

Sage Grouse Management and Associated Issues in Montana

for the Environmental Quality Council
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INTRODUCTION

In the past 12 months, the management of sage grouse and the sage brush habitat upon which they rely has become a "hot topic" of discussion around Montana and other Western states. In fact, in the 2001-2002 Work Plan, the Environmental Quality Council (EQC) chose to allocate .1 FTE to the issue. The management of sage grouse and issues related to that management were assigned to the Oversight/MEPA subcommittee for review and discussion. This paper is a brief summary of the issues associated with sage grouse management and the information gathered by the subcommittee and staff to help EQC members better understand the issues and to facilitate the EQC's ability to make informed decisions.

BACKGROUND

In May 1999, a petition was filed for listing the Western sage grouse in Washington under the Federal Endangered Species Act because of population and habitat declines.¹ At this same time there was the threat of a potential "range wide" petition for listing the Western sage grouse. The sage grouse that reside in Montana are Western sage grouse and Montana would be included in this range wide listing if it were to become reality.²

In an effort to address the concerns regarding sage grouse populations and the management of their habitat, the Western Association of Fish and Wildlife Agencies (WAFWA) requested a revision and expansion of the guidelines originally published by Braun et al in 1977. As a result of this request the *"Guidelines to manage sage grouse populations and their habitats"* was revised and released in 2000.

Sage grouse rely heavily on sage brush habitat for their survival. Because sage grouse rely so heavily on sage brush quality and quantity for their winter habitat and nesting needs the issues are rarely discussed separately.

¹"Guidelines to manage sage grouse populations and their habitats," Connelly, et. al., Wildlife Society Bulletin 2000, 28(4):967-985.

²Personal communication with John McCarthy, Wildlife Division, Montana Department of Fish, Wildlife, and Parks. November, 2001.

MEMORANDUMS OF UNDERSTANDING

The member states of WAFWA signed a Memorandum of Understanding (MOU) in 1999 to provide guidance for conservation and management of sage grouse and sagebrush shrub-steppe habitats upon which the species depends. The WAFWA MOU outlines Objectives and Actions that the signatories agree to undertake. The actions state that it is the intent of the members of the WAFWA to sustain and enhance the distribution and abundance of sage grouse through responsible collective management programs.³ One of the agreed to action items is the continuation of development of Conservation Plans based on the local working group concept. Currently, the states, including Montana, are working on developing conservation plans specific to their state. There is an oversight committee of WAFWA ensuring that this work is being completed and the committee is in the process of hiring a coordinator to oversee the project on a region-wide basis.⁴

In addition to the WAFWA MOU, there is another MOU that adds another layer to the discussions. This second MOU is among WAFWA; U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, Bureau of Land Management; and U.S. Department of the Interior, Fish and Wildlife Service. Montana is not a direct signatory to this MOU. However, as a result of being a member state of WAFWA and signing the WAFWA MOU, Montana is indirectly bound to this MOU. The purpose of this MOU is to provide for cooperation among the participating state and federal land and wildlife management agencies in the development of a rangewide strategy for the conservation and management of sage grouse and their sagebrush habitats.⁵ The actions outlined in this MOU are very direct and specific with regard to procedure and conservation plan recommendations. The MOU provides that the "States will convene Working Groups to develop State or Local Conservation Plans. Working Groups will be comprised of representatives of local, state, federal and tribal governments, as appropriate. Participation will be open to all other interested parties."⁶

Questions have arisen concerning FWP's authority to (1) sign the WAFWA MOU and indirectly the second MOU with the federal land management agencies, and (2) develop a

³Memorandum of Understanding Among Members of Western Association of Fish and Wildlife Agencies. Conservation and Management of Sage Grouse in North America. 1999.

⁴For additional information regarding the MOUs see "Summary of Memorandums of Understanding Affecting the Montana Fish, Wildlife, and Parks Management of Sage Grouse." Krista Lee Evans, EQC Staff.

⁵Memorandum of Understanding Among Western Association of Fish and Wildlife Agencies and U.S. Department of Agriculture, Forest Service, and U.S. Department of Interior, Bureau of Land Management, and U.S. Department of Interior, Fish and Wildlife Service. 2000. Page 1.

⁶Ibid, page 2.

conservation plan for a species that is not listed or without specific direction from the Legislature. Title 87, chapter 1, part 2, Montana Code Annotated is devoted to the Department of Fish, Wildlife, and Parks. Section 87-1-201(9), MCA specifically addresses the questions outlined above by not only giving FWP authority to manage species which may be listed but by specifically saying that the agency SHALL implement management programs while maintaining a balance with the social and economic impacts. Section 87-2-201(9), MCA states:

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(Emphasis Added)

THE CONSERVATION PLAN

Montana Fish, Wildlife, and Parks (FWP) is in the process of developing the Conservation Plan for Montana. The approach that FWP has chosen to take is to develop a statewide conservation plan with the intent of returning to local watershed type working groups to implement the plan on a local or regional level.⁷

The conservation plan that is currently being developed by FWP through a technical group process has been and is a subject of much discussion. There are proponents and opponents for its development as well as a lot of discussion on how far the conservation plan should go with regard to management guidelines. Some feel that the guidelines that are being developed as a part of the conservation will be as restrictive if not more restrictive than any potential management requirements associated with a listing. Others feel that it is absolutely imperative that the conservation plan be completed in order to protect the species and its habitat. There has been concern voiced about the process that

⁷Personal communication with John McCarthy, Wildlife Division, Montana Department of Fish, Wildlife, and Parks. November, 2001.

is being followed and whether or not the MEPA process should be followed. Other concerns relate to the general public awareness of what is going on, FWP's authority to manage a species and the inclusion of the species' habitat under their management authority.

PUBLIC INVOLVEMENT

The FWP "Guidelines for Citizen Participation in the Department of Fish, Wildlife, and Parks" provide that "Participation of the public is to be provided for, encouraged, and assisted to the fullest extent practicable, The major objectives of such participation include greater responsiveness of governmental actions to public concerns and priorities, and improved public understanding of official programs and actions."(Emphasis added) ". . . active public involvement in and scrutiny of the decision making process is desirable to accomplish these objectives."⁸

It is important to recognize that with regard to sage grouse, the current public participation and public input is related to the development of the conservation plan and its contents. The technical committee that has been convened by FWP is for the purpose of providing guidance with regard to fire issues, harvest management/hunting issues, predation, grazing, oil and gas, and mining and energy, etc. and how these issues should be addressed in the conservation plan.⁹ Outside of the formal technical group setting, the FWP has held "public meetings" in conjunction with the "technical group meetings". These public meetings have been held in the evening following the first day of the technical meeting.

It appears that FWP's agreement to the two MOU's identified earlier is driving the development of the conservation plan. As a signatory, the FWP has agreed to the fact that it will develop a conservation plan. The question here is whether or not the FWP met its own rule requirements of public participation when deciding whether or not to even sign the MOUs. Is sage grouse management a priority to Montana citizens? Did the FWP conduct hearings and gather public comment with regard to whether or not a conservation plan should even be done? This would be the type of public involvement process which could have taken place prior to the signing of the WAFWA MOU and by association the USFWS MOU.

Now that the MOUs have been signed, the FWP isn't requesting input regarding whether or not a conservation plan should be done but rather on the contents of that conservation plan. Based on public feedback, it appears that many of the questions and frustrations being raised are related to why a conservation plan is even being done.

⁸Administrative Rules of Montana, 12.2.301 POLICIES AND OBJECTIVES

⁹Sage Grouse Technical Committee Meeting Minutes, October 16-18, 2001.

CONCLUSION

The reason FWP is developing the conservation plan for sage grouse is to ensure that the state is prepared to show the US Fish and Wildlife Service that sage grouse should not be listed as a threatened or endangered species in Montana.¹⁰ However, even with the development of a conservation plan, the species could still be listed. The question that begs to be asked is whether or not the development of a conservation plan will keep the species from being listed and if so is it worth the potential restrictions, etc, on land use that may be imposed? This question would be answered differently by the various interested parties and how or if the conservation plan and its associated management guidelines would impact them.

Whether or not the state should remain at status quo with management or continue development of the conservation plan and at what level of detail is a question that each person needs to answer for themselves based on their needs, constituents, and situation.

If the sage grouse were to be listed, the implications could be very broad. In fact, Gregg Tanner, game bureau chief for the Nevada Department of Wildlife stated "The sage grouse has been called the spotted owl of the West The point being, when the spotted owl was listed, it had a significant impact on the economy and lifestyle of many people living in the Pacific Northwest."¹¹

¹⁰Personal communication with John McCarthy, Wildlife Division, Montana Department of Fish, Wildlife, and Parks. November, 2001.

¹¹"Governor outlines sage grouse protection strategy." Reno Gazette-Journal, November 7, 2001.