From: Mike Phillips (TESF-Bozeman)
To: Dan Ashe
Cc: Gary_Frazer@fws.gov; Sen.Bradley.Hamlett@mt.gov; connell4sd43@yaoo.com
Subject: RE: Montana"s Greater Sage Grouse Stewardship Act
Date: Wednesday, March 11, 2015 5:34:41 PM
Attachments: SageGrouse Leg 1 pager 111814.docx
Sen Phillips Overview SG.docx

Dan,

I thought it might be useful for you guys to have a couple of summaries of Montana's Sage Grouse Stewardship Act.

Mike

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From: Dan Ashe [d_m_ashe@fws.gov]
Sent: Sunday, March 08, 2015 9:43 PM
To: Mike Phillips (TESF-Bozeman)
Cc: Gary_Frazer@fws.gov; Sen.Bradley.Hamlett@mt.gov; connell4sd43@yaoo.com
Subject: Re: Montana's Greater Sage Grouse Stewardship Act

Thanks very much Mike. We are working hard toward our shared goal: Conserving the greater sage grouse, such that ESA listing is not necessary. Very good progress from BLM and USFS planning, and the state plans. Down to the wire, we really need a strong plan from Montana. Thanks to you and your colleagues for supporting the governor.

Dan.

Dan Ashe
Director, U.S. Fish and Wildlife Service

> On Feb 24, 2015, at 7:24 PM, Mike Phillips (TESF-Bozeman) <Mike.Phillips@tedturner.com> wrote:
>
> Dan, Gary:
>
> I want relay that the Montana Greater Sage-Grouse Stewardship Act (Senate Bill 261, attached) just passed an important early vote in the State Senate and is gaining momentum for ultimate passage to Governor Bullock. The same is true for another bill (Montana's House Bill 2) that includes ~ $11M for implementation of the stewardship program. Governor Bullock has advocated for both and is excited about passing them into state law.
>
> I mention this as support for the claim that enactment of a comprehensive and operational sage-grouse conservation program by Montana should help facilitate a decision by the US Fish and Wildlife Service to not list the species under the ESA.
>
> That said, I recognize that if other states do not develop such programs listing may be indicated. If that situation does arise, given Montana's obvious commitment to the species and the presence of a reasonably secure population here, it seems that a DPS approach to listing could be used that would exclude ESA application to our state.
>
> Much credit for Montana's progress with the greater sage-grouse goes to State Senators Brady Hamlett (the principal sponsor of SB 261) and Pat Connell (co-sponsor of SB 261). Both are copied here.
>
> I think I can speak on their behalf when I say that we would be honored to work with the US Fish and Wildlife Service to improve the future for the species without invoking the protective provisions of the ESA in Montana.

>
> Feel free to call if you have any questions.
>
> Mike
>
> Mike Phillips
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> <SB 261.pdf>

Montana Sage Grouse Stewardship Act

Helping Maintain State Management of Sage Grouse

The greater sage grouse is being considered for a listing under the Endangered Species Act (ESA). Regardless of what people think of a listing, one thing remains clear: Montana must develop a strong and comprehensive state plan to maintain state management - rather than federal oversight - and we need to act now to conserve this species.

As we've seen with the fluvial Arctic grayling, a common sense approach between various stakeholders can impact listing decisions. That is why Montana's agriculture, coal and hard rock mining, and oil & gas industries and conservationists are working together to find common ground on the sage grouse issue.

What would the Montana Sage Grouse Stewardship Act do?

1.) Establish a fund with $10 million to conserve sage grouse habitat through various methods that would help to offer certainty for natural resource developers by providing "off ramps" for development and creating a stable mechanism for offsetting impacts:
    a. Conservation banks are permanently protected lands that contain natural resource values. These lands are conserved and managed for species that are endangered, threatened, candidates for listing, or are species-at-risk. Conservation banks function to offset adverse impacts to these species that occurred elsewhere, sometimes referred to as 'off-site mitigation'. Offset of sage grouse habitats represents significant opportunity to spur private investment in restoration and conservation for the species while allowing for responsible development of natural resources in sage grouse country. Likewise, habitat exchange is an emerging market-based mitigation approach for endangered, threatened, candidates for listing, or species-at-risk through a willing seller/willing buyer transaction.
    b. Habitat improvement projects both on private and public lands. Removing conifers and other invasive plant species from sage grouse habitat is an important component of successfully managing sage grouse.
    c. Voluntary, incentive-based private land conservation measures, including conservation easements, can help conserve sage grouse habitat across Montana. Over 65% of core

sage grouse habitat occurs on private land. The Act would establish a willing partnership program at the Montana Department of Natural Resources & Conservation (MTDNRC) for landowners who are interested in private land conservation opportunities.

2.) Provides a carrot rather than stick for landowners who are working to ~~save~~ conserve sage grouse habitat while protecting agricultural and livestock operations.
3.) $10 million of One Time Only Funding can help obtain other public and private funding. For example: the federal Natural Resources Conservation Service (NRCS) demands a match of funding in order to support certain projects. Combined with state, federal and non-profit funding sources, it is not unreasonable to expect that for every $1 of state funding up to $5 could come in to play to match state funds, as we've seen in Wyoming.
4.) The Act would bolster the Governor's Sage Grouse Conservation Plan, giving Montana our best chance to maintain state management of sage grouse. A strong state plan is one of the most important factors the US Fish & Wildlife Service (USFWS) will consider in deciding whether or not to list sage grouse.

What would the Montana Sage Grouse Stewardship Act not do?

1.) The Act would not be used to purchase fee title lands.
2.) The Act would not require access as a component of any project.
3.) The Act would not be used to purchase water rights.
4.) The Act would not erode private property rights.
5.) The Act would not be used to pay for administrative purposes. Every dollar would be spent on projects that directly conserve sage grouse.
6.) The Act would not change current agricultural practices.
7.) The Act would not increase or change in any way public oversight or ownership of private lands in Montana.

Montana's economy and our way of life depend on common sense approaches to managing our natural resources. In order to help Montana retain state sage grouse management, Montana must follow through with the commitments that Governor Bullock has made in his executive order. As we've seen with other endangered species issues in the past – the better Montana plans for the conservation of a species, the more likely it is to retain management. The Montana Sage Grouse Stewardship Act will be an important tool in helping maintain state management of sage grouse and ensure a strong economy moving forward.

To: Senator Phillips

From: Tim Baker

Re: Montana Sage Grouse Program

Date: March 11, 2015

Background

The Greater Sage Grouse is an iconic bird that inhabits much of the sagebrush-grassland habitats in Montana, and our state has viable and widespread populations of the species, with the second largest abundance of birds among western states. The United States Fish and Wildlife Service (USFWS) has determined that sage grouse are warranted for listing as a threatened or endangered species under the Endangered Species Act (ESA), and is under a court order to determine the status of the bird by September 30, 2015.

A state-specific plan to conserve sage grouse can preclude the need to list under the ESA. Because of the sound management practices and ongoing efforts of private landowners, over half of sage grouse habitat in Montana involves private property, and maintaining the species will require effective conservation strategies across property ownerships. The listing of the sage grouse under the ESA could have a significant adverse effect on the economy of the State of Montana. The State of Montana has management authority over sage grouse populations in Montana.

There are approximately 1,000 active sage grouse leks in Montana. An important population metric is the average number of displaying males at each lek. Over the years (1980-2014), the count of displaying males at leks has ranged from 13.1 to 44.6. There is a cyclic pattern in the number of males displaying at leks, and the number is influenced by a several variables. Recent numbers have been low, but that is likely due to the natural cycle.

Approximately one-third of the state is sage grouse habitat, and 10% of the state is the best, or core, habitat. Approximately 64% of sage grouse habitat is on private land (54% of core habitat is private).

Governor Bullock has issued an Executive Order that creates a new Sage Grouse Habitat Conservation Program. When fully implemented, the Program will have as many as 6 full-time staff. The Program will be overseen by the Montana Sage Grouse Oversight Team, initially consisting of a member of the Governor's staff, Directors of the Departments of Environmental Quality, Fish, Wildlife and Parks, Natural Resources and Conservation, and Transportation, and representatives of the Montana Board of Oil and Gas Conservation and Rangeland Resources Committee. The Program will be administratively attached to the Governor's Office.

The Order also sets forth the basic requirements of the Program, for uses and activities that occur in sage grouse country. *When fully implemented, the Program requirements will attach*

to every state permitting action or other authorization that takes place in sage grouse country for new activities and land uses. There are also recommended best practices for a number of activities, including fire, grazing, predator control, and West Nile disease.

The Program is modeled after a very successful effort in Wyoming, as recommended by the Montana's Greater Sage-Grouse Habitat Conservation Advisory Council (see below). Often called a "core area strategy," the requirements of the Program are focused on sage grouse Core Areas, geographic areas of high concentrations of birds. Lesser standards apply in General Habitat (lower concentrations of birds), and connectivity areas (migratory areas where birds are moving between core habitats).

Funding for 5.5 new full-time positions is contained in the Governor's Executive Budget Fiscal Years 2016-2017, and is currently being reviewed and considered by Montana State Legislature. The legislative session will conclude by the end of April. Once the staffing and Program resources have been funded, the Program's consultation process will become mandatory, by virtue of a subsequent Executive Order by the Governor.

The Governor's Executive Budget Fiscal Years 2016-2017 also includes a proposal for a Sage Grouse Stewardship Fund, which is designed to, among other objectives, promote and fund voluntary incentive-based non-regulatory programs and practices on private land to conserve sage grouse habitat. The proposed budget amount is $10 million dollars. (Governor's Executive Budget Fiscal Years 2016-2017). As with the staffing and Program resources, these requests are pending before the Montana State Legislature.

The Executive Order builds on the very good work done by Montana's Greater Sage-Grouse Habitat Conservation Advisory Council, which Governor Bullock created by Executive Order in February 2013. The diverse group of stakeholders prepared a comprehensive set of recommendations which were given to the Governor on January 29, 2014. As part of the process in preparing those recommendations, the Advisory Council held ten multi-day public meetings, accepted public comment at each meeting, conducted seven public hearings around the state, and accepted written comment.

The Executive Order provides that all meetings of the Montana Sage Grouse Oversight Team will be open to the public, with public notice and participation.

Future changes

The Program is science-based, and as the science regarding sage grouse becomes better understood the Program will capture that science and be adjusted accordingly with review by the Program, Oversight Team, stakeholders, and the public. Subsequent adjustments will be made to the Executive Order (WY has amended or issued new Executive Orders 5 times).

How does the Executive Order impact activities that are happening now, like existing coal mines or energy developments?

Existing land uses and activities are largely exempt from the Conservation Strategy for sage grouse. *When fully implemented, the Program requirements will attach to every state permitting or other authorization that takes place in sage grouse country for new activities and land uses.* There are also recommended best practices for a number of activities, including fire, grazing, predator control, and West Nile disease.

How does the new Program affect grazing?

Approximately 64% of sage grouse habitat in Montana is in private ownership, and Montana's private landowners have done a good job of managing their lands so it's no coincidence that so much good habitat is found there. Livestock grazing is the most widespread type of land use across sage grouse country. Done well, grazing is good for sage grouse, and the Executive Order sets forth voluntary recommended best practices for range management.

Do we think the USFWS will approve this Program?

Yes. Our Program is a lot like the one in Wyoming, which the US Fish and Wildlife Service has already approved and worked with for many years.

Why isn't the Program attached to FWP?

The Program applies *to all state actions in sage grouse country*, not just those of FWP. Because the program cuts across so many different state agencies it is appropriate to attach it to the Governor's office. FWP will still retain all authority over sage grouse hunting, and it is expected that FWP biologists in the field will work closely with the Program staff.

Why does the Land Board decide how to apply the requirements of the Program to State Lands?

By law, the State Land Board manages State Trust Lands. Since the Land Board has a trust responsibility it needs to decide how best to meet the requirements of the Program, as they apply to State Trust Lands. There is precedent for managing State Trust Lands to recognize ESA concerns, as the Board has adopted a Habitat Conservation Plan for Grizzly Bears.

Our talking points:

1. Builds upon the successful efforts of diverse Montanans who worked together in an extensive public process to draft recommendations for comprehensive Sage Grouse management;

2. Takes critical steps forward to keep Sage Grouse management in state hands, protecting our economy, jobs, and outdoor heritage;

3. Creates the Sage Grouse Habitat Conservation Program to use sound science to protect the bird and our economy, while bringing Montanans together to retain state management of Sage Grouse;

4. Recognizes the important role that Montana's private landowners play in Sage Grouse conservation and the need for voluntary incentives to help landowners stay on the land and preserve vital Sage Grouse habitat;

5. Finds common ground to preserve the Sage Grouse and its habitat, protecting property rights and existing uses and activities; and

6. Preserves critical Sage Grouse habitat in Montana and ensures a healthy bird population for the benefit of future generations.