

SV rancher, NACO join lawsuit against FWS regarding ESA

[Keith Trout](#), xxxxx 9:48 a.m. PST December 17, 2014



(Photo: RGJ file)

A family-owned sheep ranch in Smith Valley has joined a federal lawsuit against the U.S. Fish and Wildlife Service regarding a settlement the agency entered regarding the Endangered Species Act and, in particular, its effects on the Greater Sage Grouse.

The Nevada Association of Counties board at its Dec. 3 meeting voted to join F.I.M Corp. and Fred Fulstone, Marianne Leinassar and Kristofor Leinassar of Smith Valley, along with the Nevada Mineral Resources Alliance and American Exploration and Mining Association in the lawsuit filed Dec. 4.

According to Jeff Fontaine, NACO executive director, and Debra Struhsacker, executive director of the Nevada Mineral Resources Alliance, they fear the USFWS settlement in 2011 with two environmental groups would hinder current conservation and mitigation efforts to improve the habitat for the greater sage grouse and its bi-state distinct population segment. They are asking that the settlement be set aside.

The parties feel the federal government is skirting necessary due process in its sage grouse process and violating the Constitution and the ESA law, that changes were made without congressional action, violating the separation of powers.

Struhsacker said the settlement impacts five Nevada species and many others across the county. He said it impacts every Nevada county and many states. She said the lawsuit simply is asking the USFWS to follow the ESA law as written.

Lyon County Commissioner Vida Keller, vice president of the NACO board, said what prompted this is the federal agency "allowed outside special interest groups come in and dictate timelines." She said the counties decided, "Enough's enough."

The Endangered Species Act has three options for decisions regarding listing of species: listing warranted; listing not warranted; and, listing warranted but precluded because other species are more imperiled and thus have higher listing priority, with the third creating what are candidate species.

However, Struhsacker said the settlement eliminated the third classification option for a "candidate species" and in effect gets rid of much incentive to continue the conservation efforts that have been occurring in recent years.

Laura Skaer, AEMA executive director, said in a release, "The settlement is illegal because it eliminates the congressionally mandated warranted but precluded category for the greater sage grouse and the other 289 species included in the settlement, sets arbitrary decision deadlines and frustrates the very purposes of the Endangered Species Act.

"We and the other co-plaintiffs are asking the court to set aside the illegal settlement and require USFWS to follow the law as enacted by Congress and evaluate whether the greater sage grouse should remain a candidate species. This is particularly important for greater sage grouse because intensive state, local and private habitat conservation measures are in progress throughout Nevada and other western states with greater sage grouse habitat."

Fontaine said the NACO board first considered joining the lawsuit in August, but then decided to officially join at a special meeting Dec. 4 after the complaint had been drafted.

Keller said this is similar to the prior lawsuit NACO joined against the BLM and how it was handling wild horses and burros, maintaining it wasn't following the Wild Horse and Burro Act.

Fontaine said the counties "have a great interest in preventing" the listing of the sage grouse. "They've invested a lot of effort in preventing" listing, working with the state and federal agencies and private landowners.

Keller said the vote to join this lawsuit was unanimous.

"We have a very active NACO board and executive board when it comes to public lands," Keller said.

She added once they felt the wording was right "it was a no-brainer" to join the lawsuit. "We're tired of just sending letters" and decided "to step up to the plate."

This also includes the DPS, whose habitat is found in approximately 1.8 million acres western Nevada, including Lyon County, and neighboring eastern California counties. USFWS already has proposed listing the DPS as threatened, although a date has been delayed, and despite efforts as stipulated and enacted in the Bi-State Action Plan.

The complaint says the settlement, entered into in 2011 between USFWS and two environmental groups, places arbitrary deadlines that don't leave enough time for the conservation measures to be fully implemented, Struhsacker said.

She said the deadlines mean the listing decision won't be made fully based on facts on the ground and best scientific data to fully consider the conservation measures.

The Fulstone family has been raising sheep for more than 100 years, but it had lost grazing rights throughout the years and feels this listing would further erode the amount of land for grazing.