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Lessons Learned from the State-Federal Effort to Conserve the Greater Sage-Grouse

By Jim Lyons July 24, 2017

On June 7, 2017, Secretary of the Interior Ryan Zinke put in motion an effort that could unravel years of work in the conservation sphere. Secretarial Order No. 3353 threatens to undermine coordination and collaboration among state and federal agencies, private landowners, scientists, and stakeholders, as well as throw 11 states across the West into economic uncertainty.

On its face, S.O. 3353 sounds innocuous enough: It establishes a team within the U.S. Department of the Interior to review the state-federal conservation strategy that led the U.S. Fish and Wildlife Service (FWS) to determine that the greater sage-grouse did not need the protection of the Endangered Species Act of 1973 (ESA). A short phrase in the order, however, belies the review's ultimate purpose: "identification of provisions [in the strategy] that may require modification or rescission … in order to give appropriate weight to the value of energy and other development of public lands…"[1]

During its first six months in office, the Trump administration has focused on deconstructing the government agencies and processes long entrusted with the stewardship of the United States' natural resources and on redirecting management of the nation's public lands to emphasize oil and gas production over other uses. In ways both subtle—beginning a review of national monuments—and not so subtle—issuing secretarial orders to direct all relevant Interior Department agencies to identify "all existing Department actions … that potentially burden … the development or utilization of domestically produced energy resources" and directing the Bureau of Land Management (BLM) to make oil and gas lease sales "at least" quarterly and process permits in 30 days—Secretary Zinke is looking to remove any impediments to oil and gas development on public lands and offshore waters to fulfill President Donald Trump's "energy dominance" commitment.[2] Now, Zinke is focusing on the successful sage-grouse conservation strategy to wring out more oil and gas from public lands while choosing to ignore the advice of the career scientists, conservationists, and Western governors who worked to produce the strategy.

Irrespective of laws requiring the BLM to manage public lands for purposes beyond energy production—a concept known as "multiple use"—Trump and Zinke seem undeterred in making them, first and foremost, the nation's oil patch.[3] As a result, other uses of public lands—including producing water, recreation opportunities, fish and wildlife habitat, and healthy rangelands—are likely to take a back seat to Trump's energy mandate.

As the new administration conducts its so-called review of the sage-grouse plans, this issue brief provides an overview of the epic collaboration that led to the landscape-level, science-based, collaborative strategy to conserve the sage-grouse and the sagebrush habitat upon which it depends. The brief also shares some lessons learned from this bipartisan, state-federal effort that defined a new paradigm for American conservation—including why policymakers need not choose between conservation and energy production.

Background on sage-grouse conservation

The greater sage-grouse is a chicken-sized bird that currently occupies approximately 56 percent of its original range spanning from the California-Nevada border to the Rocky Mountains. An iconic species of the Western sagebrush landscapes, wildlife biologists and state fish and wildlife agencies knew for some time that the grouse was in decline, as its sagebrush habitat was being lost to energy development, urban encroachment, invasive species, and rangeland fire. In 2006, the Western Association of Fish and Wildlife Agencies (WAFWA)—an organization of U.S. Western states' fish and wildlife directors—issued a report highlighting challenges to the sage-grouse's continued viability.[4] The report also presented a strategy to save the bird through protecting and improving the sagebrush habitats that sustain it.

The future of the greater sage-grouse and the at least 350 species that occupy the sagebrush ecosystem is directly tied to the decisions of public land managers.[5] Nearly 60 percent of the grouse's remaining habitat is on public lands.[6] The BLM manages approximately 52 percent of the habitat on federal land and the U.S. Forest Service manages most of the remainder. The rest is privately owned or state-managed.

In 2010, the FWS determined that the sage-grouse deserved the protection of the ESA but was precluded due to higher-priority listing actions at the time.[7] A subsequent lawsuit challenged the FWS' "warranted but precluded" determination and forced the FWS to commit to a timeline to decide whether to list the species under the ESA. The deadline for the decision on whether to list the bird was September 30, 2015.[8]

This deadline infused Western states and the Interior Department with a new sense of urgency to address the complex issue of sage-grouse conservation. Listing the bird under the ESA as threatened or endangered would require the FWS to review all projects on federal lands that could potentially affect the bird—a process called consultation—and require private landowners in sage-grouse habitat to adopt conservation practices that

would avoid harming the bird and its habitat. This concept is referred to as "take."[9] The potential costs of these requirements—in both time delays and dollars and cents—for project developers and private landowners can be substantial. So state and federal officials have every incentive to develop conservation strategies in advance in order to avoid the potential costs of listing a species as "threatened or endangered" under the ESA.

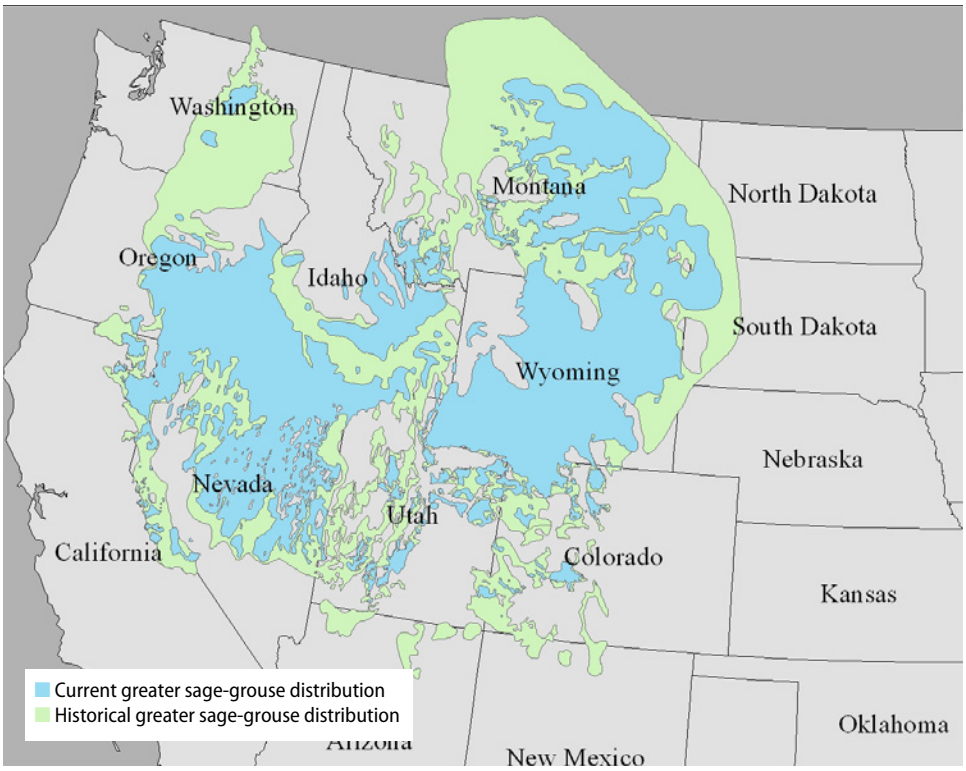
In December 2011, Wyoming Gov. Matt Mead (R) and then-Interior Secretary Ken Salazar invited the governors of the Western states to a meeting to discuss a way to resolve the sage-grouse issue. An important outcome of the meeting was the establishment of a Sage-Grouse Task Force that consisted of representatives of each of the affected states and relevant federal agencies, as well as the governors' and relevant federal agencies' recognition of "an unmet need for an action plan that prescribes near-term conservation measures, that when added to the body of past and current efforts would ensure a viable sage-grouse population in the West and preclude the listing of the species."[10]

Subsequently, then-FWS Director Daniel Ashe convened the Conservation Objectives Team (COT) comprising sage-grouse experts to review the status of the species and its habitat, identify factors contributing to the bird's decline, and suggest strategies for its conservation. Two-thirds of COT were from state fish and wildlife agencies, and the remainder were employed by the FWS. Its final report became the blueprint for the state-federal sage-grouse conservation strategy.[11]

Efforts to conserve the sage-grouse required state-federal collaboration

The sage-grouse conservation strategy was built on the foundation of state-led conservation strategies and developed in collaboration with the BLM, the U.S. Forest Service, the FWS, and U.S. Geological Survey (USGS) scientists and researchers. It also capitalized on the commitments made by the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) to fund voluntary private land conservation and habitat improvements across the remaining 11-state range of the species.[12]

The hackneyed criticism from some opponents of the adopted sage-grouse conservation strategy was that it was a one-size-fits-all solution. This belies the fact that federal land managers worked with their partners in each state fish and wildlife agency and governor's office to tailor each state's conservation effort to reflect unique knowledge and expertise, as well as to respond to unique management concerns raised by the states. The Wyoming Core Area Strategy, for example, was the first to identify and map areas dedicated to sage-grouse conservation where limits on habitat development were established.[13] And Idaho identified three habitat categories—priority, important, and general habitat—for the sage-grouse, while most states mapped only priority and general categories. Utah's strategy, meanwhile, was modified to respond to the state's concern that certain sage-grouse populations created by transplanting birds from one part of the state to another might not survive in places where energy development pressures had increased.



Source: Michael A. Schroeder and others, "Distribution of Sage-Grouse in North America," *The Condor* 106 (2) (2004): 363–376.

For Montana, the conservation strategy took into account the state's checkerboard landscape of private and public lands by allowing greater flexibility to permit habitat disturbance on public lands when state and federal wildlife officials and the BLM state director agreed that the bird would benefit more from protected habitat on private lands and would therefore permit habitat disturbance on nearby public lands. Nevada's plan, for its part, included a new approach to mitigating the effects of development on habitat through use of the Nevada Conservation Credit System to encourage the protection of private land habitat to offset disturbances on public lands.[14] And Oregon's counties ultimately adopted their state's "SageCon"—or Sage Grouse Conservation Partnership—approach by promulgating regulations under the state's land-use planning law to guide how and where development in sage-grouse habitat could occur.

All of the plans adopted by the BLM and the Forest Service incorporated elements of the states' sage-grouse conservation strategies—as reflected in executive orders, resolutions, and plans produced by the states—but also included certain elements common to the rangewide strategy overall: maps delineating grouse habitat areas; limits on habitat disturbance; buffers to reduce disturbance near leks, the places where sage-grouse mate and raise their young; rangeland health objectives; and mitigation requirements to restore habitat where plans would allow for further development.[15] These provisions were based on the best available information as determined by agency scientists and sage-grouse experts, but state partners participated in discussions regarding these

common provisions as well as specific plan elements unique to a particular state. In this way, the rangewide sage-grouse conservation strategy provided both the consistency necessary to ensure viability of the species across its remaining range and the flexibility needed to respond to the unique needs, conditions, and concerns of a specific state.

In some places, the FWS identified Sagebrush Focal Areas (SFAs), where the service recommended additional habitat protections, such as halting mineral leasing. Then-FWS Director Ashe emphasized the importance of protecting the SFAs in a memo he sent to BLM and Forest Service leaders: "Strong, durable, and meaningful protection of federally administered lands in these areas will provide additional certainty and help obtain confidence for long-term sage-grouse persistence."[16] He emphasized the need for the "highest degree of protection" in the SFAs to achieve the governors' stated objective to "ensure a viable sage-grouse population in the West and preclude the listing of the species."[17]

In the Great Basin, then-Interior Secretary Sally Jewell developed a strategy to prevent and suppress rangeland fires, as well as to restore habitat affected by fire. Secretarial Order No. 3336 acknowledged that rangeland fire is the most significant threat to sage-grouse habitat in that area and that special measures were necessary to address this threat.[18] Not only does the strategy benefit habitat, but it also helps reduce the risk of catastrophic wildland fires for rural communities and ranchers. A related effort with WAFWA and state departments of agriculture produced a strategy to control the spread of invasive species such as cheatgrass, which exacerbates rangeland fire risk.[19] To ensure that adequate native seed is available to restore the health and resilience of fire-affected landscapes, the BLM and partners developed a strategy and began collecting and storing native seed for sagebrush restoration.[20]

Overall, a critical part of the sage-grouse conservation strategy is collaboration with private landowners and ranchers to protect and restore habitat through voluntary efforts. The NRCS developed the Sage Grouse Initiative (SGI) to improve sage-grouse habitat on private lands through the purchase of conservation easements to prevent further development and protect important habitat on private lands; fence-marking to reduce bird mortality due to collisions with fences; and the elimination of pinyon pine and juniper trees on farm and rangelands.[21] Research has shown that trees can lead sage-grouse to abandon areas that were used as habitat. Because of the SGI, farmers and ranchers have been able to protect and restore millions of acres of sage-grouse habitat.[22]

At the same time, the U.S. Fish and Wildlife Service, working with state fish and wildlife agencies and private landowners, created Collaborative Conservation Agreements with Assurances, which spelled out voluntary conservation practices for landowners to benefit the sage-grouse and rangeland health.[23] If landowners implement these practices on their lands, the agreements guarantee that even if the grouse is later listed under the ESA, these landowners will not be held to a higher standard as long as they continue to meet the terms of the original agreement. Projects in Wyoming, Oregon, and other states affecting millions of acres of public and private ranchland habitat have demonstrated the value of these collaborative conservation efforts.[24]

In summary, in order to meet the vast, complex challenge posed by the decline of the sage-grouse, federal, state, and local partners developed a multifaceted conservation strategy to address specific threats to the species' continued viability across its remaining range but tailored toward the needs of each affected state.

Lessons learned

The state-federal effort to conserve the greater sage-grouse yielded a number of lessons that can inform Secretary Zinke's review and, more importantly, future species conservation efforts.

Think big

The first lesson is to see the big picture in understanding the nature and scale of the issues affecting the sage-grouse's survival. As state and federal partners worked across the bird's 11-state range, it became clear that the threats to the species in the eastern part of the range were different from the threats in the western part. So, too, were the strategies to address them. Recognizing that the threats did not stop at a particular state line or administrative border, federal land managers worked as partners to assess and prescribe strategies to address them. Working together, they were able to more efficiently and effectively develop strategies to deal with the threats through a coordinated, regional approach.

Habitat is the name of the game

The second lesson is to use habitat conservation—not population numbers alone—as the measure of success in protecting species of concern. Many variables can affect changes in populations, such as weather and precipitation. Currently, there is no clear and consistent methodology for estimating sage-grouse populations across their remaining range. But without healthy sagebrush habitat, the grouse and other species associated with the sagebrush ecosystem are not likely to survive. Chad Boyd, a USDA rangeland scientist in Burns, Oregon, put it this way: "The decline of the sage-grouse is an ecosystem problem, not a species problem."[25] For this reason, the current plans employ habitat and population triggers—the percentage of decline in populations in a particular geographic area that would trigger a coordinated review to determine potential causes of decline—developed in concert with each state to provide a means of monitoring and, if necessary, adjusting the sage-grouse conservation measures.

Science is foundational

The next lesson is to use sound science informed by local knowledge to guide the conservation development strategies. Sound science anchored the sage-grouse conservation strategy, with the COT report representing a synthesis of existing science and research informed by the input of state and federal experts. In addition, the USGS in the Interior Department played an important role in reviewing the sage-grouse science and in addressing questions critical to formulating key elements of the conservation strategy. In particular, the USGS conducted a review of existing research on the effects of disturbance on the grouse.[26] For various forms of disturbance—including oil and gas development, electrical transmission lines, and roads—the study provided estimated minimum and maximum distances from leks necessary to avoid affecting the grouse. Buffer distances based on the USGS study were then modified to reflect local topography and knowledge in specific state strategies.

Collaborate, coordinate, and listen

The fourth lesson is to promote collaboration in the development and implementation of conservation strategies. Those trying to conserve the sage-grouse achieved this in various ways, including regular meetings of the State-Federal Sage-Grouse Task Force; regional meetings of federal and state agency leadership; continued coordination through WAFWA; and engagement with the governors' offices, local elected officials, and various stakeholders. Public participation associated with the development of the individual BLM and Forest Service sage-grouse conservation plans also provided a means of dialogue and input. Additionally, the shared effort to coordinate habitat conservation between public agencies, public land permittees, ranchers, and private landowners represents a high-water mark in collaborative conservation and a model for managing habitat in the future.[27]

Conservation vs. development is a false choice

Finally, despite rhetoric from some in the oil and gas and mining industries, the sage-grouse conservation effort demonstrated that it is possible to craft conservation solutions that allow for responsible mineral and energy development. The conservation strategy is consistent with the BLM's multiple-use mission to manage lands and resources sustainably for present and future generations.

A recent report released by the nonprofit Backcountry Hunters and Anglers demonstrates that the conflict between important sage-grouse habitat and oil and gas resources is more perception than reality. According to the report, there is only a 4 percent overlap between areas identified as priority sage-grouse habitat management areas and existing

coal and oil and gas leases on federal lands. In addition, the majority of federal lands that fall within the priority habitat—79 percent—have zero-to-low assumed potential for oil and gas development based on existing data sources.[28]

By guiding oil and gas development to areas with the highest energy potential and lowest conflict with sage-grouse habitat, threats to the sage-grouse's survival associated with energy development can be minimized. This same strategy could also benefit energy developers by reducing the cost of additional environmental analysis and potential project delays associated with wildlife consultations. And leasing and developing oil and gas outside sage-grouse habitat may also reduce the potential for litigation challenging the impacts of projects on the sage-grouse. This would reduce costs to both plaintiffs and project defendants.

In addition, where existing oil and gas leases may coincide with sage grouse habitat or leks, directional drilling can be used to reduce or mitigate potential adverse effects due to disturbance caused by energy development.

Innovative mitigation agreements can also offer solutions. For example, a partnership among the Barrick Gold Corp., the Nature Conservancy, and the Interior Department allows the company to accumulate credits for successful sage-grouse habitat improvement projects in Nevada, which provides certainty to the company to continue gold-mining in the state.

Conclusion

Probably the greatest benefit of the multiyear, rangewide effort to develop a conservation strategy to prevent the extirpation of the iconic greater sage-grouse was that it provided all parties with some measure of certainty.

For energy developers, the mining community, ranchers, and other users of the public lands, the state-federal strategy spelled out how to continue to operate without endangering the species. The same is true for private landowners and users of private lands within the range of the grouse. And while all parties may not be in total agreement with every aspect of the plans, they offer Westerners confidence that if they operate within those guidelines, their operations and the landscapes on which they depend can be sustained into the future.

Perhaps the greatest testament to the sage-grouse conservation strategy is the fact that Western state governors—Democrats and Republicans alike—stand behind it. Before and after Secretary Zinke announced his secretarial order to review the sage-grouse plans, several governors implored him both in private meetings and by letter to seek their counsel before attempting to reopen Pandora's box.[29] The *Casper Star-Tribune*—in the heart of oil and gas country in Wyoming—reinforced this message in a recent editorial, "Let sage grouse plans work."[30]

By designing the state-federal greater sage-grouse conservation strategy to protect and restore the sagebrush ecosystem, the sage-grouse effort implemented the ESA as the law was originally intended to work. As the act states, its first purpose is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."[31]

Too often, the inclination is to put off dealing with a threatened or endangered species as long as possible in order to avoid the conflicts and controversy that can result. But delay and denial of the need to act on behalf of a species of concern often exacerbate the potential for controversy. By the time efforts are initiated to conserve the species, options can be few and more costly. At times, it can be too little, too late.

But thanks to the early vision of the Western state and federal fish and wildlife managers, Western state governors, enlightened public land permittees, private ranchers, and two previous interior secretaries who realized the potential consequences of an ESA listing for a bird inhabiting an 11-state range, people came to the table early and often. They realized that they should work together to find solutions to conserve the species while options for doing so remained.

By protecting its ecosystem, landowners, land managers, and public land users have been able to conserve an important species by working across the sage-grouse's remaining range; using the best available science; and taking advantage of coordination, collaborative conservation, and voluntary measures. And by protecting the sage-grouse, the need to list many other species dependent upon the sagebrush ecosystem may also be avoided.

The sagebrush ecosystem is considered one of the largest and most threatened ecosystems in North America.[32] Ironically, the fate of the greater sage-grouse and that of the communities whose future is linked to the health of the sagebrush landscape are inextricably tied. Through continued coordination and collaboration, both can benefit.

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Endnotes

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