

## Judge rejects challenge on sage grouse listing

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CHEYENNE, Wyo.—A federal judge on Thursday rejected a challenge from environmental groups seeking to force the federal government to take immediate action to increase protections for the sage grouse. Had their request been granted, it could have curtailed new energy production on public lands across the West.

Judge B. Lynn Winmill of Idaho granted a request by the U.S. Fish and Wildlife Service, the states of Wyoming and Utah and others to rule against the groups, Western Watersheds Project and WildEarth Guardians.

Although Winmill ruled for the federal agency, he had harsh words for Steve Guertin, regional director of the FWS in Denver, over his initial recommendation that sage grouse be listed as "warranted but precluded." That remains the bird's present ranking, which amounts to federal acknowledgment that the bird needs federal protections but that other species are in even worse shape.

"Guertin's recommendation ignored his agency's own guidelines, contained no scientific analysis and featured off-hand comments about the various political interests at play in the case," Winmill wrote.

"Given that political meddling has already resulted in one reversal in this case, the court was frankly astonished at Guertin's cavalier recommendations."

Nonetheless, Winmill wrote that the Fish and Wildlife Service scientists later did the necessary work to support Guertin's recommendation to agency higher-ups. The judge upheld the agency's determination that the threat to sage grouse currently falls into the moderate category.

The Interior Department is under a separate federal court order to decide by the end of 2015 whether the birds ultimately should receive Endangered Species Act protections.

Pat Deibert, national sage grouse coordinator with the Fish and Wildlife Service in Cheyenne, applauded Winmill's ruling, saying the agency believes it's appropriate for the courts to defer to the agency's expertise.

"It doesn't mean we've quit working on the sage grouse," Deibert said. "It just gives us a more reasonable amount of time."



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The sage grouse is a chicken-sized bird known for its elaborate mating display. It's found in Wyoming, Montana, Idaho, South Dakota, North Dakota Nevada, Utah, Washington, Oregon, eastern California and western Colorado.

Jon Marvel, executive director of the Idaho-based Western Watershed Project, said Friday he's disappointed in Winmill's ruling.

"I think it just delays the day of reckoning, but does not change the probable outcome," Marvel said.

"It's clear the judge was disappointed and disgusted with the behavior of the regional director," Marvel said. "And that I think reflects poorly on this administration in that it simply is an extension of the political involvement that was carried out during the Bush administration, where recommendations for listing of species under the Endangered Species Act are interfered with by political considerations. So, it's a shame, but it appears to be a continuing reality."

Marvel said listing sage grouse as endangered would put a significant damper on oil, gas and coal development in sage grouse habitat in the West.

"The reality is that these groups have not proposed anything substantive to protect sage grouse habitat," Marvel said of energy interests. "Instead, they have chosen to avoid making commitments to protecting that habitat. And as a consequence, it seems to me they are in the process of digging their own graves."

Jay Tutchton, lawyer for WildEarth Guardians in Denver, said Winmill's ruling makes it clear that the sage grouse issue will get resolved by 2015.

"In the meantime, what you will see is a large amount of activity by various states and federal agencies trying to put in place some sort of protective regime that will allow the government not to list the sage grouse, and we will just have to wait and see if they can come up with an alternative that actually protects the bird," Tutchton said.

Interior Secretary Ken Salazar has said sage grouse have experienced a 90 percent decline in their numbers and a 50 percent decline in their habitat over the last century. Populations have been relatively stable over the last decade.

Wyoming officials have been working for years to try to keep the sage grouse off the endangered or threatened list to avoid interrupting energy development, the state's bread and butter. The state has designated core sage grouse habitat where restrictions are in place on disruptions, including energy

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development.

Wyoming Gov. Matt Mead said Friday that Winmill's decision allows the state to move forward with its own conservation plan.

"Our deliberate approach recognizes that the goal of the Endangered Species Act is not listing a species, but rather the goal is to avoid the need for a species to be added to the list," Mead said. "Wyoming is also working with other western states and the Bureau of Land Management to share our state-led strategy for sage-grouse management."

Salazar traveled to Cheyenne in December to applaud Wyoming's sage grouse conservation efforts, which he said could be adopted by other Western states.

Bruce Hinchey, president of the Petroleum Association of Wyoming, said Friday that he believes Wyoming's approach offers real protection for the birds. Considering what's already been done and reclamation efforts undertaken by energy companies, he said, "I think they're going to be hard-pressed to come up and say that the bird needs to be listed."

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