



# ADVOCATES<sub>for the</sub> WEST

# Case Notes

A periodic journal of public interest environmental law

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## SAVING THE SAGE-GROUSE

### And Facing The Future Of The West

*Advocates for the West* is now deeply involved in seeking to protect the Greater Sage-Grouse, an imperiled icon of the American West.

As explained below, sage-grouse populations are in decline because their sagebrush habitats are being destroyed and fragmented by livestock grazing, energy development, weed invasions, fires, and other factors.

Global warming is magnifying those threats, making the West hotter, drier, and more susceptible to catastrophic fires.

This newsletter explores the roots of the problems facing sage-grouse; and explains how *Advocates for the West* is working with our clients and partners to save the sage-grouse – and the West – by promoting changes in public land management needed to address these threats.

(See detailed story beginning on page 3)



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*The greater sage-grouse needs our help now – and sage-grouse will help us take the steps we must take to face the future of global warming in the West.*

## MAJOR WIN FOR SAGE-GROUSE

As a key step in protecting sage-grouse, *Advocates for the West* recently won a major legal victory reversing the U.S. Fish and Wildlife Service's determination that sage-grouse does not qualify as an endangered or threatened species. See *Western Watersheds Project v. U.S. Fish and Wildlife Service*, 535 F. Supp. 2d 1173 (D. Idaho 2007) (opinion available on our website at [www.AdvocatesWest.org](http://www.AdvocatesWest.org)).

### Politics Trumped Science in ESA Listing

In December 2007, U.S. District Judge Lynn Winmill held that the Service was “arbitrary and capricious” in not addressing the habitat threats and extinction risks facing the sage-grouse –

(cont'd on page 2)



including threats from grazing, energy development, and global warming, discussed in this newsletter.

The decision also excoriated the Bush Administration for allowing politics to trump science in this listing decision. Our briefings demonstrated that former deputy assistant Interior secretary Julie McDonald – who has since resigned in disgrace – bullied federal scientists and rewrote much of their analysis, in an unlawful effort to prevent Endangered

*“The next administration will have to confront how to protect sage-grouse. The future is now. By saving sage-grouse, we can also save the west.”*

*-Laird Lucas  
Executive Director*

Species Act listing of sage-grouse as a favor to energy and other industries.

The sage-grouse ruling has attracted widespread media attention – including editorials in papers across the country faulting the Bush Administration for allowing politics to override science yet again in its environmental decisions.

## The New Listing Process Must Follow Science

In a subsequent February 2008 order, Judge Winmill required that the Service must make a new ESA listing decision after leading sage-grouse experts update their analysis of current sage-grouse populations and habitat threats, and allow the public to weigh in on this science too. This ruling is also significant, because it reduces the opportunity for politics to again override science – forcing the Service to listen to the real sage-grouse experts, instead of caving in to industry pressure.

Moreover, the new listing process will take until May 2009 – meaning that the incoming new Administration will have the responsibility for deciding whether to list sage-grouse under the ESA, not the Bush Administration.

This prospect that sage-grouse may soon qualify for protection under our nation’s toughest environmental law has energy and other industries worried – and rightly so. A sage-

grouse listing will help force industry and public land managers to take a more holistic approach to protect and restore sage-grouse. These steps are badly needed not just to save sage-grouse, but to ensure the sustainability of our western lands and communities as we enter a new period of climate change. •



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## The New York Times

Editorial: *Bird in the Brush* (Dec. 15, 2007)

“Judge Winmill’s ruling brings the sage grouse back to center stage in the battle over public lands and development in the West.”

“Politically and economically speaking, it is a keystone species, one whose legal status will determine patterns of grazing, urban expansion and, especially, oil and gas development over much of the West...”

“In the case of the sage grouse, the Fish and Wildlife Service appears to have done a better job serving industry than the public or the grouse. . . We hope the agency will remember that its responsibility is to reach an impartial decision based on the “best science” – something it forgot to do the first time around.”



(cont'd "saving the sage-grouse" from page 1)

## Sage-Grouse and the Sagebrush Sea.

Sagebrush once covered more than 155 million acres in the western U.S. and Canada. This "Sagebrush Sea" was the predominant ecosystem in the semi-arid Interior West at the time Lewis and Clark arrived nearly two centuries ago.

This native ecosystem includes several species of sagebrush, plus native bunchgrasses, wildflowers, and other plants that together are home for a wide array of "sagebrush-obligate" species.

The best known of these is the Greater Sage-Grouse (*Centrocercus urophasianus*) – a large grouse that depends on the sagebrush ecosystem for all its key biological needs, including sheltering, nesting, and even feeding.

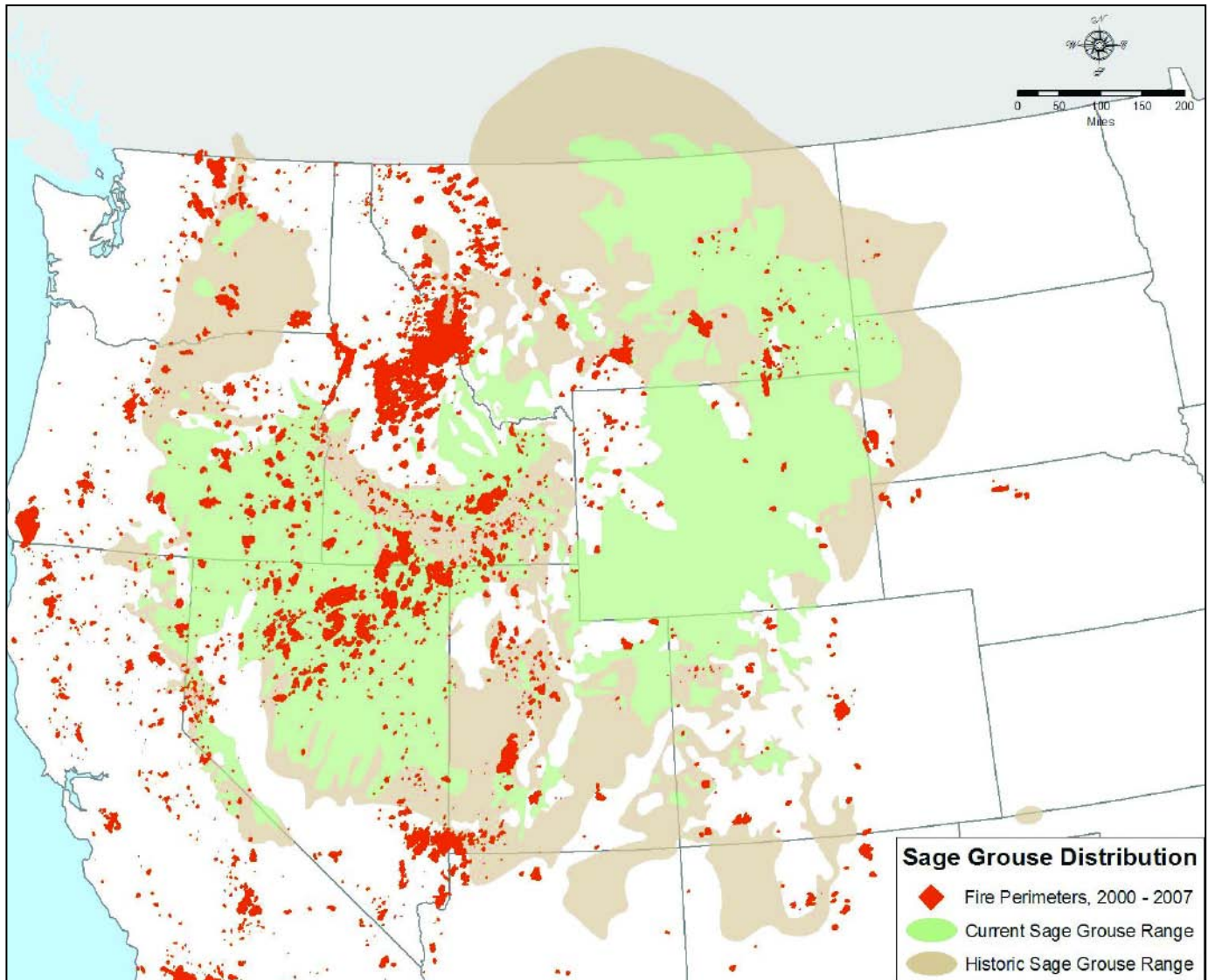
In a magnificent breeding display, male sage-grouse puff out their chests while strutting on "leks" within sagebrush clearings, to compete for females. The females nest and raise their young hidden in sagebrush and tall native grasses. Sage-grouse survive the winter by using sagebrush for food and protection.

## The Decline of the Sagebrush Sea.

Over the last two centuries since Lewis and Clark, nearly half of the original sagebrush ecosystem has been lost.

People have plowed, burned, chained, bulldozed, poisoned and replanted tens of millions of acres of sagebrush – resulting in permanent loss of these habitats, on both private and public lands.

(cont'd on page 4)



**Sage Grouse Distribution**

- ◆ Fire Perimeters, 2000 - 2007
- Current Sage Grouse Range
- Historic Sage Grouse Range

© Conservation Geography



(cont'd from page 3)

In addition, fences, roads, power lines, pipelines, water troughs, and other infrastructure, fragment sage-grouse habitat, creating smaller “patches” out of what were once vast expanses of intact sagebrush.

Adding to these impacts, ubiquitous livestock grazing on public lands tramples sagebrush, destroys native grasses and wildflowers, breaks up soils, degrades wet meadows, lowers water tables, and spreads cheatgrass and other weeds throughout the sage-grouse’s range. Grazing impacts began a century ago, and persist throughout western public lands to this day.

Because of this massive loss and fragmentation of sagebrush, it is no surprise that the sage-grouse has suffered too. Greater sage-grouse populations have plummeted as much as 99% from historic levels, and dropped an estimated two-thirds since 1965 alone. The grouse is also now extirpated from nearly half its historic range. Many populations have been eliminated or left isolated – such as in Washington State, where just two sage-grouse populations remain.

### The New Threats to Sagebrush and Sage-Grouse.

On top of these losses, sage-grouse populations face growing new threats – again tied closely to what is happening to their sagebrush habitats.

First, the Bush Administration has unleashed an onslaught of **energy development** in Rocky Mountain states – particularly Wyoming – that is rapidly destroying the largest remaining sage-grouse strongholds. These impacts will only get more severe as tens of thousands of newly-authorized oil and gas wells come on line in the next few years.

Second, **fires and weed invasions** are eliminating native habitats on public lands throughout northern Nevada, southern Idaho, and eastern Oregon – again harming many of the best remaining sage-grouse populations. Many millions of acres have burned in recent years, and the burned areas are quickly infested with weeds, causing irreversible losses of sagebrush habitats in most instances.

Third, sage-grouse populations are also being reduced by the **spread of West Nile virus**. The localized impacts of West Nile have been huge in some cases – causing Idaho and Oregon to halt sage-grouse hunting in affected areas in 2007, for example (See photo above right).



Laird Lucas

These factors prompted a team of leading sage-grouse experts to conclude in 2004 that sage-grouse prospects are indeed dim: “[L]ong term population changes coupled with the continued loss and degradation of habitat and other factors (including West Nile virus) *do not provide causes for optimism*” for the future of the sage-grouse.<sup>1</sup>

### Global Warming in the West.

The reality of global climate change adds new urgency to the plight facing sage-grouse and other native species in the West.

According to recent reports from leading climate experts,<sup>2</sup> global warming will be felt more harshly in the western U.S. than most of the country – causing the West to become even hotter, drier, and more susceptible to large fires. In the last five years alone, the West warmed at a rate 70% faster than the rest of the country.

<sup>1</sup> See J. Connelly *et al.*, “Conservation Assessment of Greater Sage-Grouse And Sagebrush Habitats” (Western Association of Fish and Wildlife Agencies, June 2004), available at: [www.sagebrushsea.org/pdf/WAFWA\\_assessment.pdf](http://www.sagebrushsea.org/pdf/WAFWA_assessment.pdf).

<sup>2</sup> See U.N. Intergovernmental Panel on Climate Change, “Climate Change 2007: Synthesis Report” (November 2007), available at [www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf); NRDC, “Hotter & Drier: The West’s Changed Climate” (March 2008), available at [www.nrdc.org/globalWarming/west/west.pdf](http://www.nrdc.org/globalWarming/west/west.pdf)



These trends are expected to continue, with the West warming faster than the rest of the world on average over the next fifty years.

With this warming, snowpacks will be reduced and will run off faster, causing more winter flooding; and the ground will be less able to absorb moisture. Stream flows will be reduced during summers; and wet meadows and riparian habitats will dry out more. Native vegetation will become more prone to fires; and exotic weed species will have an easier time invading and replacing native vegetation. All of these trends will exacerbate the habitat losses and fragmentation that have already placed the sage-grouse in deep peril. We must face the future by taking action now to protect sage-grouse, and the West, from the effects of global warming.



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**“[L]ong term population changes coupled with the continued loss and degradation of habitat and other factors (including West Nile virus) do not provide causes for optimism for the future of sage-grouse”.**  
*-2004 WAFWA Sage-Grouse Conservation Assessment*

## What We Can Do To Protect Sage-Grouse From Global Warming.

Science shows that natural ecosystems – and wildlife – can resist or adopt to changing climate and habitat conditions, but they need resiliency and time to do so.

Providing this resiliency so that sage-grouse and other species have “breathing space” to survive and adapt in the face of global warming requires the following steps:



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**Step 1: Protect all water sources** (including streams, wet meadows, seeps and springs) as well as all remaining high-quality wildlife habitats, and prevent new sources of degradation and fragmentation of these areas;

**Step 2: Improve the natural resiliency of western ecosystems by reducing “stressors”** on these systems – such as eliminating livestock impacts on wet meadows and sagebrush uplands; and

**Step 3: Restore degraded areas**, including by reconnecting dewatered streams, replanting burned areas with native vegetation, and utilizing proper management to reduce weeds.

It is particularly important that we take these three steps on our **federal public lands**. Federal lands comprise **over 300 million acres of the West**, managed principally by BLM and the Forest Service; and include most of the remaining sage-grouse habitats.

The agencies are required to follow federal laws and mandates in managing these public lands and those federal laws can be enforced in federal courts, as *Advocates for the West* is doing. •



# LEGAL ACTIONS FOR SAGE-GROUSE

Regrettably, our federal land managers and political leaders are avoiding their legal duties, failing time and again to acknowledge the threats facing sage-grouse and their native sagebrush habitats in the West.

Instead, they continue to approve rapid energy development, unsuitable livestock grazing, non-native seedings, fence building, and many other actions that, individually and together, are accelerating the destruction of sage-grouse habitats.

*Advocates for the West* is working closely with our client Western Watersheds Project and other allies to confront this situation – using law and science to enforce legal mandates to protect the sagebrush ecosystem and its many wildlife species, particularly sage-grouse.

In addition to our litigation seeking Endangered Species Act protection for sage-grouse (described above), we are challenging land management decisions affecting sage-grouse in numerous areas around the West. Just some of these efforts include the following:

**Wyoming:** Our staff attorney Beth Richards is handling administrative appeals over BLM's recent decisions to issue 10-year grazing permits to one of the largest sheep operators in the West, J.R. Broadbent, affecting 800,000 acres in the Kemmerer Field Office of southwestern Wyoming.

The Kemmerer area is occupied by sage-grouse on a year-round basis, and BLM has authorized extensive energy development through its Moxa Arch project here. Even though BLM admits the energy project has displaced sage-grouse and harmed habitats, BLM never examined the cumulative effects of grazing and energy upon sage-grouse in the region.

This same pattern is seen in many other parts of Wyoming, where new energy projects are being implemented rapidly even while other damaging uses of the land – such as grazing and fence building – are continuing, yet BLM never examines the combined impacts of its actions. We expect to bring several new cases addressing these problems in the near future.

**Idaho:** Following up on our long-standing litigation to protect sage-grouse in the Jarbidge Resource Area of southern Idaho, we recently filed new claims and an injunction motion to challenge BLM's decisions allowing grazing and 490 miles of fencing in and around last summer's Murphy Complex Fire.

This massive fire – Idaho's largest fire in a century – burned 500,000 acres in the Jarbidge Resource Area, and destroyed 70% of sage-grouse nesting habitats there. One of the nation's leading sage-grouse experts, Dr. Clait Braun, recommends that all remaining sage-grouse habitats must be closed to grazing and fencing activities for at least several years, to give the remnant sage-grouse population a chance to survive in the wake of the fire. This litigation will continue through 2008.

We also have numerous other cases underway involving sage-grouse in Idaho, with more to come. These include new rounds of litigation over the Owyhee Resource Area; and over BLM and Forest Service grazing decisions in the Upper Salmon basin.

**Oregon:** Our newest staff attorney, Kristin Ruether, is working with attorney Mac Lacy of the Oregon Natural Desert Association (ONDA) on a new Oregon lawsuit over BLM's decisions to increase grazing and develop dozens of springs on 125,000 acres of public lands in the North Fork Malheur River area of eastern Oregon. Sage-grouse populations and habitats have suffered for years from over-grazing here, yet BLM refuses to take the steps needed to reduce grazing pressure and restore native vegetation.

**Washington:** Kristin Ruether is also bringing new litigation for WWP challenging the Washington Department of Fish and Wildlife's politically-based decisions to allow livestock grazing in state wildlife refuges. WDFW asserts – over the objections of its own biologists – that grazing can help “improve” fish and wildlife habitats, when in fact the opposite is true. Of particular concern are WDFW's plans to allow grazing in one of the last remaining sage-grouse habitats in the sagebrush-steppe ecosystem of eastern Washington, known as the Whiskey Dick area. •



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*The mission of Advocates for the West is to use law and advocacy to restore streams and watersheds, protect public lands and wildlife, and ensure sustainable communities in Idaho and other western states.*

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# Welcome To Our Newest Staff Attorney!

*Advocates for the West* – and the entire conservation community in Idaho – are lucky to have Kristin Ruether on board as our newest staff attorney.



**Kristin Ruether**

We have known Kristin since she came to Idaho after graduating from Cornell in the late 1990's to defend the old growth forests and roadless areas of the Clearwater basin. While in law school, Kristin spent a summer with us as a law clerk, where she was exposed to the beauties of the Sagebrush Sea, and the threats facing it.

Kristin graduated from Lewis and Clark Law School in 2005, where her team won the top prize in a national environmental moot court (a test of oral argument and briefing skills). Kristin then spent two years as a staff attorney with ONDA in Portland, where she brought a series of winning cases over grazing impacts on imperiled fish, citizen wilderness areas, and other resource values.

We were able to woo Kristin to Boise with promises of fame, glory, and riches (moral, not pecuniary). We have no doubt she will succeed in winning all of these!



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