

SAGE GROUSE

QUARTERLY REPORT

Contract No. 146311

January 2016



Stag Consulting

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INTRODUCTION



This report is provided in compliance with State of Utah Contract 146311. The contract requires Stag Consulting to provide “written, quarterly progress reports to the Department of Natural Resources and to the Natural Resources, Agriculture, and Environment Interim Committee.” This quarterly report is being provided at the end of the second quarter of the 2015-2016 contract period. As contemplated in Stag Consulting’s contract proposal, Stag Consulting has worked extensively with Big Game Forever, a 501(c)4 social welfare organization to engage the public in the process. Ryan Benson is the attorney who leads these efforts.

This report is provided in addition to the previous quarterly progress reports that have previously been submitted by Stag Consulting related to the Greater Sage-grouse Coordinated Consulting Team’s efforts, which are incorporated by reference. This report will provide an overview of the progress in the second quarter of the contract period which covers October 1st, 2015 to December 31st, 2015.



HISTORICAL PARALLELS

Disproportionate focus on “protections” which limit human activity leads to lost opportunities. Federal managers now acknowledge the role of natural selection in spotted owl decline.

In 1992, the U.S. Fish and Wildlife Service listed the spotted owl as an endangered species. The Service and environmental activists repeatedly stated that shutting down the timber industry was the answer to protecting the spotted owl. The negative impacts to industry, local economies, and hard-working families in the region have been well-documented. Eighteen years later, these draconian “protection” measures have not been successful in stopping the decline of the spotted owl. The singular focus on human activity missed a key factor in spotted owl decline—competition from the larger and more aggressive barred owl. Now to save the spotted owl from further decline, barred owls are being shot and killed. Unfortunately, almost 20 years of conservation opportunity was lost while the spotted owl was used as a surrogate for those who oppose human use of the natural resources in the Pacific Northwest.

Western states do not want to make this same mistake. In the last 18 months, it has become clear that states are investing heavily in Sage-grouse conservation. The state of Utah is no exception. Utah has invested tens of millions of dollars in Sage-grouse conservation. Understanding the challenges facing Sage-grouse, Utah’s plans have grown and strengthened populations. These conservation measures are making Utah’s Sage-grouse habitats more resilient, redundant and capable of supporting more Sage-grouse. These programs are

also providing important solutions for other challenges including wildfire, pinyon and juniper encroachment, invasive plant species, and watershed restoration. The right solution for Sage-grouse and citizens of the state of Utah is to ensure that the state’s conservation plan can be fully implemented without further unnecessary and unhelpful restrictions. Our efforts are to protect state management of Sage-grouse and the programs that are providing such significant dividends in the state of Utah.

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FEDERAL AGENCIES INCREASE RESTRICTIONS

BLM land use plans usher in another round of federal restrictions. The focus once again is primarily on shutting down human activity; threatening further loss of resources for conservation.

In this quarter's reporting period, the Sage-grouse Coordinated Consulting Team has worked diligently to work with members of Congress on concerns related to newly proposed federal regulatory restrictions. Restrictions on BLM and Forest Service land are a significant challenge for pinyon/juniper removal, wildfire prevention and suppression, and other important conservation measures for Sage-grouse. In fact, more than 90% of acres burned in an 18-year study period occurred on land managed by the Bureau of Land Management. Utah's Watershed Restoration

Initiative is addressing these challenges. Our hope is that less federal red tape will allow more conservation work to be done in the next 10 years. Just as important is protecting the programs and private funding sources that made these programs possible.

This is one of the reasons that the newly proposed Sage-grouse "focal areas" have been a significant focus of concern to Western states. As part of the federal focal area strategy, approximately 9-10 million acres of mining withdrawals are being proposed by the federal

government. This raises many questions about the impacts to Western states, industry, economy, and jobs for those living across the West. While there has been much focus on these mining withdrawals across Oregon, Nevada, Idaho, Montana, Wyoming and Utah, BLM restrictions will be much more far reaching:

“Prior to offering any parcels for sale, the BLM will ensure conformance with the sage grouse plans,” says Mitch Snow, a spokesman for the agency.

Those plans call for strengthened sage grouse protection across 67 million acres in 10 states, putting 28 million acres off limits for surface development. In addition, tiered restrictions will be placed on any new leases, which can include disturbance caps, density limits on well pads and roads, and buffer zones between drilling activity and leks, the birds’ mating grounds.¹

¹ To read more visit: <http://www.hcn.org/articles/blm-mulls-energy-development-in-sage-grouse-habitat>

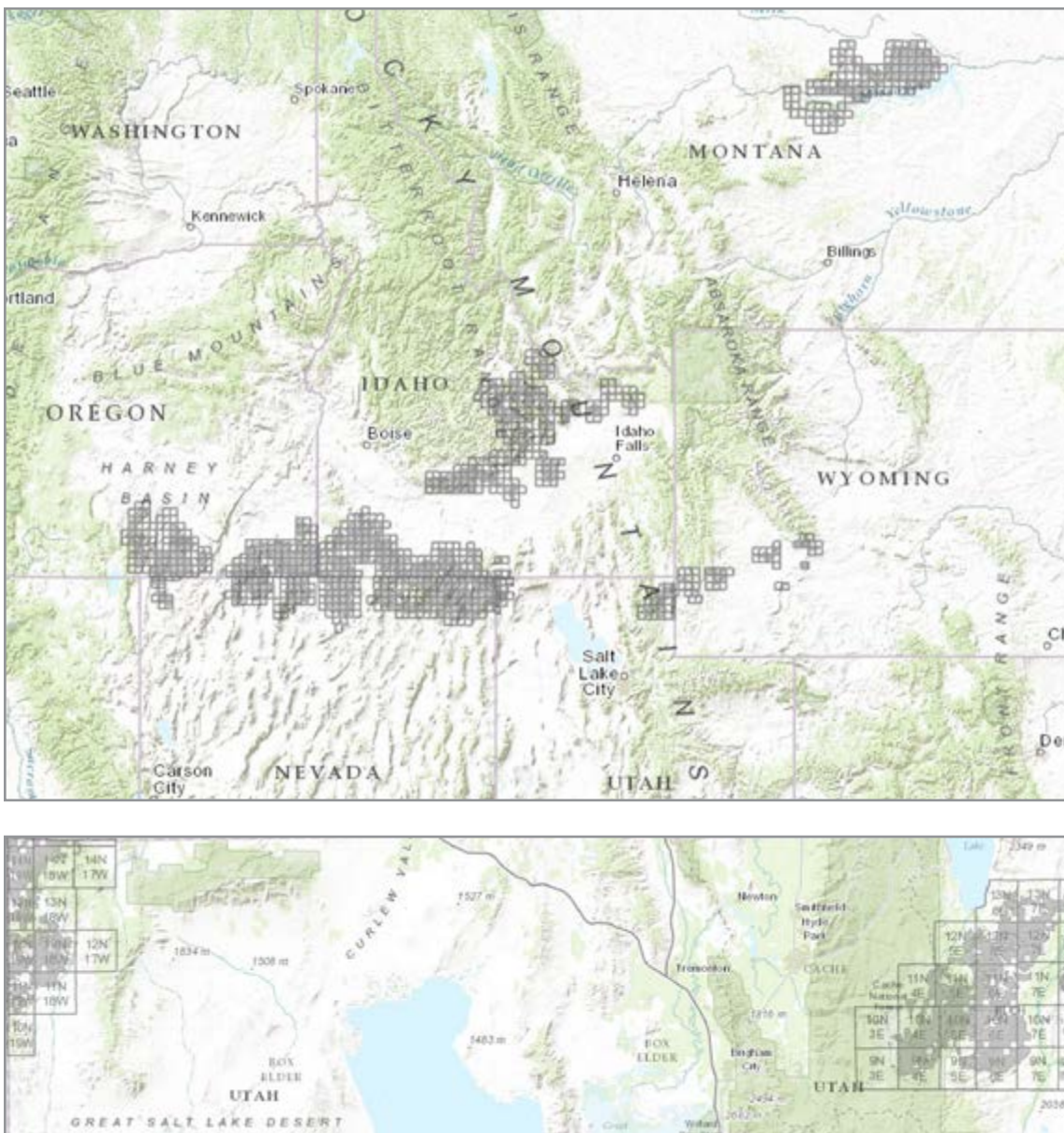


Figure 1- Proposed mining withdrawals in Sage-grouse focal areas comprise approximately 3.8 million acres in Idaho, 2.7 million acres in Nevada, 1.9 million acres in Oregon, 983,000 acres in Montana, 252,000 acres in Wyoming, and 231,000 acres in Northern Utah. (See <http://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=45b2d7896c36467aac3990b739d75a26>)

BROAD-BASED CONGRESSIONAL SUPPORT

Support in Congress acknowledges the need for more balanced common-sense protections afforded by state management plans. Efforts to exert draconian regulatory measures over non-endangered species by federal land regulators is a concerning new precedent.

For these and other reasons, Congressional interest has remained considerable in protecting the more proactive, balanced, and less restrictive plans of Western states. In fact, on November 5, 2015, 76 members of Congress from 35 states signed a “Dear Colleague Letter” in support of Congressional protections for state management of Sage-grouse.

The letter reads as follows:

We are writing to request that you include in any FY2016 spending measure language preventing

the Interior Department from moving forward with the highly restrictive Resource Management Plan Amendments (RMPs) that are inconsistent with Greater Sage Grouse conservation planning at the state level.

The U.S. Department of Interior recently announced that, while it would not consider listing the Greater Sage Grouse as threatened or endangered under the Endangered Species Act (ESA) for five years, it would instead move rapidly forward with RMPs which would result in land use restrictions on millions of acres of public lands. In many cases, the RMPs are as restrictive as a formal listing under the ESA.

The Obama Administration’s scheme to use the Sage Grouse as the excuse to institute restrictive RMPs to shut down virtually all development on large swaths of public lands in the West, particularly oil, gas, and mineral development, will have a devastating impact on state and local economies.

The Administration’s actions will have a negative impact on our nation’s energy and natural resource independence. Furthermore, the Greater Sage Grouse is not truly endangered. Its population is greater today than it has been in recent years thanks to the concerted efforts of several States which have implemented at their own expense comprehensive Sage Grouse Recovery plans. One can purchase a hunting license for Sage Grouse in several states. With few exceptions, the RMP restrictions far exceed



76 SIGNERS OF CONGRESSIONAL SAGE-GROUSE LETTER

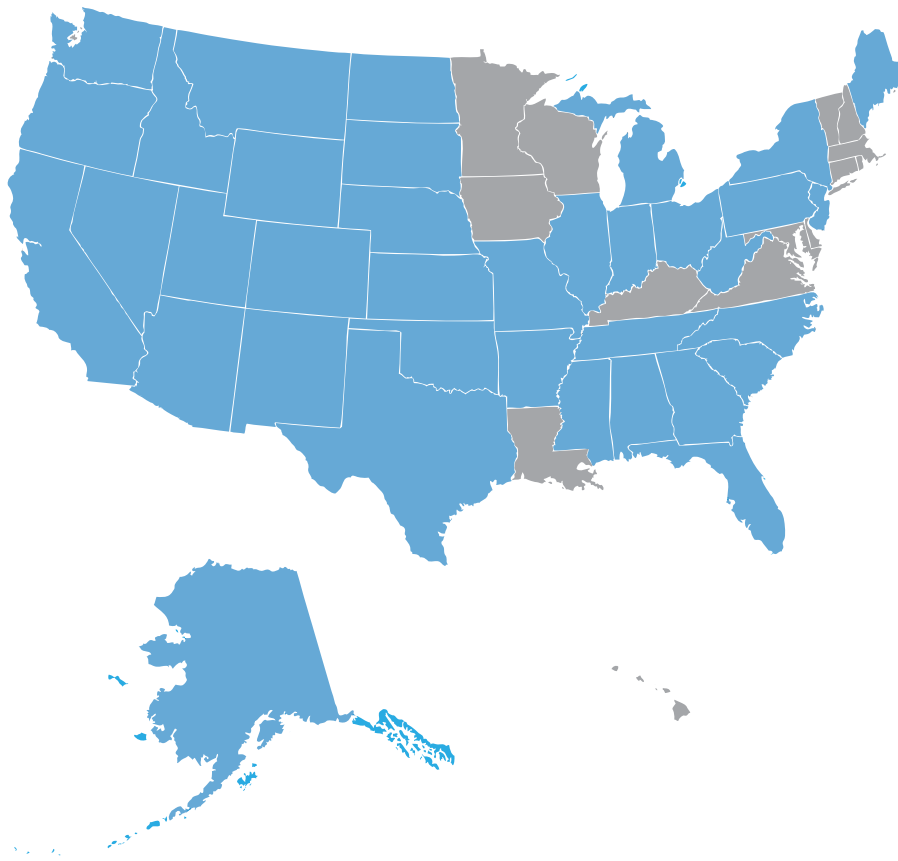


Figure 2. Seventy-six members of Congress from 35 states signed a “Dear Colleague” letter in support of congressional protections for state management of Greater Sage-grouse. Members included were:

Allen	Huizenga	Pompeo
Amodei	Hunter	Reed
Babin	Hurd	Renacci
Barletta	Jenkins, Evan	Rogers, Mike
Benishek	Kelly, Mike	Ross
Bishop, Mike	Labrador	Russell
Bishop, Rob	LaMalfa	Salmon
Brady, Kevin	Lamborn	Scott, Austin
Bridenstine	Latta	Sessions
Chaffetz	Loudermilk	Shimkus
Cole	Love	Shuster
Collins	Lucas	Smith, Adrian
Conaway	Luetkemeyer	Stewart
Cook	Lummis	Stivers
Cramer	MacArthur	Stutzman
Desjarlais	Marino	Thompson,
Duncan, Jeff	McClintock	Glenn
Finsher	McMorris,	Tipton
Franks	Rogers	Walden
Gibbs	Meadows	Weber
Gohmert	Miller	Webster
Gosar	Noem	Wenstrup
Hardy	Palazzo	Williams
Heck	Palmer	Woodall
Hill	Pearce	Young, Don
Holding	Poliquin	Zinke

common-sense measures developed by states to more effectively balance conservation with the needs of their citizens.

Environmental Groups have further indicated that they would challenge the Interior Department’s 5-year listing deferral in federal court within the next few months. The potential for Sage Grouse critical habitat designations under an ESA listing would negatively impact military readiness and several large military installations and training areas in several western states.

In conclusion, we believe that any FY2016 spending bill should both prevent unnecessary RMP restrictions from being implemented, as well as prevent court ordered reopening of the Interior Department’s ESA listing deferral.

This high level of congressional support was instrumental in support for a Sage-grouse rider in the year-end omnibus spending bill. The interest in inclusion of Sage-grouse compared to other proposed

riders was described in quoting Congressman Mike Simpson (R-Idaho) on the negotiations over the omnibus spending bill:

Another top appropriator -- Energy and Water Development Subcommittee Chairman Mike Simpson (R-Idaho) -- said he places a higher priority on a rider targeting Bureau of Land Management land-use plans for the sage grouse rather than the Waters of the U.S. rule -- a top priority for many Republicans and some Democrats.

“I’d drop the WOTUS and put in sage grouse,” Simpson said, noting injunctions at the district court level have put a stay on the water rule.

“If they have sage grouse in there, I guarantee there’s 60 Republicans from Western states that would fight their rear ends off to make sure this bill passes,” Simpson said. “If it’s not, maybe they’re not too interested. I don’t know.”¹

¹ See E&E publishing article “Horse-trading, rumors persist with 5-day reprieve on tap” December 10, 2015



OMNIBUS SPENDING PACKAGE

The Sage-grouse listing prohibition rider was one of the few natural resource riders included in the year-end spending bill. Western members of Congress remain committed to addressing new concerns over BLM land use plans which go into effect in 2016.

On December 18, 2018 Congress passed the \$1.1 trillion spending bill with significant bi-partisan support. The House passed the bill 316-113, the Senate passed the bill the same day by a vote of 65-33. One of the few natural resource riders on the bill was on the Sage-grouse issue. The bill language ensures ongoing protections for Western states from Sage-grouse listing. Section 117 of the bill:

*None of the funds made available by this or any other Act may be used by the Secretary of the Interior to write or issue pursuant to section 4 of the Endangered Species Act of (16 U.S.C. 1533)—(1) a proposed rule for greater sage-grouse (*Centrocercus urophasianus*); (2) a proposed rule for the Columbia basin distinct population segment of greater sage-grouse.*

This omnibus spending bill also includes report language not only addressing the threat of Sage-grouse listing but also concerns related to BLM management plans.

Greater Sage-Grouse. The agreement provides a total of \$63,250,000 for sage-grouse conservation, including \$60,000,000 for the Bureau of Land Management and \$3,250,000 for the Fish and Wildlife Service. The agencies are directed to focus this funding toward on-the-ground conservation measures to improve and preserve sage-grouse habitat and the sagebrush ecosystem. The Bureau is reminded of the concerns outlined in the House and Senate reports as Congress continues to hear complaints about the effect of the sage-grouse

land use plan amendments, which are not limited to activities within Bureau controlled sage-grouse habitat. In order for the sage-grouse, communities, and States to thrive, all partners must work in good faith. As such, the Bureau and the Forest Service are directed to closely work with each of the 11 States and the affected communities to address the issues unique to each State and seek to collaboratively resolve all issues. The Bureau is directed to provide guidance to its State offices and partners on how it will update sage-grouse habitat maps, adopt new scientific information, as appropriate, and engage State, local, nongovernmental, and private partners.

We are grateful for the leadership of Congress and inclusion of this language in the omnibus spending bill. The inclusion of the preclusion on listing remains relevant due to lawsuits on the BLM land-use amendments that have been filed by several Western states. Already federal officials are threatening a listing if BLM land-use plans are in any way impacted by lawsuits by Western states. This language would make a listing difficult if not impossible in 2016.

It is also notable that Congress continues to demonstrate an intention to protect the interests of Utah and other Sage-grouse states from excessive federal regulation. This is important given recent developments following proposed new federal restrictions. Despite the claims that this new federal regulatory regime would produce a level of “certainty” that would foster greater economic productivity, it is quickly becoming apparent that just the opposite is true.

STATES LOSING CONTROL

Concerns regarding overreaching federal regulation are already being felt. Sage-grouse is the new anti-use tool to stop even the most basic necessities of life across the West.



In 2016, the updated BLM management plans will go into effect. Additional protections will be needed to protect the state of Utah's interests. In fact, even before the plans are fully adopted, federal officials have begun asserting an unprecedented level of control over some of the most basic of governmental decisions across the West in the name of "Sage-grouse protection." Here are a few specific examples of this concerning new federal stranglehold on the West.

Feds threaten to block construction of new public school in Reno.

A story by the Associated Press helps demonstrate how far reaching these new federal control extends:

SUN VALLEY, Nev. (AP) – One of the first, actual on-the-ground disruptions caused by new U.S. efforts to protect the greater sage grouse isn't on a cattle ranch in Oregon or an oil field in Colorado. It's in the backyard of a residential neighborhood north of Reno, Nevada, where plans to acquire federal land to build a badly needed school are on hold because the government considers it sage grouse habitat...

But unlike those concerns – which government lawyers call "speculative, at best," Washoe County officials say they are now forced to find an alternative site for a new middle school in Sun Valley. Officials had applied to acquire Bureau of Land Management property in 2008 for the school. "At this point we appear to be stopped by the sage grouse designation," said Michael Boster, a school district planner.

The plight of the future school – along with a veteran’s cemetery proposed on similar BLM land in neighboring Sparks – is putting the spotlight on the regulations and the maps used to implement them...

In many cases, the maps don’t reflect the reality on the ground, and in some cases, flatly contradict earlier designations made by the Nevada Department of Wildlife. The “general” habitat includes a section of Sparks where busy streets, homes and businesses were built decades ago... The agency is aware of the Washoe County concerns and “will be working with municipalities, industry and others on a case-by-case basis to address specific projects and identify actions that will preserve and enhance sage grouse habit and provide opportunities for development,” BLM spokesman Chris Rose said Friday.

Critics include Washoe County Commissioner Jeanne Herman, a rancher who is on the witness list for Tuesday’s hearing. She represents an area bigger than many U.S. congressional districts – some 5,000 square miles stretching to the Oregon border, or about half the size of Massachusetts. Herman anticipated restrictions on livestock grazing in remote areas but never dreamed they’d extend into the valleys, bumping up against existing development. “That’s all on the map now as serious sage grouse country,” Herman said. “If they won’t allow us to have a school or a cemetery there, I can’t imagine them letting us develop it for anything.”

The regulations establish buffer zones as large as 3 miles in diameter around sage grouse “leks,” the traditional breeding grounds for the chicken-sized bird...The school site is 12 miles from the closest “active” lek and 5 miles from the closest lek of “unknown” status, according to the Nevada Department of Wildlife.

State Department of Wildlife Director Tony Wasley acknowledged there’s no grouse near the proposed school site. “Strictly from a biological perspective, we certainly don’t have concerns in that particular instance.”¹

After substantial pressure from local officials, Governor Sandoval and Nevada’s Congressional delegation, Interior Secretary Sally Jewel finally relented and allowed the proposed school to move forward. Contrary to the “epic collaboration” fanfare with which the Department of Interior heralded the new federal restrictions, Western states are finding that even the most basic decisions can be singularly denied by federal officials. This new reality provides fuel to

the critics that these new federal plans did not represent a common-sense approach but rather a justification to block any human activities. Just as concerning, these federal plans provide hundreds of pages of new regulation which affords private litigants the ability to sue to block any development on 165,000,000 acres of Sage-grouse habitat in the Western United States.



“If they won’t allow us to have a school or a cemetery there, I can’t imagine them letting us develop it for anything.”

--Jeanne Herman
Washoe County Commissioner

¹ <http://bigstory.ap.org/article/0150c91a81b545cc84263f662d774152/nevada-neighborhood-first-feel-sting-sage-grouse-rules>

Veteran's Cemetery

In Sparks, Nevada, the BLM's management plans also placed doubt on a veterans' cemetery. An op-ed in the Reno-Gazette Journal explains:

Another conflict exists in Sparks where Washoe County has identified a 40-acre parcel adjacent to the Pyramid Highway that would be an optimal location for a new veterans' cemetery. But the BLM map mischaracterizes this spot as habitat, even though it's currently being used by dirt bikers and most certainly isn't a good place for the birds.

Washoe County has expended considerable resources to develop our own habitat maps because we think wildlife conservation is important. We certainly strive to avoid conflicts between wildlife habitat and development. But at the same time, we cannot be constrained by a faulty habitat map that means we can't acquire lands needed for development.



Figure 3. Land proposed for a veterans' cemetery in the city of Sparks, Nevada placed at risk by propose Sage-grouse restrictions.

Water Tank Update

Efforts to rebuild an aging water tank illustrate the level of control already being exerted by federal

regulators in the name of Sage-grouse. The truly draconian nature of the newly proposed land-use plans will continue to worsen over the long-term. In an article by the Associated Press, a meeting between Nevada Governor Brian Sandoval with Interior officials was required to allow even this basic project to move forward:

"Federal land managers are clearing the way for a rural Nevada county to replace an aging water tank that critics called a prime example of development doomed by new protections for the greater sage grouse.

The move comes a week after Republican Gov. Brian Sandoval announced that the U.S. Interior Department agreed to address concerns about the land-use restrictions, including the water tank that White Pine County officials say is desperately needed near Great Basin National Park along the Utah line.

U.S. Bureau of Land Management officials authorized the necessary right-of-way late Thursday that will allow construction to begin in July, agency spokesman Steve Clutter said.

Clutter says the deal protects important habitat, consistent with regulations issued in September when Interior Secretary Sally Jewell determined that the chicken-sized bird doesn't need Endangered Species Act protection. Sandoval met with Jewell last week during a meeting of the Western Governors' Association and told reporters they had made strides in addressing concerns about the rules...

Lawyers representing the BLM said in a brief filed late Thursday that the water tank site is 0.7 miles from an existing breeding ground and in an area that contains habitat for grouse breeding and nesting.

Nevertheless, federal officials could approve the project because it would benefit the grouse through installation of anti-perching devices to keep away raptors, among other things.

"Contrary to plaintiffs' assertions, these requirements are not 'one-size-fits-all,'" assistant U.S. Attorney General Luther Hajek wrote. "BLM has determined that the replacement of the water tank would provide a net conservation gain to sage grouse by reducing



the attractiveness of the area to predators and ensuring a source of water to control wildfires.”¹

It now appears that restrictions on the time frame allowed for construction may once again make the project impractical or impossible. Whether or not the project moves forward, the underlying takeaway from these examples points to a concerning new reality. The most basic of governmental decisions cannot be made without permission from the Department of the Interior.

While permission may be granted in some high profile cases, it is clear that Interior will use Sage-grouse to control even the most common-sense and basic of decisions. What this shows is that federal Sage-grouse plans were designed to dramatically affect Western states. This will have a debilitating affect on industry and citizens in the region. States have already shown that more balanced and proactive

conservation measures can work for Greater Sage-grouse. Congressional action will be needed to allow for implementation of state’s conservation plans to protect the state of Utah’s interests from unnecessary impacts to Utahns, local communities, and the state’s economy.

These concerns are shared by leaders in Congress:

“While [the Omnibus] does contain much good, it also has shortcomings. House leadership has acknowledged these issues and they are particularly aware of the impacts on western priorities. I am confident that in the coming months, those shortcomings will be addressed and made right. The problem with the bill is what it could have been and what it should have been. Western issues that improve our lives should NOT be held hostage by Democrats in the House and Senate. These issues were eliminated with the threat of a government shutdown for political reasons.” (Congressman Rob Bishop)

¹ To read the complete article visit: <http://www.washingtontimes.com/news/2015/dec/11/blm-approves-nevada-project-critics-claimed-doomed/>



CONCLUSION

In 2016, the updated BLM management plans will go into effect. As alluded to by Congressman Bishop, additional protections will be needed to protect the state's interests.

We remain committed to protect the state of Utah's common-sense Sage-grouse management plans. Not

only is Utah's plan proactive and forward thinking, it is producing significant results for Sage-grouse populations and improving the quality of Sage-grouse habitat across the state. This investment is also addressing other serious concerns such as conifer encroachment, catastrophic wildfire, and restoring the health and productivity of Utah's public lands.

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