserving at-risk wildlife that works through voluntary cooperation, incentives, and community support.*[9]

Through their extension work, states and the Sage Grouse Initiative have accomplished a tremendous amount, including:

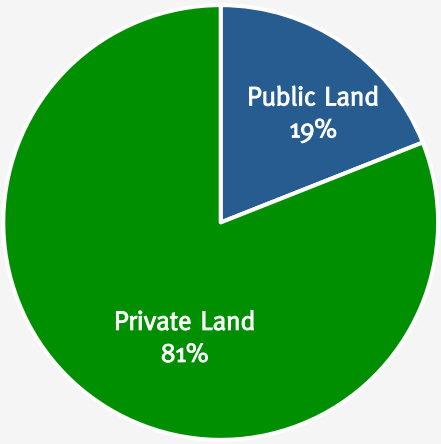
- Conserving at least 7,000,000 acres through a variety of means over the past two decades, including:[10]
    - reclaiming over 950,000 acres of habitat by removing encroaching conifers in which sage grouse predators can perch[11]
    - working with private landowners to implement grazing plans that benefit sage grouse populations on close to 2.5 million acres[12]
- Marking, removing or modifying over 550 miles of fence to help grouse avoid fatal collisions while flying[13]
- Seeding 48,120 acres with native vegetation[14]

C. Private Landowners Are Crucial

The sage grouse is commonly thought of as a "federal lands" species because 64% of its habitat is on federal land, compared to 31% on private land and 5% on state land. Yet these numbers do not reflect that private landowners are likely the key to successful sage grouse conservation because they:

- Own 81% of the keystone moist habitat.[15] This moist habitat is of at least equal importance as breeding sites, located on drier sites known as leks, most of which are on federal lands. "Wetlands are keystone features that structure populations," according to Patrick Donnelly of the U.S. Fish and Wildlife Service and lead investigator of a recent study.[16] Due to this, leks with the highest densities of sage grouse are within 1.8 miles of moist habitat, and 85% of leks are concentrated within 6.2 miles of moist habitat.[17] As Patrick Donnelly observed, "How do you conserve grouse that split their time between private and public lands? With 81% of sparse summer habitat in private ownership, sage grouse success is inextricably linked to ranching and farming in the West."[18]

Figure 2: Ownership of Moist Sage Grouse Habitat



Source: Sage Grouse Initiative, Private Lands Vital to Conserving Wet Areas for Sage Grouse Summer Habitat, Science to Solutions Series Number 4

- Live on the land 24 hours a day, 365 days a year, and have very detailed knowledge of the land, including the wildlife that inhabits their land and surrounding publicly owned land.
- Typically possess a strong attachment to the land and are deeply committed to its conservation.
- Have strong ties to the local community and a deep understanding of local social networks, which is a crucial, but often overlooked, factor for successful conservation.
- Are, by profession, land and resource managers. Sage grouse conservation ultimately occurs due to on-the-ground management, not in cities or the offices of federal agencies and groups that support penalty-based sage grouse conservation.
- Consist of thousands of ranchers who hold permits to graze on most of the 84,000,000 acres of sage grouse habitat administered by the Bureau of Land Management and the 13,200,000 acres administered by the U.S. Forest Service.[19] These ranchers and their thousands of family members and employees are by far the largest potential conservation force for the sage grouse, being ideally positioned to implement conservation measures for grouse on federal lands as well as private lands because they are spread across almost all of the sage grouse's habitat.

D. High Quality, Accurate Data

States, municipalities, and industry have by far the highest quality scientific data on sage grouse. Being literally closest to the habitat in question, local scientists can research species more thoroughly than federal agencies. Accurate, high quality data are critical because they allow better decision-making about what conservation measures should be prioritized and how best to implement these measures.

Even federal agencies acknowledge this. According to the U.S. Fish and Wildlife Service's Conservation Objectives Team Report, which is the agency's "bible" for sage grouse conservation:

> *States have the most complete local information of sage-grouse distribution and habitat use*.[20]

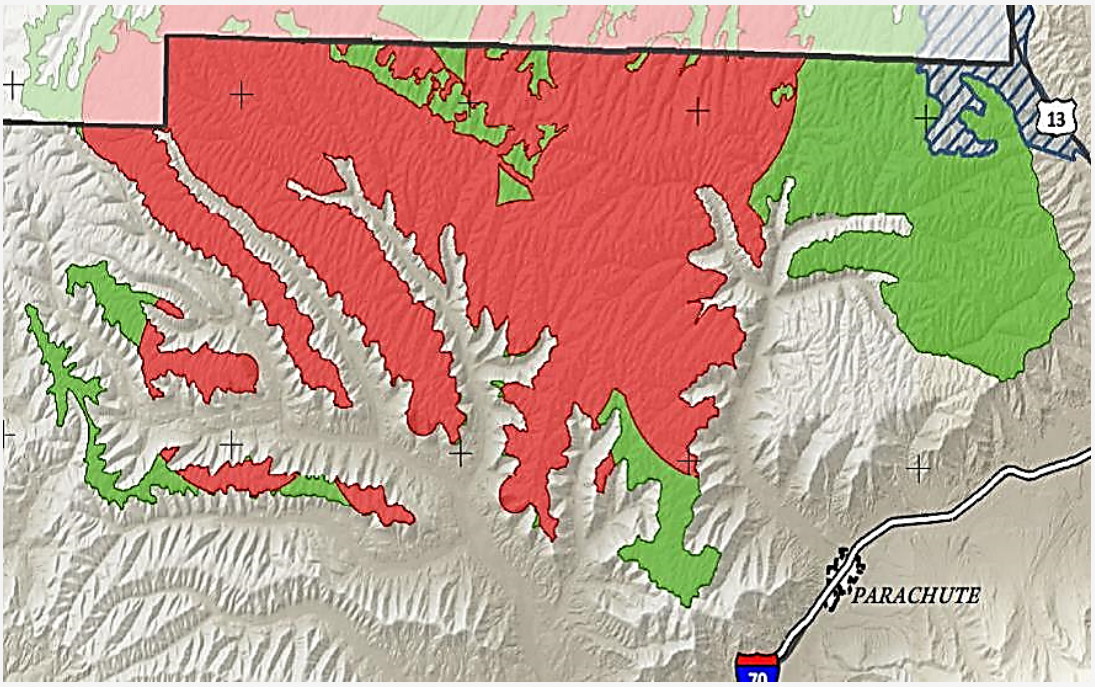
Many examples of non-federal entities, especially states, having superior data can be found in the objections to the draft federal land use plans and final environmental impact statements lodged by six states (Colorado, Idaho, Montana, Nevada, Utah, and Wyoming). Among other things, these objections challenge federal data on:

- Grouse location and mapping of seasonal habitat[21]
- Locations of priority habitat[22]
- How sage grouse react to disturbances, such as roads[23]

One of the starkest examples of the repercussions of inaccurate data is a map used by the federal government in the amended land use plan for the greater sage grouse in Colorado, which includes designations of priority habitat that will receive heightened regulatory scrutiny, and general habitat.[24] The problem with the 2012 map, which has been in circulation for a few years, is that it is wildly inaccurate because it is derived from analysis of very coarse, 1,000-meter resolution imagery, which means the entire image is composed of many squares, each of which is 1,000 meters on each side.[25] So Garfield County, Colorado spent a couple hundred thousand dollars to do an accurate analysis based on much finer-grained 2-meter resolution imagery.[26] The result was an almost ten-fold decrease in the amount of suitable sage grouse habitat, as the following maps show:[27]

Figure 3: Bureau of Land Management Map

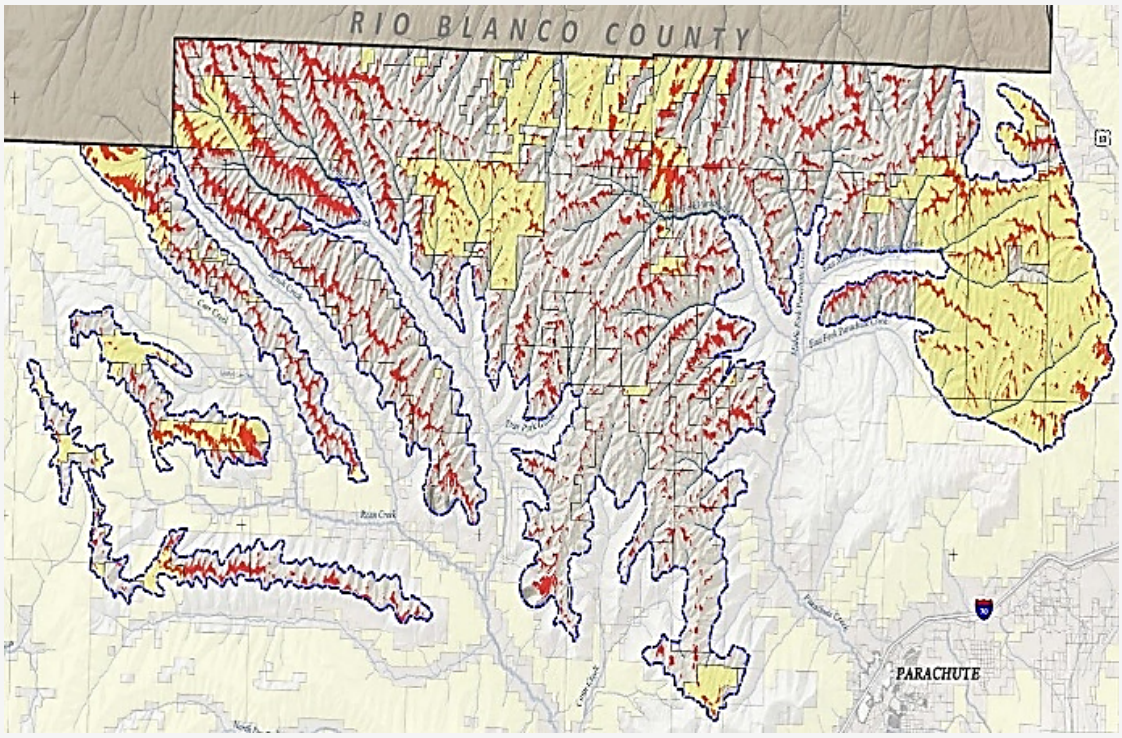
220,000 acres of Greater Sage Grouse Habitat (priority habitat in red, general habitat in green)



Source: Produced by Colorado Parks and Wildlife in 2012

Figure 4: Garfield County Map

28,000 acres of Greater Sage Grouse Habitat (suitable habitat in red)



Source: Produced by Garfield County in 2013

(http://www.garfield-county.com/community-development/documents/2015-Grouse/Exhibit%20U.pdf)

A scholarly article published in September 2015 confirmed the validity of Garfield County's revised map and flawed methodology, known as "model averaging," which contributed to the highly inaccurate map used in the amended plan.[28]

There appear to be much broader implications because model averaging was used in at least two prominent studies cited repeatedly in the two reports that are the "bibles" guiding federal agencies on sage grouse: the U.S. Fish and Wildlife Service's Conservation Objectives Team (COT) report, and the Bureau of Land Management's National Technical Team (NTT) report. According to these two federal agencies, the COT report was produced "to inform our upcoming 2015 decision under the Endangered Species Act," and the purpose of the NTT report was "to develop new or revised regulatory mechanisms, through Resource Management Plans (RMPs)," which are synonymous with the 15 revised federal land use plans the agency released in May 2015.[29] One of the studies that uses model averaging is also one of two studies cited most frequently in the COT and NTT reports combined, while the other study using model averaging is cited third-most frequently and is a key study used by the federal government to assess impacts of energy development on sage grouse and to justify the use of large buffers around leks to diminish the asserted negative impacts of such development.[30]

These two maps are also significant because if low quality data are used, such as the 2012 map employed by the Bureau of Land Management, then incorrect decisions can easily be made about where to target limited funds and person-hours in order to conserve the sage grouse. By contrast, if high quality data are used, such as the map produced by Garfield County in 2013, then conservation efforts can be more precisely targeted, and as a result funds and personnel deployed more efficiently and effectively.

E. Cutting-Edge Conservation Plans and Local Working Groups

States have taken the lead in formulating and implementing cutting-edge conservation plans, both at the state-wide and local levels. Local working groups are key to implementing these plans, which typically consist of county, state and federal officials; landowners; and representatives of the ranching, oil, gas and mining industries, as well as conservation groups.

Conservation Plans

The existence of statewide conservation plans for all 11 states with sage grouse, and 46 local plans (written by states, local working groups, and even counties) spread across seven

states, is an indication of the seriousness with which states and communities take sage grouse conservation.[31]

Local Working Groups

Approximately 60 local working groups currently help implement conservation measures across the sage grouse's entire range—yet another indication of the seriousness with which states, business and communities take sage grouse conservation. Local working groups, as their name implies, consist of a wide range of people from state, federal, and municipal government; landowner groups; trade associations; conservation organizations and businesses.

F. Trust, Transparency and Fairness

In their sage grouse conservation leadership role, states understand how crucial it is to successful conservation outcomes to build trust among partners through transparency and fairness. A fundamental tenet of successful conservation, or any successful endeavor that involves many participants, is that all involved parties perceive the process as fair, transparent, and trustworthy. It is especially incumbent on those participants that have more power and authority, particularly if they are in the public sector and wield regulatory authority, to ensure that their behavior and decisions are just, reliable, and free of political agenda.

G. Flexible, Innovative and Site-Specific

Successful conservation must be flexible, innovative and site-specific, especially for a species like the sage grouse that is so widely dispersed and requires long-term conservation. Efforts must reflect an understanding of the considerable spatial and temporal variation in sage grouse habitat, and all lands must be a part of the conservation equation. This means that the approach to conservation must work for the sage grouse and for the people who own and share its habitat.

H. Sustainable for the Long Term

Sage grouse conservation must be geared to occur over the long term in order for it to be sustainable, for a couple of reasons.

1) **The long time frames it takes to restore sagebrush habitat.** According to Pat Deibert, National Sage Grouse Coordinator for the U.S. Fish and Wildlife Service, sagebrush ecosystems have "long restoration times: 20 to > 100 years depending on species and conditions."[32]

2) **The need for partnerships, especially with landowners**, which can take years to develop and must be sustained over the long term, including the current successful conservation initiatives.

Part 3

Successful Conservation Jeopardized

Successful sage grouse conservation efforts are jeopardized by the Interior Department's top-down, penalty-based approach that creates strong disincentives for landowners and others to be involved in conservation efforts, and works against partnerships, trust, and cooperation. The Interior Department's approach is unsuccessful for the following reasons.

A. Narrow Focus on Federal Lands

Federal regulatory agencies are focused almost exclusively on federal lands to conserve the sage grouse, which leads to a very incomplete approach for two reasons.

- Private lands are just as important as federal lands to conserve and sustain the sage grouse.

- Private landowners are key to implementing conservation measures across the vast majority of the 64% of the sage grouse's range that is federally owned because much of this federal land is leased for grazing by ranchers who live nearby. These ranchers are ideally situated to implement conservation measures, including monitoring, for sage grouse.

Federal agencies' narrow focus on federal lands is quite different from the holistic, all-lands approach taken by many states that has proven successful in conserving the sage grouse.

B. Emphasis on Regulation, not Conservation

The Endangered Species Act's penalty-based regulatory approach causes harm to species because it punishes landowners for conserving species and discourages them from conserving species habitat, which is supported by a significant body of evidence—

scholarly, anecdotal—and by the opinions of some of the Act's foremost proponents.[33] Instead of punishing landowners for harboring species and habitat, a common sense approach, such as cooperative extension, would reward, or at least not punish, landowners for habitat and species conservation, reflecting the public value of endangered species. Yet the Interior Department's approach to sage grouse conservation, through potential listing under the Endangered Species Act and the 15 amended federal land use plans, is another example of the harmful penalty-based regulatory approach that works against species conservation. In reality, tangible work on the ground, coupled with incentives and partnerships, conserves the sage grouse, not regulations.

C. Low Quality Conservation Plans

Federal agencies' conservation plans for the greater sage grouse, which consist of the 15 amended federal land use plans, are based almost exclusively on restricting various human activities within tens of millions of acres representing various categories of land use designations, which Utah terms "a 'Just Say No' philosophy."[34] Successful sage grouse conservation needs to involve tangible on-the-ground results, not "just say no," a blunt instrument that clobbers all parties except the regulatory agency.

D. Lack of Transparency and Fairness

There has been a marked lack of transparency and fairness in the process federal agencies are using in their regulatory approach to sage grouse conservation. In turn, this erodes trust on the part of those involved, such as states and industries. These issues are apparent in the preferential treatment federal agencies give wind energy over oil, gas and mining in amended federal land use plans.

For example, two large high voltage lines (Gateway West and TransWest Express), which are a combined 1,850 miles long and intended to transmit wind-generated electricity from Wyoming to Boise and Las Vegas, are essentially exempted from land use restrictions that are imposed on other forms of energy transmission, such as oil and gas pipelines.[35] These transmission lines cut through some of the highest quality sage grouse habitat. This is a problem for sage grouse, which avoid tall structures, such as the transmission towers that will be as high as 180 feet for the two high voltage lines, because they provide perches for raptors and other predatory birds, and also because transmission towers provide high quality nesting habitat for ravens, a major predator of sage grouse chicks and eggs.[36] "We are likely to see a raven infiltration into those areas that power lines have never run through before and that is the real risk to sage grouse," observed Kristy Howe, lead author of a recent study on the threat ravens pose to sage grouse.[37]

Figure 5: Gateway West and TransWest Express Transmission Lines

Source: U.S. Department of Energy (https://etrans.energy.gov/defaultmap.pdf)

The reason the power lines get a break is "The Obama Administration identified these transmission projects as a priority project, as part of the President's commitment to job creation and modernizing America's Infrastructure," according to one of the amended federal plans.[38] Such political prioritization undermines sage grouse conservation efforts. When federal land use plans—ostensibly to "conserve the sage grouse"—restrict land use by ranchers, oil and gas companies and others, but exempt structures that drive away sage grouse and provide habitat for a main sage grouse predator due to political agendas, people

have good reason to doubt the intent of their government. The federal government cannot have it both ways—sacrificing sage grouse conservation for federal priorities and restricting people's land and resource uses to protect sage grouse.

E. Lack and Failure of Partnerships and Collaboration

Over the past four years, the relationship between federal agencies and states, industry and landowners has deteriorated substantially. In October and November 2014 two events occurred that signaled the Department of the Interior's shift away from collaboration.

- In October, the U.S. Fish and Wildlife Service, without consulting states, started the process that led to the creation of Sagebrush Focal Areas as "stronghold" habitat in which human activity would be banned or severely restricted. Sagebrush Focal Areas were then inserted into the Final Environmental Impact Statements of the amended federal land use plans, released at the end of May, 2015, despite that the focal areas were not included in the Draft Environmental Impact Statements, as they should have been under federal law and in the spirit of collaboration.[39]

- On November 20, 2014 the U.S. Fish and Wildlife Service listed the Gunnison sage grouse, a close cousin of the greater sage grouse that lives in Colorado and Utah, under the Endangered Species Act. This occurred despite data showing the species' population was slowly increasing due to over two decades of remarkable conservation by Colorado and Utah, and over the strenuous objections of both states, counties, and Democrat and Republican members of Congress.

F. Regulation and the Quest for "Certainty"

Much of the rationale behind federal agencies' regulatory approach is the desire for "certainty" to ensure sage grouse conservation measures will be durable.[40] The assumption here is that the mere use of regulation automatically results in higher populations of species. The quest for this "certainty" through penalties and regulations actually *decreases* certainty because it creates mistrust, erodes collaboration and breaks partnerships. When private landowners and people who work the land are punished for harboring species and their habitat, they are unlikely to encourage the conservation of the species, such as allowing inspectors and scientists on their land to determine the population of that species and habitat concerned.

Part 4

Consequences of Penalty-Based Sage Grouse Conservation

All indications are that the penalty-based approach to sage grouse conservation being taken by the Interior Department, whether through the Endangered Species Act or the 15 amended federal land use plans, is going to harm the sage grouse. These indications come from three sources:

1) The successful approach already discussed in this brief, which is 180 degrees away from the unsuccessful approach pursued by federal regulatory agencies and environmental pressure groups.

2) The Endangered Species Act's history of harm to other species.

3) The penalty-based approach to sage grouse conservation that already has harmed the sage grouse and very likely will continue to do so.

A. Consequences to Other Species

The penalty-based approach to conservation, most notably the Endangered Species Act, has a well-documented history of causing harm to species by creating strong incentives for people to work against the interests of species conservation. Many such examples of this are contained in a report by Reason Foundation.[41] This harm can happen in four ways:

- **Scorched Earth**: Landowners destroy and degrade habitat for endangered species.

- **Deny Access**: Landowners deny researchers and public agencies access to their land because they fear the discovery of species will result in land and resource use restrictions.

- **Keep Quiet**: Other landowners keep quiet in the hope regulatory authorities don't notice the presence of endangered or potentially endangered species.

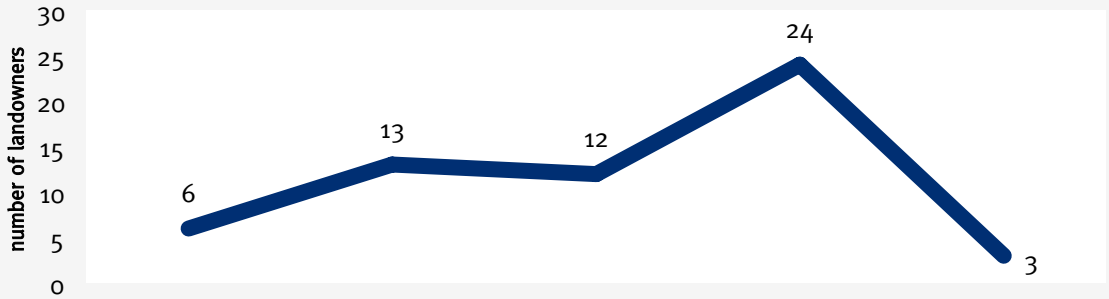
- **Shoot, Shovel, Shut-Up**: Killing species likely occurs least frequently because many people are averse to breaking the law and to killing wildlife, but regrettably this does sometimes occur.

B. Consequences to the Sage Grouse

Unfortunately, some of these harmful actions are already occurring for the sage grouse, and they are only likely to get worse under an Endangered Species Act listing or the 15 amended federal lands plans, or both. Ranchers in Colorado used herbicides to destroy sagebrush, in efforts to eliminate habitat for sage grouse and avoid potential punitive regulations if listing occurs.[42] Colorado contains about 2.4% of the sage grouse's habitat.[43] If habitat destruction is found in such a small portion of the sage grouse's habitat, it is very likely occurring elsewhere.

The effect of failed collaboration is evident in the case of the bi-state sage grouse, a population of the greater sage grouse that lives along the California-Nevada border and is eligible for a separate listing under the Endangered Species Act. After the U.S. Fish and Wildlife Service proposed to list the bi-state population of the greater sage grouse under the ESA in 2013, applications by landowners to participate in the Sage Grouse Initiative dropped by 88%.[44]

Figure 6: Landowner Applications to Participate in the Sage Grouse Initiative for the Bi-State Sage Grouse



Source: Jason A. Weller, Chief, Natural Resources Conservation Service, letter to John Hickenlooper, Governor, State of Colorado, April 25, 2014.

While the bi-state sage grouse was eventually not listed under the Endangered Species Act, the fear a proposed listing generates, including landowners refraining from involvement in the Sage Grouse Initiative, creates lasting distrust, which does long-term damage to the landowner relationships that are so crucial for successful sage grouse conservation.

Part 5

Policy Solutions

The Interior Department's dogged pursuit of a punitive regulatory approach to sage grouse conservation, including a decreasing willingness to collaborate with states in good faith, will in all likelihood end up harming the species. Therefore, any potential policy solutions are most likely to come from outside the Department and other federal agencies. Basically, these solutions revolve around the need to allow state and incentive-based conservation efforts to continue their well-established track record of successfully conserving the sage grouse. Here are possible legislative and legal solutions, some of which are already in play:

A. Legislative

Congress can intervene, and already has tried to do so, in a number of ways to prevent the sage grouse from being listed under the Endangered Species Act, and the Departments of Interior and Agriculture from implementing the 15 amended plans for federal lands. This is a very reasonable proposition due to the success of state-based conservation efforts, the very long time frames it takes to restore the sage grouse's habitat, the increase of the species' population on decadal timeframes, the widespread agreement among states and others that the top-down, penalty-based federal approach will harm the sage grouse, and the unsettling reality that the Interior Department is so determined to ram through a punitive regulatory approach over the strenuous objections of many involved—especially states.

So far, legislative efforts have consisted of attempting to delay listing and to prevent the implementation of amended federal lands plans:

- In December 2014, a stop-gap federal funding bill, often referred to as the "cromnibus," to fund the federal government to the end of fiscal year 2015 (September 30) contained a rider prohibiting federal agencies from any regulatory work, known as rulemaking, under the Endangered Species Act for sage grouse; proposed rules for the greater sage grouse and Columbia Basin population of the greater sage grouse, and final rules for the bi-state population of the greater sage grouse and Gunnison sage grouse.[45] The bill was signed into law by President

Obama on December 16, 2014.[46] The Interior Department did not feel bound by the law, which is why the Department issued a final rule on April 23, 2015 not listing the bi-state sage grouse, and appears prepared to issue a rule on the greater sage grouse, either a listing proposal or a listing withdrawal, by September 30, 2015.[47]

There are also a number of pieces of active legislation in Congress:

- S. 1036 (introduced by Sen. Gardner, R-Colorado) and H.R. 1997 (introduced by Rep. Stewart, R-Utah) require the Interior Department to delay listing the sage grouse for at least six years, and, if a state chooses to submit a conservation plan to the Interior and Agriculture Departments, that the Departments work with the state to implement the plan. In addition, if a state elects to submit its conservation plan, the two Departments are prohibited from implementing any of the 15 amended federal lands plans that affect the state. Both bills have yet to be voted on before the House and Senate.

- H.R. 1735 (introduced by Rep. Thornberry, R-Texas), which is the Department of Defense budget for fiscal year 2016 (October 1, 2015-September 30, 2016), has a provision preventing the listing of the greater sage grouse under the Endangered Species Act until at least 2025, and preventing the Departments of Interior and Agriculture from amending land use plans in states in which the governor notifies the Departments that a state sage grouse conservation plan is operating. There was an unsuccessful attempt by Sen. Mike Lee, R-Utah, to introduce the same amendment to the Senate's Department of Defense budget bill. Currently, the Senate and House bills are in conference, where differences between the two, including the sage grouse provision, have to be resolved.

- H.R. 2822 (introduced by Rep. Calvert, R-CA) and S. 1645 (introduced by Sen. Murkowski, R-AK) are the Interior Department appropriations bills for fiscal year 2016. S. 1645 prohibits the Department from using any funds on a proposed rule for the greater sage grouse, or the Columbian basin population segment of the greater sage grouse, and on final rules for the bi-state population of the greater sage grouse or the Gunnison sage grouse. H.R. 2822 only addresses proposed rules for the greater sage grouse and Columbian basin population of the greater sage grouse.

- S. 468 (introduced by Sen. Hatch, R-Utah) and H.R. 1793 (introduced by Rep. Stewart, R-Utah) exempts from regulation under the National Environmental Policy Act removal of pinyon and juniper trees on federal land. Removal of these trees has proven to be a very effective conservation measure for the sage grouse.

Legislative success in Congress, however, is difficult given the highly partisan nature of the issue. As well, those pushing against the Interior and Agriculture Departments have not been sufficiently effective in making the point that the approach taken by the two Departments is harmful to the sage grouse, whereas an approach based on states taking the lead would be better for the bird.

Members of Congress who oppose top-down approaches might do more to persuade their colleagues how the 15 federal land use plans will likely harm conservation of the sage grouse, and emphasize procedural problems with the plans. This might be accomplished by holding additional hearings on how best to conserve the sage grouse, especially after the September 30 deadline and the 15 federal land use plans are finalized.

B. Legal

Lawsuits filed by states, counties and the regulated community (landowners and businesses involved in oil, gas, mining and ranching) to try to force substantive changes to, or even invalidate, the 15 federal land use plans, as well as oppose any potential listing, are another option because of congressional gridlock. Colorado's willingness to file a lawsuit in February 2015, to try to overturn the listing of the Gunnison sage grouse under the Endangered Species Act, is a sign of how aggrieved states are over the penalty-based regulatory path the Interior Department is taking. As for the greater sage grouse, Idaho and Nevada signaled they are prepared to sue the Bureau of Land Management over the Bureau's rejection of both states' recommendations for making the amended federal land use plans that pertain to these states consistent with each states' sage grouse conservation plans, programs, policies and laws, which the Bureau is required to do under federal law.[48] It is widely rumored that a number of other states are similarly prepared to file lawsuits over the amended federal land use plans.

C. The Future

The near-term future for the greater sage grouse is clouded by the Interior Department's pursuit of a penalty-based approach for the species' conservation, which creates uncertainty, undermines successful conservation efforts, and creates opportunities for advocacy groups also committed to similar penalty-based approaches to sue in attempts to make the penalties more onerous—including listing the grouse under the Endangered Species Act.

Over the longer term, however, if states and others prevail in their anticipated lawsuits against the federal government, and also intervene successfully against expected lawsuits to try to force a listing, then the greater sage grouse will likely have a brighter future. States, landowners and others will be free from the fear that successful sage grouse conservation will be punished, and can continue pursuing the current cooperative and voluntary conservation initiatives that have proved so successful in increasing the sage grouse's populations.

About the Author

Brian Seasholes is director of Reason Foundation's endangered species project. His work deals with wildlife and land-use issues, especially the Endangered Species Act, property rights, wildlife conservation, including private approaches to conservation in the U.S. and around the world, the effects of wind and solar energy generation on wildlife, the effects of the estate tax on conservation and wildlife, and the intersection between wildlife conservation and energy development. His writings have appeared in the *Forbes*, *National Review Online*, *Christian Science Monitor*, *Houston Chronicle*, *Orange County Register, The Daily Caller* and *The Washington Times*.

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