

# SAGE GROUSE

---

QUARTERLY REPORT

*Contract No. 146311*

*October 2016*

---



**Stag Consulting**



# SAGE GROUSE

———— QUARTERLY REPORT ————

*Contract No. 146311*

*October 2016*

**Stag Consulting**



# Introduction

---

This report is being 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 first quarter of the 2016-2017 contract period. As set forth in Stag Consulting’s contract proposal, Stag Consulting has worked extensively with BigGame 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 first quarter of the current contract period which covers July 1, 2016 to September 30, 2016.





# New Federal Restrictions Move Forward

---

*In previous quarterly progress reports, there has been substantial discussion of approximately 2,000 pages of new restrictions on federally managed land in Utah and the Western United States by the Bureau of Land Management (BLM) and U.S. Forest Service (UFS). These new plans are now starting to move swiftly toward finalization.*



In an Associated Press Article dated September 2nd, 2016, Dan Elliot reports, “Federal Land Managers issued guidelines Thursday for restricting energy development, livestock grazing and other activities on public land in the West to protect the greater sage grouse, part of a broad effort to save the bird without resorting to listing it as an endangered species.”

The article quotes Congressman Rob Bishop explaining the disappointment with the BLM land management plans, “...Rep. Rob Bishop, R-Utah, chairman of the House Committee on Natural Resources, denounced the guidelines...These plans, written as if sage grouse are listed, are proof it was an underhanded, de facto listing scheme.”

The BLM and USF restrictions miss the mark when it comes to the most important needs of Sage-grouse in the state. Instead, the primary emphasis of these plans is imposing new restrictions on human activity, despite the fact that very little activity is projected to occur in Utah’s priority Sage-grouse habitat. The impacts to Sage-grouse populations across the state are very limited from human activity. On the other hand, the plans do little to move the ball forward on addressing challenges from conifer encroachment, wildfire, and invasive plant species which predominantly are occurring on federally managed land. Just as concerning, these BLM and UFS plans threaten to undermine the foundation for a one-hundred million dollar state program which is addressing conifer encroachment, wildlife, and

invasive plant species through a cutting edge habitat restoration and enhancement of hundreds of thousands of acres.

The state of Utah has carefully scrutinized the federal BLM and USF plans. These federal proposals do not reflect the collaborative decision-making between the states and federal agencies for Sage-grouse conservation. They are full of conflicting, unnecessary, burdensome and (as some have suggested) possibly even illegal mandates. They will have significant impacts on productivity of Utah's School Trust Lands and threaten to restrict anyone wanting access to these lands for more than casual recreation.

### Scope of Federally Mandated Restrictions

So just how many acres are impacted by these proposals in the state? There are approximately 8 million acres of Sage-grouse habitat in Utah. This includes habitat within Utah's Sage-grouse Management Areas and areas of general habitat outside of SGMAs. These federal restrictions 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; and
- (c) 553,00 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 within the state of Utah from these proposals are staggering. When it is understood that \$2.5 billion in economic productivity is occurring in current Sage-grouse habitat annually, it becomes clear how much is at stake.

### Economic Impacts

State conservation plans balance Sage-grouse conservation with the needs of the citizens of these states using priority habitat such as Utah's Sage-grouse Management Areas (SGMAs). Utah's SGMAs protect the highest percentage of Sage-grouse (94%) and the highest percentage of Sage-grouse habitat

of all western states. Unfortunately, the newly proposed federal resource management plan restrictions allow federal land managers to treat general habitat essentially the same as priority habitat when it comes to restricting economic development. Instead of balancing conservation needs with needs of Utah and other western states, these plans maximize impacts to economic activity even where there is little or no benefit to Sage-grouse conservation.

How important is this to the state of Utah? A recent report indicates that over \$2.5 billion in economic activity occurs annually within general sage-grouse habitat within the state of Utah. These areas comprise just 6% of Sage-grouse habitat in the state

of Utah and only six percent of the total Sage-grouse population in the state. These are also areas where marginal Sage-grouse habitat means not only fewer birds, but also correspond with areas where repeated conservation efforts have produced limited results. The same investment in Sage-grouse conservation in priority areas can produce significantly greater conservation lift, meaning more useable habitat for the birds and increased bird populations statewide. This “core-area” strategy is the preferred methodology for long-term sage-grouse success by both habitat experts and Sage-grouse biologists. The state of Utah is showing that balancing economic activity with Sage-grouse conservation is not only

possible, but that it can become a major incentive for conservation efforts both now and in the future.

Utah is demonstrating that Sage-grouse conservation efforts under state management are working. Sage-grouse populations in the state continue to increase. Habitat restoration and enhancement is happening with tens of thousands of acres being restored or enhanced annually. It is possible to properly balance economic productivity while also protecting Sage-grouse populations under state management. Unfortunately, the same cannot be said of the 2,000 pages of new federally mandated restrictions in the BLM and Forest Service land-use plans.

**Upwards of \$2.5 billion in economic activity occurs annually within the areas designated as “Sage-grouse habitat” in Utah.**



# Could Federal Plans be Used to Undermine the Rights of Sportsmen?

## Access

Reducing mule deer, elk, and pronghorn population numbers is not the only way hunter's rights will be impacted by these new federal Sage-grouse plans. One of the most insidious impacts will be to reduce access to sportsmen. We'll use Utah as a case study in how significant restrictions on access could impact sportsmen.

## Overview of Hunting, Fishing and Outdoor

An estimated 26.5 percent of hunters afield in Utah during 2012 entered the FWS current range of Greater Sage-grouse. Nearly one-third of fishing trips in 2011 were to destinations in FWS current range. Lesser shares of hunters afield and fishing trips were to SGMAs (21.0 percent combined) or historical-only range (16.9 percent). Hunting and

fishing expenditures in SGMAs were \$139 million, and spending in historical-only range was \$112 million, both with similar shares from nonresidents. Total expenditures in FWS current range generated \$124 million in earnings from 4,180 jobs and \$243 million in value-added or gross state product.

## Road Closures/Lost Access

Closing roads is one way access restrictions are accomplished. Road closures are already being mandated on 16 million acres of "Sage-grouse Focal Areas" across the Western United States by U.S. Fish and Wildlife Service, the BLM, and the U.S. Forest Service.

Lawsuits are already being utilized by activist organizations to close access roads for sportsmen. In fact, this has been happening for the past 20

**Summary of Economic Contributions of Activities in Greater Sage-grouse Range in Utah, 2014**  
(Dollar amounts in millions)

Activity	FWS CURRENT RANGE			HISTORICAL-ONLY RANGE			SGMAs		
	Jobs	Earnings	Value Added	Jobs	Earnings	Value Added	Jobs	Earnings	Value Added
Oil and Gas Production	4,415	\$366.5	\$1,584.0	7,173	\$595.5	\$2,250.7	205	\$17.0	\$46.2
Coal Mining	2,394	\$132.0	\$433.3	-	-	-	-	-	-
Metals and Minerals Mining	932	\$35.3	\$85.3	845	\$32.0	\$77.4	826	\$31.3	\$75.6
Renewable Energy Generation	138	\$138.1	\$138.1	103	\$5.1	\$12.5	-	-	-
Cattle and Sheep Grazing	1,012	\$34.6	\$52.9	564	\$18.8	\$28.3	831	\$27.9	\$42.3
Hunting and Fishing	4,180	\$124.4	\$243.1	2,412	\$71.8	\$140.4	2,998	\$89.2	\$174.3
<b>Total</b>	<b>13,071</b>	<b>\$830.8</b>	<b>\$2,536.6</b>	<b>11,097</b>	<b>\$723.2</b>	<b>\$2,509.4</b>	<b>4,861</b>	<b>\$165.4</b>	<b>\$338.5</b>

Source: BEBR analysis.



years. These lawsuits to close “unimproved roads” have been filed by a variety of litigants. In the past 4 years, these lawsuits have become rampant. The same litigants in these road closure lawsuits are many of the groups pushing for 2,000 pages of restrictions in the name of Sage-grouse. Here are a few of these groups:

- National Audubon Society*
- National Wildlife Federation*
- Natural Resource Defense Council*
- Wilderness Society*
- Western Watersheds Project*
- Wildearth Guardians*
- Center for Biodiversity*

How much road are we talking? Using Utah again as a case study, there are approximately 9,000 miles of “unimproved” roads in Sage-grouse habitat throughout Utah. How much could this impact the rights of sportsmen in terms of access? Considering the much larger swaths of Sage-grouse habitat in Nevada, Idaho, Wyoming, Montana, and Oregon, the overall impact to sportsmen could exceed 100,000 miles of access roads.

**“An estimated 26.5% of hunters afield in Utah during 2012 entered the FWS current range of Greater Sage-grouse.”**

# Could Federal Plans be used to Decrease Mule Deer Populations?

---

Mule deer populations have been gradually declining over the past 40 years across the West. Cumulative population declines over the past 40 years have been extensive. This has been an area of significant concern for sportsmen. So how will these 2,000 pages of new restrictions impact mule deer populations? Seasonal Sage-grouse populations overlap with mule deer populations by as much as 91%. These are some of the most important mule deer areas to hunters in terms of mule deer population numbers, tag allocations, and hunting opportunity in the country. It is not limited to mule deer either. Sage-grouse also inhabit prime hunting areas for pronghorn and Rocky Mountain Elk.

Considering the huge area of Sage-grouse habitat, 2,000 pages of new restrictions proposed by Bureau of Land Management, the U.S. Forest Service, and the U.S. Fish and Wildlife Service could have significant impacts on wildlife and hunting across much of the Mountain West. Just how much impact could these new restrictions have on mule deer populations? A review of the federal Sage-grouse record from U.S. Fish and Wildlife Service and other Federal agencies related

to Sage-grouse is insightful. In fact, the Federal record all but paves the way for future mandates and judicial activism to further reduce mule deer and other wild ungulate populations. Consider the following quotes:

*"...despite decreased habitat availability, elk and mule deer populations are currently higher than pre-European estimates."*

*"Elk and mule deer browse sagebrush during the winter and can cause mortality to small patches of sagebrush from heavy winter use."*

*"...we do know that grazing can have negative impacts to sagebrush and consequently to sage-grouse at local scales...Given the widespread nature of grazing, the potential for population-level impacts cannot be ignored."*

These official pronouncements open the door to lawsuits by anti-sportsmen organizations to reduce mule deer, elk and other ungulate populations in order to "protect Sage-grouse" and their "obligate sagebrush plant communities." It is no surprise that many of the same anti-sportsmen activist organizations that have been behind exploding



wolf numbers and the commensurate imploding elk and moose population numbers, are also huge proponents of these new BLM management plans. A few of these groups include:

*Defenders of Wildlife*  
*The Center for Biodiversity*  
*The U.S. Humane Society*  
*Earth Justice*  
*Sierra Club*  
*WildEarth Guardians*  
*Wildlands Network*  
*Western Watersheds Project*  
*Born Free USA*  
*The Endangered Species Coalition*

It is just as likely, that these groups will use this new treasure trove of regulation to file round after round of lawsuits targeting sportsmen, ungulate populations, livestock producers, and other productive uses in Sage-grouse habitat in the coming decades. A memo written by Bill Myers, former top solicitor for the U.S. Department of Interior, and partner at the western law firm of Holland & Hart explains that litigation is not only likely, but could easily lead to mandates for further reductions of mule deer, elk and other ungulates. It is just as likely that these mandates will be accomplished by blocking management of predators including wolves and coyotes.

# Sportsmen, Conservation Organizations, Livestock Groups, and Western Leaders Support Congressional Action

---

One high-level thought leader, activist, and former head solicitor in the Department of Interior during the Clinton Administration was straightforward in his comments during a Congressional hearing on the Endangered Species Act. John Leshy was surprisingly candid noting that the “federal government and the Endangered Species Act” “provides the club” to force states to do what they want them to do.

Eastman’s Hunting Journal was equally candid in their assessment of how Sage-grouse will be utilized to attack hunting, access, and wildlife:

*Endangered Species Act (ESA) is being used as a weapon to potentially destroy our hunting heritage... the sage grouse is the next piece in the puzzle for the feds and the animal rights groups to further limit*

*our access and sport. If you look at the gray wolf and grizzly bear recovery area map, and overlay the proposed sage grouse recovery area you can see they fit together like a glove. The sage grouse habitat area will encompass most of what is thought to be some of the best mule deer habitat on the planet. Make no mistake about it, listing the sage grouse as an endangered species would have disastrous affects on western hunters and recreationalists. This “power grab” of our precious wildlife resources is nothing more than politics as usual, pure and simple.*

A letter from over 200 sportsmen, conservation groups, and leaders from Western Sage-grouse states was also sent to leaders in Congress in support of inclusion of Sage-grouse language in must pass legislation before Congress. See Figure 1 (next 3 pages) for the text and signees of the letter.



Figure 1. Letter to leaders in Congress supporting inclusion of Sage-grouse language

September 21, 2016

Dear Speaker Ryan,

As Sportsmen, Conservationists, Livestock Producers, and State Leaders we are writing to request that you include the Sage-grouse language set forth in H.R. 4793 as part of the 2017 National Defense Authorization legislation before Congress. These provisions protect out state ability to implement their Greater Sage-grouse conservation planning efforts and remedy unnecessary restrictions to the highly controversial and unnecessarily problematic Resource Management Plan Amendments (RMPs) implemented by the Bureau of Land Management and U.S. Forest Service.

While some special interest groups oppose sage-grouse protections of created by Western State's sage-grouse conservation efforts, we strongly support the collaborative efforts by broad coalitions in our state's to protect sage-grouse using balanced common-sense conservation efforts and address the needs of our citizens. These conservation measures are working. In fact, Sage-grouse total range-wide breeding populations have increased by 63% over the last two years with a total breeding population of 424,645 birds across 11-Western States.

Newly proposed BLM and Forest service plans threaten these conservation efforts. With a few exceptions, the new federal RMP amendments far exceed the common-sense measures developed by Western States. Notwithstanding the success of state conservation efforts, instead of collaboration, federal regulatory agencies:

- Refused to even include Western States Greater Sage-Grouse Conservation Plan in the federal alternatives,
- Implemented many excessive restrictions of access to use of public land; and
- Summarily dismissed Western State's requests consistency review.

Environmental activists are already threatening new rounds of litigation to challenge the most recent decision not to list the Greater Sage-grouse. In point of fact, this was the third listing determination in just the past decade. Providing a litigation safe-harbor through the appropriations process will allow states to implement their plans in ways that responsibly address Sage-grouse conservation concerns.

In conclusion, we strongly urge inclusion of the Sage-grouse language set forth in H.R. 4793 that protect state management and conservation efforts as part of the 2017 National Defense Authorization legislation before Congress. These provisions allow Western States to correct punitive features of the proposed RMPs and address the threat of unnecessary and unhelpful litigation by special interest activists. These important provisions protect the responsible and common-sense conservation measures by Western States.

Signed:

*(Signees listed on the following two pages)*

**Figure 1.(Cont.) Letter to leaders in Congress supporting inclusion of Sage-grouse language**

BigGame Forever	Colorado Mule Deer Association	Pateros Sportsman's Club
The Hunters Heritage Council	Colorado Outfitters Association	Paul Bunyan Rifle and Sportsmen's Club
Washingtonians for Wildlife Conservation	Colorado Muzzleloaders Association	Pheasants Forever Chapter #257
Citizens for Responsible Wildlife Management	Colorado BigGame Forever	Pierce County Sportsmen's Council
Sportsmen for Fish and Wildlife	Colorado Trappers Association	Richland Rod & Gun Club
Utah Association of Counties	Colorado Predator Hunters Association	Ruffed Grouse Society
Utah Farm Bureau	Montana Guides and Outfitters Assn.	Skagit Sportsman and Training Assn.
Utah Cattleman's	Montana Sportsmen for Fish & Wildlife	Tacoma Sportsmen's Club
Utah Bowman's Association	Montana BigGame Forever	Vashon Sportsmen's Club
Cooperative Wildlife Mgmt. Units Assn.	Wyoming BigGame Forever	Washington Falconer's Association
Oregon Outdoor Council	Teton County-WY BGF	Washington Game Fowl Breeders Association
Oregon Hunters Association	Park County-WY BGF	Washington State Bowhunters
National Wild Turkey Federation - South Sound Longbeards	Boulder County BGF-Colorado	Washington State Hound Council
Columbia Basin SCI Chapter	Moffat County BGF-Colorado	Washington Muzzleloaders Association
Nevada Assn. of Conservation Districts	Mesa County BGF-Colorado	Washington State Trappers Association
Nevada Farm Bureau Federation	Centennial Aurora BGF-Colorado	Wenatchee Sportsmen's Association
Nevada Woolgrowers Association	Weld County BGF-Colorado	Washington Waterfowl Association
Nevada Cattleman's Association	Gunnison County BGF-Colorado	Wildlife Committee of Washington
Nevada PJ Partnership	Safari Club International, the Inland Empire	Oregon United Sporting Dogs Assn.
Nevada Mineral Resource Alliance	Safari Club International, Central WA Chapter	Oregon Safari Club International
Oregon FNAWS	Inland Northwest Wildlife Council	Oregon Trappers Association
Oregon Rocky Mountain Elk Foundation	Northwest Chapter SCI	Oregon Falconers Association
Extreme Elk Magazine	SW Washington Chapter SCI	Benchmark
Colorado Outfitters Association	Seattle-Puget Sound Chapter SCI	Double U Hunting Supply
Washington for Wildlife	Seattle Sportsmen's Conservation Foundation, and many more.	Oregon Pack Works
Leupold	Borderline Bassin' Contenders	HEVI Shot
Eastman's Hunting Journals	Capitol City Rifle/Pistol	HECS Stealthscreen
Speaker Scott Bedke-ID House of Reps.	Cascade Mountain Men	Bullseye Camera Systems
Brad Little-ID Lieutenant Governor	Cascade Tree Hound Club	Elk101.com
Senator Bert Brackett-ID State Senate	Cedar River Bowmen	NW Predator Hunters
Rep. Marc Gibbs-ID House of Reps.	Edison Sportsmen's Club	Oregon Duck Hunters
COM Jerry Hoagland-Owyhee Co., ID	KBH Archers	S2 Calls
Idaho Farm Bureau	Kittitas County Field & Stream	HuntonXMaps
Idaho Mining Association	NW Field Trial & Hound Association	Dominic Aiello
Idaho Public Lands Council	North Flight Waterfowl	Dr. John Menke (Professor Range Ecologist retired)
CO Rep. J Paul Brown	Northwest Sportsman's Club	N-4 Grazing Board
CO Senator Ray Scott	Okanogan Hound Club	Nevada BigGame Forever
CO Rep. Yuelin Willet	Pacific Flyway	Lincoln County Wildlife Advisory Board

**Figure 1.(Cont.) Letter to leaders in Congress supporting inclusion of Sage-grouse language**

Buckskin National Gold Mine	Pete Paris	123GO
Eureka County Natural Resource Commission	Ron Cerri-Orovada, Nevada	Maricopa County-BGF Arizona
Senator Don Gustavson-NV Chairman Natural Resources	Kade Lee-Lincoln County, BGF	Scottsdale Chapter-BGF Arizona
Senator Pete Goicoechea-NV Senate District 19	John Caviglia-White Pine County BGF	Gila County-BGF Arizona
Assemblyman John Ellison-NV District 33	Bruce Allen-Clark County BGF	Yavapai County-BGF Arizona
Assemblyman Ira Hansen-NV District 32	Eureka County Conservation District	Navajo County-BGF Arizona
COM Demar Dahl-Elko County	Brenda Richards-Murphy, Idaho	Cochise County-BGF Arizona
COM Julian Goicoechea-Eureka County	Richard Savage-Savage Cattle	Graham County-Bgf Arizona
COM Kevin S. Phillips-Lincoln County	John Faulkner-Faulkner Land & Livestock	Montana Trappers Association
J. Goicoechea-Nevada Land Action Association	Bill Baker-Baker Environmental Consulting	Wyoming Trappers Association
John Uhalde-Ely Nevada	John Biar-Western Rangeland Consulting Services	National Trappers Association
Bevan Lister-8 Mile Farms	David Little-Little Enterprises	Fur Takers of America
David Stix-Stix Livestock	Red Eagle Technologies-Alabama	Virginia Trappers Association
Dan Crowell-Eureka Veterinary Service	Malihini Sportfishing-California	Backwater Enterprises LLC Iowa
Jerry Sestanovich-Sestanovich Hay & Cattle	Sedona Web Development- Utah	North Carolina Trappers Association
David A. Baker-Baker Ranches	Arizona BigGame Forever	Ohio State Trappers Association
S. Wallace Slough-Quinn River Crossing Ranch	Arizona Deer Association	Alabama Trappers Association
Robert McDougal-Nevada Nile Ranch	Arizona Big Game Super Raffle	Iowa River Wildlife Control
Tony and Nancy Lesperance-Liberty Land and Livestock	Arizona Trappers Association	Indiana State Trappers Association
Norman Frey-Fallon Nevada	Southwest Fur Harvesters	Flood Creek Services LLC Oregon
Lura Weaver-Lyon County Nevada	Western Outdoor Times	Georgia Trappers Association
Robert and Cassie Mason-Round Mountain, NV	Arizona B.A.S.S. Nation	Vermont Trappers Association
Carl F. Slagowski	Arizona Boating and Water Sports	Pennsylvania Trappers Association
Fred Baily-Diamond Valley, Nevada	The Bass Federation-Arizona	Florida Trappers Association
Lincoln County Conservation District	American Resources Council	Arkansas Trappers Association
John Falen-McDermitt, Nevada	SRT Outdoors	Alaska Trappers Association
Maggie Orr-Lincoln County	Lookout Mountain Outdoors	Illinois Trappers Association
William Blackmore-BigGame Forever Washoe County	Southwest Environmental	Wisconsin Trappers Association
Michael Turnispeed-BigGame Forever Carson City, Nevada	JT's Guide Service	Minnesota Trappers Association
Lilla and Woodie Bell-Paradise Nevada	Dark Horse Unlimited	Missouri Trappers Association
Travis Miller-Jiggs, Nevada	Arizona Catfish Conservation Assn.	Mississippi Trappers Association
Fred and Chris Steward	Wild at Heart Adventures-Arizona	Texas Trappers Association
Gracian Uhalde-Ely, Nevada	Striper Snatch Guide Service	Virginia Trappers Association
	Red Eagle Technologies	Kansas Fur Harvesters
	Chasin' a Dream Outfitters	Michigan Trapper and Predator Callers Association
	Larry the Lizard Custom Baits	Maine Trappers Association
	Trend Setter Jigs	Beder LLC Wisconsin
	Rim Country Custom Rods	Tennessee Fur Harvesters Association

# Impacts to Military and National Defense Infrastructure

The impacts to military installations, particularly Air Force, Army, and Navy Test and Training Ranges, show just how far the impacts from federal Sage-grouse restrictions reach. There are at least seven major military test and training ranges which coincide with Greater Sage-grouse Habitat in the Western United States (see Figure 2 and 3). These installations are Utah Test and Training Range (Utah), Nellis (Nevada), Mountain Home (Idaho), Fallon (Nevada), Yakima/Goose/Hart (Washington), Ellsworth (WY/SD), and Malstrom (Montana). Just as important to proper operation of these test and training ranges are the protected overflight areas that coincide with each base and test and training range. In point of fact, there are 73,240,941 acres of air space which coincide with Sage-grouse populations.

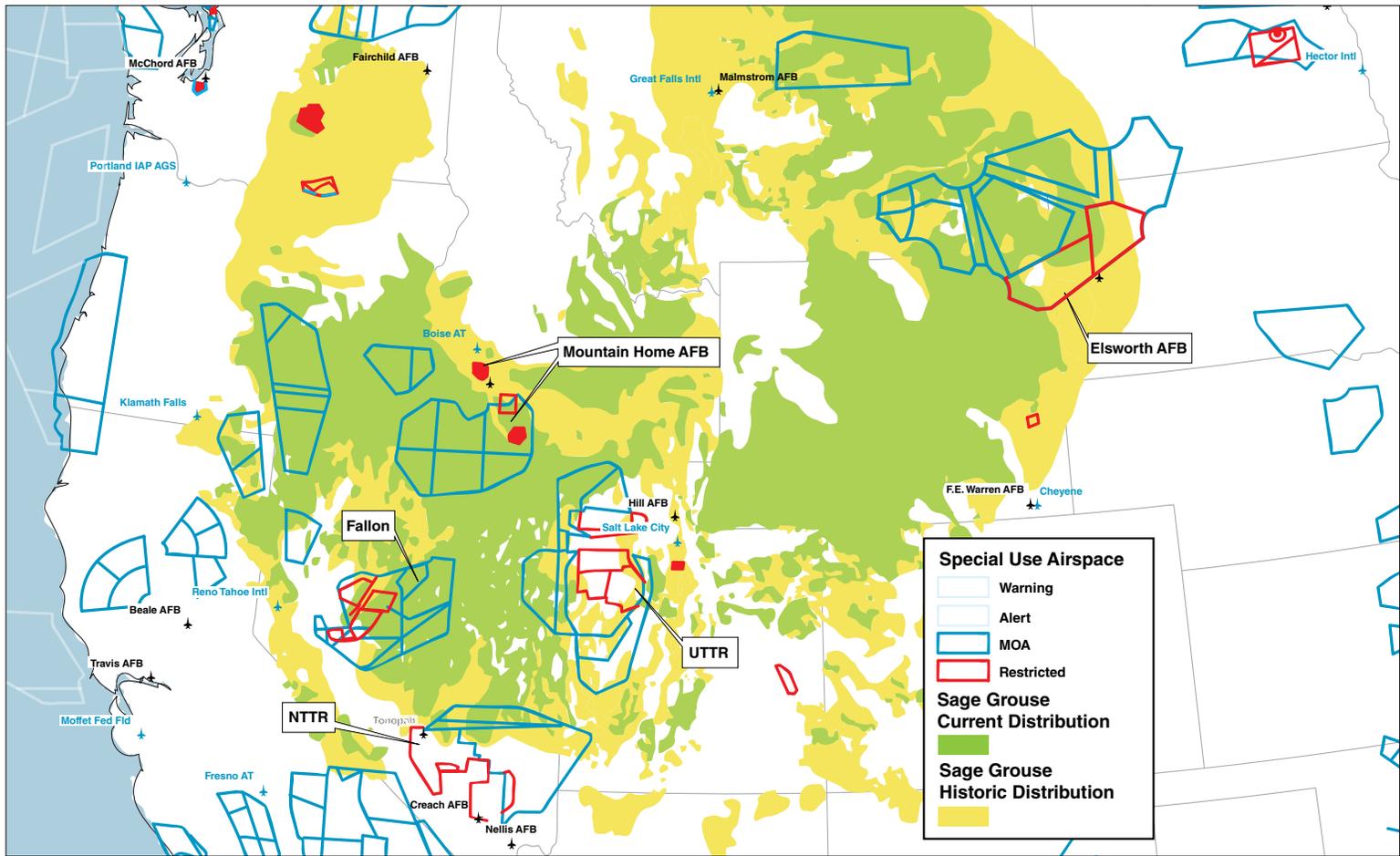


Figure 2. Approximately 50% of Air Force training flights in the continental United States are conducted in western test and training ranges impacted by the Sage-grouse. This map shows the overlap of military installations with current and historic Sage-grouse range.

An article by three former high ranking military officials entitled, “Congress Must Act to Protect Military Readiness” in Roll Call dated April 27, 2017 explains the importance of these impacts to Western Military Installations. Here is an excerpt from the article:

*...If [the U.S. Fish and Wildlife Service] is able to implement its restrictive regulatory regime...it will have a significant and negative effect on the military and Western States’ economies without real conservation benefit to the bird. Regulatory restrictions that would blanket huge swaths of 11 states would impair or even eliminate a wide range of economic activities resulting in lost jobs and lost revenues...While those concerns are real, the destructive impacts on the readiness of numerous military installations located in or just near the bird’s habitat are less well-known.*

*Currently, the military’s voluntary sage grouse conservation efforts are already costing millions, and those costs will likely skyrocket...it is likely to significantly impair the readiness and effectiveness of a number of military installations, and the military units assigned to these sorts of camps and bases. For example, at Yakima Training Center in the state of Washington – one of the Army’s premier combat live fire training ranges – it could affect up to 19 training areas and 27 gunnery ranges, making Yakima all but useless for six months of every year...Operations at Nellis Test and Training Range in Nevada will also likely be harmed. Nellis Air Force Base is the host of the famed Operation Red Flag and provides the Air Force with a training facility that cannot be replaced anywhere else in the country, or even the world. A federally regulated grouse could restrict overflights, impose further weapons deployment and testing restrictions and degrade the overall capability of Nellis.*

*Similarly, at the Navy’s Fallon Naval Air Station in Nevada will feel the impact of a sage grouse listing. According to the Navy, the costs and time delays associated with lengthy consultation process and expensive conservation measures could affect the capabilities at Fallon. Additionally, seasonal and spatial restrictions could limit maneuvers and other vital training procedures. The story is repeated at other military installations...The good news is there are state plans that can adequately conserve the bird, protect the economy and allow the military to focus on its job of protecting the nation...*

<b>BASE/AIR SPACE</b>	<b>ACRES</b>
UTTR (UT)	13,536,640
Nellis (NV)	13,036,160
Mountain Home (ID)	7,700,480
Fallon (Nevada)	10,617,200
Yakima/Goose/Hart (WA)	4,231,191
Ellsworth (WY/SD)	15,287,270
Malmstrom (MT)	8,832,000
<b>TOTAL</b>	<b>73,240,941</b>

**Figure 3. Military bases impacted by BLM and Forest Service Sage-grouse plans (acres)**

The article was authored by Joseph E. Schmitz, a former inspector general of the Department of Defense, Lt. General William G. Boyking, a U.S. Army (retired) and former deputy undersecretary of Defense, and Lt. General Marc Rogers, U.S. Air Force (retired), and former inspector general of the Air Force.

Just how important are these installations to training and preparation of our national defense? Consider that approximately 50% of Air Force training flights in the continental United States are conducted on these western test and training ranges. As pointed out in the article reference above, the test and training ranges provide capabilities that cannot currently be replicated anywhere else in the world. In particular, the Nevada Test and Training Range is a national asset that is sized, operated, and maintained to provide T&E information to Department of Defense component users in support of Department of Defense research, development, T&E, and the acquisition process. What this means is that not only are these installations important to training our air defense and other military capabilities, it is also critical to development of new technologies and methodologies to face the challenges of the future.



# Addressing Misinformation Regarding Sikes Act and BLM Land-Use Restrictions

---

***One of the common misperceptions is that the military is exempted from BLM and UFS restrictions for Greater Sage-grouse. This is not the case.***

It appears that this misperception is an artifact from arguments made relative to the potential applicability of the Sikes Act for endangered species. No such exemption exists for BLM and Forest Service restrictions for non-endangered species.

In an effort to inform members of Congress of this important distinction, Bill Myers, former Solicitor from the Department of Interior, attorney, and partner at the Law Firm of Holland & Hart prepared a legal memo to explain that the exemptions of the Sikes Act do not apply to BLM and UFS land-use plans. Here is an excerpt from the memo:

*The ESA, Sec. 4(a)(3)(B), and the Sikes Act, Sec. 670a, have no effect on BLM and Forest Service land use plan amendments for Sage-grouse. Sage-grouse are not an*

*ESA listed or candidate species and the Sikes Act only applies to military installations, not surrounding BLM or Forest Service lands that are off the installation but within areas affected by military operations such as restricted airspace and Military Operating Areas.*

The memo continues:

*Even if applicable, the ESA provision would only apply if the Interior Secretary, not the Defense Secretary, first determines the INRMPs benefit sage-grouse habitat. This has not happened. Hundreds of INRMPs would first need revision and updating. More importantly, the Sikes Act cannot provide a safe harbor to overflight areas because the Act only applies to military installations and not to neighboring BLM and USFS land-use planning areas.*

# Progress and Results

---

*As reported in previous quarterly reports, the provisions of H.R. 2864 were included in the National Defense Authorization Act (NDAA) which passed the United States House of Representatives.*



The Senate version of NDAA did not include the same provision. What this means is that the inclusion of H.R. 2864 in the final NDAA to be passed by Congress will be part of the conference negotiations between the U.S. House and the U.S. Senate.

It is important to note that the version of the NDAA which included H.R. 2864 passed out of the House committee with significant bipartisan support by a vote of 60-2. Similarly, it passed out of the U.S. House of Representatives by a vote of 277-147. This shows the strong level of bipartisan support for the bill.

It now appears that the National Defense Authorization Act will be finalized sometime after

the November elections. Sage-grouse language will be a significant point of negotiation, along with spending levels, along with other provision in the bill that have yet to be resolved. An article in Roll Call provided some insight:

*[Congressman Adam] Smith is one of the so-called Big Four – the Armed Services chairmen and ranking members – who had been meeting to reconcile the House bill with its Senate companion (S 2943). Smith told an audience at the Stimson Center think tank on Thursday that the sage grouse issue is “the biggest problem remaining” in the conference and then said, “There is one other.”... On the sage grouse issue, Smith suggested to his audience that the dispute was unnecessary, because the Environmental Protec-*

tion Agency plans to remove the bird from the endangered list anyway.

"But promises have been made at a very high level in the Republican caucus, and I don't know how we get around that," he said. The White House Office of Management and Budget, in a 17-page Statement of Administration Policy on the House bill, threatened to veto the conference report over a bevy of issues... Still, Smith is confident that lawmakers and the president will get the measure done before New Years Day.

"We've done it in December before, and we'll do it in December again," Smith said. "Once the appropriators make their decision— whether it's a CR or some form of appropriations bill – and we get a (funding) number, it'll be a lot easier to get it done."

The inclusion of Sage-grouse language in the conference version of NDAA received a significant boost in recent weeks when a bipartisan "Dear Colleague" letter, authored by Congressman Rob Bishop (R) Utah and Congressman Collin Peterson (D) Minnesota, was signed by over 120 members of the U.S. House of Representatives. The letter reads in part:

*As you begin conference deliberations on the National Defense Authorization Act (NDAA) for Fiscal Year 2017, we are writing in strong support of Section 2864 in the House-passed bill. (H.R. 4904), regarding the Protection and Recovery of Greater Sage Grouse. It is entirely appropriate that this provision be included within the NDAA.*

*The military services have all indicated, in response to inquiries from Congress over the past two years, that a formal listing of Sage Grouse under the Endangered Species Act (ESA) would result in serious negative training and military impacts across several test and training ranges in 11 Western States.*

*For example, the Air Force has reaffirmed in information provided to Congress earlier this year that, "If listed...potential impacts could also include limited ability for ground movement, limitations on development of ground infrastructure, limitations on over-flights during specific or extended time period, and restrictions on munitions, chaff and flare use." The Air Force further pointed out that "Section 7 consultation would*



**Congressman Rob Bishop (R-UT)**

*be required for any development on range," and that this would result in "increased costs and time" and "reduced operational flexibility."*

*The Army has reaffirmed significant training degradations due to proposed Sage Grouse limitations imposed by the U.S. Fish and Wildlife Service, to include the elimination of all training within lek buffer zones during 5 months of the year, effectively shutting down training on 11 gunnery ranges at Yakima Training Center.*

*The Navy has previously described to Congress military training degradations of a listing of the Sage Grouse that include "potential seasonal and spatial limitations for maneuver on and over areas used by the greater sage grouse and/or designated critical habitat for the species."...*

*We believe that Section 2864 represents a reasonable and balanced approach to both conservation and preservation of species, by allowing time for the affected States to implement and demonstrate the effectiveness of their individual plans. This approach is fully consistent with the ESA itself that requires the Secretary "to cooperate with the maximum extent possible with the States." (16 U.S.C. 1535(a))...In conclusion, it is imperative that the final FY17 NDAA conference retains Section 2864 dealing with the Sage Grouse in upholding State conservation plans.*

# Conclusion

---

As anticipated last year, approximately 2,000 pages of new restrictions in the form of Bureau of Land Management and U.S. Forest Service plans begin to go into effect in 2016. The plans are just as problematic as predicted.

These restrictions will have significant impact on jobs, productivity, the state's economy, and hard working families. In addition, these proposals threaten the economic foundation for Sage-grouse conservation going forward.

We are encouraged by Congress's commitment to protect Utah's common-sense Sage-grouse management plans. The provisions of H.R. 2864 included in the National Defense Authorization Act provide common-sense protections for state management of Sage-grouse in Utah and across the west. This also allows state management plans to continue to be implemented and demonstrate their conservation efficacy. We anticipate that resolution of the National Defense Authorization Act and other must pass legislation in the coming months including ongoing negotiations over the inclusion of H.R. 2864.









# Stag Consulting

## SAGE GROUSE

———— QUARTERLY REPORT ————

*Contract No. 146311*