

**Written Statement of  
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**Oversight Hearing on  
“Sage grouse and States Management”**

**Before the  
U.S. House of Representatives Committee on Natural Resources  
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**Introduction and Qualifications**

Chairman Bishop, Ranking Member Grijalva, members of the Committee, my name is Ed Arnett and I am the Senior Scientist for the Theodore Roosevelt Conservation Partnership, a national sportsmen’s conservation organization comprised of 42 Partner organizations, our mission is to ensure all Americans a quality place to hunt and fish. I appreciate the opportunity to testify today on such a timely and important topic as sage grouse conservation.

I’ve been a professional wildlife biologist and scientist for 25 years, with experience in research, management, academia, and conservation policy. I earned my Ph.D. from Oregon State University in Forest Science; a Master’s degree in Zoology and Physiology from the University of Wyoming; a Bachelors from Montana State University in Fish and Wildlife Management; and an Associate of Applied Science degree in Natural Resources Management from Colorado Mountain College. I have extensive research and management experience in forest-wildlife relationships, wind energy and wildlife, and other aspects of energy and wildlife relationships.

**Background**

Once numbering millions and spanning 13 US states and three Canadian provinces, greater sage-grouse are now extirpated in two states and one province and have lost 44% of their original range. Numerous stressors that include habitat fragmentation, energy development, urbanization, fire, invasive species, disease and poor rangeland health have contributed to declines of sage-grouse in the past several decades. Indeed, the fact that a once abundant, widely distributed and harvested game bird is now at population levels low enough to consider for listing as threatened or endangered should be a major concern for all stakeholders and certainly for America's sportsmen.

Sagebrush ecosystems are critically important to more than 350 species of plants and animals, including those pursued by sportsmen such as mule deer, pronghorn, and the greater sage-grouse. The sage-grouse in essence has become a modern day “canary in the coal mine” that is telling us that sagebrush ecosystems and many of the species that depend on them are in jeopardy. Thriving populations of sage grouse are a good indicator of healthy sagebrush ecosystems.

The TRCP supports the continued science-based management of sage-grouse as a game bird under the authority of state fish and wildlife agencies. We believe that the best way to maintain

state management authority is to enact both federal and state conservation plans with durable protections for sage-grouse habitat, thus enabling the US Fish and Wildlife Service (USFWS) to make a “not-warranted” decision under the Endangered Species Act (ESA) without delay. Balancing sagebrush and sage-grouse conservation with other land uses also is important, notably 1) implementation of sustainable grazing practices that keep working ranches in operation while providing habitat for sage-grouse; and 2) responsible energy development that balances with conservation and does not further impact sage-grouse and their habitats and mitigates unforeseen impacts once avoidance and minimization measures have been taken.

### **Past Engagement by the States**

Given the theme of this hearing, a bit of history is in order regarding the engagement of the states in the collaboration and progress that has been made the past decade. Any notion that the states have not been “empowered” or engaged is misleading. In the mid-1990s, it was state agency biologists that began expressing concern about declining numbers of sage-grouse, loss of habitat, and deteriorating conditions of the remaining sagebrush ecosystems. At that time, however, it was determined that sage-grouse did not meet requirements for listing under the ESA. As we all know, years later, after litigation, a “not warranted” decision in 2005, and more litigation, the USFWS in 2010 determined sage-grouse did warrant ESA protection. The USFWS is now under court order to finalize a decision by 30 September 2015. But the stage for extensive state agency engagement and cooperation with the federal agencies was set a decade earlier.

In 2002, the Western Association of Fish and Wildlife Agencies (WAFWA) partnered with the USFWS to generate an assessment of sage-grouse populations and habitats (Connelly et al. 2004) and a conservation strategy (Stiver et al. 2006) built from the ground up that continues to serve as a foundation of the current efforts. The Governor’s Sage-grouse Task Force was later created in 2011 and chaired by the states (Governors Matt Mead-WY and John Hickenlooper-CO). That state-dominated task force was charged with developing recommendations on how to best advance a coordinated, multi-state, range-wide effort to conserve the sage-grouse, including the identification of conservation objectives to ensure the long-term viability of the species (USFWS 2013). With the backing of this Task Force, the USFWS embarked on developing range-wide conservation objectives for the sage-grouse to define the degree to which threats need to be reduced or ameliorated to conserve sage-grouse so that it is no longer in danger of extinction or likely to become in danger of extinction in the foreseeable future (USFWS 2013). The USFWS recognized that state wildlife agencies have management expertise and management authority for sage-grouse; as such, the USFWS created a Conservation Objectives Team (COT) of state and FWS representatives to accomplish this task. The COT consisted primarily of state agency biologists/representatives (10 of the 11 western states in the range of sage-grouse) along with five biologists and other staff from the USFWS. At the heart of the COT report is the foundation laid by the WAFWA conservation strategy (Stiver 2006). Importantly, all of the states signed off on the COT report and the threats to sage-grouse and strategies to reduce those threats embedded within the report.

The states have continued to be engaged extensively, through the Governor’s Task Force, WAFWA and their Sage-grouse Executive Oversight Committee, and other venues. From my perspective, the coordination and work between the states and federal agencies to achieve

positive outcomes and ultimately a not-warranted decision, while not perfect at all levels or all the time, has been unmatched in my 25 year career.

### **State and Federal Land Management Operate Under Different Mandates**

Nearly half of the nation's remaining sagebrush habitat lies on federal public lands administered by the Bureau of Land Management, and conservation measures in that agency's new resource management plans will likely carry significant weight in the September 2015 decision. Private and state lands, however, are also vital to the birds' future, and the ESA listing decision will hinge on good state conservation plans and efforts from private landowners (e.g., the NRCS Sage Grouse Initiative). The states have done a tremendous amount of work, as evidenced by reports from the Western Governors Association and others, and should be commended for their efforts. Both voluntary and regulatory measures in the current and future state plans are critically important components of a broader, comprehensive federal and state strategy for sage-grouse.

However, shifting land management authority completely to the states and negating federal land management plans, as has been proposed in several recent legislative proposals, is fundamentally flawed and problematic for numerous reasons. There are key differences in how state and federal governments are mandated to manage their respective lands. First and foremost, states do not manage their lands under a multiple-use mandate, as the federal agencies are required to by law. State school trust lands are under constitutional mandate to generate, and where possible maximize, revenues for schools, which limits their flexibility and management options in many cases. In contrast, federal land managers operate under a multiple use sustained yield mandate, giving them far greater flexibility to manage for conservation values in addition to other values. Moreover, at least some states have limited ability to regulate private lands given their current constitutional statutes and in some states, counties have authority over many decisions that may affect sage-grouse habitat (e.g., permitting development). The management stipulations that states apply to non-federal lands are far more limited in scope than the types of requirements that federal land managers can apply. As a result, sage-grouse management plans on federal, public lands can and should be significantly more conservation-oriented than the state plans insofar as development buffers and setbacks from priority sage grouse habitat. State plans, however, must work in conjunction with strong federal plans for sage grouse conservation to be successful.

### **States Already Have Management Authority of Populations and Cooperating Status**

The states, primarily through their respective fish and wildlife agency, already have full management authority of wildlife populations. The Fish and Wildlife Coordination Act (among others) sets the stage for state cooperation with federal agencies, and the states have "cooperating agency" status under administrative rule set forth by the federal agencies. For example, the BLM planning Handbook (H-1610 Appendix C, p. 6) requires field offices to:

*"Designate priority species and habitats, in addition to special status species, for fish or wildlife species recognized as significant for at least one factor such as density, diversity, size, public interest, remnant character, or age. Identify desired outcomes using BLM strategic plans, state agency strategic plans, and other similar sources. Describe desired habitat conditions and/or population for major habitat types that support a wide variety of*

*game, non-game, and migratory bird species; acknowledging the states' roles in managing fish and wildlife, working in close coordination with state wildlife agencies, and drawing on state comprehensive wildlife conservation strategies. Identify actions and area wide use restrictions needed to achieve desired population and habitat conditions while maintaining a thriving natural ecological balance and multiple-use relationships.”*

As mentioned earlier, the states have been engaged since concerns for sage-grouse and loss of sagebrush habitat arose years more than two decades ago. The states remain responsible for managing not only populations but also approximately one third of the identified priority sage-grouse habitat into the future. Extraordinary effort and coordination has occurred for the past several years and the states are finalizing their plans (or already have done so and have begun implementation; e.g., WY, UT) that will compliment federal efforts. While we have seen some reluctance and mediocre plans in some states to date, the ongoing process and negotiations should be allowed to play out and be finalized with the goal of a comprehensive, coordinated state and federal strategy for sage-grouse and sagebrush ecosystems. This is happening, and requires no further Congressional action on sage-grouse.

### **Issues with Legislating State Management on Federal Lands**

Current proposed federal legislation under consideration would:

- eliminate the ability of federal public land managers to amend or modify federal resource management plans whether to enable conservation or development, and seeks to retroactively nullify resource management plan amendments already made, a change in policy that would impact millions of acres and hundreds of species of fish and wildlife.
- halt federal land-use planning efforts, costing taxpayers tens of millions of dollars, and delaying implementation that is needed immediately. Such action also would increase the uncertainty within SG range associated with this major change in land management policy - unintended consequences?
- erode the implementation of bedrock conservation statutes—such as the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Federal Land Policy and Management Act, National Forest Management Act, Administrative Procedures Act, Fish and Wildlife Act of 1956, and others.
- eliminate judicial review on a sweeping array of long-term land management decision points.

It can be argued that state management authority and practices on private and state lands, or lack thereof, is in part responsible for declines in sagebrush habitat and ultimately populations of sage-grouse. Importantly, state conservation plans and regulatory authority vary dramatically across the 11 states, a situation not necessarily driven by different environmental conditions or threats to the species that warrant flexibility and different approaches. Additionally, some populations of sage-grouse span multiple states that have different habitat designations and management approaches – this would be very problematic for managing such populations.

Numerous questions regarding any such shift in management authority immediately surface. How soon could we possibly expect such a shift in management responsibility to occur? It does

not seem possible that halting all efforts by BLM and the USFS and shifting to a state-driven plan is possible in the immediate future—the federal management plans are nearly finalized and ready for much needed implementation. How will states incorporate the intent of the ESA, existing federal regulations, and case law into the analysis on a state by state basis? How will the states do their own analysis on plans, or will they employ the 5-factor analysis that the USFWS must employ according to the ESA? How would individual states address the range wide listing petition they are dealing with now? Perhaps most important, how will courts rule on the adequacy of state plans – will this be through federal or perhaps through 11 different state courts?

Finally, the state plans, even those produced by committees of diverse stakeholders, did not go through a broader public review and input process as the federal plans have. As such, implementing such state plans on federal lands owned by the American people with no opportunity to comment is fundamentally and constitutionally flawed.

Given these issues and questions, the state plans themselves cannot stand alone and drive conservation efforts on federal and state and private lands that would adequately conserve the species.

### **Conclusion**

Our organization and many of our partner organizations have been active in the sage-grouse issue and define success as keeping the bird off of the threatened/endangered species list and its continued management by the state wildlife agencies. The threat of an ESA listing for sage-grouse has brought the states, federal agencies and multiple stakeholders to the table in a meaningful way. The only way to conserve the species, avoid a listing, and sustain state management authority, is with strong conservation plans and collaboration that is currently ongoing. We have seen unprecedented coordination and planning efforts across 11 western states and we believe the USFWS can get to a “not warranted” decision by the court-ordered deadline in September 2015, and without Congressional intervention. The recent “not warranted” decision on the Bi-state population of greater sage-grouse clearly demonstrates that a positive outcome from these current efforts can be achieved. However, we are deeply concerned that current legislative efforts not only represent an unprecedented shift of management responsibility by turning over land use and habitat management authority of publicly –owned, federal lands to the states, but also unnecessarily delays implementation of management plans that have been years in the making. We need to achieve timely approval of federal land management plans and begin implementing conservation and habitat management measures that convert “paper birds and habitat” into real results on the ground.

Altering the process at this point via delay and shifts in management authority creates even greater uncertainty for stakeholders and virtually assures a listing down the road. As such, what we need from Congress is simple – adequate and sustainable funding levels that ensure conservation durability in the long-term.

Mr. Chairman and Members of the Committee, on behalf of the TRCP I want to thank you for inviting me to share this information and assist you on this important issue. I would be happy to answer any questions you may have.

## **References**

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