

# Wyoming Maintains Example Of Sage Grouse Success

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CASPER, WY.—Wyoming is leading the way in sorting through the complex and controversial issue of species management for the greater sage grouse, and regulators around the country are recognizing the effort, reported speakers at the Petroleum Association of Wyoming annual convention.

The event, held Aug. 15-16 at the Ramkota Hotel in Casper, highlighted the state's progress in developing a sage grouse management plan and the challenges it still faces in ironing out the associated complications, they said.

The ongoing controversy surrounding management of sage grouse protections was discussed throughout the convention, with several speakers recounting their experiences both with developing policy and in dealing with views of those unfamiliar with the issue.

Bob Budd, executive director of the state Wildlife and Natural Resource Trust, introduced himself at PAW's Public Lands Committee session by recalling his first sage grouse experiences, which came in 1999 through a volunteer position on an ad hoc committee.

Today, he said, it remains a challenge to discuss why sage grouse management policy should exceed the goal of merely preventing the bird's populations from dropping below a certain level.

"People always want an answer to 'how many birds are there?' It is tough for them to understand that bird populations change from year to year," Budd stated. "We have been counting males since the 1960s, so it is not that we don't have the numbers, it is how those numbers are interpreted and used."

Budd noted that the executive order issued by Governor Matt Mead made it clear that management plans that relied exclusively on population counts were the wrong approach. "If you go to a number metric, you are chasing that number forever and when another state sees a population decline, we pay the price here. That is not in the interest of the bird or the state," he considered.

## Up To States

Habitat is the key to a successful sage grouse management plan, Budd suggested.

He noted that when Mead expressed concern over an early pronouncement by Interior Secretary Ryan Zinke, some media reports said western governors opposed the Trump administration's new direction. "Once the bird was not listed as endangered two years ago, management of its protection fell to the states," Budd noted. "As a nonfederal species, it is treated the same as deer. No one is telling any state how many mule deer it has to maintain."

After receiving feedback from the 11 states that count sage grouse as a resident species, Zinke ordered a review of the Obama-era sage grouse management plan that gave states a measure of flexibility to consider economic issues as they work to protect habitat, Budd recounted. As a member of the group that provided Department of Interior officials with eight key considerations for a federal management plan, Budd said an emphasis on habitat core areas numbered among those



**The Endangered Species Act can be improved in a number of ways, including a better emphasis on the species that face the most danger, considers Wyoming Governor Matt Mead. He told PAW that smart changes would help make the law more effective for imperiled species and work better for many of the human activities that affect them.**

recommendations, he said.

"It was important they understood that there must be a single map of bird habitat core areas," he said. "One version of the core area map added tens of thousands of male birds and released tens of thousands of acres where there were no birds. An earlier map showed very different boundaries. We tried to convince them that a plan had to have a single map."

According to Budd, other issues affecting the oil and gas industry included the need for uniform descriptions of core and noncore areas and the importance of allowing states to develop their own habitat mitigation compensation programs.

Budd noted that the states and other interested parties had until Oct. 7 to respond to DOI's latest proposal.

## Debits and Credits

A program established in Wyoming to allow companies to secure credits for long-term sage grouse habitat protection has generated new questions for operators, reported Ryan Lance, from Sweetwater River Conservancy. He indicated Wyoming's program appeared to be far ahead of similar efforts in other states.

"For federal drilling decisions to withstand legal and other scrutiny, BLM and the state must ensure that project impacts are avoided, minimized and, where necessary, mitigated," Lance noted. "Habitat reclamation has proven somewhat difficult and takes quite a long time in sage grouse habitat, so if your plan disturbs important sage grouse habitats, the state has been deliberate about spelling out compensatory mitigation requirements—largely to ensure that the sage grouse stays off the Endangered Species Act list."

The processes for determining a debit ratio for disturbing core habitat, to a credit for preserving undisturbed habitat, remain unclear and subject to interpretation, mainly because of the uncertainty surrounding federal mitigation policy Lance said.

"The bank will continue to push for offset ratios that are scientifically defensible but still recognize that, in order for capital to flow to Wyoming for drilling

projects, they must be reasonable,” he concluded.

### Migratory Birds

Operators also can run afoul of federal regulations with other bird species when planning a new site or facility, according to U.S. Fish and Wildlife Service Field Supervisor Tyler Abbott. He warned that well plans must account for the risk that their projects might be responsible for bird takings—unintentionally or otherwise—that could violate the Migratory Bird Treaty Act.

“The USFWS can provide guidance on how to specify if a project has a reasonable likelihood a bird taking may occur,” Abbott said.

Even with such assistance, the unexpected can occur, he acknowledged. “We recognize that operators may do everything they can to avoid a bird taking, but accidents happen,” he admitted. “If our officers are satisfied everything has been done and the operator is willing to put it into writing, they have some enforcement flexibility.”

Abbott concluded with an update on USFWS involvement in an environmental impact statement in process for Converse County, Wy. The proposal calls for drilling as many as 5,000 new oil and gas wells in a 1.5 million acre area during the course of 10 years, published reports say.

“Our strategy is to identify migratory bird impacts, avoid them where possible,

and minimize as needed,” Abbott characterized. “We are working with BLM and industry to develop best management practices and conservation measures that can be included in the EIS.”

### Congressional Insights

PAW’s convention included insights into Washington’s changing political climate from the Wyoming congressional delegation.

Senator Mike Enzi, R-Wy., said he detected renewed optimism in D.C., even as the news media largely had overlooked the Trump administration’s progress since taking office. As chairman of the Senate Budget Committee, Enzi expressed a belief that Congress could pass tax reform, but he acknowledged the task would not be easy.

“The other side will put things like intangible drilling costs and oil depletion on the chopping block,” he predicted. “We won’t let them have it.”

Enzi urged oil and gas industry representatives to provide federal policymakers with examples that would demonstrate what would happen to U.S. energy production if the provisions were deleted from the tax code.

Senator John Barrasso, R-Wy., also expressed encouragement at the new administration’s actions, especially in the area of energy development. “When I first took office (in 2007), we were talking about energy security, not energy independence,” Barrasso reflected. “President Trump has made it clear that he wants to see us reach energy dominance.”

Representative Liz Cheney, R-Wy., who was elected to the House in 2016, outlined for PAW some of what she had seen during her first six months in office.

“President Trump has repealed or rescinded more than 800 regulations since taking office,” she detailed. “Start with Waters of the United States and the methane rule and the first bites out of the Clean Power Plan,” she recounted. “This president has done more in his first 100 days than any other since Harry Truman.”

As a member of the House Rules Committee, Cheney said she played an instrumental part in moving a bill under the Congressional Review Act that rescinded the Obama Administration’s Planning 2.0 policy.

“We want to change the way the federal government regulates,” Cheney declared. “New regulations must consider economic costs and the need for a sunset

provision.”

### Species Revisions

An increase in Wyoming oil and gas activity in 2017 was a source of encouragement, assessed Governor Mead, who cited a threefold increase in drilling rigs since 2016’s nadir.

“Twenty-six rigs may not be boom times, but compared with the eight rigs last year, it’s wonderful,” Mead considered. “In a state where minerals pay 70 percent of our bills, I am grateful.”

He commended the industry for responding to the commodity price slump by streamlining and creating efficiencies. State offices also have cut back their operations and adjusted to reduced revenue, he reported.

“Three years ago, I asked all departments to cut rules and regulations by 30 percent,” Mead recalled. “Those that weren’t frowning at me may have been laughing at me when I said that. I am pleased to report that the agencies responded—some cut 30 percent, some cut 50 percent—and still are able to carry out their duties.”

Considering Wyoming’s considerable reliance on mineral resources, economic diversification is vital, Mead suggested. “Developing additional revenue streams is not only about smoothing the ups and downs of the commodity markets,” Mead



Sweetwater River Conservancy’s Ryan Lance tells PAW that reclamation can be difficult and time consuming for sage grouse habitat at the group’s 2017 convention, Aug. 15-16 in Casper, Wy. Nevertheless, he said, Wyoming’s program allowing companies to secure credits for long-term sage grouse habitat protection seemed to be progressing well.



Possible provisions for smart regulatory reform include accounting for economic costs and including sunset provisions, suggests Representative Liz Cheney, R-Wy. As a member of the House Rules Committee, Cheney indicated she had helped advance Congressional Review Act initiatives that rescinded some regulations established during the waning days of the Obama administration.

## ConventionCoverage: Petroleum Association of Wyoming

considered. “We are losing our young people at an alarming rate, so we must provide additional opportunities outside resources, tourism and agriculture.”

The governor outlined a plan that included a number of emphases, including:

- Improving the state’s regulatory climate;
- Working with the federal government to balance state and federal regulations;
- Encouraging innovation;
- Taking a leadership position among states on wildlife and environmental issues;
- Facilitating worker safety initiatives across industries;
- Providing Wyoming solutions to challenges faced elsewhere, such as the 1,100 miles of shovel-ready pipeline corridor he has proposed; and
- Persevering in the face of misguided federal sage grouse protection proposals.

“When I ran for governor, I had several things I wanted to talk about. Sage grouse was not number one on that list,” Mead quipped. “Managing the bird has been an issue since before I took office. Wyoming has a solid plan and we cannot take for granted that the bird is not listed under the ESA. The U.S. Department of the Interior is making positive changes to its management proposals, but—no question—there is room for improvement.”

Mead added that the time had arrived for Congress to consider ESA revision. As chairman of the Western Governors Association, Mead noted he had pushed ESA reform as one of the group’s initiatives, despite knowing that many Americans feel the act “is as sacred as biblical text.”

However, the governor considered, the ESA definitely has room for improvement. “With sound policy, we can stop wasting time on species that clearly have recovered and pay attention to those that are only hanging on,” Mead stated.

### Bureau Perspective

At the state level, Bureau of Land Management officials are working with their federal counterparts to define and execute the Trump administration’s numerous policy revisions, said Mary Jo Rugwell, Wyoming state director at BLM. According to Rugwell, her office “stands ready to work with the Trump administration.”

Even so, she acknowledged a distinct



**Mary Jo Rugwell, Wyoming state director at BLM, discusses updates to the bureau’s Automated Fluid Minerals Support System. According to BLM, notices, well completions and inspection platforms are among the updates producers can expect in the new edition.**

shift away from policies issued under President Obama. “Policies put in place by the previous administration were further from the center than many of us career BLM’ers would like to have seen,” Rugwell assessed. Since Trump took office, she said, field staff had been “waiting for clear direction on the policies that are changing so we can begin implementing them.”

The federal government holds the lion’s share of Wyoming’s surface and minerals, Rugwell noted. Therefore, efforts to streamline federal mineral leasing tend to be appreciated. As a former mineral leasing staffer, Rugwell recalled the volumes of paper generated by a single application for a permit to drill. Therefore, she suggested, systems that automate the review process, improve accountability and promote transparency are welcome.

One of those systems, the Automated Fluid Minerals Support System, is being updated, Rugwell noted. The revision covers sundry notices, well completions and inspection platforms and is due for release this fall, a BLM report noted.

Regarding mineral leases, BLM and the U.S. Forest Service are reviewing parcels located in Wyoming’s Thunder Basin National Grassland that were nominated as expressions of interest for future lease sales, she said. Once prioritized, parcels in the grassland will be included among those offered in the next four Wyoming quarterly lease sales. “During the next year, 540 parcels covering 600,000

acres will be offered at auction,” Rugwell added.

She reported that, in August, there were 1,926 approved APDs waiting to be drilled in Wyoming. She added that there also were 765 notices of staking and APDs pending, half of which were in the Casper office.

Rugwell indicated the bureau had completed a workforce review and, thanks to legislation that reauthorized the BLM pilot office program, Wyoming BLM administrators could move resources and staff quickly between the Casper, Buffalo and Newcastle field offices.

### Tribal Consultations

Another factor in the APD backlog at the Casper field office relates to delays from private landowners denying access needed for tribal consultation, maintained PAW Vice President of Public Lands Esther Wagner. She mentioned an Aug. 7, 2017, letter PAW sent to Stephanie Connolly, BLM manager for the High Plains District.

In the letter, Wagner expressed concern that the issue had delayed or deferred APDs at the Casper office. The letter noted that more than 150 applications were deferred for as long as two years as the bureau awaited tribal consultation when landowners denied access to conduct the consultation. When operators reconfigured development plans, BLM objected and said doing so violated the tribes’ rights.

In other instances, “BLM required miles of additional road on private land to stay clear of the site even though the landowners expressed preference for the existing road,” Wagner wrote.

When the sites are avoided, BLM still requires tribal consultation, since the site falls within the area of potential effects (APE). Unfortunately, she indicated, the bureau does not provide the operator with information about the APE, including its origin.

“BLM has made it clear that without site access, the APD cannot move forward,” Wagner observed.

PAW’s letter asked BLM to provide proof of authority or a guidance document to clarify:

- The circumstances that trigger tribal consultation and their rationales;
- The requirements operators must meet to fulfill consultation requirements;
- Whether BLM has discretionary authority to approve APDs even if

landowners prevent tribal consultation;

- The criteria for determining APE sizes and the factors that are considered in the event of an expansion;
- The authority that allows BLM to require best management practices and road placement on private land for operators that already have confidential surface use agreements with landowners; and
- How much effort operators must expend to obtain landowner approval of committed measures before APDs can be processed.

"We have seen instances where BLM asks the operator to get landowner approval so the bureau can take additional measurements or pictures," Wagner related. "That should be up to BLM, not the operator. Our letter asks BLM for guidance."

She added that PAW sent copies of the letter to the BLM state office, the governor's office, the Wyoming Stock Growers' Association and state senators Brian Boner, R-Douglas, and Larry Hicks, R-Baggs.

### Permit Action

An update from the Wyoming Oil and Gas Conservation Commission indicated that, although production had declined during the commodity price downturn, permit activity—especially in the Powder River Basin—remained strong.

According to WOGCC Deputy Supervisor Tom Kropatsch, Wyoming's 2017 oil production was 33.5 million barrels through June. He reported that Wyoming oil production in 2015 reached 86.5 million barrels—the highest level since 1993—but had declined to 72.5 million barrels in 2016.

Wyoming natural gas production peaked in 2009 at slightly more than 2.5 trillion cubic feet a year, and by 2016, had declined to 1.75 Tcf a year, Kropatsch detailed.

The commission is making progress at shrinking the orphan well list, he continued. From 2014 to 2016, 1,705 orphan wells were addressed, and another 522 were scheduled for resolution this year. Through the first half of 2018, 2,738 wells remained on the orphan well list, he indicated.

Meanwhile, permit activity remains strong, Kropatsch said, with the WOGCC issuing an average 800 permits a month since August 2016. "We continue to hit record permitting numbers, including more than 1,000 permits issued in March," he stated.

"We are 60-90 days out on permit approvals. Operators should know that when they have a rig running and are getting ready to move it to another location, they can call two weeks ahead, and we will review the APD," Kropatsch advised.



**Wyoming has averaged 800 drilling permits a month since late last summer, reports Oil and Gas Conservation Commission Deputy Supervisor Tom Kropatsch. He added that WOGCC often processed permits in 60-90 days.**

"We will work to have that permit ready when the rig arrives on location."

Following the production and activity report, Kropatsch provided an update on revisions to Wyoming oil and gas rules. The commission approved an increase in the blanket bond to \$100,000, while the individual well bond was boosted to \$10 a foot, he observed, adding that the increase expanded the total bond held by the state to \$181 million from \$169 million from before the rule change. Compliance is strong, Kropatsch assessed, as 95 percent of operators have posted increased blanket bonds.

The other significant rulebook change involved harmonizing regulations with the Office of Administrative Hearing's standards for contested hearings and a normalization of rules covering fees, costs and charges for inspecting, copying and producing public records, he said. Contested case hearing fees are scheduled to

increase to \$250 and continuance fees increase to \$125, Kropatsch observed.

### Passing the Gavel

The annual meeting also saw Paul Ulrich, director of government affairs at Jonah Energy in Denver, become PAW's top officer. With the conclusion of his term as PAW Chairman, Randy Harris, a vice president at Black Hills Corp., expressed satisfaction at the association's accomplishments during the past two years and thanked PAW staff and members who "got involved and made a difference."

The association's next objective, Harris said, is to review and develop a comprehensive communications program for carrying the industry's messages to Wyoming's public and political leaders. "We also want to reach our members quickly when something comes up in the Capitol," he added.

Later, Harris discussed the importance of renewing PAW's communications program. Wyoming has a tradition of resource development that comes from a sense of cooperation between the state, industry and the public, Harris characterized. Lately, however, he said the business climate was changing.

"We have activists arriving from other states, spreading misinformation," Harris said. "PAW has to upgrade its communications with thought leaders, legislators and the public. Our messages have to be proactive."

The need for a new communications effort was echoed by PAW President Bruce Hinchey.

"This is coming from our members," Hinchey said. "We used to have a line-item in our budget for communications, but it faded with time."

Hinchey added that this year's convention saw an increase in attendance. "We are hearing that members liked the new location and our program," he said. □