

From: [Noreen Walsh](#)
To: [Michael Thabault](#); nicole_alt@fws.gov
Cc: [Matt Kales](#)
Subject: FW: Greater Sage-Grouse Listing Decision
Date: Monday, December 01, 2014 8:00:01 AM
Attachments: [PAW - Ashe Ltr 11-24-14.pdf](#)

Good morning,

We may or may not be assigned to respond, however, beyond response, please review and determine if action on our part is necessary.

Thanks,
Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: *We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Esther Wagner [<mailto:esther@pawyo.org>]
Sent: Monday, November 24, 2014 12:07 PM
To: dan_ashe@fws.gov
Cc: michael_bean@ios.doi.gov; Sattelberg, Mark; pat_diebert@fws.gov; noreen_walsh@fws.gov
Subject: Greater Sage-Grouse Listing Decision

Dear Director Ashe,

Attached is our letter regarding concerns with the format requirements of the data call and the listing decision timeframes.

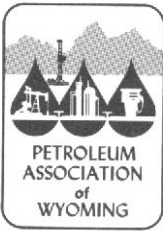
Please feel free to contact me with any questions or comments.

Sincerely,

Esther Wagner

Esther Wagner
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November 24, 2014

Dan Ashe, Director
US Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

SENT VIA EMAIL: dan_ashe@fws.gov

RE: Greater Sage-Grouse Listing Decision

Dear Director Ashe:

I write this letter to address the pending decision related to the listing of the Greater sage-grouse, specifically my concerns with the process that has been outlined to collect the "best scientific and commercial data" that will be used to make such a listing determination and the timeframe allocated to finalize the listing decision.

Pursuant to a settlement with environmental groups that was approved on September 9, 2011, the U.S. Fish and Wildlife Service (USFWS) agreed to either make a decision not to list the Greater sage-grouse or to publish a proposed rule to list the species by no later than September 30, 2015. In order to collect the data required to make a decision by September 2015, the USFWS has established a Conservation Efforts Database (CED) (found at <https://conservationefforts.org>) and a portal through the U.S. Geological Survey (USGS) for state game and fish agencies to submit distribution, abundance, trend and threat data. A mailing address has also been supplied for those who are unable to submit data electronically.

I have been advised that the USFWS has indicated that unless certain data is digitized or supplied in the form of shape or .shp files, it will not consider or otherwise use the data in the listing determination. The instruction that non-digitized data would not be accepted was primarily related to "location information" requested through the CED, but was also tied to game and fish agency submittals through the USGS portal.

Aside from the obvious practical concerns, and considering that significant banks of information, particularly information that was collected when digitizing or .shp files did not exist, or are simply not available in such formats, and given that converting even recent data into these formats will take significant amounts of time, my main concern is that this standard does not comport with the requirements of the Endangered Species Act (ESA). As you are aware, the ESA only specifies that "the Secretary shall make determinations required by subsection (a)(1) (to list a species as either threatened or endangered) solely on the basis of the best scientific and commercial data available to him..." (Section 4(b)(1)(A) of the ESA).

Nowhere does the Act qualify the term "scientific and commercial data" with a requirement that the data be submitted in a particular format. It merely requires that it be the "best" data that is "available"

to the Secretary. The same section of the ESA states that the Secretary shall make the decision after taking into account efforts to protect the species and other conservation practices. Again, such language does not require that the data and information related to conservation efforts and practices be in the "easiest to use" or "most accessible" form – but merely that the Secretary make its listing determination after taking any efforts to protect the species or other conservation practices into account.

Particularly for the plan and project data submitted through the CED, the only data that might be available for a particular project or plan may not be in a digitized format. While the onscreen digitizer may help in certain instances, it will not in others, including, but not limited to, data and information that is mailed to the USFWS-provided mailing address.

I raise this issue mainly based on past experience with similar data call efforts. In the past, the USFWS rejected submissions made in furtherance of a data call either on the grounds that it was in an improper format or that it was not technically pure in the context of other considerations like those spelled out in the "Policy for Evaluation of Conservation Efforts When Making Listing Decisions". As such, it is imperative that written assurances be provided by the USFWS that it will appropriately consider all of the "best" data that is made "available" to the Director when a listing determination is made for the Greater sage-grouse, even if such data is not in a particular format. If a submission is rejected, I trust that the record will be specifically documented to justify the exclusion of the particular entry.

Beyond the format of the data that is submitted to the USFWS, I also have concerns with regard to the timeframe in which the agency will make its determination related to the listing of the Greater sage-grouse. By all accounts, the listing decision will be hurried. Based on discussions with Department of Interior (DOI) personnel, internal targets to have the data and information submitted pursuant to the data call and otherwise reviewed and analyzed are set in late-Spring or mid-Summer of 2015. Considering that the status and trend data was not made available to the USFWS until October 31, 2014 and the project and plan CED will not close until December 31, 2014, such a schedule seems very difficult to maintain. Add to that the fact that most of the Bureau of Land Management (BLM) planning level final Environmental Impact Statements (EISs) will not be released until March 2015 (or, at the latest May 2015) and the Records of Decision (RODs) for those plan revisions will not be signed until June 2015 (or, at the latest August 2015), and the deadline for a listing decision becomes more difficult to achieve.

Such concerns are only intensified after the release of the recent Gunnison sage-grouse listing decision, where, following the announcement of the decision, you related that you had sought, and been denied, a 30-day extension from WildEarth Guardians, assumingly to provide more time to review and evaluate the data and information submitted in furtherance of that very important decision. (See *Gunnison sage grouse gets federal protection to prevent extinction*, The Denver Post, November 12, 2014). This only helps to support the concern that the timelines outlined in the above-mentioned Greater sage-grouse settlement are optimistic in terms of USFWS's ability to complete a timely and effective review, especially given the likely size and scope of a record covering the data and work of eleven states.

In light of these concerns related to the timing of the decision, can you provide assurances that the USFWS will have adequate time to arrive at a fully informed decision by September of 2015? Will such a decision be adequately documented with a record that details the information that was used to arrive at

the decision together with the information that was discounted, disregarded and/or not considered in making the listing decision?

The intention of this letter is to ensure a fully informed, fair and legally sufficient decision with regard to the listing of a species that could have profound, significant and far-reaching effects on Wyoming, the region and the country. Given the extensive work that has been engaged by the states, counties, industry, conservation groups and others, the decision will have a lasting effect on our collective willingness to step forward and be proactive in conserving species going forward.

Thank you for your time and attention to these matters. I request that this letter be included in the formal record related to the listing determination for the Greater sage-grouse.

Please do not hesitate to contact me with any questions you may have at (307) 234-5333 or esther@pawyo.org.

Sincerely,



Esther Wagner
Vice President – Public Lands

cc: Michael Bean, Counselor, DOI
Mark Sattelberg, Field Supervisor, USFWS
Pat Diebert, National Sage-Grouse Coordinator, USFWS
Noreen Walsh, Regional Director, USFWS