



## **Howdy—**

Quite honestly, this is an experiment, but one for which we hope the results will be useful to you and in which you will want to be a participant. Simply put, our firm, seasoned veterans of all kinds of natural resource issues, want to attach ourselves to the hip of what promises to be the largest effort ever to deal with an ESA issue—sage grouse and it's possible listing throughout 11 western states. We'll provide a chronology of biological findings, meetings, court decisions, agency decisions, political developments and all that will transpire over the next 3 years as, collectively, the nation decides how best to assure this bird remains an icon of the American West. We won't advocate a position, but we will strive to provide you with sufficient, accurate information so that you can chart your own path forward. The next three years will be complicated, confusing, perhaps maddening, but it will happen. Our goal is to give you a ring side seat. Our job is to interpret what you would otherwise read about in the papers or through your own contacts. We'll do it in a way that may be humorous at times and hopefully interesting all the time, but the subject is dead serious—as a natural resource user or landowner in the West, this will affect your lives. We just want you to know “how”, “when” and “why”.

## **Our Story So Far...**

For years now, western state wildlife agencies, with the occasional participation and encouragement by the BLM and U.S. Fish and Wildlife Service, have attempted to find a way to maintain state control over sage grouse management and keep it off the “endangered” list. Their attempts have ranged from state plans to local working groups with their own plans to complex “candidate conservation agreements with assurances” to public education and a massive NRCS cost share program—all of which have been predictable responses and some might even prove helpful. However, all will inevitably fall short because over 50% of the bird's habitat is on federal land, principally the BLM, where the foregoing efforts have little effect.

Earlier this summer, the issue of how best to manage sage grouse habitat on federal lands reached a turning point, led by a strong recommendation from state wildlife agencies that BLM, with 57 million acres of sage grouse habitat, implement a regulatory program that will protect that land from the negative impacts of fire, invasives, energy development and grazing. This effort was reportedly buttressed by dire warnings from U.S. F&WS to its BLM cousin down the

hall in the Interior Department that without their help, the bird would almost certainly be listed in 2015.

Not surprisingly, BLM sought guidance on just what regulatory mechanism might find favor with FWS. The response was a strong inclination toward the “Wyoming model”, wherein the most important sage grouse habitats are identified as “core areas”, with strict regulations on how land use and management can proceed within them, including outright prohibitions of some uses.

So, within the period of approximately two months, in the way these things happen, decisions were made, teams appointed and strategies developed. Now, with little fanfare, we in the West find ourselves facing efforts to define core areas in each of ten states, develop management practices for these areas and complete all the legal and procedural steps to create a “regulatory mechanism” sufficient to protect sage grouse habitat and preclude the need to list the bird as “threatened” or “endangered” under the Endangered Species Act.

Will it work? Will separate legal challenges and court decisions override this huge federal effort? Will political winds blow in a way that changes its direction? No one can say, at this point. All we can say with certainty is, “stay tuned”.

### **BLM’s Organization for the Upcoming Task...**

As might be expected, the BLM is organizing several interagency planning and science teams that will determine how the strategy will be implemented across the range of sage-grouse. The proposed organization is, in itself, cumbersome, with multiple teams at multiple levels and two “regions” within sage grouse range. The “Eastern Region” includes Colorado, Montana, North Dakota, South Dakota, northeastern Utah, and Wyoming. The major threats to sage-grouse in this region based on the FWS’s “warranted but precluded” finding last year include habitat loss and fragmentation due to energy development. The “Western Region” includes California, Idaho, Nevada, Oregon, most of Utah, and a small portion of southwestern Montana. The major threats in this region include habitat loss and fragmentation due to invasive plant species and wildfire impacts.

Within the general “regional” organization, BLM proposes five teams, each with a specific charge and area of responsibility, including:

- A National Policy Team (NPT) provides national policy guidance on sage-grouse conservation and consistent planning objectives.
- A National Technical Team (NTT) will use the best science available to develop recommended conservation measures.

- Two Regional Management Teams (RMT's) are responsible for coordinating planning and strategy implementation, provide direction, and ensure consistency between the states within each region.
- Two Regional Interdisciplinary Teams (RIDT's) will coordinate the development of EIS's and RMP amendments using policy guidance and recommended conservation measures provided by the National Teams.
- State Level Interdisciplinary Teams (SIDT's)---will complete the required environmental analyses to select the regulatory mechanisms for greater sage-grouse conservation.

So, what does all this mean? First, the effort is designed to prevent a listing of sage-grouse as "threatened" or "endangered" and maintain BLM's discretion for managing some 57 million acres of sage grouse habitat on BLM lands. Through this effort, BLM will amend some 73 resource management plans within the two described regions by the completion of 6 to 8 separate programmatic EIS's and thereby expanding Wyoming's core area concept across the West. All of this will be accomplished through some 17 national, regional, and state level teams. The time frames are daunting, just three years (2015), for the completion of an effort that encompasses some 57 million acres of BLM managed lands, across 11 states, multiple jurisdictions, plus an untold number of stakeholders covering the spectrum of political, environmental, and commodity user groups. Needless to say, opportunities abound for misunderstanding, miscommunication, rumors, speculation, political and technical gamesmanship.

### **Core Areas...**

#### **What We Think We Know...**

Wyoming's "core area" concept has won widespread approval. Through it, areas with significant sage grouse habitat and use, combined with population estimates for those areas are prioritized, with the best areas given correspondingly high attention. Thus, high priority core areas may be first in line for fire suppression, habitat restoration and, if private lands are included, for conservation agreements and cost-share programs.

This is the concept that the Western Association of Fish and Wildlife Agencies (WAFWA), FWS and the BLM now want to extend to other sage grouse states. Indeed, efforts are now underway to identify important habitats and populations so that the highest priority "core" areas can be mapped and incorporated into the BLM's sage grouse planning effort. Expect to see them this fall, although there probably isn't much mystery about it. After all, we know where the leks are and the sagebrush is. While the biologists may want to play around with breeding density or other parameters, it's a pretty sure bet that "core areas" will include active leks, the surrounding sagebrush habitats and some buffer around them.

What is less clear is what will happen after we identify important areas and populations. In Wyoming, there was considerable “horse trading” to exempt important energy areas, particularly, from the final determination of core areas. This may not be the case in other states, with the lines drawn as a simple matter of biology, devoid of any social or political leavening.

### **What We Think Will Happen...**

1. We’ll see “core area” maps this fall, perhaps about the time the interim measures surface. It won’t be pretty and many user groups will be properly terrified over blatant depictions of their grazing lands, wind power developments or transmission corridors on a map.
2. There will be lots of arm waving over the maps and probably some serious political or legal maneuvers to at least modify the areas that are most troublesome to resource users.

### **Interim Conservation Measures...**

#### **What We Think We Know...**

BLM’s new “Sage Grouse Planning Strategy” envisions significant modifications to about 75 “resource management plans” (RMPs) across the West in areas where sage grouse are found. According to BLM Director Bob Abbey, “We will build consistent conservation measures into land-use planning efforts including those already underway where sage-grouse are located. Most importantly, we will then implement on-the-ground actions that will benefit the species.” Conservation actions will be science based and directed toward addressing threats to sage grouse habitat that are specific to the area covered by the RMP.

Fair enough. Despite the magnitude of the job, it seems reasonable to identify threats and develop measures to deal with them as the basis for a conservation program. However, all of this will take some time—generally revisions to RMPs are a multi-year process, accompanied by significant public involvement and a full EIS. In recognition of this fact, BLM is proposing to implement interim measures through “instructional memoranda” to each field office as early as this fall. These interim measures are currently under construction, doubtless in some back office deep in the bowels of the Interior Department. However, they will soon see the light of day, with a projected unveiling in late September.

What’s going to be in them? Those in place in Wyoming for core sage grouse habitat will likely be an indicator. However, those restrictions focus largely on oil and gas production, plus wind power and energy transmission, activities that are not common to all western states. Therefore, restrictions on well pads per square mile as applicable for Wyoming will have little relevance for states like Idaho or Oregon. There is also a question about BLM’s ability to

unilaterally impose changes in regulations to permitted land uses without adequate public review and completion of NEPA analyses.

### **What We Think Will Happen...**

1. We'll see some rather Draconian interim measures sometime this fall. Oil and gas production will mimic Wyoming's core area restrictions.
2. Grazing has never been identified as a major threat to sage grouse. In Wyoming, grazing is viewed as having a minimal impact and basically is not subject to the core area restrictions, so long as it is conducted under some type of management plan, whether developed by the BLM, state agencies or private parties. However, because grazing is ubiquitous across sage grouse habitat and is generally the target of Western Watershed Project lawsuits, expect BLM to be unable to resist imposing at least something. We expect this will take the form of later turnout dates to minimize conflicts with sage grouse nesting and reduced stocking rates.
3. Wind, solar and geothermal power takes a major hit. If a project is in a "core area", forget about it.
4. Energy transmission corridors will have to largely avoid "core areas". Where this is impossible, expect major off-site mitigation requirements as a project requirement.

Somebody is going to sue somebody else. BLM's imposition of interim measures without adequate NEPA and other procedures is an open invitation to courthouse. Lawyers, start looking around for a new BMW or something—you're probably going to be able to afford it.

### **Meanwhile, Back at the Courthouse...**

No one ever said justice could take the day off while BLM is amping up its regulatory mechanism and zoning sage grouse habitat. So, why not add a little legal confusion to the mix? Right now, two cases do just that.

In the most recent decision, federal district court judge B. Lynn Winmill (you'll hear that name a lot) has ruled that Western Watersheds and other plaintiffs are not bound by a prior settlement between the Fish and Wildlife Service and various groups who sued over the agency's propensity to conclude that listing for a great number of species was "warranted", but that other priorities and budget constraints "precluded" them from actually listing them. Such a decision maintains each species status as a "candidate", with annual reviews to see if their status has changed. Right now, there are over 250 species listed as "candidates" through "warranted but precluded" decisions. Under Judge Winmill's decision in a separate action, Western Watersheds and a few other groups are free to pursue a sage grouse listing apart from the settlement which provided a structured time limit for addressing each candidate species and which limited the ability of parties to the settlement to seek listings of candidate species

through judicial avenues. So, in short, WWP is free to argue in court that sage grouse should be listed before the 2015 deadline that FWS has set for their decision.

In another case spawned by WWP, the organization argues that BLM's "resource management plans" across the West fail to adequately address the condition of sage grouse and provide for adequate habitat protection. Since BLM essentially admits the agency's shortcomings through the initiation of the current effort, there seems little to argue about. Indeed, BLM intends to revise somewhere around 100 plans to incorporate sage grouse conservation measures as part of their new initiative. They also recognize that while this work is being completed, it will be necessary to require some interim measures which they plan to unveil in late September. But guess what? The federal attorneys in this case are currently developing their own set of interim conservation measures as a means to settle the case. How the settlement of this case, the interim measures and the new BLM sage grouse initiative is unknown. Presumably, there will be a clear linkage and the new initiative will drive the settlement process....right, guys?

What We Think Will Happen...

1. WWP will almost certainly argue that the situation with sage grouse is so dire that an immediate listing is necessary well in advance of the 2015 deadline for a final decision.
2. The case regarding the adequacy of BLM's plans will be settled, with the new initiative as a key part of the agreement. However, WWP has the right to argue for a listing before 2015, the expected completion date of the BLM initiative. That factor plus the adequacy of the interim measures will be part of the arguments and any future settlement.

### **Our Take on All of This...**

Well, for better or worse, we're in it—the Super Bowl of Sage Grouse Management, a term we coined ourselves. After years of starts, stops and changed directions, the federal government, encouraged by many state wildlife agencies, has decided that Wyoming had it right all along—simply "zone" important sage grouse habitats, decide how many birds we will save by maintaining the highest priority habitats and we can not only assure that sage grouse will remain a feature of Western landscapes, but we can preclude the need to list it as "threatened" or perhaps even "endangered".

No problem. Scientifically, all of this may even make sense. In a perfect world, this would all happen. But guess what? The world ain't perfect and this path forward is fraught with perils—lawsuits, political pressures, changing priorities and changing administrations, economics, biology and the desires of local folks who believe, rightly so, that their efforts over many years ought to count for something in this whole effort.

We are moved by Shakespeare, particularly his quote from Richard the Second, "How this day will end, we cannot say. Sufficeth to say there will be an end and then we shall know".

The Bard is right. At the end of the day, there will be answers. What they are right now, we can't say. All we can say is that this process, for now, exists. It is all we have. It may work; it may crash in failure. Most likely it will evolve, shaped by legal and political pressures that we hope our humble efforts can help inform.

One thing is certain—it's gonna be a wild ride! Hang on!