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U.S. Fish and Wildlife Service Considers Listing the Gunnison Sage-Grouse Under the Endangered Species Act

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The U.S. Fish and Wildlife Service ("Service") announced in today's Federal Register that it is initiating a status review of the Gunnison sage-grouse under the Endangered Species Act ("ESA"), as required under settlement agreement with a number of environmental groups.¹ During the status review the Service will evaluate the threats to the Gunnison sage-grouse to determine whether to propose listing the species as threatened or endangered.² The settlement agreement requires the Service to conclude its status review and make its final decision by June 30, 2010.³ The Service is accepting comments for the status review, especially information regarding the species' ecology, biology, distribution, threats, and current conservation actions, until December 23.⁴

The Gunnison sage-grouse is a sagebrush-obligate bird species that is related to the greater sage-grouse and is found in southwestern Colorado and southeastern Utah.⁵ The Gunnison sage-grouse and the greater sage-grouse were originally considered to be the same species until 2000, when they were recognized as distinct species based on morphological and behavioral differences and geographic isolation.⁶

The Service added the Gunnison sage-grouse to the ESA list of candidate species in 2000, then removed it from the list in 2006 after an earlier status review.⁷ The 2006 withdrawal notice considered the impact of oil and gas development on the species and determined that although some Gunnison sage-grouse habitat is in areas with high potential for oil and gas development, BLM lease deferrals and economic infeasibility of extraction minimized the likelihood that this development would occur at a significant enough level to imperil the species.⁸ The earlier review also concluded that present and future mining activities appeared to be limited in the species range, and thus did not pose a significant threat to the species.⁹

With respect to renewable energy, the 2006 withdrawal notice acknowledged that renewable energy development could result in impacts from direct habitat losses, habitat fragmentation through roads and power lines, noise, and increased human presence.¹⁰ However, due to the limited amount of wind development proposed in the range of the

Gunnison sage-grouse, the Service concluded that there was no evidence that current or future wind energy development threatened or endangered the long-term persistence of the species.¹¹

During the current status review, the Service will reevaluate these conclusions based on existing and new information it receives during the public comment period.¹² If the Service determines that the Gunnison sage-grouse warrants ESA protection, it will propose a listing rule and will solicit additional public comment before finalizing a listing decision.

A decision to list the Gunnison sage-grouse is likely to have significant consequences for those who live and work in the species' habitat in Colorado and Utah. If the Gunnison sage-grouse is listed, it will become illegal to "take" the species or adversely modify any designated critical habitat without authorization from the Service.¹³ "Take" is broadly defined to include activities that harass, harm, or kill a listed species; "harm" is also broadly defined and includes significant habitat degradation or modification which kills or injures wildlife.¹⁴ The take prohibition will apply across the species' habitat, regardless of surface ownership. A listing would also require consultation between the Service and federal agencies prior to agency issuance of any permits or authorizations that might affect the Gunnison sage-grouse. Actions that are likely to adversely affect the species would be subject to additional restrictions to protect the species.

Persons potentially affected by a listing of the Gunnison sage-grouse should submit information to the Service for the status review, especially information regarding the species' population status and trends, effects (or lack thereof) of certain activities on the species, and proposed or existing conservation actions for the species. Conservation efforts are particularly relevant to the listing decision, because the Service's Policy for Evaluation of Conservation Efforts When Making Listing Decisions ("PECE Policy") allows the agency to evaluate formalized conservation efforts to determine if those efforts improve the status of the species such that the species is not threatened or endangered.¹⁵

For additional information regarding the ESA listing process and strategies to manage potential impacts to your operation, please contact Sandi Snodgrass at 303-295-8326 or SSnodgrass@hollandhart.com

¹ See Notice of Intent to Conduct a Status Review of Gunnison sage-grouse (*Centrocercus minimus*), 74 Fed. Reg. 61,100 (Nov. 23, 2009).

² *Id.* at 61,101.

³ *Id.*

⁴ *Id.* at 61,100.

⁵ See Final Listing Determination for the Gunnison Sage-Grouse as Threatened or Endangered, 71 Fed. Reg. 19,954, 19,957 (April 18, 2006).

⁶ 74 Fed. Reg. at 61,100.

⁷ 71 Fed. Reg. 19,954.

⁸ *Id.* at 19,967.

⁹ *Id.* at 19,968.

¹⁰ *Id.*

¹¹ *Id.*

¹² 74 Fed. Reg. at 61,100-01.

¹³ 16 U.S.C. §§ 1532(19), 1538(a)(1).

¹⁴ 50 C.F.R. § 17.3.

¹⁵ 68 Fed. Reg. 15,100, 15,101 (March 28, 2003).

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