

F. I. M., CORP.

Farming and Livestock

FRED FULSTONE
MARIANNE F. LEINASSAR
KRISTOFOR LEINASSAR
Phone: 775-465-2381
Fax: 775-465-1200
Email: fimcorporation@gmail.com

25 Saroni Road
P.O. Box 12
Smith, Nevada 89430



April 11, 2024

Department of Fish and Wildlife
Wildlife Branch
P.O. Box 944209
Sacramento, CA 94244-2090

Email to:

wildlifemgt@wildlife.ca.gov

Subject "greater sage-grouse"

re: FIM Corporation comment regarding: *"Evaluation of the Petition from the Center for Biological Diversity to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered under the California Endangered Species Act (CESA).*

INTRODUCTION

As a family owned and operated ranch we are opposed to the CESA listing of the Greater Sage Grouse including what the federal officials have labeled the Bi-State Sage Grouse DPS (page 4). Our ranch is within the area of the Bi-State Sage Grouse with property and rangelands within both California and Nevada.

Please remember that FIM family members have a personal interest in wildlife which means that we take pleasure in having an abundance and variety of wildlife in the areas where we graze our sheep. Our direct observations for nearly 80 years indicate that a wide variety of wildlife benefit from our rangeland sheep grazing.

We support biologically sound and cost effective efforts that actually benefit wildlife. Consequently, we have spent a lot of time and money as participants in development of the Bi-State Sage Grouse Action Plan since that effort was started, and in the Nevada Sagebrush Ecosystem project. FIM will continue to participate in the effort to update the Bi-State plan that is now underway.

California Fish and Game Commission received and directed the California Department of Fish and Wildlife (CDFW) to evaluate the contents of a petition to list the Greater Sage Grouse under the California Endangered Species Act in 2022. CDFW has written an evaluation of the petition. Please accept the following comments that concern your document:

"Evaluation of the Petition from the Center for Biological Diversity to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or

Endangered under the California Endangered Species Act”; Report to the Fish and Game Commission by the California Department of Fish and Wildlife; dated March 2023”

As indicated by Petition Evaluation (PE) on page 2 the CDFW concluded that the “...petitioned action to list the greater sage grouse as threatened or endangered may be warranted.”

Authors of the PE have erred.

Greater Sage Grouse, including the Bi-State Greater Sage Grouse, does not warrant status as a CESA candidate.

Errors within the Listing analysis include failures to carefully stick to factual information and failures to carefully follow various laws. Once erroneous information is introduced it is repeated in additional sections and that makes stating every place the error occurs impractical. Common sense should indicate that having based your assessment of sage grouse populations on information that is incomplete and clearly conjecture (fabricated) then the conclusions are in error and the actions will not benefit sage grouse.

As illustrated on your maps, Sage Grouse habitats in California and neighboring Nevada are located within what is known as the Basin and Range Province. This geographic area is generally called “the Great Basin” and we will use that term for this discussion.

As ranch owners we have been involved in Endangered Species Act (ESA) regulations for other species. Our involvement includes the fact that in accordance with ESA we are federal permit applicants which means we are to be included in any consultation between Bureau of Land Management (BLM) or US Forest Service (USFS) and US Fish and Wildlife Service. We expect the same status and courtesy under California ESA.

We expect that any species listing including “candidate status” within our grazing areas will recognize the importance of properly managed grazing and include incidental take provisions for agricultural activities, specifically our sheep grazing.

Your most conspicuous error is the failure to clearly state that sage grouse abundance increased greatly after the arrival of livestock in the Great Basin. Prior to 1850 sage grouse were rarely encountered by early explorers. Sage Grouse were at their greatest abundance around 1950 to 1970 when there were many more livestock than exist today. Authors of the PE have cited US Department of Interior papers that state sage grouse have declined in numbers since 1960. CDFW authors have not been diligent to evaluate the historic fact that sage grouse were infrequently encountered before 1850.

Population peaks in 1960 were the culmination of population growth that was initiated when livestock grazing increased within sage grouse habitats. There has been a decline in sage grouse populations that corresponds to the decreased numbers of livestock grazing in sage grouse habitats since the 1960's. Authors of the PE need to look at the Historic evidence to determine genuine cause and effect relationships between sage grouse populations and recent regulatory actions by federal and state agencies. No CESA effort to protect the species can succeed if we don't identify the real problems.

Grazing livestock is clearly a beneficial anthropogenic effect for sage grouse populations. Grazing provides benefits such as preparing meadow vegetation to be more readily available for sage grouse broods and reducing risk of wildfires that kill sage grouse and destroys sage grouse habitat. Predator control to protect livestock also protects sage grouse.

Our comments are well supported by literature citations, empirical observations, historical accounts by early explorers of the Great Basin, and other factual information. All of our information is publicly available but since this response time for comments on your PE is so brief we believe it would be more effective to forward our documentation when or if your staff would be able to review it.

PE reference citations fail to meet the federal standards that are required when federal funds are used in an effort such as this. For example Information Quality Act standards and other standards for objective and factual federal documentation under the ESA are also appropriate for this consideration under CESA. Please instruct your staff to conform to Office of Management and Budget (2004) “*Final Information Quality Bulletin for Peer Review*” unless California has standards that are more strongly worded.

Please correct the following within your document and then change your conclusions to fit the revised statements:

1. You fail to clearly state that the goal of your plan is to have more sage grouse in the future. That would clearly include statements about the abundance of sage grouse prior to Statehood, increased abundance of sage grouse in the late 1800s, and apparent decreased abundance in the recent past.
2. You fail to include and the authors fail to base their conclusions on the historic record of sage grouse population changes as provided by eye witness accounts since the early Nineteenth Century. It is well established that sage grouse in the Great Basin of Nevada and California were infrequently observed and not at all abundant prior to 1850. Please incorporate the Journals of the Walker Party as recorded by Zenas Leonard, and other historic records. By 1950 sage grouse were very abundant at locations throughout what is now labeled as Great Basin sage grouse habitats.

3. Written history and personal testimony shows that the historic high numbers of Sage grouse occurred after settlement brought the establishment of ranches in the Great Basin. Several benefits became available to the sage grouse as ranchers developed their businesses. It seems obvious that what US Fish and Wildlife Service refers to as Primary Constituent Elements (PCE) were established where they were lacking before Settlement occurred. Please correct your text to fully accept the series of reports authored by Nevada Assemblyman (now Senator) Ira Hansen that include what early exploration revealed as well as changes in wildlife populations. Similar reports can be found on the web site of Nevada Naturalist and Rancher Cliff Gardner <http://www.gardnerfiles.com/>

4. Based on professional opinions of agency biologists, agency officials have erroneously proclaimed that sage grouse were abundant prior to settlement by Americans and have declined since about 1860. That unsupported assumption is false and must be removed from reference in accordance with scientific standards for objective and factual information.

5. History shows that there was a dramatic increase in sage grouse numbers and distribution from 1860 to historic high numbers in about 1960. History then shows there has been a sage grouse decline from historic high numbers since about 1980. This decline in sage grouse numbers (and other wildlife) parallels the federal agency decimation of ranches and livestock numbers. Factual information from Hansen, Gardner, and others has been provided to USFWS, BLM, USFS, USFWS, NDOW, and CDFW repeatedly and is ignored or worse is rejected by the authors of documents such as yours in favor of purely speculative statements about sage grouse numbers and habitat.

6. Please correct your text to indicate that the historic numbers of sage grouse peaked about 1960 and the birds were not abundant prior to 1860. Please base your PE analysis on this factual data. Please urge the California Wildlife Commission and CDFW to support other federal agency efforts to return livestock numbers to the levels of 1980 or before for the benefit of greater sage grouse.

7. Agency officials glibly reject personal observations of some people as merely anecdotal. There has been a claim that such empirical observations are not dependable because the empirical evidence is not found within “peer reviewed” articles. Authors of documents regarding sage grouse conclude that the direct observations of dependable witnesses are not factual --- but an agency employee’s “professional judgment” or a statement printed in some magazine claiming to be a peer reviewed publication are factual by virtue of their existence. Every court in this nation depends on the truthful testimony of witnesses to determine facts and the Commission should be willing to do the same. Direct observations by people such as Fred Fulstone are dependable and include decades of careful observation of the natural habitats of various wildlife species. State law requires that you seek facts and stick to the truth. When our laws required agencies to use the best available scientific and commercial data for

CESA related matters they did not limit the agency officials to peer reviewed articles.

8. We have read many of the articles that agency biologists cite as peer reviewed. Most of what your authors claim as having been subjected to rigorous peer review will not pass the standard for Peer Review as provided by the Office of Management and Budget. Federal standards for peer review must follow the OMB December 2004 Bulletin “*Final Information Quality Bulletin for Peer Review*” and that should also be applied within a State when federal funds are involved. PE Authors are being dishonest when they reject factual statements of empirical observations as being undependable and even more dishonest when they cite articles claiming the status of peer review that would not be approved under the OMB standards. Please order your employees to return to an objective search for truthful and factual information because anything less than this will result in analysis and conclusions that are in error.

9. Authors also mischaracterize habitats that are required by sage grouse in order for the birds to thrive and be abundant. Most of the cited authority carelessly fails to identify sagebrush in accordance with standard Botanical taxonomy and fails to adhere to standards of objectively providing the technical details of sagebrush dominated plant communities and other attributes of sage grouse habitat. As a minimum technical standard habitat attributes must be identified relative to USDA--NRCS Ecological Site concepts, the technical basis provided by Cooperative Soil Survey, Ecological Site Description, and evaluation of plant communities in terms of Seral Status and State or Transition. Please correct your documents by discarding landscape descriptions that are based on GAP and RE-GAP in favor of ecological sites.

10. Biologists with state and federal agencies have arbitrarily declared that certain gross features are essential for sage grouse such as stubble height of more than 4 inches and sagebrush cover values that are never obtained in some sagebrush plant communities. Then the agencies invent a story about the entire life history of sage grouse based on these arbitrary conclusions. The statements typically include accusations of anthropogenic fragmentation of habitat or conclusions that habitat needs restoration, with no measure of deterioration in either case.

11. Please avoid defining cover based on stubble height and plant cover criteria because there is no proof that meeting those criteria is necessary for the sage grouse PCE. It is a matter of record that none of the habitat characteristics that biologists imagine sage grouse require such as stubble height or cover were present during the peak sage grouse populations of roughly 1950-1970. All of the sage grouse habitat was grazed every year and much of it was heavily grazed by domestic livestock. That grazing pressure had no detrimental effect on sage grouse populations. Much greater numbers of livestock than are allowed to be present today did not harm the sage grouse and that intensity of domestic livestock grazing provided beneficial anthropogenic effects.

12. History also tells us that when sage grouse populations peaked in the mid-Twentieth Century there were nearly ten times more sheep and twice as many cattle grazing within sage grouse habitats in the Great Basin. We believe those numbers should be restored for the benefit of wildlife such as sage grouse and for the health of our local economies.

13. Agencies typically fail to note that predation has a severely limiting effect on sage grouse populations, especially nest success and brood rearing. It is well documented that ravens, coyotes, bobcats, and other predators can greatly reduce the reproductive success and survival of sage grouse within both grazed and ungrazed rangeland habitats. Stubble height and shrub cover have no significant bearing on the rate of depredation. Authors of the PE should state that rigorous predator controls are essential if the goal is to have more sage grouse.

14. Agencies such as CDFW, BLM, and USFS probably don't often conduct predator control but this PE discussion should include the topic in some detail even if it is lacking in the Petition. This is an opportunity for CDFW employees to state a problem, identify the causes of that problem, and determine the solutions that will solve the problem efficiently and effectively. Predation of Sage Grouse is well documented and that means that predators are a component of Sage Grouse habitat so predator control must be identified in the analysis. There is no justification for onerous CESA regulations to protect vegetative cover if there is no correlation between the cover and rate of predation.

15. Please state in the text that sage grouse thrived in abundance in the mid-1900s at a time when occupied sage grouse habitat did not provide six inches of herbaceous cover height. All of the sage grouse habitat -- including lek locations, nesting locations, and brood rearing habitat -- was grazed by livestock, often at levels which would be considered “heavy” use during the very time that sage grouse populations peaked. Riparian meadows which coincide with the location of water for livestock were generally heavily grazed beginning early each spring. Studies completed by Klebenow, Evans, and others at Sheldon refuge indicates that the sage grouse selected grazed meadows for foraging and avoided ungrazed meadows which is consistent with the observations from the 1940s through the present that early grazing of meadows is beneficial for sage hens. Grazing either has no effect on the reproduction of sage grouse or was and is a beneficial anthropogenic activity and that should be so stated.

16. Your document fails to clearly state the benefits that sage grouse receive when livestock are grazed on the rangelands that provide sage grouse habitat. If you want sage grouse numbers and abundance that was present in the mid-1900s you will have to arrange for the conditions that correlate with that abundance which was many more livestock grazing within sage grouse habitats in the presence of sage grouse, especially domestic sheep.

17. One issue that is correctly identified by Coates and others is characterization of the invasion of sagebrush dominated plant communities by conifers which becomes a loss of available sage grouse habitat. In the Great Basin those conifers are mostly Singleleaf Pinyon Pine and Utah Juniper with some Western Juniper in the northwest portion of this area (California Northeast SG). Recent papers indicate that as little as 4% cover by conifers coincides with sage grouse no longer occupying an area.

18. We also concur with being concerned about the threat of catastrophic wildfires that burn very large areas and that have become common in the recent years.

19. Agency biologists and apparently authors of the petition want both a concern about wildfire on one hand and some arbitrary claim that grass stubble height of 6 inches or more along with dense stands of sage brush must be in place for sage grouse. Again there is no clear evidence that the stubble height/cover standards will result in more sage grouse but it certainly will result in more susceptibility to catastrophic wildfires. Please state that herbaceous plant production is the fuel that feeds the wildfires and has been allowed to increase within sage grouse habitats.

20. This false statement of sage grouse habitat characteristics, the regulations that are already in place to maximize stubble height are just two of the regulations endorsed by state biologists that have put many ranches out of business or at best have resulted in under-utilized rangeland forage. CDFW must analyze the correlation of the loss of numbers of grazing livestock which in turn leaves vast quantities of vegetation available to burn and destroy sage grouse and habitat.

21. PE authors fail to fully critique the analysis of economic effects that will be the direct result of CESA regulatory decisions. The authors need to determine the costs to the local economy and of ranches such as ours when we are prevented from accessing and using our existing property rights within federally controlled lands. We own water rights, easements, rights-of-way, and grazing preference within our BLM and USFS grazing allotments. Numerous court decisions now support our property ownership; one recent case in Federal District Court in Reno provides an excellent example. Judge Jones ruled in the favor of rancher Wayne Hage and the Hage Estate that their water rights and easements are theirs to own and use within both BLM and USFS regulated allotment areas. Denial of those rights by regulatory actions will in turn be a denial of due process of law and will be viewed as an unlawful “Taking” under both the Fifth and Fourth Amendment to the U.S. Constitution. The liability for costs of Takings of property must be included in any economic analysis of this listing and the accompanying critical habitat designation.

22. PE authors fail to fully recognize the lawful status of our ranch as an applicant under ESA and subsequently under CESA. Status as an applicant means we will be involved in every consultation between BLM, USFS, and USFWS that pertains

to our operation. This document must include discussion of the participants in ESA consultation as a future action.

23. Federal agencies and CDFW have endorsed what the Endangered Species Act calls a Distinct Population Segment of Greater Sage Grouse based entirely on the conjecture of biologists who don't believe they would fly from Washoe County or Churchill County to Lyon County NV and Mono County CA. Justification of DPS status failed to document the best available scientific and commercial data and in accordance with the federal standards of discreteness and significance as defined by the ESA policy. PE authors give some recognition to the fact that CDFW worked with federal agencies to designate the Bi-State but again fails to demonstrate how this Greater Sage Grouse which is arbitrarily called a DPS is in fact a discrete and significant population.

24. Historic records show that prior to 1850 there were few or no sage grouse in our portion of the Bi State area which extends from Smith Valley NV to Bridgeport Valley CA. Historic records further show that by 1950 sage grouse were an abundant and commonly observed species. This increase occurred after the arrival of settlers and livestock, especially sheep. We have no record of the source of original reproducing sage grouse in the Bi-State area but we know the birds are very mobile and the distance from northern Nevada or central Nevada is not too great to prevent migration of birds into the area. It is very likely that birds simply flew to what is now called the Bi-State area from other portions of Nevada and California.

25. What ever the source of sage grouse the fact remains that the numbers increased dramatically from being rare or not present to being very abundant within 100 years. This area does not meet the criteria for either discreteness or significance and authors of the PE fail to discuss this.

26. Listing this bird under ESA would put the economy of our entire community under the control of the CDFW and by reputation your agency people would write an ESA recovery plan with no regard to local needs. The listing and regulations that follow would be a disaster economically and environmentally to our communities. Everyone would be hurt including livestock production, mining, manufacturing, recreation such as hunting and fishing, and just about every other aspect of our custom and culture. We are facing onerous and destructive regulations which have very little possibility of resulting in more sage grouse. Please edit the document to reflect the items listed above.

DISCUSSION

F.I.M. Corp is a family owned and operated sheep ranch with land, existing property rights, and grazing preference within adjudicated range allotments in both Nevada and adjoining areas of California.

The Fulstone family have been agricultural producers in Western Nevada for over 165 years and in that time sage grouse populations grew from none to a great abundance in about 1950 and have now declined in numbers since about 1980. Our ranch history during this time (165) years includes how our livestock, especially our sheep, have greatly benefitted sage grouse.

At this time three generations of our family owns and operates our sheep ranch with headquarters in Nevada and ranch property in both California and Nevada. Our operation includes private property along with Bureau of Land Management and Forest Service grazing allotments in both Nevada and California. Our permits on a number of BLM and Forest Service grazing allotments allow us to graze our sheep by herding them on open range throughout the year. Our range is approximately 100 miles from north to south and 75 miles from east to west.

In order to produce our lambs and wool, we have a working force of 18 people in addition to the immediate family. We have run 1000 head of cattle most of our lives along with the sheep.

The first Fulstone homesteaded in 1854 near Genoa NV. We bought our first ranch in Smith Valley NV in 1903 and began running a few sheep in 1910. Fred Fulstone’s mother Dr. Mary Fulstone, was one of the first woman Medical Doctors in Nevada. Fred’s wife, Irene, was a school teacher and also made many thirty mile horse back rides to the Sheep Camps. Now Marianne, Fred’s daughter, runs the daily business of this ranch with her son Kris and daughter Danielle.

Any proposed sage grouse listing will extinguish our family history as agricultural producers and active members of our community but will not result in more sage grouse.

WHAT NEEDS TO BE DONE IS REALLY FAIRLY SIMPLE

Livestock grazing and predator control are the two most important tools we have to save and enhance the sage hen.

As business owners we have many reasons to be very skeptical about the listing of any species because the ESA has yet to save a single species while spending vast amounts of tax payers’ money.

For a very good example of how the ESA works look at what happened in Klamath Falls area after the USFWS listed a sucker fish. This allowed the USFWS to implement their recovery plan and to give all the water in the Klamath Lake to the endangered species. That meant the farmers got no water for their crops even though they and the community businesses faced immediate economic destruction and citizens were forced into personal bankruptcy.

The USFWS was doing everything backwards. After the USFWS took over, about 80% of the sucker fish died. What is the worse part? The National Academy of Science would later rule that the USFWS recovery plan was based on false science.

Without irrigation water 200,000 acres of farm land and 50,000 acres of wildlife refuge habitat dried up. This destruction was the result of the science used to list the sucker fish being corrupt. False data, false assumptions built into models, errors from carelessness or ignorance, and outright fabrication of biology all came to a head when many thousands of the protected fish were killed as a direct result of the federal actions.

Can any rational person expect a different outcome from listing the sage grouse than what occurred in the Klamath Falls area?

Most of the biologists say that their main concern is for the sagebrush as one part of the sage hen habitat. We have plenty of sagebrush. We also note in the sage grouse literature that ideal sage grouse breeding and nesting habitat is sparsely vegetated with sagebrush cover less than 25%. It can also be shown that sage grouse populations were at a peak when grass cover in their nesting and brood rearing habitat was described as overgrazed by livestock and sage grouse populations decreased following BLM and Forest Service cuts in permitted grazing.

Sage grouse habitat, following settlement and the arrival of livestock grazing in the Great Basin, included large areas of irrigated pastures that had the characteristics of natural meadows, upland vegetation was beneficially altered by grazing livestock to the advantage of sage grouse, water became more available at more locations, and protection of livestock from predators also protected sage grouse. With federal regulations that have reduced livestock numbers and bankrupt many ranches, the sage grouse habitat (PCEs) have been substantially reduced and sage grouse numbers have declined greatly in the last 30 years.

First we must improve sage hen habitat by controlling the predators that destroy the sage hens, their nests, and their chicks. The birds right after hatching are very vulnerable to everything and no amount of cover that occurs naturally in sage hen habitat can protect them. Some reports say that we are losing 50% of our nests today and 70% of that loss is from ravens. (Mark Jensen, Supervisor, Wildlife Services, Reno Nevada).

Wildlife Services is in charge of predator control and they have lost 45% of their work force. At one time we had three trappers here – one in Smith Valley, one in Mason Valley, and one in Carson Valley. Today we have one trapper that has to cover all three valleys plus Fallon and Austin. We also don't have a lion hunter anymore.

THINGS WE NEED TO DO IMMEDIATELY TO SAVE THE SAGE HEN:

During those years from about 1955 to 1980 we had thousands of sage hen in Smith Valley, the Pine Nut Range, and Bodie Hills. Also during those years we had trappers and the use of toxicants and we controlled the numbers of predators very well. During those years we had ten or more times the numbers of gazing animals on the Federal ranges than we now have and we had thousands of sage hen on the same areas. As soon as the grazing permits were cut by the agencies the trappers and toxicant use was cut down and the sage hens started to disappear.

No 1. We must have more trappers to control ravens, coyotes, badgers, bobcats, and other predators.

No 2. We need more open range grazing and more permitted grazing on the ranges. (and less housing development)

No 3. Where open grazing is allowed it accomplishes more than just providing feed for livestock

1. Livestock consumes the fuel that feeds wildfires.
2. Livestock owners improve the water resource and create new water sites
3. Livestock owners use water rights they own to develop irrigated meadows and fields that in turn serve as brood rearing habitat for sage hens.
4. Livestock grazing helps in the natural re-seeding, fertilizing, and cultivating of the grasses, forbs, and brush. This is necessary for the production of the sage hen and other wildlife. Sage grouse follow in the livestock footprints and into the bed grounds (especially sheep). These sage grouse feed on insects and other sources of nutrients left by the animals. It is common to see sage grouse chicks eating the pellets from the lambs which are highly nutritious because it is partially digested milk.

No 4. The livestock generally feed off the tall meadow grasses and forbs in the spring and then as the uplands dry the sage hen com down to the new growth of forbs and short green grasses in early summer. The livestock have to graze the meadows before the sage hen broods arrive to provide this benefit. The meadows that have been grazed are preferred by the sage hens because the shorter meadow plants enable the sage hens to see any approaching predators. They seem to like open space.

No 5. Livestock on the range offers relief from predation because the predators prey on livestock. When livestock owners kill predators the wildlife benefit along with the sheep.

BACK TO THE SAGE HENS

Sagebrush is not a problem --- we have plenty of it.

In some areas where the sagebrush is tall (3' to 4') and very thick it should be sprayed. That gives the forbs and grasses a chance to come which is very valuable as habitat and forage for the sage hens.

We have done this in cooperation with the BLM in some areas the sage hen has flocked into the sprayed areas.

We need better management of meadow forbs or grasses so forage will be available to sage hen broods when they come off the sage brush onto the meadows in June and July.

We know how to do all of these things which are sound management. Proper management is never attained by heavy handed regulation or even writing the name Greater Sage Grouse on a list of protected species.

BY EMAIL /S/ Marianne F. Leinassar
BY EMAIL /S/ Kristofor Leinassar
BY EMAIL /S/ Danielle Rausch

F.I.M., Corp
Marianne F. Leinassar
Kristofor Leinassar
Danielle Rausch
P.O. Box 12
Smith, NV 89430
775-465-2381 Office
775-465-1200 Fax
fimcorporation@gmail.com