

Testimony of Robbie LeValley

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House Committee on Natural Resources

*"Recent Changes to Endangered Species Critical Habitat Designations and Implementation"*

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Mr. Chairman, Ranking Member Grijalva, and members of the subcommittee, my name is Robbie LeValley. I am a fourth generation cattle producer and my family and I run a cow-calf operation in Hotchkiss, Colorado. In addition to ranching, my family and I are part owners of Homestead Meats, a direct beef marketing business and USDA processing plant. I currently serve as chairman of the National Cattlemen's Beef Association's Federal Lands committee and as a director for the Colorado Public Lands Council. It is my pleasure to testify before your Committee to discuss the impact this Administration's critical habitat policy has on ranchers across the West.

For generations, ranchers have served as stewards of the land. Land and habitat thrives because of the knowledge and resources that we put into our land and grazing management decisions. My operation, and the operations of other ranchers proves that managed grazing not only provides for livestock, but for wildlife as well. The time and money that ranchers invest into public land improves water sources, controls invasive species, and removes the fine fuel loads that contribute to catastrophic wildfires that destroy habitat and food sources for wildlife.

My testimony will be specific to the Gunnison Sage Grouse which was listed as a threatened under the Endangered Species Act in 2014. Our ranch has made the habitat for the Gunnison Sage Grouse (GSG) a priority since 1995, when we became involved with the Colorado Parks and Wildlife and Bureau of Land Management (BLM) to cooperate in providing habitat on our private land and BLM allotments. We have two conservation easements on our private ground and have enrolled an additional 1300 acres of private ground in a Candidate Conservation Agreement with Assurances (CCAA) strictly for the grouse.

Our BLM grazing allotments are a high desert ecological site. To date, we have put in over 17 miles of pipe – 14 of which resides on public land - to not only provide water for our cows but supply waterers for the GSG as well as other wildlife species. The source of this water for the GSG is from our private land and we maintain the pipe infrastructure on both the public and private lands to ensure delivery of this water. In addition, we manage our grazing each year to provide nesting, brood rearing and summer habitat. Our managed grazing consistently yields habitat that exceeds GSG guidelines set by the USFWS and BLM. We have worked cooperatively with the USFWS, the local Audubon group, BLM, and CPW for two decades to benefit the Gunnison Sage Grouse and our efforts are yielding quality grouse habitat.

The U.S. Fish and Wildlife Service recently issued a final rule to implement changes to the regulations for designating critical habitat under the Endangered Species Act. The Service stated that the rule was "intended to add clarity for the public, clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical habitat designation process." In reality, the rule goes beyond mere clarifications and simplification of the process and instead attempts a broad re-orientation of the scope and purpose of critical habitat designations.

Under the revised rules, the Service will have broadly expanded power to classify large areas of unoccupied range as critical habitat based solely on evidence of the “physical and biological features” needed to support a species. Worse, the new rules also provide the ability to designate critical habitat based on a site’s *potential* to support those physical or biological features, even if they do not exist at the time of the designation. In essence, this broad latitude brings every single acre of a species’ range into the crosshairs of a critical habitat designation.

The ability to plan is essential in any business, and in our business - where we are managing both our herd and the landscape - this action by the Service could be catastrophic. As adopted, these changes increase the discretion of the Service to broadly designate areas as critical habitat – or be forced to do so through litigation abuse by predatory environmental groups, which will impose strict requirements and modifications on public land livestock grazing at a time of unprecedented, effective coordination between ranchers and conservationists to create and protect GSG habitat.

Derailing these successful ongoing conservation efforts and undermining the regulatory certainty needed to execute highly technical business operations like rotational grazing from year-to-year will seriously disrupt our business as well as the habitat improvements we’ve made on the ground. Introduction of new federal regulations into an ongoing collaborative effort should not be undertaken lightly, and must be done in a manner that is consistent with conservation efforts that are already working. Unfortunately, this is not the case with the new critical habitat guidelines, which propose a series of definitions that step outside the bounds of the statute, but are also so vague that they are ineffective in implementation.

Additionally, USFWS has directed BLM to standardize language in Resource Management Plans (RMPs) on occupied and critical habitat for habitat guidelines across entire landscapes, which is simply not biologically possible given the ecological site descriptions, year-to-year temperature and moisture fluctuations, and diversity of vegetation on the landscape. Variations on the landscape and seasonal fluctuations in habitat require intensive day-to-day management, which only an empowered permittee with extensive knowledge of site-specific conditions can achieve. This management becomes especially problematic in the context of a one-size-fits-all regulatory scheme as proposed. The end result of this regulatory expansion is a classic federal overreach with the potential to greatly reduce the grazing footprint and decrease the active management of herbivory.

Ranching is a technical business that operates on a year round planning cycle. Regulatory certainty is absolutely essential to effective partnerships between land management agencies like USFWS and BLM and ranchers. The broad generalizations and definitions in the proposed critical habitat guidelines do not provide this. Specific to the Gunnison Sage Grouse, livestock grazing was not listed in the top listing factors, yet it continues to be a management tool that BLM applies inappropriately – almost always resulting in reduced time that livestock can be on an allotment, reduced numbers or AUMs, or a combination of both. Our fear is that this overregulation of a necessary biological partner like grazing has nothing to do with grazing itself and instead is due to the lack of other viable regulatory targets. Finding it impossible to regulate wildfire, drought, or invasive weeds, grazing becomes the primary casualty of Federal overreach into effective ongoing state management of wildlife.

Another issue of concern is the revised definition of “destruction or adverse modification” - which can be triggered if a permitted use such as livestock grazing significantly delays the development of features needed by the species, a standard that is almost impossible to define or measure. Implementation of this language will create yet another vast opportunity for abuse by litigious environmental organizations that seek to eliminate multiple use on federal lands.

Again, there is only one multiple use that will take the hit for this “delay in development” - proper livestock grazing. An example of this is currently unfolding in regard to the listed bull trout where environmental litigants are arguing that continued grazing while maintaining the current conditions of the range and riparian areas that are classified as being in “properly functioning condition” is still adverse modification of critical habitat because the Forest Service cannot demonstrate that the range will move to an “ecologically ideal level” over time. The litigants are focusing on temperature and believe there is adverse modification of critical habitat if the warmer streams found throughout the West in August are not converted to cold streams at that time. The FWS’ new rule will support the litigants’ arguments regarding modification of critical habitat in most grazing allotments throughout the West.

USFWS consistently and correctly says that grazing is necessary and critical for the conservation of species and maintenance of essential habitat. However, the revised critical habitat rules and adverse modification definition stand in contrast to this assertion by allowing for even more opportunity for abusive litigation and reduction in grazing over time. Additionally, this regulatory expansion exposes public grazing allotments to lengthy delays for ESA Section 7 consultations – yet another source of litigation abuse by environmental activists.

The critical habitat rule states that “lands owned by the federal government should be prioritized as sources of support in the recovery of listed species, and that to the extent possible the Services will focus designation of critical habitat on federal lands in an effort to avoid the regulatory burdens on non-federal lands.” [79 Fed. Reg. at 27056; 25057]. In general, we are supportive of this approach. Nevertheless, the Service must recognize that functional federal land grazing permits are essential in maintaining a viable ranching community as well as healthy ecosystems. The Services must also consider the potential consequences of increased grazing pressure on private lands that would occur if burdensome grazing restrictions were imposed on the use of adjacent public lands. Appreciation of this interrelationship of private and public lands for ranching is crucial in both minimizing burdens on the regulated community and effectively managing for sensitive species.

In closing, federal agencies must move away from the scientifically inaccurate idea that removing, reducing and retiring grazing is the answer to every problem the agencies face on public land. As these new standards are implemented, they will have a negative economic impact on ranchers and rural communities without benefitting habitat and the species that live there. Imposing regulatory change on grazing without any scientific basis is unwarranted and makes it clear that this Administration’s intent is to manage away from productive uses, rather than actually protecting species and their habitat.

The livestock industry not only plays an integral role in the safekeeping of our federal lands but also in the maintenance of the critical habitat for the species on that land. We look forward to working with the Committee to ensure that America’s ranchers continue to have the ability to protect and restore natural habitat while grazing at the same time - without having to spend countless hours and thousands of dollars to defend a practice that has been jointly occurring with species, to the benefit of those species, for centuries. I appreciate the opportunity to be here today and I am happy to take any questions the committee members may have. Thank you.