Lawsuit Challenging BLM's Management of Sagebrush Habitats has Potential Broad Ramifications for Energy Development in the West

By: Bret Sumner

On December 17, 2008, the Western Watersheds Project (WWP) filed an amended complaint in federal court in Idaho that has potentially broad ramifications for federal land use plans and energy development in the West. The lawsuit is docketed as *Western Watersheds Project v. Dirk Kempthorne, U.S. Department of the Interior*, Case No. 08-cv-516-BLW (D. Idaho). WWP's lawsuit challenges the Bureau of Land Management's (BLM) recent decisions approving a total of eighteen Resource Management Plans (RMPs), including: three RMPs in Idaho, four RMPs in Wyoming (Kemmerer, Pinedale, Rawlins and Casper), six RMPs in Utah (Vernal, Price, Moab, Richfield, Kanab, and Monticello), the Dillon RMP in Montana, the Ely RMP in Nevada, and three coordinated RMPs in Nevada and California. These challenged RMPs encompass management of more than 25 million acres of federal lands in the West.

The lawsuit alleges that livestock grazing and energy development activities have "quickly accelerated the decline of sagebrush habitats and harmed remaining sage-grouse populations, thus contributing to the sage-grouse's slide toward extinction as a viable species." WWP Amended Complaint at ¶ 37. WWP's core allegations are that, in the new RMPs, BLM: (1) failed to analyze potential impacts to the sagebrush-steppe ecosystem and the greater sage-grouse; (2) failed to impose sufficient protection measures to prevent habitat fragmentation; and, (3) failed to impose sagebrush habitat restoration requirements. WWP also claims that BLM's RMPs fail to follow the BLM Special Status Species Policy and the BLM National Sage-Grouse Habitat Conservation Strategy (BLM Strategy), emphasizing that the BLM Strategy calls for "considering regional sage-grouse habitats and populations in the land use planning process," WWP Amended Complaint at ¶ 114, and that the

new RMPs fail to do so.

WWP claims that BLM violated the National Environmental Policy Act (NEPA) and Federal Land Policy and Management Act (FLPMA) by failing to analyze and address sagebrush habitat fragmentation and related potential impacts to the greater sage-grouse in the new RMPs. WWP also claims that BLM failed to take a "hard look" under NEPA at the "likely effects of global climate change, and what those effects mean for sage-grouse and other sagebrush-obligate species." WWP Amended Complaint, First Claim for Relief, ¶ 436(D). WWP requests that the court "reverse and remand" each and all of the challenged RMPs and grant "declaratory and/or injunctive relief require[ing] [BLM] to undertake comprehensive and legally valid NEPA analysis and adoption of new RMPs that will conserve sagebrush habitat and sage-grouse populations across the BLM lands within the sage-grouse range." WWP Amended Complaint, Prayer for Relief at ¶ D.

To date, no representatives from the cattle or energy industries have intervened in this case. Recently, the Department of Justice, on behalf of BLM, filed a Motion to Sever the lawsuit to transfer portions of the case (e.g. RMPs not related to Idaho) to the appropriate federal court where the respective RMPs are located.

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