



From the Inside

How the West Was Lost

Playing games the Washington way. By Stephen M. Studdert

We all hear stories about how decisions in Washington, D.C., are reached through a combination of political horse trading, backroom deals, corruption, deception and double-dealing flim-flam, and outright mugging. Well, it's true. And one of the worst such decisions in recent memory will have enormous lasting impact on the West.

The great American West is engaged in a war—what Wyoming Sen. Michael B. Enzi calls a “regulatory war”—with the Obama administration and unelected Washington minions over the stewardship and use of public and private lands in the West, and the West is losing. At stake is everything from water to oil and gas production, coal mining and coal power plants to cattle and sheep grazing, mineral extraction to timber production, and summer to winter recreation.

Nothing happens in Washington today without a partisan political battle; gone is the consensus for the common good that used to exist. Meanwhile, the feds run roughshod over our lives. State and local governments, ranching and mining interests, and average families are fighting this regulatory war on virtually every front, and the massive churning machine of unelected federal bureaucrats and political appointees has brought a howitzer to a knife fight.

In a classic Washington story, where power is everything and the process is laced with insider intrigue, backroom deal making, political chicanery, scheming backstabbing, conspiring turncoats, partisan obstinacy, and shifty bureaucratic maneuvering, a range bird sort of like a chicken has handed us the potentially most devastating federal triumph yet in the losing battle for western states' rights.

Growing Federal Dominance

Today, the Department of the Interior employs over 70,000 bureaucrats spending over \$13 billion in 2015. The Department of Agriculture employs over 100,000 bureaucrats with a budget of \$140 billion, and EPA

has more than 15,000 with an \$8 billion budget. A recent study revealed that federal workers' pay and benefits were 78 percent higher than private-sector employees, who earn a yearly average of \$52,688 less than government workers.

Just to keep things in perspective, there were 56 signers of the Declaration of Independence in 1776, and 55 delegates drafted the Constitution in 1787.

A Football-size Bird

In what has been a hotly debated topic for several years, the state/federal battle over the



Sen. Mike Enzi (R-WY) is chairman of the Health Education, Labor and Pensions Committee.

greater-sage grouse, a bird about the size of a football, is about far more than a bird. It is about the destiny of western states and the ranching way of life, about food production and resource extraction, about something we used to possess called private property rights, and about whether “we the people” or Washington hacks control our future and our livelihoods.

According to the North American Breeding Bird Survey, in the past 50 years greater-sage grouse populations have decreased by 65 percent. Once believed to number in the millions, U.S. Fish & Wildlife Service estimates there are now approximately 500,000

birds spread over 173 million acres in 11 western states and two Canadian provinces. About half of that habitat is on private land.

Conservation officials attribute this decline to a loss of sagebrush-steppe habitat attributable to invasive species such as piñon pine, juniper trees and nonnative cheatgrass, to catastrophic wildfire, loss of wet meadows, power lines, off-road vehicles, predation, industry, and urbanization.

Hot Topic

In 1985, federal bureaucrats and environmental activists proposed listing the sage grouse on the federal Endangered Species List (ESL). Repeated petitions to list were filed, yet no listing was warranted.

In 2005, Western Watersheds Project filed a federal lawsuit challenging that decision. The U.S. District Court of Idaho ruled in its favor and ordered a listing reconsideration. In 2010, the feds concluded the listing was “warranted but precluded,” considering if existing regulatory mechanisms and state efforts were adequate to protect sage grouse and their habitats. More lawsuits followed, causing state and private conservation costs to skyrocket, and a September 2015 deadline was established for a listing decision.

When Congress passed the Endangered Species Act, it declared its purpose was to conserve species deemed to be in danger of extinction. Species not in such danger are managed and protected under state authority. But by law it is the feds alone who make the extinction endangerment decision. States can talk throughout the process, but there is no guarantee the feds will listen; on the greater-sage grouse, they didn't.

In what ultimately proved to be a futile effort to preserve state management primacy and avoid a listing of the greater-sage grouse on the ESL, since 2001 North Dakota, South Dakota, Montana, Washington, Oregon, Idaho, Colorado, Wyoming, Utah, Nevada, and Northern California—11 western states having some sagebrush-steppe habitat—have spent several hundred million dollars to

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preserve, enhance, and restore greater-sage grouse habitat. They estimate that millions of acres of habitat have been restored and protected from wildfires and invasive species.

Costs borne by these western state governments have been exceptional, including the enrolling of thousands of ranches in the effort to help protect 44 million acres of habitat. Since 2006, for example, Utah—with an estimated total sage grouse population of only 13,000 birds—has treated over 1,120,491 acres of wildlife habitat at a cost exceeding \$300 million. With only an estimated 308 sage grouse, North Dakota has also spent millions.

Western Strategy and Tactics

Realizing that state efforts were losing to the Obama administration and recognizing an endangered species listing would cost the Defense Department tens of millions of dollars, endanger critical military facilities, and imperial western states' military training essential to national security, last April Utah Congressman Rob Bishop, chairman of the powerful House Committee on Natural Resources, crafted a brilliant solution to balance conservation and national security, preserve state control, and protect military facilities.

Working with Colorado's Sen. Cory Gardner (and after much backroom arm twisting and deal making), Bishop secured a successful House vote on an amendment to the National Defense Authorization Act that would prohibit the Obama administration from declaring the sage grouse an endangered species.

The amendment recognizes that state plans are effectively managing and conserving sage grouse populations and it would ensure time for state plans to be fully implemented. In other words, the states were succeeding and did not need federal control.

Resistance came from the Senate, surprisingly led by Arizona Sen. John McCain, chairman of the Senate Armed Services Committee. In essence, McCain abandoned his western colleagues and threw western states' primacy to the Obama forces by deleting the Bishop

amendment to secure our western future. It was not included in the final bill signed into law by President Obama.

Cagey Federal Decisions

With just a handful of days remaining before the September 30 listing deadline, U.S. Secretary of Interior Sally Jewell, a nonelected



Rep. Rob Bishop (R-UT) is chairman of the House Natural Resources Committee.

political appointee of President Obama, ambushed states rights and private property rights when quietly behind closed doors she determined that state and private efforts to save the greater-sage grouse mean the bird no longer faces extinction and does not need to be listed as an endangered species. Some heralded this camouflaged federal ploy as a victory for all parties.

But read between the lines, where the feds hide the fine print. "Jewell's cagey move," as one western governor proclaimed, "was the equivalent of a listing decision outside the normal process and fail[ed] to support an appropriate balance between conservation and other public uses of the land." With the stroke of her pen, this bureaucrat bypassed years of legal contest, leaving the fed's management plan and rules and agenda in force, and let the states

be damned. Those federal plans are so excessively restrictive and costly that they are equivalent to a listing under the Endangered Species Act, but without any legal process or challenge. Jewell's decree was arbitrary and final. The Obama plan for control of western land, both public and private, just found greatly expanded authority.

Wyoming Congresswoman Cynthia Loomis, chair of the Congressional Western Caucus and who after a quarter century of elected office is calling it quits, characterized the protections invoked by BLM and Forest Service land-use plan amendments as just as onerous as a listing. "With the stroke of a pen, the Obama administration's

oppressive land-management plan is the same as a listing. Now, successful conservation done at the state level will be in vain. The new command-and-control federal plan will not help the bird, but it will control the West, which is the real goal of the Obama administration."

Saying Jewell's move "changes nothing," House Natural Resources Chairman Bishop adds: "They did not go through the front door. They went through the back door.... They have the same type of control as if it is listed."

Federal Control of Western Lands

"The natural progress of things," Thomas Jefferson once wrote, "is for liberty to yield and for government to gain ground." That's just what's happening today.

By any other name, this policy is nothing more than a disguised federal land control grab. While some state plans provide a one-mile buffer around a lek—the mating area



President Barack Obama's Secretary of Interior, Sally Jewell, a Democrat.

Through federal sleight of hand we lost another colossal war over federal land use dominance in our slow death by regulation.

for the sage grouse—the federal plans have a three-mile zone. There are also high federal standards for “human disturbance,” an enormous federal obstruction of livestock, timber, mining, and energy interests. BLM officials have admitted that “stipulations” for greater-sage grouse will be implemented in the federal permitting process, meaning that long-standing sheep and livestock grazing permits, mining permits for countless minerals, and timber harvesting permits may be arbitrarily reduced or denied



Gov. Matt Mead (R-WY) has served as Wyoming's boss since 2011.

by a bureaucrat. Travel restrictions are likely for livestock, mining, and timber companies, and for off-highway vehicles. This potential financial devastation to the West is incalculable.

So if the habitat is 173 million acres and the feds want a three-mile protective envelope, federal control of a billion acres or more of public and private land may well be the true result. And all this has little to do with a sage grouse that is protected by responsible stewardship; it has everything to do with federal bureaucrats controlling not only our land but everything that happens on it, no matter who owns it.

Where Do We Go From Here?

The West won the battle to keep the sage grouse off the ESL, but through federal sleight of hand we lost another colossal war over federal land use dominance in our slow death by regulation.

Now there is yet another major battle brewing. Calling the Endangered Species Act a failure and economy killer, western

states, led by Wyoming Gov. Matt Mead, chairman of the Western Governors' Association, are launching the newest battle against Washington's reluctance to remove species from the list after they've recovered. When a species is listed, western governors argue, there are “extreme opportunity costs.” Only about one percent of listed species has ever been delisted.

Meanwhile, Washington carries on in its steamrolling of western states' liberties and freedoms. The use and productivity and destiny of lands where the venerated sage grouse may live, whether publicly or privately owned, now rest with the opinions of a federal bureaucrat. While the greater-sage grouse may not now be an endangered species, what is endangered is private property rights.

Everywhere we see government encroaching on such rights through zoning restrictions, permit requirements, and ever-increasing regulations. The battle for recourse, if available, can be costly and time consuming, often beyond the resources of individuals and businesses, but never beyond the deep pockets of government.

In four case decisions during 2015, Supreme Court Justice Clarence Thomas questioned the vesting of “the federal government with an undifferentiated ‘governmental power’” beyond the three constitutional branches. We should too.

My old boss, Ronald Reagan, believed private property rights to be “one of our most precious rights.” They are fundamental to our United States. What the federal government has just pulled off in the name of one football-size bird is nothing but a federal taking of states rights and private property rights that will have immeasurable, unforeseen, and very costly consequences for generations of westerners. ■

Stephen M. Studdert is a sixth-generation westerner. He was a senior White House advisor to three presidents.