

## Nevada counties sue over sage grouse

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ELKO – A lawsuit alleges the federal government is skirting necessary due process in a looming sage grouse decision by not considering “warranted but precluded” as a listing category.

The Nevada Association of Counties, Nevada Mineral Resources Alliance, the American Exploration & Mining Association, and F.I.M Corp. – a family-owned sheep operation in Smith – jointly filed the lawsuit on Thursday.

The coalition asserts that the government violated the Endangered Species Act, the Administrative Procedure Act and the U.S. Constitution, and specifically takes issue with the U.S. Fish & Wildlife Service’s 2011 legal agreement with conservation groups to determine whether candidate species – in listing limbo – needed to be recognized as protected or not.

A species under consideration for protection can be classified in one of three ways: It will be added as an endangered or threatened species, it won’t warrant a listing, or a listing is warranted but precluded because other species are in more dire straits.

But the 2011 court settlement takes the third possibility off the table for many candidate species.

“Under the Settlements, FWS voluntarily, and without congressional authority, eliminated one of these three statutory options that the ESA requires it consider,” the complaint states.

Plaintiffs also argued that the greater sage grouse decision date, Sept. 30, 2015, doesn’t give states and local governments, as well as business entities, landowners and nonprofits, enough time to demonstrate how their efforts have improved sage grouse habitat and bird populations.

“The purpose of the ESA is not to add species to the protected list but to protect species and their habitat so they never warrant listing as a threatened or endangered species,” the document continues.

A rushed decision to list the bird, plaintiffs argued, could harm Nevada’s economy.

“Ranching, farming, mineral exploration and development, renewable energy, recreation, urban development, and other multiple uses that optimize the management

of resources on these lands will be severely restricted with the designation of 'critical habitat' by FSW," it states.

The ranchers who are listed as plaintiffs said a prior listing for the Sierra Nevada Bighorn Sheep has cost the operation about \$400,000 annually since 2010 due to grazing closures. They expect a listing of the bi-state sage grouse, which is a distinct species from the greater sage grouse but also up for consideration of federal protection, to lead to more grazing restrictions.

Greater sage grouse habitat is found in 10 Nevada counties, and another five counties contain bi-state sage grouse habitat, which is a distinct population that is also under consideration for protection.

The lawsuit acknowledges efforts by the state to draft a plan through the Nevada Sagebrush Ecosystem Council's guidance.

Elko County is operating its own sage grouse pilot project on the Devil's Gate Ranch. The plan focuses on predator control and fuel reduction through grazing. A number of local ranchers believe sage grouse populations were healthiest half a century ago when public land regulations were more relaxed.

NACO spearheaded another lawsuit last year against the federal government on grounds that the Bureau of Land Management was failing to control wild horse populations to the detriment of the land and wildlife.

Jeff Fontaine, NACO executive director, estimated that lawsuit would cost a total of \$90,000. Elko County committed up to \$10,000 to help fund it. The case continues to linger in the court system.

NACO did not respond to a call on Monday.

Theo Stein, Fish & Wildlife spokesperson, said he could not address the lawsuit, per the agency's policy not to comment on ongoing litigation.