
WESTERN WATERSHEDS PROJECT COULD RESUBMIT COMPLAINT THIS WEEK

Judge: Enviros must file new suit on grouse decision

By Nate Popino

A federal judge has rebuffed a first attempt by an Idaho-based environmental group to challenge a March 5 decision on federal protection for the greater sage grouse.

But to Western Watersheds Project, which has its main office in Hailey, Tuesday's decision by U.S. District Judge B. Lynn Winmill won't really end up a setback.

The organization still plans to urge the judge to tell the federal government to list the grouse under the Endangered Species Act, said its longtime attorney, Laird Lucas of Advocates for the West. It just will do so in a separate case.

So, the debate over the bird's future - imperiled by numerous threats to its sagebrush habitat across the West - will continue to play out in the courts.

A court case is what led to last month's announcement by federal officials that the grouse deserves protection in 11 states, including Idaho, but that a listing is precluded for now by other priorities.

The U.S. Fish and Wildlife Service had concluded in 2005 the grouse

didn't need protection. But Western Watersheds questioned that result and filed suit. Winmill found evidence of political meddling at the U.S. Interior Department and overturned the decision in 2007, remanding it back to Fish and Wildlife with a court-imposed deadline.

Just three days after the March 2010 announcement by Interior Secretary Ken Salazar, Western Watersheds asked Winmill to let it supplement its previous case with a new complaint targeting the "precluded" part of the decision. While the conclusion that the grouse needs protection was properly done this time, the complaint alleged, the rationale for the delay was full of "factual mischaracterizations and omissions, unfounded assertions, and legal misreadings of the ESA to avoid proceeding with a listing rule."

Fish and Wildlife in response argued that the court no longer has jurisdiction over the issue. On Tuesday, Winmill agreed, writing in his three-page opinion that federal officials complied with the 2007 remand and that he sees "no extraordinary circumstances" that would require him to reconsider earlier decisions. The same issues

were covered in a previous case before Winmill last fall between Western Watersheds and the U.S. Forest Service, the judge wrote.

Lucas said Wednesday that Winmill's decision was "understandable" and that the group plans to re-file its complaint in a new case as soon as Friday. That case will still come before Winmill, according to the judge's order.

Western Watersheds in late March also joined two other groups, the Center for Biological Diversity and Desert Survivors, who sent a 60-day notice to Fish and Wildlife that they intend to sue over the grouse decision. Their notice was driven in part by concern that, given the low number of candidate species listed each year, it "could take literally decades" for Fish and Wildlife to get around to the grouse.

The step, required under the ESA, will allow Western Watershed to file more claims after the 60 days, Lucas said. However, the federal government may argue that Friday's complaint must wait that long as well; Fish and Wildlife attorneys asserted last month that it, too, falls under the ESA requirements.