

SAGE GROUSE

QUARTERLY REPORT

Contract No. 146311

April 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 progress report is being provided at the end of the third quarter of the 2015-2016 contract period. As set-forth 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 being provided in addition to the 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 herein by reference. This report will provide an overview of the progress in the third quarter of the contract period which covers January 1st, 2016 to March 31st, 2016.



2,000 pages of New Federal Land-Use Plan Restrictions

Late last year, approximately 2,000 pages of new restrictions on federally managed land were proposed by the Bureau of Land Management (BLM) and U.S. Forest Service (UFS). These new land use plans are scheduled to go into effect starting in 2016.



The BLM and UFS restrictions miss the mark when it comes to the most important threats to Sage-grouse in the state. Instead, the primary emphasis of their plans is imposing new restrictions on human activity, despite the fact that human activity is projected to have a very minor impact to Sage-grouse populations across the state of Utah. These plans also threaten to undermine the foundation for a one hundred million dollar program

for habitat restoration and enhancement of Sage-grouse habitat in the state. Just as important, the restrictions threaten the funding mechanisms for the state programs that are addressing the threats of conifer encroachment, invasive cheatgrass, and catastrophic wildfire.

The State of Utah has carefully scrutinized the federal BLM and UFS plans. These federal proposals do not reflect the collaborative deci-

sion-making between the states and federal agencies for Sage-grouse conservation. They are full of conflicting, unnecessary, burdensome, and (as some have suggested) even possibly illegal mandates. They will significantly impact productivity of Utah's School Trust Lands and threaten to restrict anyone wanting to access these lands for more than casual recreation.

Impacts to Utah, Conservation, and Utah's Economy

In the last two years, Sage-grouse populations have increased 67 percent across their range. Sage-grouse populations in Utah have also grown substantially. The species is well managed by state wildlife agencies. Utah's Sage-grouse conservation plans provide important common-sense protections for Sage-grouse while also allowing responsible utilization of these landscapes for the benefit of Utahns.

The economic activity in areas associated with Sage-grouse provided critical resources for these habitat enhancement and restoration activities. Independent research by the University of Utah indicates that upwards of \$2.5 billion in economic activity occurs annually within the areas designated as "Sage-grouse habitat" in the state. The State of Utah has shown that balancing this economic productivity with Sage-grouse conservation is not only possible, but that it

can become a major incentive for conservation efforts in the state.

The Department of Interior's 2,000 pages of new federally mandated restrictions in the BLM and Forest Service land-use plans are more restrictive than an Endangered Species Act listing on Utah's public lands. The restrictions will have substantial impacts on economic productivity that is so important to citizens, families, communities, and education funding.

The State of Utah has demonstrated that Sage-grouse conservation efforts under state management properly balance economic productivity while also protecting Sage-grouse populations. Unfortunately, the same cannot be said of the newly proposed federal BLM and UFS regulations.



Upwards of \$2.5 billion in economic activity occurs annually within the areas designated as "Sage-grouse habitat" in the state.

Scope of Federally Mandated Restrictions

So just how many million acres are impacted by these proposals? There are approximately 8 million acres of Sage-grouse habitat in Utah. This includes habitat within Utah's Sage-grouse Management Areas (SGMAs) and areas of general habitat outside of SGMAs. These newly proposed federal restrictions could affect a significant percentage of this area including:

- (a) 4.7 million acres of land managed by the Bureau of Land Management and U.S. Forest Service;
- (b) 220,000 acres of Utah School and Institutional Trust Lands in SGMAs that are landlocked by federally managed land (see maps on pages 5-8); and
- (c) 553,000 acres of private and state land with an underlying federal mineral estate in Utah's SGMAs.

In total, approximately 5,473,000 acres in the state of Utah are impacted by the new federal land-use plans. This comprises 68% of all Sage-grouse priority and general habitat statewide. The threats to utilization of public land in the state of Utah from these proposals are staggering. When it is understood that \$2.5 billion in economic productivity is occurring on current Sage-grouse habitat annually, it becomes clear how much is at stake.



Landlocked State Land

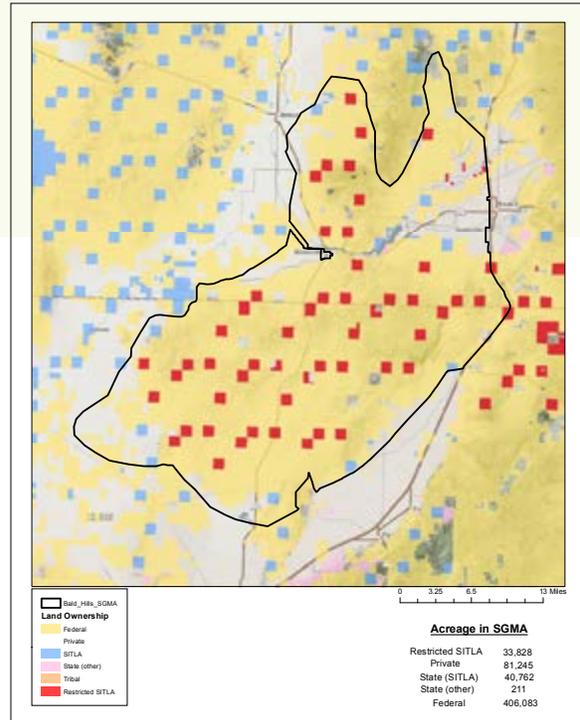
One of the most significant restrictions is to reduce or eliminate access to public land, but also to state and private land. In many of Utah's SGMA, the BLM and U.S. Forest Service lands comprise the majority of the overall acreage. State land is often in checkerboard pattern within federally managed land across these SGMA. What this means is that restrictions on access to BLM and Forest Service land can also restrict access to state and even private lands.

It is also notable that most of the state land is managed by the State Institutional and School Trust Lands Administration in order to generate revenue for education in the state of Utah. Efforts to provide extreme protections in the name of Sage-grouse threaten other important priorities within the state.

The following maps depict a breakdown, SGMA by SGMA, of areas where restricted access could impact utilization and productivity of state land within Sage-grouse habitat.

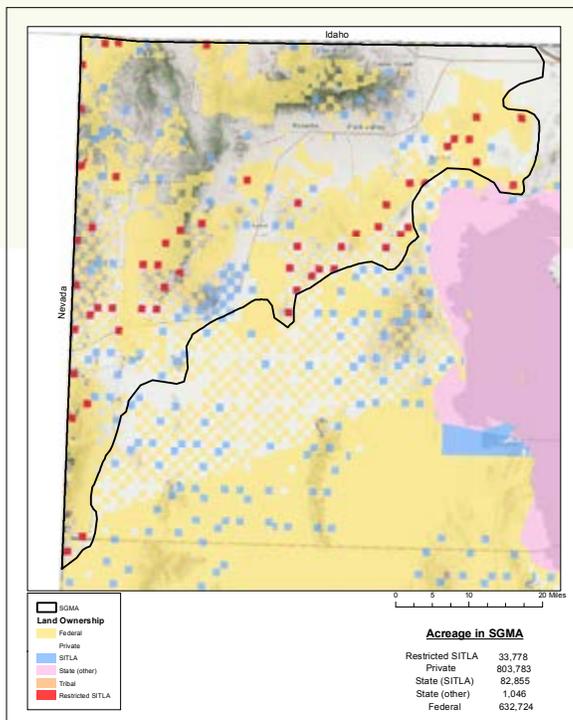
Bald Hills

Restricted Access State Land: 33,828
 Acres of Federal Land: 406,083
 Combined Total Acres: 439,911



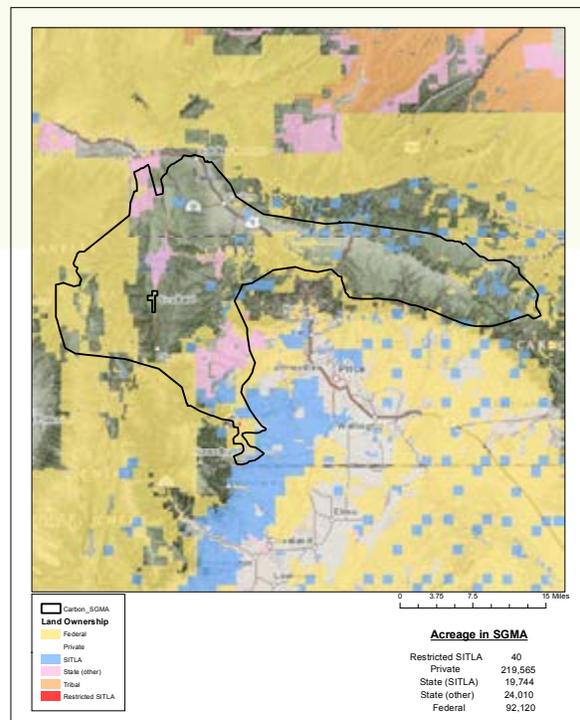
Box Elder

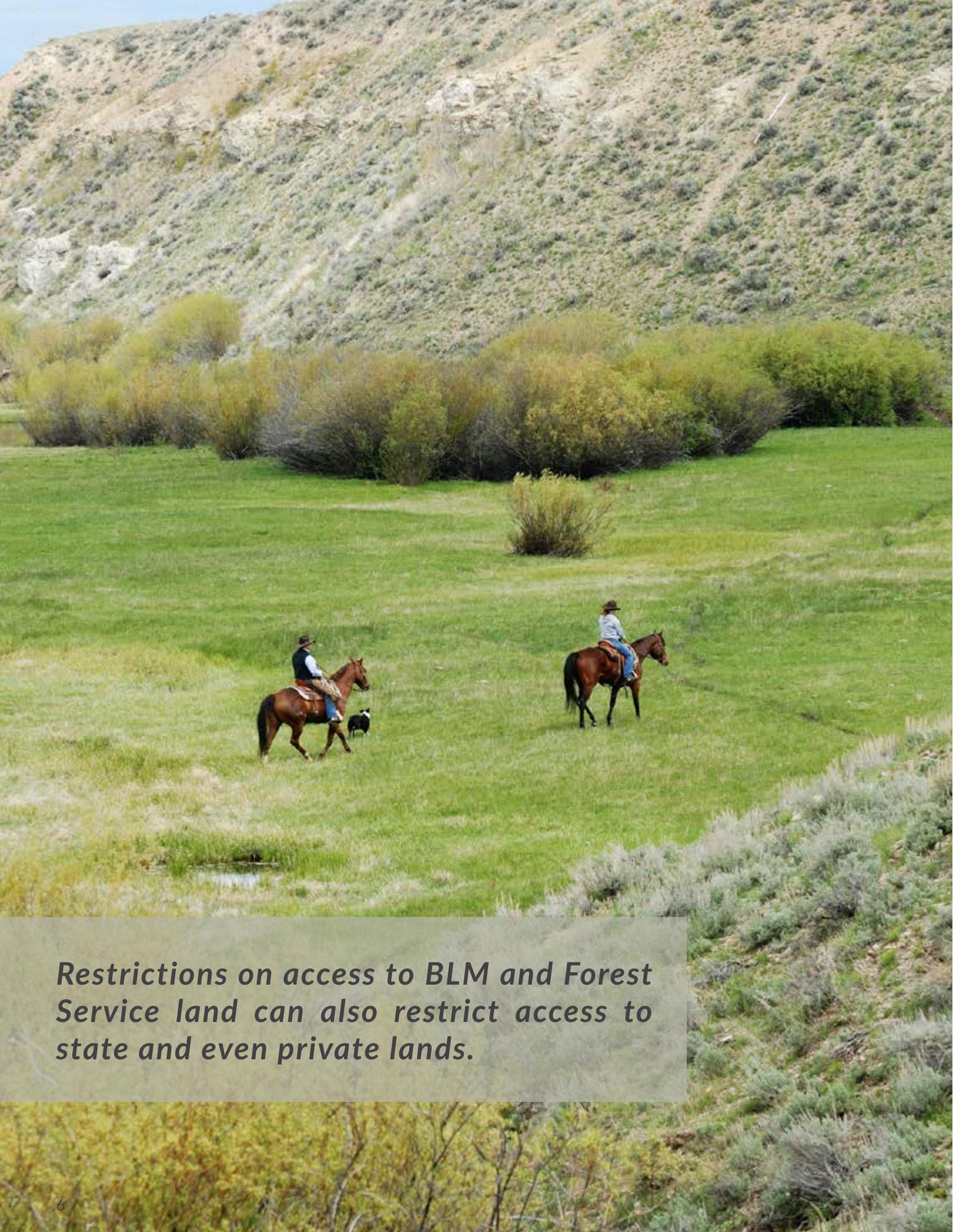
Restricted Access State Land: 33,778
 Acres of Federal Land: 632,724
 Combined Total Acres: 666,502



Carbon

Restricted Access State Land: 40
 Acres of Federal Land: 92,120
 Combined Total Acres: 92,160

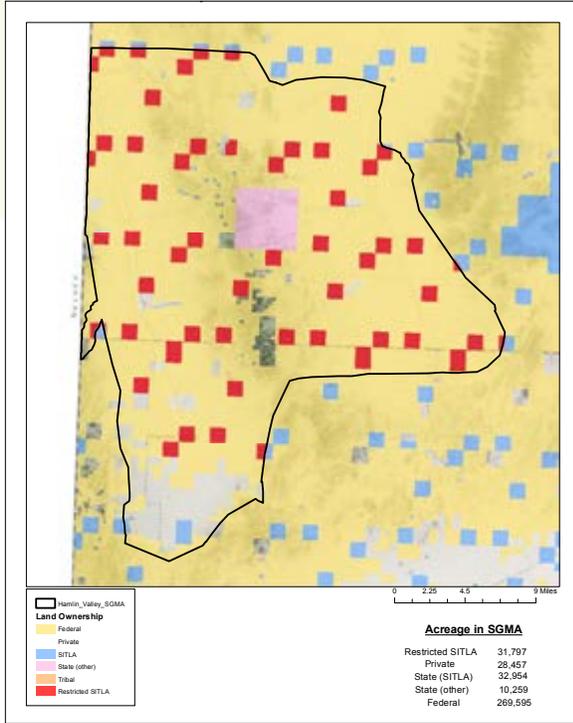




Restrictions on access to BLM and Forest Service land can also restrict access to state and even private lands.

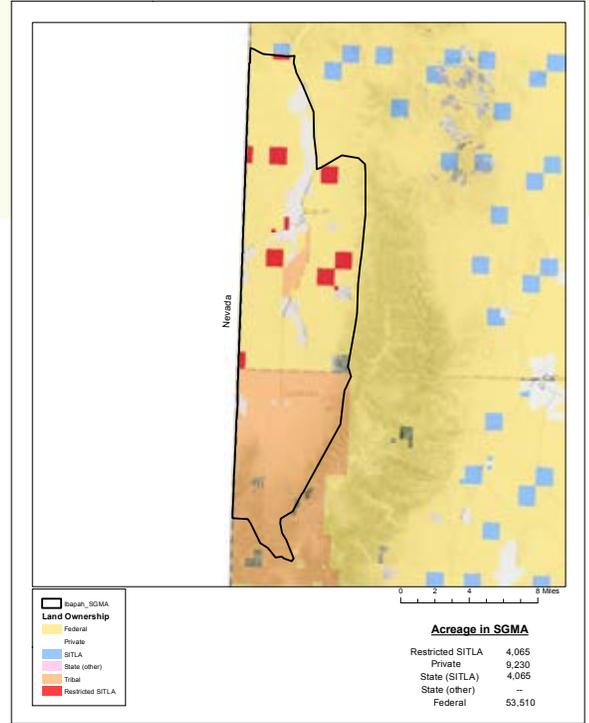
Hamlin Valley

Restricted Access State Land: 31,797
 Acres of Federal Land: 269,595
 Combined Total Acres: 301,392



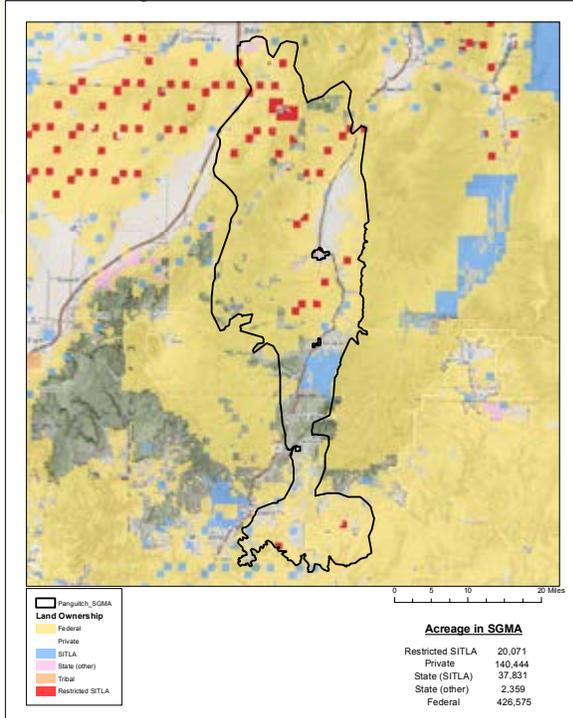
Ibapah

Restricted Access State Land: 4,065
 Acres of Federal Land: 53,510
 Combined Total Acres: 57,575



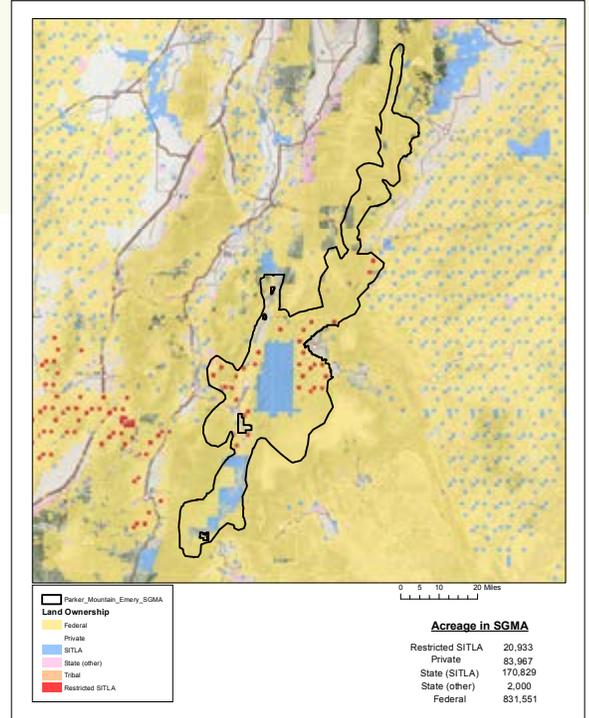
Panguitch

Restricted Access State Land: 20,071
 Acres of Federal Land: 426,575
 Combined Total Acres: 446,646



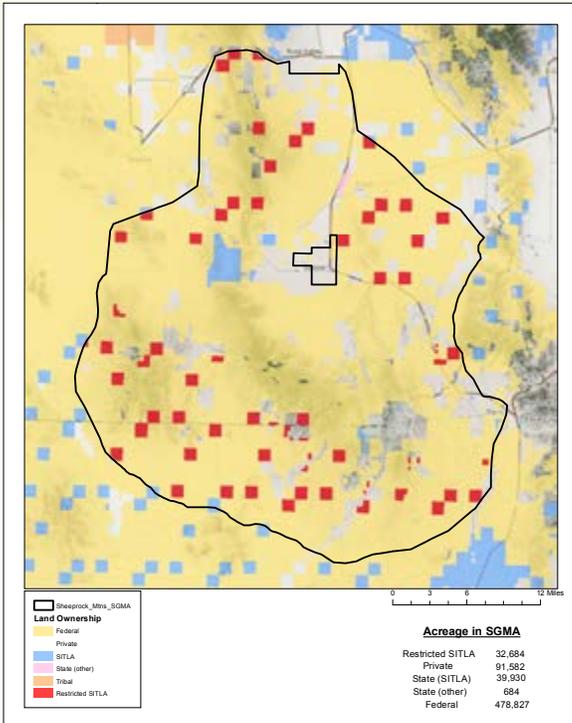
Parker Mountain-Emery

Restricted Access State Land: 20,933
 Acres of Federal Land: 831,551
 Combined Total Acres: 852,484



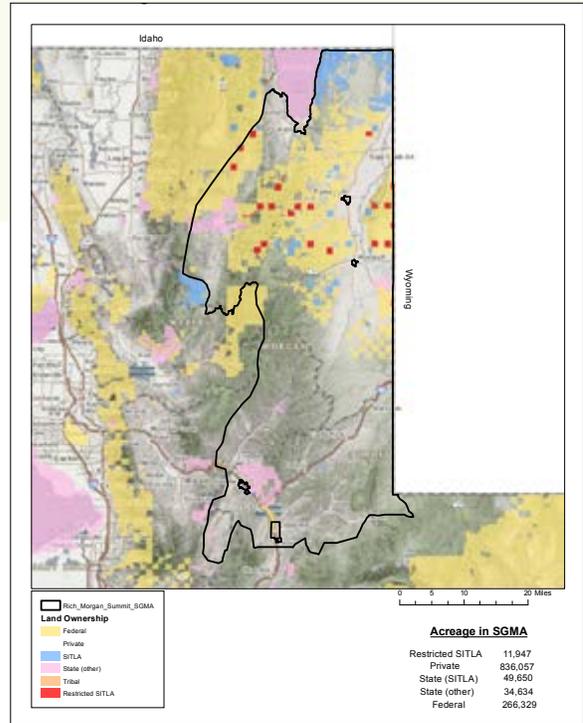
Sheeprock Mountains

Restricted Access State Land: 32,684
 Acres of Federal Land: 478,827
 Combined Total Acres: 511,511



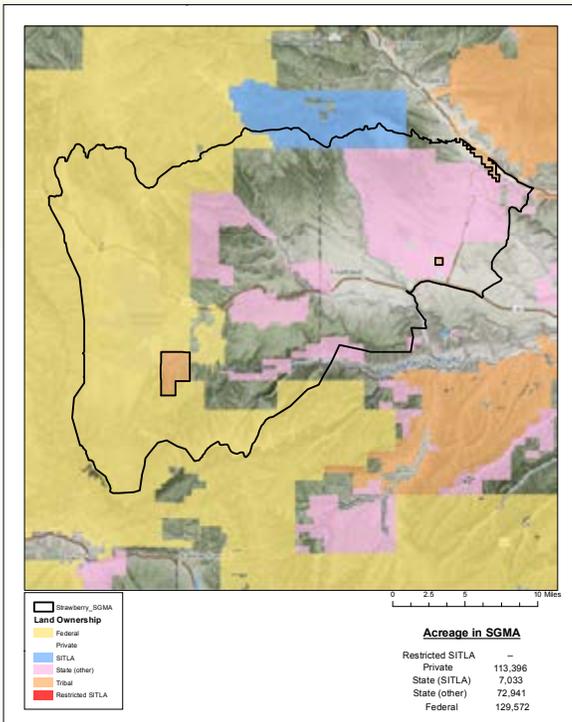
Rich-Morgan-Summit

Restricted Access State Land: 11,947
 Acres of Federal Land: 266,329
 Combined Total Acres: 278,276



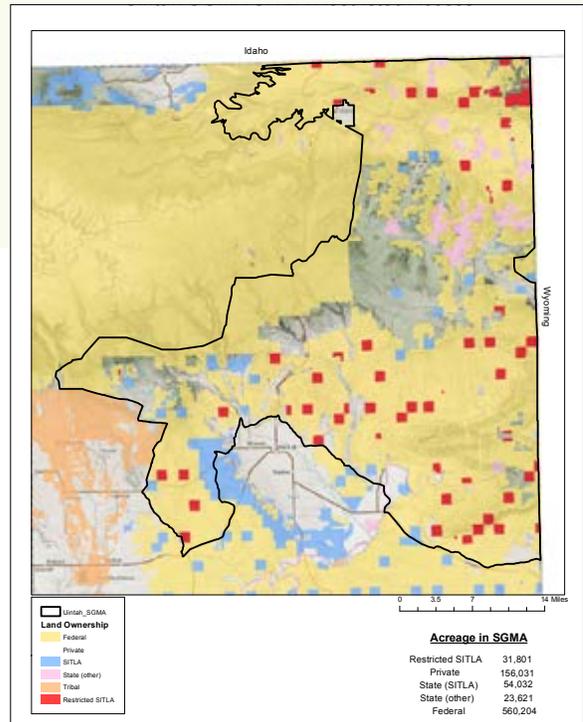
Strawberry

Restricted Access State Land: -
 Acres of Federal Land: 129,572
 Combined Total Acres: 129,572



Uintah

Restricted Access State Land: 31,801
 Acres of Federal Land: 560,204
 Combined Total Acres: 592,005



Split Estate

As previously discussed, there are approximately 553,000 acres of private and state land within Utah's SGMAs that have an underlying federal mineral estate. This is technically referred to as a "Split Estate." Split estate lands are defined in the Federal Environmental Impact Statement (FEIS) as follows:

This is the circumstance where the surface of a particular parcel of land is owned by a different party than the minerals underlying the surface. Split estates may have any combination of surface/subsurface owners: federal/state; federal/private; state/private; or percentage ownerships.

The FEIS more explicitly discusses the management of the split estate. It requires that, where the federal government manages the mineral estate in either priority or general Sage-grouse habitat and the

surface is non-federally owned, the same stipulations, conditions of approval, conservation measures, and required design features would be applied if the mineral estate is developed. These conservation measures would apply "to the maximum extent permissible under existing authorities, and in coordination with the land owner." FEIS at 2-38.

This approach is carried over from the FEIS to the Approved RMP Amendments. Management Action MR-24 repeats the language found in the FEIS. It also repeats the FEIS's instructions in the reverse situation where the federal government owns the surface and the minerals are in non-federal ownership in either priority or general habitat. In that situation, the agencies would apply "appropriate surface use conditions of





approval, stipulations, and mineral RDFs through [right-of-way] grants or other surface management instruments, to the maximum extent permissible under existing authorities, in coordination with the mineral estate owner/lessee.” See Approved RMP Amendment at 2-31.

The bottom line is that in any split estate, regardless of whether the dominant mineral estate is owned by the federal government or a non-federal entity, the BLM and the Forest Service will use their authority to restrict surface activities consistent with Sage-grouse prescriptions “to the maximum extent permissible under existing authorities.”

The extent to which an owner of the dominant mineral estate can reasonably control and

affect the servient surface estate is beyond the scope of this report, but the limits of that authority could well be tested when BLM imposes Sage-grouse restrictions on surface-estate owners based on development of the federal minerals. The degree to which the mineral estate owner can require a net conservation gain on the surface, as opposed to the mineral estate owner’s duty to avoid unnecessary damage to the surface estate, is an enormous issue in this context and one that could very likely be researched subsequently in the context of a surface owner’s complaint about the federal government’s overreach. Stated differently, it is unclear to what extent the BLM can require the surface owner to improve Sage-grouse habitat even though those improvements only apply on the surface where the BLM has no property interests.

Conclusion

Thousands of pages of new federally mandated restrictions are not the best solution for Sage-grouse conservation or the hard working people of Utah. The State has shown that long-term conservation of Sage-grouse is possible without shutting down responsible economic activity within conservation areas. The State's proactive, common-sense solutions are working for Sage-grouse in Utah.

The partnerships of those who live, work, and recreate in these areas are vital to the programs that are addressing the most important needs of Sage-grouse. Heavy-handed federal restrictions threaten these partnerships and the programs that are working for long-term Sage-grouse conservation in the state of Utah. These programs have restored and enhanced over 1 million acres of habitat in Utah.

These conservation efforts not only are protecting and restoring habitat for Sage-grouse, but also improving the carrying capacity of Sage-grouse in these areas. Additionally, Utah's programs are addressing other important needs in the state such as the threat of catastrophic wildfire, invasive plant encroachment, and improving the quality of habitat for other wildlife species.



Utah's Watershed Restoration Initiative is restoring use of high quality nesting areas for Sage-grouse.



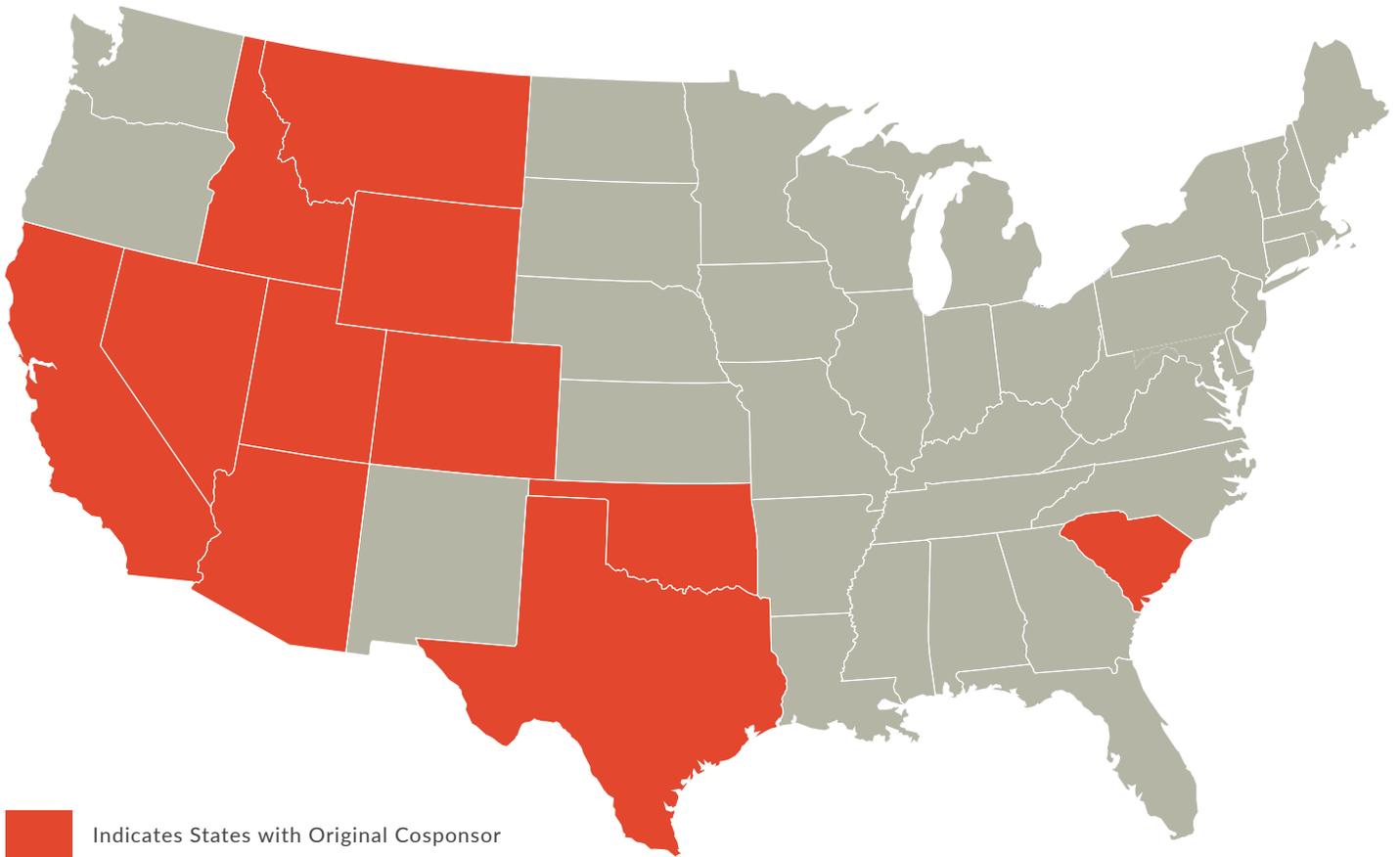
Congress

Significant progress continues on our efforts in Congress. On March 15, 2016, Congressman Rob Bishop and 14 other original co-sponsors filed a bill, H.R. 4739 entitled, “Greater Sage Grouse Protection and Recovery Act of 2016.” The additional co-sponsors include:

Representative Mike Simpson (R) Idaho,
Representative Cynthia Lummis (R) Wyoming,
Representative Mark Amodei (R) Nevada,
Representative Jim Brindestine (R) Oklahoma,
Representative Randy Weber (R) Texas,
Representative Paul Gosar (R) Arizona,
Representative Jeff Duncan (R) South Carolina,

Representative Doug Lamborn (R) Colorado,
Representative L. Chris Stewart (R) Utah,
Representative Crescent Hardy (R) Nevada,
Representative Ryan Zinke (R) Montana,
Representative Will Hurd (R) Texas,
Representative Paul Cook (R) California, and
Representative Jason Chaffetz (R) Utah.

States With an Original Cosponsor of H.R. 4739



“This amendment balances conservation with national security...There are also multiple examples already of state plans which are effectively managing and conserving sage grouse populations. We need to give time for these state plans, orchestrated by folks closest to the land and to the issue at hand, to be fully implemented and to accomplish their goal of protecting this bird.”

H.R. 4739, Greater Sage Grouse Protection and Recovery Act of 2016, protects state management of Sage-grouse for a period of 10-years and state conservation plans for the species. The bill reads as follows:

A BILL

To provide for the conservation and preservation of the Greater Sage Grouse by facilitating State recovery plans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Greater Sage Grouse Protection and Recovery Act of 2016'.

SEC. 2. PROTECTION AND RECOVERY OF GREATER SAGE GROUSE.

(a) Definitions- In this section:

(1) FEDERAL RESOURCE MANAGEMENT PLAN- The term 'Federal resource management plan' means--

(A) a land use plan prepared by the Bureau of Land Management for public lands pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712); or

(B) a land and resource management plan prepared by the Forest Service for National Forest System lands pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604).

(2) GREATER SAGE GROUSE- The term 'Greater Sage Grouse' means a sage grouse of the species *Centrocercus urophasianus*.

(3) STATE MANAGEMENT PLAN- The term 'State management plan' means a State-approved plan for the protection and recovery of the Greater Sage Grouse.

(b) Purpose- The purpose of this section is--

(1) to facilitate implementation of State management plans over a period of multiple, consecutive Greater Sage Grouse life cycles; and

(2) to demonstrate the efficacy of the State management plans for the protection and recovery of the Greater Sage Grouse.

(c) Delay in Making Endangered Species Act of 1973 Finding-

(1) DELAY REQUIRED- In the case of any State with a State management plan, the Secretary of the Interior may not make a finding under clause (i), (ii), or (iii) of section 4(b)(3)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)(B)) with respect to the Greater Sage Grouse in that State before September 30, 2026.

(2) EFFECT ON OTHER LAWS- The delay imposed by paragraph (1) is, and shall remain, effective without regard to any other statute, regulation, court order, legal settlement, or any other provision of law or in equity.

(3) EFFECT ON CONSERVATION STATUS- Until the date specified in paragraph (1), the conservation status of the Greater Sage Grouse shall remain not warranted for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) Coordination of Federal Land Management and State Management Plans-

(1) PROHIBITION ON WITHDRAWALS AND MODIFICATIONS OF FEDERAL RESOURCE MANAGEMENT PLANS- In order to foster coordination between a State management plan and Federal resource management plans that affect



the Greater Sage Grouse, upon notification by the Governor of a State with a State management plan, the Secretary of the Interior and the Secretary of Agriculture, as applicable, may not exercise authority under section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) to make, modify, or extend any withdrawal, nor amend or otherwise modify any Federal resource management plan applicable to Federal land in the State, in a manner inconsistent with the State management plan for a period, to be specified by the Governor in the notification, of at least five years beginning on the date of the notification.

(2) RETROACTIVE EFFECT- In the case of any State that provides notification under paragraph (1), if any withdrawal was made, modified, or extended or if any amendment or modification of a Federal resource management plan applicable to Federal lands in the State was issued during the three-year period preceding the date of the notification and the withdrawal, amendment, or modification altered management of the Greater Sage Grouse or its habitat, implementation and operation of the withdrawal, amendment, or modification shall be stayed to the extent that the withdrawal, amendment, or modification is inconsistent with the State management plan. The Federal resource management plan, as in effect immediately before the amendment or modification, shall apply instead with respect to management of the Greater Sage Grouse and its habitat, to the extent consistent with the State management plan.

(3) DETERMINATION OF INCONSISTENCY- Any disagreement regarding whether a withdrawal, or an amendment or other modification of a Federal resource management plan, is inconsistent with a State management plan shall be resolved by the Governor of the affected State.

(e) Relation to National Environmental Policy Act of 1969- With regard to any major Federal action consistent with a State management plan, any findings, analyses, or conclusions regarding the Greater Sage Grouse or its habitat under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not have a preclusive effect on the approval or implementation of the major Federal action in that State.

(f) Reporting Requirement- Not later than one year after the date of the enactment of this Act and annually thereafter through 2026, the Secretary of the Interior and the Secretary of Agriculture shall jointly submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the Secretaries' implementation and effectiveness of systems to monitor the status of Greater Sage Grouse on Federal lands under their jurisdiction.

(g) Judicial Review- Notwithstanding any other provision of statute or regulation, the requirements and implementation of this section, including determinations made under subsection (d)(3), are not subject to judicial review.



This bill provides important protections for state wildlife management of Sage-grouse by:

1. *Ensuring that new state management plans are the primary mechanism for management of the species. This follows decades of precedent for non-endangered species;*
2. *It provides a 10-year period of time for state Sage-grouse management plans to demonstrate their efficacy; and*
3. *It provides a litigation safe harbor during the 10-year period so plans can work without further interference from repeated lawsuits filed by anti-use special interests groups.*

The last two years Sage-grouse populations have increased 67 percent across their range. The species is well protected by state wildlife agencies. There have been three determinations not to list the bird as an endangered or threatened species in the past 10 years. A fourth decision in just 15 years is not needed. The bill also addresses repeated lawsuits filed by activists that are creating challenges to state management of Sage-grouse.

This bill restores the original intent of the Endangered Species Act for non-listed species and provides a balanced approach to protecting state wildlife protections for Greater Sage-grouse.

Conclusion

In 2016, highly controversial BLM management plans will go into effect. The proposed restrictions while having major impact on jobs, productivity, families, and the state's economy, provide little benefit to Sage-grouse. In fact, the proposals threaten the economic foundation for Sage-grouse conservation statewide.

We are encouraged by Congress's commitment to protect Utah's common-sense Sage-grouse management plans. The provisions of H.R. 4739 provide important protections for state management of Sage-grouse in Utah and across the West. This also allows state management plans to continue to demonstrate their efficacy for conservation of Sage-grouse. We anticipate significant interest in Sage-grouse on must-pass legislation during the current Congress





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