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King Solomon's Choice

The machinery is in place for a sage grouse listing and people are playing the game. By Carolyn Dufurrena

Let's get one thing straight. The listing of the sage grouse, whether Bi-State, Gunnison, or Greater, is not about the birds. It's not about habitat, or conservation, or invasive species, or wildfire. It's about placating environmental groups whose stated purpose is putting livestock operators out of business. It's about control of the land, public and private. And it's about money.

Here's an example from the Bi-State Distinct Population Segment (DPS) of the Greater sage-grouse from the Sierra Nevada foothill country between Nevada and California. The Bi-State population was originally defined by a high-school biology teacher from Yerington who along with his students

captured and took blood samples from birds in the Pine Nut Mountains and environs. The mitochondrial DNA of the females is identical to that of the Greater sage-grouse. The males differ by a couple of markers. Wildlife biologists determined that habitat fragmentation threats existed to this population, which might not be able to fly over the two-lane highway or negotiate the wire fences in the area (Has anyone ever seen a dead sage grouse tangled in a wire fence?) and cows might step on their nests and eat the grasses down below the preferred eight-inch stubble height.

Contrary to the biologists' fears about birds not being able to negotiate their way

through fragmented habitat, radio-collared birds from the Pine Nut Mountains have been documented 50-70 miles south into the Bodie Hills—over the five-acre ranchettes, power lines, highways, airports, and other urban threats that lie between. According to researchers, this movement “may occur more often than previously thought based on some recent genetic analyses.” Nonetheless, the local Smith Valley Conservation District now provides fence reflectors for 25 cents each, and hordes of Boy Scouts and volunteers comb the countryside putting little white tabs on wires. The machinery is in place, and people are playing the game.

The Bi-State sage grouse conservation effort has all the elements of a successful plan to prevent listing: a dedicated group of stakeholders from all walks of life; a conservation plan that everyone signed off on, including the governor, which the feds plan on using anyway; and a population of sage grouse that is at least stable and appears to be increasing. “And they listed it anyway,” says local rancher Dick Huntsberger in disgust. “What else can we do? We have done everything we possibly can. I've taken down 1,700 acres of juniper to prevent this listing, and it still happened. It's ridiculous. Now we're being told that the bird is listed because the FWS is not assured that the restoration projects we're proposing can be funded.”

According to sources, Nevada state U.S. Fish & Wildlife Service (FWS) director Ted Koch told the Bi-State Group at its December 3 meeting in Bridgeport that there was a “99 percent chance of the bird being listed.” When we asked Koch about that statement, he didn't recall saying it. However, he added, “Once most species get to the ‘proposed’ stage, the process does go forward to listing.” He adds that the three reasons to list a species are: “to protect unoccupied critical habitat,” although that “almost never happens”; “to help alert the public to conserve the species”; and last, but certainly not least, proposed ESA listing allows FWS “to prioritize for restoration funding.”

ESA listings also now provide an endless impetus for litigation by groups like the Center for Biological Diversity and Wild Earth Guardians, which have access to the Equal Access to Justice Act. The original purpose of EAJA was to pay the court costs for individuals and small businesses that successfully brought suit against the feds, such as ranchers whose property rights were being infringed upon by the federal

government. Now, thanks to changes in the law during the Clinton administration, EAJA has made it profitable for radical environmental groups to sue the federal government. Recent closed-door negotiations with the Obama administration have resulted in 210 more species being added to the list of potential ESA candidates, ensuring that these lawyers' grandchildren can all go to Ivy League colleges in the future.



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you've ever taken any federal monies to augment conditions on your private lands, the feds have a say-so in how you run." And how does FWS dictate land management to the Bureau of Land Management? Allotments will be evaluated individually this spring, not by FWS but by BLM and the U.S. Forest Service, to determine what cuts may be made in season of use or in numbers (measured in animal unit months or AUMs). "I run outside for six-and-a-half months of the year," says Huntsberger. "If they tell me, 'We're just going to take your spring country,' that's half my permit. I can't stay in business that way."

Nevada's Gov. Brian Sandoval, to his credit, has stood foursquare behind the folks trying to remain in business in the Bi-State area. He notes in a letter to newly appointed Interior Secretary Sally Jewell that "298 projects aimed at conserving, expanding and improving habitat

seem to prove that the motivations are political rather than biological in nature.

The viability of all industries that operate on public and private land in the West is at stake, and lobbyists and politicians are scrambling to exempt their uranium mines, wind farms, and oil and gas properties from being included in critical habitat. (See "Sacrificial Lambs" on page 22.) Longtime ranchers are scrambling to protect their private property rights. State game and fish agencies are scrambling to be sure everyone knows that actually killing the birds really has no effect on their viability as a population. What? It's important to note that the cessation of hunting would cause major negative impacts to the coffers of those state agencies.

Maybe the feds can see the disastrous effect the listing of the spotted owl had on the Northwest, where now one of the primary industries is pot-growing, and they're trying to figure out some way for private landowners, industry, and state and local governments in the western states to stay in business.

Senate Majority Leader Harry Reid's stock in trade has been to dance between environmental groups and big business, and the "discussion draft" of the Reid-Heller bill now in Congress has something for everyone, except the bird. Reid-Heller would make it possible, but very expensive, to develop land in sage grouse habitat, ensuring that a multimillion-dollar casino enterprise could go forward, but not a small local business. It would hand a little money (15 percent) to the state to support mitigation efforts—85 percent or up to \$25 million a year would go to the Department of Interior to pay for federal sage grouse programs. It would pay off environmental groups by permanently designating an undisclosed number of wilderness study areas in Nevada as permanent wilderness. Reid's financial supporters in the geothermal industry would get one site in each of three rural Nevada counties to fast-track geothermal development.

Doug Busselman says it best. "The feds are at a King Solomon moment here. They have to decide whether to cut the baby in half. Somehow they have to placate the enviros without going all Death Star on everybody else." ■

Carolyn Dufurrena was lead reporter on RANGE's Special Report: Sage Grouse, which can be found at www.rangemagazine.com, Summer 2012 issue.

Ravens and coyotes are hardest on the sage grouse, but there are plenty of others that like the pretty birds (and their eggs), which are easy prey.

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Efforts to improve habitat and reduce the effects of wildfire are commendable, but habitat conservation will have little impact if sage grouse reproduction is ignored. Multiple experts acknowledge predation is the "most important proximate cause of sage grouse mortality" (Schroeder et al., 1999). Existing studies show that up to 80 percent of sage grouse eggs are destroyed by predation, principally by ravens. Without addressing this variable in the sage grouse equation, all other solutions will fall short of solving the problem.

Ka-ching. Koch gets a little excited when he starts talking about the multimillion-dollar program that could be in the offing to manage the Bi-State population, money that could likely flow into the FWS coffers. Then Koch says somethings unexpected: "We really want to keep ranchers in business. Anybody who's engaged in juniper eradication, ranchers who are grazing properly, should be exempt from further regulation. Proper livestock grazing is not a major threat to sage grouse. This is not an all-or-nothing thing, but we don't know what the middle ground looks like, and we need help figuring it out."

He implies to one member of the Bi-State group that a conservation agreement could be put in place on public lands, with the intent of keeping ranching on those lands viable. That sounds promising, but then again, he's also been reported as saying, "If

for sage grouse" have "yielded meaningful results for the Bi-State DPS: population trends are stable to increasing in Nevada and biologists have observed record and near-record lek attendance in California." Given these results, and the 2012 Action Plan which was endorsed by federal and state resources agency directors, Sandoval calls into question the "sincerity of FWS in working with states to develop programs that can help protect species, while avoiding a listing under the ESA."

One way or another, the listing of the Bi-State and other special populations of sage grouse will provide a road map for the rest of the West. "Of all the sage grouse populations across the 11 western states, only the Bi-State population is increasing. And it's still going to be listed," says Doug Busselman, former head of Nevada Farm Bureau. That would