



Bringing back the birds

June 11, 2019

Carolyn Swed
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U.S. Fish and Wildlife Service
Reno Fish and Wildlife Office
1340 Financial Boulevard, Suite 234
Reno, NV 89502

RE: FWS-R8-ES-2018-0106 and FWS-R8-ES-2018-0106

Dear Field Supervisor Swed:

Our thanks to the U.S. Fish and Wildlife Service for this opportunity to comment on the proposed threatened listing of and critical habitat designation for the Bi-State Greater Sage-Grouse. American Bird Conservancy (ABC) agrees the evidence shows that protection under the Endangered Species Act is urgently needed for the Bi-State distinct population segment of the grouse and its remaining habitat.

Our 2013 assessment recommending Endangered status remains the same. Moreover, a number of recent events outlined below lend even greater weight to the need for an Endangered listing. Our attached 2013 comment letter states:

Endangered Status Warranted Rather Than the Proposed Threatened Status

ABC urges an endangered listing rather than the proposed threatened status due to small population size (1,800-7,000), increasingly degraded and fragmented habitat, a proposed 4d rule that exempts grazing practices, multiple threat factors combined with a lack of adequate regulatory mechanisms to ensure sustainable land management, four of six population groups potentially extinct within 30 years and the two remaining population strongholds (Bodie Hills and South Mono) expected to be in decline; connectivity between these two stronghold populations is lacking and vulnerable to impacts of grazing (cheatgrass and wildfire), a lack of protected areas, and potential for catastrophic loss of habitat from wildfire.

ABC reviewed and commented on the Bi State Conservation Plan prepared by the U.S.D.A. Forest Service. We then reviewed the final plan, submitted a protest, and then participated in the protest resolution meetings led by Regional Supervisor Chris Iverson. Despite including arguably the strongest grouse protections of any federal plan, weaknesses remain that can allow for continued habitat degradation.

For that reason, and others stated in our earlier comment, we disagreed with the Fish and Wildlife Service 2015 not-warranted finding for Bi State listing. A number of relevant comment letters are included. ***Where? Here? Attached hereto?***

Over the past 150 years, as the Service acknowledges, the range of the Bi-State Sage-Grouse DPS has been curtailed by nearly 50 percent, and the remaining habitat is “reduced in quality.” 80 Fed. Reg. at 22831. Approximately 54 percent of the land in the Bi-State Sage-Grouse DPS area is managed by the Bureau of Land Management (“BLM”), and 35 percent is managed by the U.S. Forest Service. See Species Report at 133, 138. Of habitat within the PMUs, 8 percent is privately owned or owned by a state or county. *Id.* at 129.

In addition to habitat loss, the estimated population of Bi-State Sage-Grouse has declined by over 90 percent from historic levels. Bi-State Listing Withdrawal, 80 Fed. Reg. at 22831; Species Report at 17. A 1995 study estimated a 71 percent decline in the California portion of the Bi-State area. Species Report at 16. The number of leks has declined by close to two-thirds, from as many as 122 to just 43. *Id.* at 21.

The current Bi-State Sage-Grouse DPS is estimated to number between 2,497 to 9,828 birds, although the Service acknowledges that the higher end of this estimate is overstated. Bi-State Listing Withdrawal, 80 Fed. Reg. at 22831. The larger populations are the Bodie Hills and Long Valley populations, within the Bodie Hills and South Mono PMUs. *Id.* The Bodie Hills population declined 41 percent between 1965 and 2007. Species Report at 27. Lek counts for the Long Valley population historically counted males in the 400s on 6 to 7 leks; however, from 1987 to 2012 the average peak male lek count has been about 250 on about 9 leks. *Id.* at 28.

The Service has noted that an “effective population size”¹ of somewhere between 500-5000 breeding birds is required to maintain evolutionary potential. Yet the effective population size for the entire Bi-State Sage-Grouse DPS is thought to be between 230 and 770 birds; and limited connectivity between the PMUs means that size may be much less. *Id.* at 124. No single PMU, or breeding population, contains an effective population of 500 birds. Overall, each population is small, they are not well connected, and the entire population may be far below the threshold for long-term persistence. *Id.* at 124, 126.

2017 Progress Report Finds Significant Population Declines

The Bi-State Sage-Grouse Conservation Action Plan 2017 progress report reveals that lek attendance in most areas is in decline. In Mono County the count declined 21% from 2016 to 2017, was down

¹ Effective population size is the size of the idealized population of breeding adults that would experience the same rate of loss of heterozygosity, change in the average inbreeding coefficient, or change in variance in allele frequency through genetic drift as the actual population. Species Report, 123. As effective population size decreases, the loss of genetic diversity increases. The consequences of this loss of genetic diversity – reduced fitness through inbreeding depression and reduced adaptive (evolutionary) potential – elevate extinction risk. *Id.* Captive studies suggest that effective population size should exceed 50 to 100 individuals to avoid short term extinction risk caused by inbreeding depression and mathematical models suggest that effective population size should exceed 500 individuals to retain evolutionary potential and avoid long-term extinction risk. However, some estimates of effective population size necessary to retain evolutionary potential are as high as 5,000 individuals. *Id.*

31% in the Bodie Hills, 2% in Nevada, and 19% for Mount Grant. Only the Desert Creek population showed a 5.5% uptick.

This is particularly concerning when you consider the cyclical nature of grouse populations, which were due for a significant uptick that did not materialize. Instead, it appears the overall downward trend continues and, given the low population, risks of drought and habitat degradation, the strongest level of protection is warranted.

Unlike the Forest Service Greater Sage-grouse monitoring report, the Bi State 2017 progress report does not quantify habitat degradation. While a review of grazing allotments was included, other habitat disturbances were not listed.

We do know, however, that the Forest Service is under pressure to relax the habitat and wildlife protections that were agreed to during the protest resolution process. ABC, the Center for Biological Diversity, Western Watersheds Project, and WildEarth Guardians have filed a motion to intervene in a lawsuit brought by Sierra Trail Dogs (STD) and other off-road vehicle groups who object to protections for the bi-state sage-grouse in the Humboldt-Toiyabe National Forest that require buffers and seasonal closures from off-road racing in the birds' habitat.

The STD hold a 250-mile dirt bike rally through some of the best remaining sage-grouse habitat in the Mono Basin region, but they object having to shift from June to July to comply with the birds' protections that were added after the Forest Service reviewed new scientific information about the species' habitat requirements. Conservation groups contend that the Forest Service properly adopted additional protective measures that are critical to the survival of the species.

In response to science brought forward by conservationists during the planning process, the Forest Service expanded lek buffers to four miles, made seasonal moratoriums on off-road vehicle contests apply year-round, and expanded seasonal protections to include the entire breeding and nesting period.

All but one bi-state sage-grouse population management units have been declining, and the Pine Nut Mountains population has been crashing in the last two years. Running a motorcycle race through this imperiled bird's habitat during the lekking season would only add to threats that are pushing this population over the cliff.

Given current habitat degradation under the existing Bi State plan, additional management discretion, such as provided by a 4-d rule, is inappropriate. We further urge that any significant sources of incidental take of grouse from industrial sources be identified and ameliorated.

Issues to Consider from 2013 Comment Letter

Cumulative Direct and Indirect Impacts

The Bi-State area is heavily impacted by roads, power lines, and fences in addition to cell towers and waste dumps. FWS notes that "the apparent similarity between existing Bi-State conditions and extirpated populations elsewhere suggests that persistence of substantial numbers of leks within the Bi-State DPS will likely be negatively influenced by these anthropogenic features."

And FWS is assuming that these impacts will continue: “These impacts are expected to continue or increase in the future and result in habitat fragmentation; limitations for sage-grouse recovery actions due to an extensive road network, power lines, and fencing; and a variety of direct and indirect impacts, such as loss of individuals from collisions or structures that promote increased potential for predation.”

We recommend that the agency analyze designation of sage-grouse reserves where further disturbance is not allowed, but this approach was not considered. We believe some combination of reserves and stricter management standards are needed to assure the persistence of the Bi-State DPS, and that agencies should have strong and effective mechanisms to protect habitat and guide recovery of the population.

Proposed 4d Rule is a Reason to List Species as Endangered

The proposed 4d Rule is very broad and includes any activity included in the Sage Grouse Initiative (SGI), or deemed consistent with SGI, or with the Bi-State Local Area Working Group Action Plan. The proposed 4d rule’s exclusion of grazing practices is inappropriate and should be omitted from the final rule. Grazing in areas occupied by sage-grouse may cause nest destruction or abandonment, or influence nesting success by removing cover surrounding a nest site.

The Bi-State Action Plan also provides insufficient conservation safeguards and therefore should not be the basis for a take exemption. While we appreciate the goal of retaining large blocks of habitat and preventing fragmentation of rangelands, more effective and binding grazing standards are necessary.

Greater Sage Grouse Plan Revisions and Degradation of Priority Habitat

The U.S.D.A. Forest Service is also currently amending its management plans to comport with management directives of the Department of the Interior and Bureau of Land Management. The draft plans affecting National Forests substantially weaken already weak habitat protections, with an emphasis towards additional oil and gas leasing and operations in priority grouse habitat.

A review of Forest Service management on the priority grouse habitats it manages shows that continued habitat loss and degradation can be expected. For example, the 2016 and 2017 Forest Service Greater Sage-grouse Monitoring Annual Reports find that, despite the Plans, substantial habitat degradation in priority sage grouse habitat continues.

In 2015, degradation of priority habitat across the range of the Greater Sage-Grouse was 105,601 acres; in 2016, 109,997 acres; and in 2017 another 111,924 acres. This represents 2.28 percent of the total priority habitat. If that rate continues, ALL priority grouse habitat will be degraded in less than 75 years.

Promises to conserve Greater Sage-Grouse and its habitat have been broken or ignored by the Bureau of Land Management, Forest Service, and US Fish and Wildlife Service. These promises led to a not-warranted ESA listing finding in 2015, which now appears to be a grave error, as was the Bi State not

warranted finding. It is essential that science, not good intentions, determines whether populations are listed.

In addition to recent proposals to weaken the grouse conservation plans, key provisions requiring adaptive management and mitigation of development impacts have been eliminated. BLM has also resumed leasing oil and gas in priority grouse habitat despite past promises these areas would be avoided.

The rate of degradation of priority habitat will likely accelerate under the revised plans, in part due to relaxed safeguards and requirements for mitigation and adaptive management. While the Forest Service has not moved to amend the Bi State management plan, there is grave concern that agency policies for mitigation and adaptive management have been undermined, and direction set to increase development on all National Forest units.

Conservation groups are not alone in decrying the rapid demise of sage grouse due to inadequate regulatory mechanisms and new development decisions. The House Interior Appropriations Subcommittee Report for FY 2020 states:

Sage Grouse—The Committee is extremely concerned about the dismantling by the current administration of the unprecedented conservation partnership forged in 2015 by 11 Western states, ranchers and other interested stakeholders to keep the sage-grouse off the endangered species list. This administration is moving forward with revisions that will weaken protections and conservation prescriptions for sage-grouse that were included in the 2015 science-based greater sage grouse strategy.

The Committee is also concerned that the Fish and Wildlife Service is no longer in initial discussions on amendments to land-use plans to provide the best available science or technical advice. The future of the sage-grouse, a species that is emblematic of the health of the sagebrush habitat that it shares with 350 other kinds of wildlife, depends on decisions being made with the best available science and technical advice.

The Bureau and the Department are directed to include the Fish and Wildlife Service in any discussions pertaining to BLM leasing in the sagebrush habitat to prevent degradation to the habitat, minimize disturbance, and mitigate impacts.

Many conservation groups, including ABC, supported the decision not to list this species under these circumstances. Clearly, the plans of the Bureau of Land Management and Forest Service, though a major step forward, were not perfect and could be improved. But prioritization of siting oil and gas away from priority habitat, mandatory adaptive management, and mitigation requirements tipped the balance, providing assurance that they would be effective, and would also provide protection from mining of the highest priority habitats, called the sagebrush focal areas.

As it turned out, had the beleaguered Greater Sage-Grouse been listed in 2015, years of effort could not have been washed away almost overnight, and the species might be facing a brighter future. After a decade of hard work, the many promises to conserve the sage-grouse and its habitat are purposefully being abandoned as the BLM has finalized plans that remove essential safeguards, and the Forest Service is expected to follow their lead.

The prioritization of oil and gas drilling away from priority habitat and protections for sagebrush focal areas have been cancelled, and the mitigation and adaptive management requirements severely weakened. The consistent theme in the revisions to the Bureau of Land Management's and Forest Service's grouse plans is the addition of more oil and gas development, even in priority grouse habitat -- where leasing for new developments has already resumed.

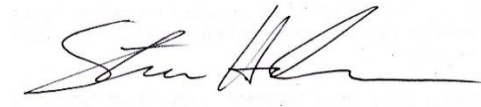
Meanwhile, Greater Sage-Grouse populations remain in serious trouble. Recent reports indicate that numbers are declining in Oregon and Montana, and that sage-grouse are nearly extirpated from both North and South Dakota.

Another, once abundant distinct population segment in Washington State is nearly gone with only about 500 birds left. Like the Bi State, this population merits immediate protection and listing as Endangered.

The Greater Sage-Grouse and the Columbia Basin population now sit exposed. ABC and other groups believe this is a watershed moment, a time for action to save this species.

We urge the U.S. Fish and Wildlife Service to list the Bi State Greater Sage-Grouse as Endangered. Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Holmer", with a long horizontal flourish extending to the right.

Steve Holmer
Vice President of Policy
American Bird Conservancy