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Office of the Governor

November 18, 2013

The Honorable Sally Jewell
Secretary, U.S. Department of Interior
1849 C Street, N.W., Room 6151
Washington, DC 20240

Dear Secretary Jewell:

I am deeply disappointed and concerned about the U.S. Fish and Wildlife Service's proposal to list the Bi-State Distinct Population Segment (DPS) of greater sage-grouse as threatened under the Endangered Species Act (ESA). It is especially troubling that this listing has been proposed in the face of more than a decade of conservation and restoration initiatives, and in spite of the fact that over the last twelve years, sage-grouse populations in the Bi-State DPS have exhibited a stable-to-increasing trend in Nevada, and monitored leks in California have displayed record- to near-record-high numbers.

Through this proposal, more than 1.8 million acres of habitat could be declared "critical" under the ESA. If ultimately approved, the listing could result in gratuitous impediments for Nevada ranchers, renewable energy companies, and everyday citizens who enjoy access to our beautiful public lands. Beyond these unwarranted impacts, proposing this listing – in light of all the work that has been done – raises serious concerns about the sincerity of the USFWS in working with states to develop programs that can help protect species, while avoiding the need to list under the ESA.

The Bi-State Local Area Working Group (LAWG), comprised of local, state, and federal partners as well as the private and non-profit sector, has been working for more than a decade to develop and implement strategies to conserve the Bi-State DPS. In 2002, the group began work on a conservation plan that was approved in 2004 and has been implemented over the course of the past decade; it has yielded significant results for the Bi-State DPS.

Since the 2004 plan was approved, 298 projects aimed at conserving, expanding and improving habitat for sage-grouse have been implemented in both Nevada and

California by various agencies. Conservation easements have been established on more than 16,000 acres; more than 7,000 acres of important seasonal sage-grouse habitats have been acquired; greater than 16,000 acres of encroaching pinyon and juniper have been removed; grazing management strategies aimed at improving habitat on more than one million acres have been instituted through permit terms and conditions modifications. Again, these actions 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.

Recognizing the need for continued focus, the 2004 conservation plan was reviewed in 2011. In 2012, the 2012 Bi-State Action Plan was endorsed by the Bi-State Executive Oversight Committee, which includes state and federal resource agency directors. The 2012 Bi-State Action Plan is currently being implemented by private, state and federal entities. Notably, the efforts of the Natural Resources Conservation Service to secure conservation easements are proving to be successful in providing habitat protection that is beneficial to sage-grouse.

The value of the 2012 Action Plan, as well as the work of the LAWG, cannot be understated; it is a model effort, demonstrating consistent engagement and presenting a comprehensive set of objectives, strategies, and actions to accomplish specific goals. The conservation actions that have occurred to date, coupled with the 2012 Action Plan and measure that will be implemented are effective for the long-term conservation of the Bi-State DPS. Unfortunately, the USFWS has chosen to cast aside these important efforts and meaningful, measurable outcomes, instead opting to propose listing the species.

Moreover, through the 4(d) special rule, the listing proposal essentially endorses the Action Plan and the work of the Natural Resources Conservation Service's Sage Grouse Initiative. It is my understanding that our Action Plan may likely serve as the foundation – if not the entirety – of the recovery plan that the USFWS must develop after listing the species. The proposed listing will not enhance or expedite conservation actions for the Bi-State DPS; it will call for the same conservation measures we have already identified. What then will the federal government accomplish through this proposed listing, other than alienating the groups who have been working so diligently on this issue for more than a decade and taking management responsibility of this species away from the states?

Finally, although viewed biologically as distinct from the greater sage-grouse, the Bi-State DPS has important policy implications for the greater sage-grouse. States across the West are currently engaged in unprecedented efforts to develop plans to address the potential listing of the greater sage-grouse. Many parallels can be drawn between the significant effort and action that has gone into addressing the Bi-State DPS and the initiatives also underway for the greater sage-grouse. In light of all the work that has been done, this proposed listing puts into question the USFWS's sincerity in promising to work with states and to truly value and honor our efforts.

Madam Secretary, Nevada remains committed to protecting, restoring and enhancing habitat for the Bi-State DPS. We will continue to implement the strategies identified in our 2012 Action Plan. I respectfully urge you to work with the USFWS and BLM, as well as with your partner agencies at the USDA, to help identify ways to support the implementation of the 2012 Action Plan, while protecting local economies and land users. It is my hope that with your full support, we can preclude the need to list the Bi-State DPS.

Should you wish to discuss this matter further, please do not hesitate to contact me at (775) 684-5670, or Mr. Tony Wasley, Director of the Nevada Department of Wildlife at (775) 684-1599.

Sincere regards,


BRIAN SANDOVAL
Governor

CC: Bi-State Local Area Working Group
Carson City Board of Supervisors
Lyon County Commission
Mineral County Commission
Esmeralda County Commission
Douglas County Commission
Nevada Congressional Delegation
California Governor Jerry Brown
Honorable Tom Vilsack, Secretary, USDA
Jason Weller, Chief, NRCS
Bruce Petersen, State Conservationist, NRCS
Bill Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest
Dan Ashe, Director, USFWS
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CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Opening Statement of
Chairman Doc Hastings
Committee on Natural Resources
1324 Longworth House Office Building
Full Committee Hearing on
“ESA Decisions by Closed-Door Settlement: Short-Changing Science,
Transparency, Private Property, and State & Local Economies”
December 12, 2013 at 10am

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Two years ago, the Obama Administration’s Interior Department signed settlement agreements with two litigious groups, in their words, “to make implementation of the ESA less complex, less contentious and more effective.”

In August, the Director of the Fish and Wildlife Service testified before this Committee that “settlement agreements are often in the public’s best interest because [the Service] has no effective legal defense to most deadline cases, and because settlement agreements facilitate issue resolution as a more expeditious and less costly alternative to litigation.”

This raises several questions: are these ESA settlements, and others negotiated by federal agencies behind closed doors with certain groups, truly in the public’s “best interest?” Have they made implementation of ESA “less contentious” and “less costly?” Are “expeditious” ESA listings allowing adequate involvement of states, local governments, and private landowners or aiding efforts to avoid listings or to delist species? Have they encouraged use of transparent and best science and commercial data in ESA decisions? Have they led to robust economic impact analyses of ESA listings on communities? Have they discouraged litigation?

Here are some facts of what these settlements *have* produced in just two years:

- The current number of proposed and final ESA listings has increased by 210, and the amount of proposed and final critical habitat has increased by more than 2 million acres and more than 2,000 river miles nationwide.
- The Interior Department has accepted 85 percent of the new listing petitions it received, including petitions seeking more than 140 new listings to the Fish and Wildlife Service, and the National Marine Fisheries Service.

- Selective use of ESA data and science and peer review conflicts of interest has clouded the Obama Administration's adherence to data quality and transparency requirements.
- New executive orders and regulations are reducing robust economic impact analyses, and could alter how critical habitat is analyzed.
- Litigants to the settlements are continuing to file lawsuits. In just the past year, the Center for Biological Diversity has threatened or filed over a dozen new lawsuits against the Interior Department, either because they didn't list fast enough, or because the Center for Biological Diversity didn't agree with Interior's decision not to list.

Undoubtedly, some believe cramming hundreds of obscure species onto the ESA list under deadlines and blocking off huge swaths of land because of the settlements are "successes," but many areas of the country tell a different account of how these policies are impacting their communities, their economies, and ultimately, the species.

While the Service recently "endorsed" a plan submitted by Texas, Oklahoma, Kansas, Colorado and New Mexico to conserve the Lesser Prairie Chicken, there is little assurance that the Service won't list the prairie chicken anyway. The Service has refused requests by dozens of counties and other interests for additional time to factor new data and review other plans, insisting it must stick to its self-imposed settlement deadline of March 2014.

In coming months, according to settlement-imposed deadlines, the Bureau of Land Management and Forest Service will submit plans covering over 250,000 square miles in 11 Western states to the Service to decide whether they are adequate to avoid listing of the Greater Sage Grouse. These plans are based on seriously flawed federal technical documents that lack transparency. Nevertheless, the Service has charged ahead with proposing listing of sage grouse in portions of Nevada, California, Colorado and Utah.

Over 2,000 river miles in a dozen mid-western and southern states are likely to be impacted as a result of the Service's listing of mussels and other fish species. These listings will impact over 40 percent of Arkansas alone, including agriculture, timber, and energy producers, and other small businesses.

In Washington, listing is imminent for a plant called the bladderpod, though DNA shows it is not warranted, and proposed gopher listings are impacting local economies and one of the largest military installations in the world.

These are some impacts from the settlements. The "listing-by-litigation" approach is not working for people and species. I look forward to hearing from our witnesses and to continuing a frank and open discussion on how to improve this law.

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