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Greater Sage-Grouse Avoids ESA Listing

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The U.S. Fish and Wildlife Service (“Service”) announced on Tuesday, September 22, 2015, that it would not list the greater sage-grouse under the Endangered Species Act (“ESA”).

This decision represents a change of direction for the Service, which announced in 2010 that the grouse was “warranted for listing”, but the Service now says “new information about the status of the species, potential threats, regulatory mechanisms, and conservation efforts indicates that listing is not warranted.”¹

Specifically, the Service determined that “the primary threats to greater sage-grouse have been ameliorated by conservation efforts implemented by Federal, State, and private landowners.”² The Service identified state regulations, new federal regulations, conservation efforts, and advancements in oil and gas technologies as having reduced threats to the grouse “in approximately 90 percent of the breeding habitat through avoidance and minimization measures.”³

The decision resolved a years-long fight that has been closely watched by energy companies across the inter-mountain west. The greater sage-grouse has been the focus of controversy in recent years pitting conservation against energy development and ranching interests.⁴ With habitat ranging across 165 million acres in eleven western states, an ESA listing-decision may have imposed additional regulatory burdens on land-use and development that may affect the grouse.

The decision is the culmination of a series of efforts by federal, state, and private parties to develop conservation programs for the species to avert listing. These efforts have involved ramping up conservation efforts (more than 325 greater sage grouse projects have been completed to date), imposing new regulations, and taking targeted measures to revitalize the grouse’s chances of survival and recovery in abundance.⁵

One result of these collective efforts is additional regulation on U.S. Forest Service (“USFS”) and the Bureau of Land Management (“BLM”) lands. The USFS and BLM have developed land-use plans for development to minimize surface disturbance of grouse habitat, improve habitat condition, and reduce the threat of rangeland fire to grouse and sagebrush habitat. In addition, many states have taken a variety of steps to conserve the grouse on state and privately owned land. For example, the Sage Grouse Initiative (“SGI”) was launched as a partnership among ranchers; local, state, and federal agencies; non-profit groups; and businesses. The SGI’s primary focus is to reduce threats to the grouse on private lands.

¹ Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Greater Sage-grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, http://www.fws.gov/greatersagegrouse/PDFs/20150921_GRSG_FR_Signed.pdf.

² *Id.* at 3-4.

³ *Id.*

⁴ For a comprehensive background on this controversy, see <http://www.klgates.com/greater-sage-grouse-and-land-use-in-the-inter-mountain-west-08-27-2015/>

⁵ *Id.*

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The Service's non-listing decision does not, however, prevent individual states from further protecting the species under state laws. Nor does the decision prevent other federal agencies—such as the Department of Interior—from enacting additional rules to protect the grouse. In addition, the Service's decision may be challenged by environmental and conservation groups. Several of these groups have already spoken out against the decision, including WildEarth Guardians and Defenders of Wildlife, who predict that the existing plan will fall short of saving the bird and describe the decision not to list it as “squandering a major opportunity.”⁶ Given these statements, litigation may be likely given the long controversy over protecting the species.⁷ Challenges may focus on the Department of Interior's regulatory authority and on the Service's decision not to list the grouse or federal agencies' land management plans for protecting the grouse.⁸ However, until a lawsuit is filed, it is unclear whether any particular challenge will be successful.

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⁶ Decision not to list sage grouse as endangered is called life saver by some, death knell by others, The Washington Post (Sept. 22, 2015), <http://www.washingtonpost.com/news/energy-environment/wp/2015/09/22/fewer-than-500000-sage-grouse-are-left-the-obama-administration-says-they-dont-merit-federal-protection/>

⁷ See *Lawsuits Will Be Next Battle in Sage Grouse Conservation Saga*, NPR, September 23, 2015,

<http://www.npr.org/2015/09/23/442761559/court-challenges-will-be-next-battle-in-sage-grouse-conservation-saga>.

⁸ *Id.*