

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 13, 2012

**PLACE:** Room WW02 and Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**HOUSE MEMBERS PRESENT:** Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood (35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood (27), Boyle, Hagedorn, Harwood, Vander Woude, Gibbs, Pence, Higgins, and Lacey.

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Stevenson** called the meeting to order at 1:31 P.M. The Committee Chairman asked our committee secretary to take a silent roll call.

**Chairman Stevenson** introduced the presenters, Virgil Moore, Director of Department of Fish and Game. **Representative Bedke** introduced **Jeff Foss**, Deputy State Director for the Bureau of Land Management (BLM); **Brian Kelly**, U.S. Fish and Wildlife Department; and **Steve Dorrety**, Office of the Secretary to the Interior. **Senator Brackett** introduced visitors from the state of Nevada: **John Carpenter**, Assemblyman; **Pete Gocachia**, Assemblyman; **Demar Dahl**, Elko County Commissioner; **Grant Gerber**; and **Smokey the Bear**.

**Virgil Moore**, Director of the Department of Fish and Game, commented about the sage grouse biology and abundance here in Idaho. Sage grouse are unique in Idaho and their biology is different. They are low productive birds, but they live a long time and have a high survival rate. They can survive Idaho's harsh winter and environment. Their populations are migratory and there is a large movement between seasonal and home ranges. They commonly move an average of 12 miles to 100 miles in their migration, with huge home ranges over 200,000 acres. Their migratory habits complicate the management problem for ensuring habitats for these birds. **Mr. Moore** explained the different priority areas viewed on the display map: the yellow area is considered the Priority area, and the lighter gray/blue area is the General area. The sage grouse have 15 million acres of habitat, 10 million acres is priority habitat; 70% is Federal and 60% is BLM. In Idaho, the majority of sage grouse habitat is on BLM land. Private land is a huge component for the sage grouse averaging at 24%, and tribal land with at least 5%.

**Director Moore** stated there are many sage grouse in Idaho. The sage grouse camouflages itself very well. The primary way to determine the number would be from the male lek counts. The male sage grouse per lek would be the indicator to count the females and chicks. The Department of Fish and Game manages hunting seasons for the sage grouse. The seasons are adjusted within 14 managed zones with limited hunting. Hunts are only permissible in areas that can withstand harvest.

**Chairman Stevenson** introduced **Bill Myers**.

**Bill Myers**, Partner, Holland & Hart, said his firm would be reviewing the issues with the legal framework as well as what the Bureau of Land Management, the U.S. Forest Service and the USDA are doing with the sage grouse issue. He gave a quick overview of the litigation history. In 2005, the Forest Service made a determination the sage grouse did not warrant being listed as a threatened or as an endangered species under the Endangered Species Act (ESA). That decision was challenged by the Western Watershed Project. In 2007, Idaho Federal Judge Winmill reversed the Forest Service decision and sent it back. One of the reasons the Judge said was the Forest Service failed adequately to consider the regulatory mechanisms that were for the protection of the sage grouse species. In the Endangered Species Act, there are five criteria. One of them is the adequacy of regulatory mechanisms that are in place to protect the species that could not be listed. The Forest Service reviewed this issue and in 2010 determined that the sage grouse warranted listing as a threatened species, but was precluded from listing due to other higher priorities at that time. The sage grouse species were given a priority rate of eight, 12 being the lowest rate, due to their moderate danger of existence. The Forest Service made a secondary determination whether the species was determined to be a full listing or not. Those were the two issues which were challenged by the Western Watershed Project and two other environmental groups. The other two environmental groups decided to pursue the case in Washington D.C. The U.S. Fish and Wildlife Service had to decide whether to list sage grouse as a threatened or endangered species by September 30, 2015.

**Mr. Myers** further commented that the U.S. Forest Service and BLM were responding in turn, with two instructional memorandums to all the field staff of what to do regarding this issue. The Forest Service approached these agencies to assist with the regulatory mechanisms that are in place by the deadline of September 30, 2015. The BLM and Forest Service are amending an enormous number of used lands for September 2014. The short-term approach is for the state to create a plan which is acceptable to the Fish and Wildlife Service and the BLM of how to adjust sage grouse preservation in the priority and general areas. The long-term approach is to amend all of the 88 resource and management plans across the West. To amend these plans by the deadline in 2014, Idaho's 15 plans, (BLM 11, Forest Service 4) needed to be amended by the September 2014 deadline. In order to make these planned amendments, a decision has to come from a National Technical Team designed by BLM, which is a group of scientists who convene at the federal and state levels, to advise BLM what to do.

**Mr. Myers** suggested: 1) the State of Idaho to continue to participate in the legal litigation as it has done through the Attorney's General and the Governor's offices; 2) the State of Idaho present its opinion regarding the Resource and Management Plans (RMPs) cases to Judge Winmill, to include the Fish and Game Department, Department of Lands, Department of Agriculture, the Office of Species Conservation, and various constituents represented throughout Idaho; 3) the state expedite the planning process and decide their role in the management of land and wildlife; and 4) the state coordinate with their western sister states to determine which states are dealing with this sage grouse issue.

**Nate Fisher**, Office of Species Conservation (OSC), presented the policy perspective on the greater sage grouse issue and the path forward for sage grouse conservation in Idaho. He commented the sage grouse species issue was very important to the State of Idaho, as well as ten other Western States. There are three components to this issue: 1) the biological, component, which was presented by Director Moore. 2) The legal component; which was presented by Mr. Myers; and 3) the policy component. **Mr. Fisher** said there has been legal litigation for the last 15 years surrounding the sage grouse conservation issue. The State of Idaho has assisted in keeping the sage grouse off the Endangered Species list for over a decade. In 1997, the State of Idaho developed one of the first statewide management plans for the sage grouse species. This plan was updated in 2006 to include new biological information and conservation measures. Input from many stakeholders has been the principal guiding tool in conservation efforts to date. In Idaho and other parts of the western range, the U.S. Fish and Wildlife Service in its 2010 listing determination identified the inadequacy of regulatory mechanisms as one of the major threats to the sage grouse species. The BLM and U.S. Forest Service recently kicked off a National Sage Grouse Planning Initiative to incorporate more stringent sage grouse conservation measures into existing RMPs. He further commented that the BLM's approach needed to be a one-size-fits-all approach, covering the entire range with new restrictions in order to stave off a listing. The sage grouse species is not everywhere on the range so a broad-brush approach would make all areas the same and not prioritize the species' habitats and needs.

**Mr. Fisher** stated the State of Wyoming developed a "core area" approach where the best habitat for sage grouse was protected, meeting the biological needs of the species, and at the same time provided for and protected new development which met the standard as an adequate regulatory mechanism. The Idaho Governor chose to embark on the following goals: 1) To develop a plan that could serve as an acceptable alternative to the federal planning effort; 2) To provide a regulatory mechanism to preclude the need to list the species; and 3) In the event of a listing, minimize the impacts and provide regulatory certainty for land use activities. To accomplish these goals, a "Task Force" would be formed from a diverse group of stakeholders. **Mr. Fisher** reviewed these objectives, and commented the main objective was to develop a conservation plan that is biologically driven, legally defensible and politically palatable. Objectives should be centered on conserving the species and its habitat, while maintaining predictable levels of land use across private, County, State and Federal land. The goals should be incorporated into the BLMs Resource Management Plans (RMPs), consistent with the requirements of the National Environmental Policy Act and it should be calibrated to meet the adequate regulatory mechanism standard under the ESA. **Mr. Fisher** said they will seek the pertinent scientific information and technical expertise to inform the Task Forces's deliberations regarding key sage grouse habitat. The Governor has submitted a letter to the Idaho Legislature asking them to be involved in this process as well.

**Senator Tippetts** asked how would the hunting season be reconciled with the listing? **Director Moore** stated we have places where we can still have limited hunting seasons. But across the entire range, Fish and Wildlife Services found the productivity available from sage grouse was not sufficient for the entire range. He said, we need to maintain our best areas, as well as work on some of the other areas so we can consistently show in the future that the regulatory mechanisms are there to ensure the productivity of the sage grouse. **Senator Tippetts** asked who decides what is a sufficient population or what is a broad enough range. **Director Moore** said, we decide that with proposals from the Fish and Game Commission. For the wide range, there is a determination by a technical team through an advisor of the Fish and Wildlife Services.

**Representative Hagedorn** asked if the areas between Idaho and Nevada were actual target areas. He further commented that before we proceed, we should have the BLM, Forest Service and Fish and Wildlife Services help us understand what we don't know. **Director Moore** replied that Idaho does have a few of the best habitat for sage grouse as does Northern Nevada and Eastern Oregon. But truthfully, he said, Idaho habitat has to be treated for this to succeed. The three state range: Idaho, Nevada and Oregon, are hugely important to pulling all this together.

**Senator Stennett** asked where these funds came from and would there be an ongoing monitoring system in place in the next few years regarding the \$3.1 million set aside for current habitat resurrection, research and monitoring projects in 2012? **Mr. Fisher** commented on a few examples of what has been done with these funds. The funds have been used for habitat restoration, public outreach, field tours and radio telemetry. He further commented these funds came from the Congressional Delegation and unfortunately were being considered for earmarks. He said currently, we are working with our Congressional Delegation to reinsert language in order to provide us with additional funding.

**Representative Bedke** asked if the 3% man-made impact was over and above the status quo and how was that qualified. **Mr. Myers** replied that 3% of all of land surfaces with regards to ownership within the priority habitat areas does include current disturbed land. This includes power lines, homes, mines, roads, and some fire roads. If the disturbances are under 3%, one may have the opportunity to disturb more areas. If the disturbances are over 3% one would not disturb those areas.

**Representative Bedke** asked if Idaho was set to be the litigation state for the plan in Wyoming. **Mr. Myers** said to keep in mind there are two primarily core populations of sage grouse according to the Fish and Wildlife. One is in the three state areas of Idaho, Nevada and Oregon. The other one is located in Wyoming. We look at these two areas differently.

**Representative Harwood** asked who was telling the truth on the entire situation? He queried can you tell me what is going on? **Mr. Myers** commented these are draft maps from BLM. **Representative Harwood** asked for a couple of names of the local working group members on the Task Force. **Mr. Moore** replied this information was in the distributed information. **Mr. Fisher** stated two local working group names were: Wayne Pratt, with the Eastern Grazing Association and Donna Bennett, with the Owyhee County local working group.

**Representative Harwood** asked if there were any conservation organizations in the local working groups. **Mr. Fisher** commented there were two conservation organizations who have requested to be invited to participate with the Task Force local working groups. **Representative Harwood** asked if this issue would be similar to the three-state wolf committee, working together in the same fashion. **Director Moore** stated we would be working from a science standpoint with the other two states for consistency. Each state will have their own unique management plan.

**Senator Brackett** asked how can we expect the outcome of this effort to be any different than some of the other conservation plans done previously? And, he said, he would like all three presenters to give their opinion. **Mr. Myers** commented that the State of Wyoming was held up as the icon of how this process works. The BLM gave the State of Wyoming a pass from compliance. BLM informed the State of Wyoming they will be issuing instructional memorandums specifically for them and would include the National Technical Team recommendations. The State of Wyoming put together a plan which was approved by BLM, the Forest Service, and two other service parties. Now the BLM was bringing in a new set of criteria. **Mr. Fisher** replied that in a short-term perspective, our attempt is to find our own solution within Idaho and try to comply with the BLM and the Fish and Wildlife Service. In the larger perspective, if all the states approach this issue, it would be very similar to the wolf issue. **Director Moore** commented that we can come up with a state plan and then the Secretary of the Interior would do his part to see that plan came to fruition.

**Representative Raybould** asked what would the impact be on the sage grouse on private property that is in agriculture now. **Mr. Myers** replied the sage grouse were not yet a listed species and they were listed under the Species Act. The BLM and the Forest Service had no authority to manage private land. However, he said if there was a patch of BLM land all around the habitat area, this would be considered a human cause disturbance, which would go into the 3% calculations. **Representative Raybould** asked if it would be a problem for the property owners for farming and leasing grazing land, west of St. Anthony and Ashton, which are bordered by BLM lands. **Mr. Fisher** commented that one of the major concerns was the protection of private property in Idaho.

**Representative Bedke** asked what could the Legislature do at this point to address this gap. **Mr. Fisher** replied that the Legislature plays a very valuable role in this process and he said we want and need the Legislature's input. One of the roles the Legislature could play would be that of a Legislative Oversight committee.

**Chairman Stevenson** commented that **Chairman Pearce** had requested the Senators to be excused to move to Room WW55 at 2:53 P.M.

**RS 21085C1** **Senator Stennett** presented **RS 21085C1** to the Committee for print. The purpose of the RS was to prohibit the use of certain substances in hydraulic fracturing and to ensure the health and safety of our citizens without materially impeding the development of our natural resources. This legislation would prohibit the injection during fracking operations of known human cancer causing compounds as listed in the latest edition of the "Report on Carcinogens" prepared by the National Toxicology Program.

**MOTION:** **Senator Stennett** moved, **seconded** by **Senator Werk**, to print **RS 21085C1**. **Senator Tippets** opposed to print line 11 with no consideration. Motion **failed** by **voice vote**.

**SUBSTITUTE MOTION:** **Senator Werk** moved, **seconded** by **Senator Stennett**, to print **RS 21085C1**. The motion **failed** by **voice vote**.

**RS 21226** **Senator Werk** presented **RS 21226** to print to the Committee. Currently, the state statute excludes consideration of protection of public health, safety and welfare as a public interest in the development of oil and gas resources in our state. This legislation remedies this oversight by affirming that development of oil and gas resources is in the public interest when implemented in a manner that protects the health, safety and welfare of our citizens.

**MOTION:** **Senator Werk** made a motion to print **RS 21226**, **seconded** by **Senator Stennett**. Motion **failed** by **voice vote**.

**ADJOURNMENT:** Chairman Pearce thanked the Committee for the good work, and adjourned the meeting at 3:00 P.M.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary