

**From:** [Mackey, Dennis](#)  
**To:** [FW1 Idaho Management Group](#)  
**Subject:** Fwd: Sage grouse rider -- what it all means  
**Date:** Friday, December 12, 2014 2:18:16 PM

---

FYI

----- Forwarded message -----

**From:** **Edgar, Leith** <[leith\\_edgar@fws.gov](mailto:leith_edgar@fws.gov)>  
**Date:** Fri, Dec 12, 2014 at 1:46 PM  
**Subject:** Sage grouse rider -- what it all means  
**To:** Michael Carrier <[michael\\_carrier@fws.gov](mailto:michael_carrier@fws.gov)>, Dennis Mackey <[dennis\\_mackey@fws.gov](mailto:dennis_mackey@fws.gov)>, Kathleen Hendricks <[kathleen\\_hendricks@fws.gov](mailto:kathleen_hendricks@fws.gov)>, Katie Powell <[katie\\_powell@fws.gov](mailto:katie_powell@fws.gov)>, Jason Pyron <[jason\\_pyron@fws.gov](mailto:jason_pyron@fws.gov)>

## Sage grouse rider -- what it all means

Phil Taylor, E&E reporter

Published: Friday, December 12, 2014

A one-year ban on new Endangered Species Act protections for sage grouse in this year's \$1.1 trillion omnibus spending bill is a foreshadowing of partisan wildlife battles to come when Republicans take over the Senate.

The rider, pushed by Republicans at the behest of grazing, mining, and oil and gas interests, passed the House last night in [H.R. 83](#), which squeaked by 219-206 and is expected to clear the Senate by the weekend.

It sparked an outcry from environmentalists, who accused Congress of blocking crucial protections for Western rangelands, among other environmental safeguards.

"There is a pretty clear pattern in this bill," said Brett Hartl, endangered species policy director at the Center for Biological Diversity. "Special interests take precedence over the interests of people and the environment."

Republicans and their allies said next September's court-imposed listing deadline for greater sage grouse was arbitrary -- it was set in 2011 settlements between the Obama administration and green groups, including CBD -- and will ultimately harm the bird. More time is needed to ensure that state conservation plans can bear fruit, they said.

This is not the first time Congress has intervened in a major wildlife battle -- it stepped in to delist the gray wolf in the northern Rocky Mountains in 2011 -- but it's a preview of battles next Congress when Republicans legislate with a unified voice.

President Obama has pledged to block GOP attempts to dismantle his climate change agenda, but the White House's support for the omnibus bill yesterday proves that wildlife and their habitat are bargaining chips in spending fights.

Here are some key takeaways from the sage grouse rider:

## **The rider appears put**

If Democratic appropriators could not stop a sage grouse rider when they controlled the upper chamber, there's almost no chance they'll be able to defeat it when they're in the minority.

"Once a rider is into an appropriations bill, it is very hard to get out," said one conservation lobbyist.



Greater sage grouse once occupied nearly 300 million acres of sagebrush grasslands, but its habitat has been plowed, fragmented and burned to roughly half its original expanse. Photo courtesy of Wikipedia.

Rep. Rob Bishop (R-Utah), the incoming chairman of the Natural Resources Committee, said just delaying a listing for the remainder of this fiscal year would not be sufficient to determine whether state programs can protect the bird without federal intervention.

"One year is not enough to find out the viability or the efficacy of programs that are out there," Bishop said during a Rules Committee meeting this week on the bill, calling for at least "five to 10 years" to see if state plans are effective.

If the past is any indication, the sage grouse rider will stick around.

Take, for example, the rider Congress wrote in 1982 to keep most federal water off-limits to oil and gas leasing. It was not removed from future appropriations bills until 2008 under threat of a veto from President George W. Bush.

In 2003, Congress inserted a spending bill rider allowing the Bureau of Land Management and Forest Service to extend grazing leases and permits until they're able to complete an environmental review.

That provision -- to which environmentalists object -- has hung on ever since and would be made permanent by the public lands package that is attached to the defense authorization bill expected to pass the Senate today.

"The sage grouse is basically in purgatory," Hartl said.

If Republicans can't pass new spending bills for fiscal 2016, a continuing resolution would extend the listing ban in the 2015 bill, said Don Barry, executive vice president of Defenders of Wildlife, who served as Interior's assistant secretary overseeing endangered species during the Clinton administration.

"I think there were some people who thought this wasn't a big deal, 'It's just one year,'" Barry said. "The White House is looking at it as not a big deal. But it is a big deal."

## **The White House will accept some species riders**

In its policy statement on the omnibus bill, the White House said it "objects to the inclusion of ideological and special interest riders," but said it supports passage of the bill.

Its main beef with the bill was policy riders increasing the amount of money individuals can donate to political party committees and relaxing banking regulations from the Dodd-Frank law. But there was no mention of sage grouse.

The Interior Department has blasted the sage grouse rider, but the truth is it had limited sway in the high-level spending negotiations between the White House and House and Senate leaders.

"The White House has shown no real affinity for the Endangered Species Act," said Patrick Parenteau, a professor of environmental law at Vermont Law School and a former vice president of conservation at the National Wildlife Federation.

In April 2011, the White House signed off on a Republican rider defunding former Interior Secretary Ken Salazar's "wild lands" order, which sought to preserve roadless lands, over the objections of conservationists and Democrats. Former Interior Secretary Bruce Babbitt blamed White House "munchkins" for bartering away wilderness protections to placate Western Republicans.

The April 2011 deal also delisted the gray wolf, though that language was backed by two Democratic senators in Montana and merely affirmed a delisting rule the Obama administration had already issued.

Still, environmental groups denounced it as an affront to science and the judicial process, and a sign that wildlife is not immune in spending battles.

While the White House won't say so publicly, making ESA decisions is not always politically advantageous. The administration may have something to gain by allowing Congress to push a sage grouse listing to the next president.

In the next Congress, lawmakers may look to block a listing of the northern long-eared bat, whose protection is opposed by the logging industry, or mandate the delisting of the grizzly bear or gray wolf in Wyoming. Republicans may also seek to stop the Forest Service from reducing sheep grazing. Mexican wolves, seen as a scourge by some New Mexico ranchers, could also be in the spotlight.

"How many of those will it take until the administration is willing to risk a veto of a 'must pass' bill?" Parenteau asked. "They're going to have to draw line in the sand somewhere that you can't do business through riders."

## **Sage grouse will still get protection**

While it's unclear when, or if, sage grouse will enjoy full ESA protection -- which would ban harming them and require federal agencies to consult before authorizing potentially harmful projects in their habitat -- the bird's habitat will receive new administrative safeguards.

The Bureau of Land Management and Forest Service, which manage the majority of remaining sage grouse habitat, are revising roughly 100 land-use plans covering 67 million acres in the bird's 11-state Western range to protect and restore its sage grouse habitat.

"The BLM plans are going to be the only rules out there," said one public lands lobbyist. "Those will essentially list the sage grouse anyway."

BLM's plans could cap disturbances such as oil and gas wells, require developers to invest in mitigation and establish buffer zones around breeding areas known as leks. For example, BLM's draft sage grouse plans in Utah would include a 4-mile buffer for new oil and gas developments. And the proposed plan for Oregon would designate 5.1 million acres of "focal" areas of prime grouse habitat where conservation is focused and development is discouraged.

BLM has already deferred oil and gas leasing on millions of acres of public lands. Fears of future regulations deterred companies from buying all but one of 97 tracts offered at BLM's oil and gas lease auction Tuesday in Nevada, according to the Associated Press.

"In the face of this rider, the agencies, states and stakeholders should redouble their efforts to publish strong plans," said Alan Rowsome, senior director of government relations for lands at the Wilderness Society. "Real conservation actions present the only lasting solution for the species."

The omnibus spending bill would provide \$15 million to BLM to support state conservation plans that "promote sustainable sage-grouse populations through conservation of sensitive habitat and to avoid an Endangered Species Act listing designation of the species."

But without the specter of a federal listing, BLM's feet would no longer be held to the fire.

The agency was under intense pressure to prove to the Fish and Wildlife Service that its land-use regulations preclude a listing under ESA. And BLM's safeguards, along with those imposed by states and voluntarily provided by landowners, had to be reliable enough to hold up in federal court.

"We think there's an incredible opportunity to get a great conservation outcome here provided there is a meaningful incentive for Western states to come to the table," said one conservation lobbyist. "But if they think this is a long-term delay, it may not provide the carrot-and-stick approach you need to get meaningful conservation."

For now, BLM may be out of the hot seat. So, too, are landowners and energy companies that may have volunteered habitat protections as part of candidate conservation agreements to shield themselves from future ESA regulations.

## **It's still unclear what the rider would do**

Certain provisions in the sage grouse rider remain a riddle.

It will be up to Michael Bean, Interior's principal deputy assistant secretary for fish and wildlife, and Deputy Solicitor Ted Boling to interpret what Interior can and can't do pertaining to listing rules.

The language "was just sloppy," said Barry of Defenders, who pointed to language forbidding Fish and Wildlife from issuing a final listing rule for the Gunnison sage grouse, a species the agency last month listed as threatened.

Hartl of CBD said the rider likely trumps the settlement CBD signed with the Obama administration in 2011 that set the September 2015 listing deadline for grouse.

The language says FWS shall not use money to "write or issue" listing rules for four types of

sage grouse: proposed rules for the greater sage grouse and the Columbia Basin population of greater sage grouse, and final rules for the bi-state population of greater sage grouse and the Gunnison sage grouse.

"I would interpret the directive that the secretary not 'write or issue' proposed rules literally, meaning that the staff can continue to work on those rulemakings packages, provided they do not draft the text of rule," Parenteau said. "If Congress wanted to prevent 'all work' on the proposed rules, it should have said so."

Whether Interior Secretary Sally Jewell wants to openly flout Republican majorities in the House and Senate is another matter, Parenteau said.

Interior this week warned that the rider could have the unintended effect of hindering Fish and Wildlife from pursuing a 4(d) rule meant to relax regulations associated with the Gunnison sage grouse in Colorado, or from reaching an anticipated decision to withdraw a proposed listing for the bi-state sage grouse along the Nevada-California border.

"I can't hazard a guess as to how this turns out," Parenteau said.

--

Dennis Mackey  
Deputy State Supervisor  
U.S. Fish and Wildlife Service  
Boise, Idaho  
Office: 208-378-5267  
Cell: 208-860-1970