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POLICY PAPER: Western Lands Taking Through the Federal Lands Acts

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THE PROBLEM: Heavy-Handed Government use of Environmentalists

The President's campaign and policies have recognized a unique encroachment of the Federal Government through national monument designations, limits to offshore drilling and participation in the [Paris climate accord](#). Over the last decade the Environmental Protection Agency (EPA) has been named by many states as the culprit in heavy handed government land takings from private citizens in the name of wildlife and wildlife habitat protection. Many U.S. industries, such as the timber industry Oregon, potatoes in Northern California, and agriculture in the California San Joaquin Valley, have seen sharp declines as a result.

There are other agencies specifically within the Department of the Interior and Department of Agriculture, notably the Bureau of Land Management and the Forest Service, that have used similar tactics. After traveling the West in recent months, Zinke, a former congressman from Montana, said he decided to act because he had heard from people who "did not believe that they were heard on the issue of sage grouse." He said a task force within the department would report back

to him within 60 days. In an [order](#), issued by Interior Secretary Ryan Zinke, the review process will consider improvements to conservation efforts while taking into account "the value of energy and other development of public lands."

“While we in the federal government have a responsibility under the Endangered Species Act to take action, we also want to be a good neighbor, a good partner and recognize that a lot of the state agencies and the work that has been done thus far are really the forefront of the effort,” he said. “While the federal government has a responsibility under the Endangered Species Act to responsibly manage wildlife, destroying local communities and levying onerous regulations on the public lands that they rely on is no way to be a good neighbor," Zinke said in a [press release](#).

The vast area and the number of species on that land made the Sage Grouse a prime target candidate for protection by conservation groups under the Endangered Species Act. The sage grouse population is estimated to have declined to half of its population since the 1970s. This decline is based on specific localities not population of Sage Grouse in the United States overall. The importance of protecting the species for conservation groups extends beyond this particular bird in 11 states that touch across the West from the Dakotas to California.

The **greater sage-grouse** (*Centrocercus urophasianus*) is a resident of the sagebrush ([Artemisia](#)) ecosystem, mainly eating sagebrush. Once estimated at 16 million birds across North America, lost roughly half its habitat to development, livestock grazing and an invasive grass that encourages wildfires in the Great Basin of Nevada and adjoining states. Mortality due to hunting has no effect on population levels.

In 2015 a compromise bill was enacted that kept the Fish and Wildlife Service from listing the sage grouse as endangered. That decision is up for review in 2020. Though the greater sage-grouse as a whole is not considered endangered.

Interior Secretary Ryan Zinke, said he was ordering his agency to review core principles of the 2015 agreement, perhaps most notably its underlying premise that protecting the sage grouse requires protecting its distinctive habitat, the sprawling “sagebrush sea.” The announcement prompted a quick rejection from environmental groups, revealing their underlying agenda of land control, not protecting a species.

Zinke said his review would consider allowing states to emphasize population goals over habitat protection. *“Just because you have habitat doesn’t mean that the health of the flock is healthy or vice versa,”* he said. The broad idea was to give the 11 states involved in sage grouse protection more flexibility to customize their efforts to protect the bird.

In issuing its finding, the U.S. Fish and Wildlife Service stated that:

“A status review conducted by the Service has found that the greater sage-grouse remains relatively abundant and well-distributed across the species’ 173-million acre range and does not face the risk of extinction now or in the foreseeable future. The Service’s decision follows an unprecedented conservation partnership across the western United States that has significantly reduced threats to the greater sage-grouse across 90% of the species’ breeding habitat. The Service has determined that protection for the greater sage-grouse under the Endangered Species Act is no

longer warranted and is withdrawing the species from the candidate species list."^[59]

Despite the Department of the Interior's decision not to list the greater sage-grouse as threatened or endangered, legal efforts to protect the sage-grouse continue. For instance, in May 2016 the United States Court of Appeals for the Ninth Circuit ruled that a planned wind energy project in [Harney County, Oregon](#) could not proceed until the [Bureau of Land Management](#) adequately studied whether the project site provided winter habitat for sage-grouses.^[60]

THE SOLUTION: The Tenth Amendment

Using this right, the law should move from a preservation model based on protecting habitat to one that potentially depends instead on population goals for each state. Zinke said in a conference call with reporters that “state agencies are really at the forefront of efforts to maintain healthy fish and wildlife populations,” and the government needs to make sure state voices are being heard.

The plan needs to give state more flexibility and relying less on habitat preservation “and more on numbers” of birds in a particular state.

In January of 2017, Representative Rob Bishop has introduced the H.R. 527 Greater Sage Grouse Protection and Recovery Act of 2017 as a stop-gap measure. This bill addresses the Department of the Interior's October 2, 2015, finding that the greater sage grouse is not an endangered or threatened species. Until September 30, 2027, Interior may not alter or invalidate the finding.

Additionally, Interior and the Department of Agriculture (USDA) are prohibited from amending any federal resource management plans that affect the greater sage grouse in a state in which the governor has notified Interior or USDA that a state management plan is in place.

A copy of the Bill is attached to this White Paper. Rep. Bishop's bill is only a stop-gap measure and needs to be followed by laws that give each state control over the management plans for all wildlife species contained within its borders based on populations not habitat decline percentages across numerous states. This is another case where one-size or one policy does not fit all.

Without this state control the Federal government through the stroke of a pen, responding to the pressures of special interests such as extreme environmentalists, can seriously restrict our inalienable right to life, liberty and the pursuit of happiness.

A BILL

To provide for the conservation and preservation of the Greater Sage Grouse by facilitating State recovery plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the “Greater Sage Grouse Protection and Recovery Act of 2017”.

SEC. 2. Protection and recovery of Greater Sage Grouse.

(a) Definitions.—In this section:

(1) The term “Federal resource management plan” means—

(A) a land use plan prepared by the Bureau of Land Management for public lands pursuant to section 202 of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1712](#)); or

(B) a land and resource management plan prepared by the Forest Service for National Forest System lands pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 ([16 U.S.C. 1604](#)).

(2) The term “Greater Sage Grouse” means a sage grouse of the species *Centrocercus urophasianus*.

(3) The term “State management plan” means a State-approved plan for the protection and recovery of the Greater Sage Grouse.

(b) Purpose.—The purpose of this section is—

(1) to facilitate implementation of State management plans over a period of multiple, consecutive sage grouse life cycles; and

(2) to demonstrate the efficacy of the State management plans for the protection and recovery of the Greater Sage Grouse.

(c) Endangered Species Act of 1973 findings.—

(1) DELAY REQUIRED.—During the period beginning on the date of the enactment of this Act and ending on September 30, 2027, the Secretary of the Interior may not alter or invalidate the finding made by United States Fish and Wildlife Service on October 2, 2015, under section 4(b)(3)(B) of the Endangered Species Act of 1973 ([16 U.S.C. 1533\(b\)\(3\)\(B\)](#)) with respect to the Greater Sage Grouse (80 Fed. Reg. 59857 et seq.).

(2) EFFECT ON OTHER LAWS.—Paragraph (1) shall apply without regard to any other statute, regulation, court order, legal settlement, or any other provision of law or in equity.

(3) EFFECT ON CONSERVATION STATUS.—Until September 30, 2027, the conservation status of the Greater Sage Grouse under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) shall remain not warranted for listing under such Act.

(d) Coordination of Federal land management and State conservation and management plans.—

(1) PROHIBITION ON WITHDRAWALS AND MODIFICATION OF FEDERAL RESOURCE MANAGEMENT PLANS.—Effective upon notification by the Governor of a State with a State management plan, neither the Secretary of the Interior nor the Secretary of Agriculture may exercise authority under section 204 of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1714](#)) to make, modify, or extend any withdrawal of, nor amend, revise, or otherwise modify any Federal resource management plan applicable to, Federal lands in the State in a manner inconsistent with the State management plan for a period, to be specified by the Governor in the notification, of at least five years beginning on the date of the notification.

(2) RETROACTIVE EFFECT.—In the case of any State that provides notification under paragraph (1), if any amendment, revision, or modification of a Federal resource management plan applicable to Federal lands in the State was issued after June 1, 2014, and the amendment, revision, or modification altered management of the Greater Sage Grouse or its habitat, implementation and operation of the amendment, revision, or modification shall be stayed to the extent that the amendment, revision, or modification is inconsistent with the State management

plan. The Federal resource management plan, as in effect immediately before the withdrawal, amendment, revision, or modification, shall apply instead with respect to management of the Greater Sage Grouse and its habitat, to the extent consistent with the State management plan.

(3) DETERMINATION OF INCONSISTENCY.—Any disagreement regarding whether an amendment, revision, or other modification of a Federal resource management plan is inconsistent with a State management plan shall be resolved by the Governor of the affected State.

(e) Relation to National Environmental Policy Act of 1969.—With regard to any Federal action consistent with a State management plan, any findings, analyses, or conclusions regarding the Greater Sage Grouse or its habitat under the National Environmental Policy Act of 1969 ([42 U.S.C. 4331](#) et seq.) shall not have a preclusive effect on the approval or implementation of the Federal action in that State.

(f) Reporting requirement.—Not later than one year after the date of the enactment of this Act and annually thereafter through 2027, the Secretary of the Interior and the Secretary of Agriculture shall jointly submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the Secretaries' implementation and effectiveness of systems to monitor the status of Greater Sage Grouse on Federal lands under their jurisdiction.

(g) Judicial review.—Notwithstanding any other provision of statute or regulation, this section, including determinations made under this section, shall not be subject to judicial review.