

Congress of the United States
Washington, DC 20515

October 16, 2014

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Jewell:

We write to express concerns with the lack of transparency of your Department's evaluation and use of 'best available scientific and commercial data' and lack of coordination with and assurances to affected states and other stakeholders relating to their extensive ongoing conservation efforts to avoid a listing under the Endangered Species Act (ESA) of the Greater Sage Grouse.

With less than a year to go before the Department's self-imposed September 2015 settlement deadline to determine whether to list the Greater Sage Grouse under the ESA, it appears that the Department is blatantly ignoring or downplaying significant flaws and gaps in its own sage grouse data and science, and failing to incorporate recent data that suggests sage grouse populations are stable and not declining. This undermines the Obama Administration's pledge to "ensure the public trust and establish a system of transparency, public participation, and collaboration."

We are also concerned that, at the same time, the Department has set in motion a process to mandate, through revisions to 98 resource management plans, mitigation requirements which have not been deemed necessary or helpful to sage grouse that would devastate state and local economies and severely impact private property owners' activities in portions of eleven western states. It is much more important that best available science and data, rather than mega-settlement deadlines negotiated behind closed-doors, guide this important ESA issue.

Recently, we have been made aware that the U.S. Fish and Wildlife Service (FWS), together with the U.S. Geological Survey (USGS) has scheduled an October 22-23, 2014 "workshop" in Fort Collins, Colorado to "collect information from scientific experts" on various science questions on genetic differences of sage grouse. While we concur that it is important for the FWS to reconcile the many and serious flaws and gaps of studies relied upon in federal rules and reports, such as the 2011 "*Report on National Greater Sage-Grouse Conservation Measures*" (NTT Report), and the 2013 "*Greater Sage-grouse Conservation Objectives: Final Report*" (COT Report), the purpose and structure of this workshop raises more questions than it answers. As you know, the USGS, FWS, and Bureau of Land Management (BLM) all rely on the NTT Report and COT Report which contain studies that have been shown to contain bias, mathematical flaws, misrepresentation of science and data, and erroneous opinion and

assumptions.¹ This issue is too important to be relying on mere opinion, and deserves to have the best available scientific and commercial data be used in determining the status of the Sage Grouse and the best way to move forward.

Without question, the American public deserves and expects the Department and FWS to foster an open and transparent process on how it receives, evaluates and incorporates sage grouse data, and determines what is or isn't "best available," as ESA requires. Reversing itself in 2010, the FWS found that listing several populations of sage grouse found in portions of eleven states "may be warranted," allegedly due to population declines. However, rather than focus on actual sage grouse population data, the workshop apparently will consist of discussions of mere "individual *opinions*" and queries of individual *professional experience and opinion* rather than sound science regarding sage grouse genetics, according to the invitation.

It is disappointing that the FWS workshop does not also include an examination of data relating to population trends in addition to questions of genetics, since many have questioned the FWS' lack of clear data that Greater Sage Grouse populations range-wide are declining, and in fact, some study data indicates populations in many areas are stable. Moreover, confusion about the FWS' policies relating to various distinct population segments of the sage grouse has been compounded by a 2013 USGS report that states the FWS "no longer considers listing consideration at the subspecies level based on the multiple lines of evidence that do not support the eastern and western subspecies delineation in sage-grouse."²

In addition, the FWS recently confirmed that the few invited must meet rigid, somewhat exclusionary criteria to participate at the Fort Collins October workshop. As a result, participants will be comprised almost entirely of federal employees, federal grantees, or individuals who helped draft, were connected with, or have some interest in either the NTT or the COT reports or with FWS' research. It is concerning that the invited participants, with the exception of a co-author of a primary source of the flawed COT Report, do not include any representatives of affected states or state fish and wildlife agencies that have been working on plans to avoid a federal ESA listing. Non-profit science researchers (such as those from litigious groups favoring a federal listing) are apparently invited, while other scientists employed by industries or non-governmental entities appear to be excluded.

Adding insult to injury, the public would not be allowed to observe or obtain any information relating to this "workshop" until well after the BLM and U.S. Forest Service finalize their resource management plan revisions and the FWS finalizes its listing decision. This runs counter to data transparency and ensuring use of best science that would benefit both the Greater Sage Grouse and millions of people in the affected area.

¹ Witnesses at multiple hearings before the Committee on Natural Resources have testified about incidences of bias, mathematical flaws, misrepresentation of science and data, erroneous opinions and assumptions found in published studies in the monograph *Greater Sage-Grouse: ecology and conservation of a landscape species and its habitats; Studies in Avian Biology (vol. 38)*, University of California Press (2011).

² p. 10, "Summary of Science, Activities, Programs, and Policies That Influence the Rangewide Conservation of Greater Sage-Grouse," United States Geological Survey (May 2013).

Additionally, the distribution materials for the workshop state that the “workshop will comply with all Federal regulations, including the Federal Advisory Committee Act (FACA), the Administrative Procedure Act (APA) and the Endangered Species Act (ESA).” As this workshop, of course, is not an attempt to form an Advisory Committee, but structured in a way to purposefully avoid triggering FACA, it is curious that compliance with FACA would be listed in the details for the workshop. As you are aware, FACA was passed with the intent to make information provided by advisory committees objective and accessible to the public, and true increased public participation and full transparency would be welcomed by those state most significantly impacted by this decision.

Because the FWS continues to insist on adhering to inflexible, self-imposed settlement deadlines amidst growing unanswered questions about data quality, and now specifically, the intent of and details behind how this workshop and other influential data will be used in the process to determine whether to list the Sage Grouse, we request prompt written responses to the following questions, no later than November 1, 2014:

1. Please describe how and for what purpose the October 22-23, 2014 “Expert Elicitation Workshop on the Genetics of the Greater Sage-Grouse” in Fort Collins, Colorado was arranged.
2. What specific scientific concerns with the federal agencies’ Greater Sage-Grouse data is the workshop designed to address?
3. Were any formal information quality guidelines or federal authorities used to sponsor the workshop and develop the criteria for eliciting expert opinions for this workshop? If so, please describe in detail.
4. Will the FWS schedule subsequent workshops or forums relating to the DNA or genetics of Greater Sage Grouse? If so, please outline where and when? If not, why not?
5. With regard to the Bi-State, Columbia Basin, Gunnison populations of the Greater Sage Grouse, what is the FWS’ current policy regarding separation of populations at the subspecies level, and what will this mean regarding the current process for the FWS listing determinations for each?
6. Did the FWS consult with any of the affected states, their Governors, or other state officials regarding participation in the October 22-23 workshop? If so, please describe the consultation in detail, who was consulted and whether and when they were invited.
7. Did the FWS consult with any published experts, including federal, non-federal, academic, non-profit, industry, or others before assembling a list of potential invitees? If so, please indicate who the FWS consulted with.
8. Who developed the participation criteria and invitation list relating to the workshop and how were the invitations announced and conveyed?

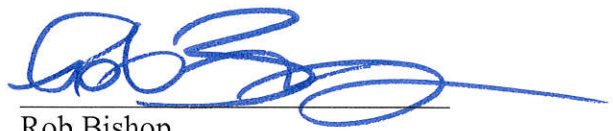
9. Were any public notices or Federal Register Notices published about the workshop?
10. Please explain the role of USGS facilitators at this workshop.
11. Please provide copies of current curriculum vitae or resumes of each invited participant.
12. Please list all invited participants that were team members, were cited as sources, or who had any involvement at all with the "*Report on National Greater Sage-Grouse Conservation Measures*" (NTT Report, 2011), or the "*Greater Sage-grouse Conservation Objectives: Final Report*" (COT Report, 2013).
13. Please list all invited participants that currently receive or have received federal research grants from the FWS, USGS, Forest Service, or BLM, and list all grants each received with dates and amounts.
14. As you know, the ESA requires that listings determinations be based on the "best available scientific and commercial data available." Other than "individual opinions", "professional experience" or "unpublished studies" offered by the participants of this workshop, what efforts will the FWS or the Department make to allow qualified scientists or biologists with expertise in sage grouse to submit actual data or information regarding Greater Sage Grouse populations, DNA or genetics?
15. Will interested individuals from the public be permitted to observe this workshop? If not, why not?
16. Will the workshop be recorded or transcribed, or will minutes be taken? If so, how and when will this be made available to the public? If not, why not?
17. Please describe the process on how the results of this workshop will be utilized by the FWS in its listing determination.

We look forward to your prompt response to these questions. We also sincerely encourage you to consider cancelling this workshop and instead, before proceeding with any final listing or regulatory action, initiate an independent scientific review of *all* relevant sage grouse population and genetic science, such as through the National Academy of Sciences, that will encourage all scientists with expertise in this issue to contribute through a much more inclusive and transparent process. An independent scientific review of all best available science will work to strengthen trust and credibility in the agencies' current opaque and flawed science, and better inform the Department and the American public on this important issue.

Sincerely,



Doc Hastings
Member of Congress



Rob Bishop
Member of Congress



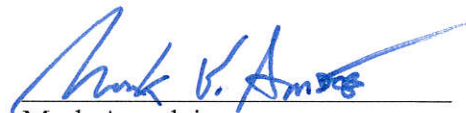
Jason Chaffetz
Member of Congress



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Mark Amodei
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Cynthia Lummis
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Raúl Labrador
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Kevin Cramer
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Chris Stewart
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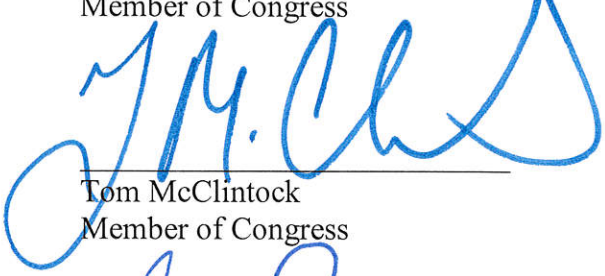
Joseph Heck
Member of Congress




Steve Daines
Member of Congress



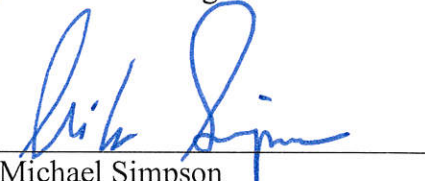
Cathy McMorris Rodgers
Member of Congress



Tom McClintock
Member of Congress




Greg Walden
Member of Congress



Michael Simpson
Member of Congress



Doug LaMalfa
Member of Congress



Kristi Noem
Member of Congress

cc: Mr. Dan Ashe, Director, U.S. Fish and Wildlife Service
Ms. Suzette Kimball, Acting Director, U.S. Geological Survey
Mr. Neil Kornze, Director, Bureau of Land Management
Mr. Tom Tidwell, Chief, U.S. Forest Service
The Hon. Brian Sandoval, Nevada Governor and Chairman, Western Governors Association