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Sage grouse get a lawyer

Legal pistons begin to fire in DC; argument based on USFWS ignoring science

By Matthew Beaudin

This time of the year, people talk about "the bird." Just so happens the "bird" is usually a turkey, cavity deep in brine. But in the county offices it's about another bird entirely: the Gunnison sage grouse.

Last summer the county jumped on a legal bandwagon riding to Washington to challenge the United States Fish and Wildlife Service's decision to exclude the bird, which numbers fewer than 400 in San Miguel County, from the Endangered Species List last spring.

So while it's "nice bird, Dad" at one house on Thanksgiving, it's "Save the birds" at more than a few tables across the country. The county is but one element of a multi-faceted coalition fighting for stricter protections and, hopefully, a much-coveted spot on the Endangered Species List.

On Tuesday, the Western Environmental Law Center filed a suit in U.S. District Court challenging the non-listing, citing "blatant" violations of the Endangered Species Act.

Amy Atwood, the case's lead attorney at the Western Environmental Law Center, said the legal argument she plans to bring to the courtroom hinges upon the USFWS decision to not list the bird as "arbitrary and capricious."

Atwood said the case will challenge the top levels of the U.S. Department of the Interior for directly interfering with the bird's placement on the Endangered Species List, something, she said, the department was ready to do but was tampered with by Department of the Interior's Deputy Assistant Secretary, Julie MacDonald.

"What we'll be doing is explaining that the agency's own scientists said the bird should be listed," Atwood said.

The USFWS office in Denver issued draft a press release on the bird, suggesting it be listed under the Endangered Species Act, but Atwood said that decision was reversed in the Washington office.

The Denver USFWS office did not have a comment on Thursday, other than that the agency is reviewing the lawsuit, according to Sharon Rose, a USFWS official. The department has 60 days to reply to the legal filing.

Some in the county are hoping the suit puts the bird under federal protections.

"All the best available science suggests the existence of the Gunnison sage grouse is seriously threatened throughout most of its range," San Miguel County Commissioner Art Goodtimes said in a press release. "The county is pleased to lead this litigation to bring the federal government back to the table to help local working groups to save this bird from extinction."

When the USFWS excluded the bird from the ESL last spring it also removed the bird from the candidate list, stating that that threats to the longevity of birds - that are located in only seven regions between Colorado and Utah - were not of such scale the addition of the species to the federally-protected list was merited.

That decision, now formally met in the courtroom, was initially met with disbelief among some conservationists, with Goodtimes calling the non-listing an instance of politics trumping science.

Dave Remington, a biologist with the Colorado Department of Wildlife, called the science used to determine bird populations - counting of male birds - "crude," and also said that the population has declined over the past 50 years, though he thought the USFWS had made the correct decision.

The legal fight is the third dispute between the government and the birds' advocates, but this cause is more substantial than the others, as it aims to add the bird to a federally protected list whereas the other two were mismanagement complaints. Both verdicts thus far have erred in the favor of the birds; one was won and another settled.

The particular grouse currently exists in seven populations, six in southwest Colorado and one in both Colorado and Utah, and the Gunnison Basin population is the largest and represents the best chance for sustained conservation of the bird, biologists have said.