

Legal and Regulatory Update: Wildlife & Public Lands

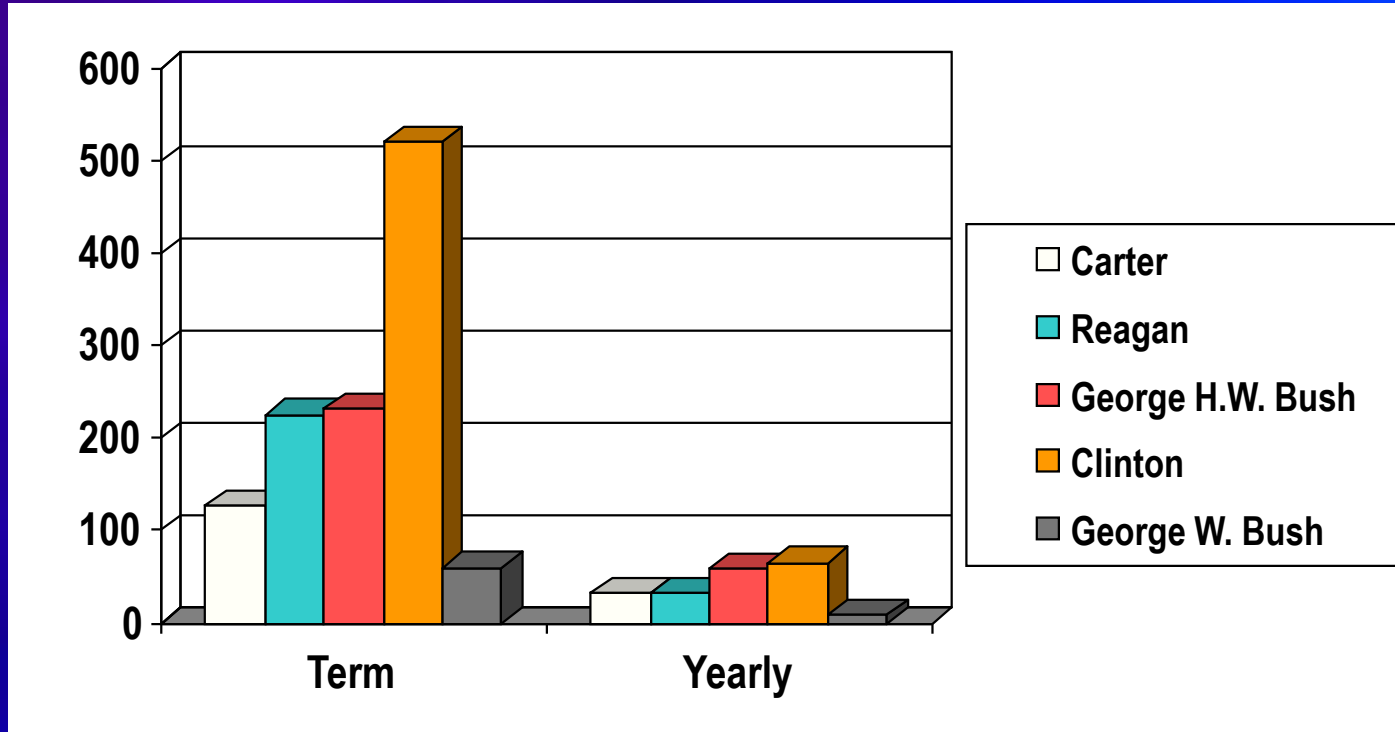
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Overview

- Threatened and Endangered Species
- Litigation Update on ESA Listing Petitions
- Sage-Grouse Litigation
- FWS Climate Change Strategic Plan
- BLM Instruction Memorandum on Environmental Monitoring

Why Is This Important?



- Carter Administration: 126 listings or 32/year
- Reagan Administration: 225 listings or 32/year
- George H.W. Bush Administration: 231 listings or 58 per year
- Clinton Administration: 521 listings or 65/year
- Bush Administration: 60 listings or 8/year

Endangered Species Act

- Goal: Protect critically imperiled species from extinction
- Citizen Petition Provisions
- Opportunities to sue and comment/provide FWS with data and information
- Critical Habitat Designation

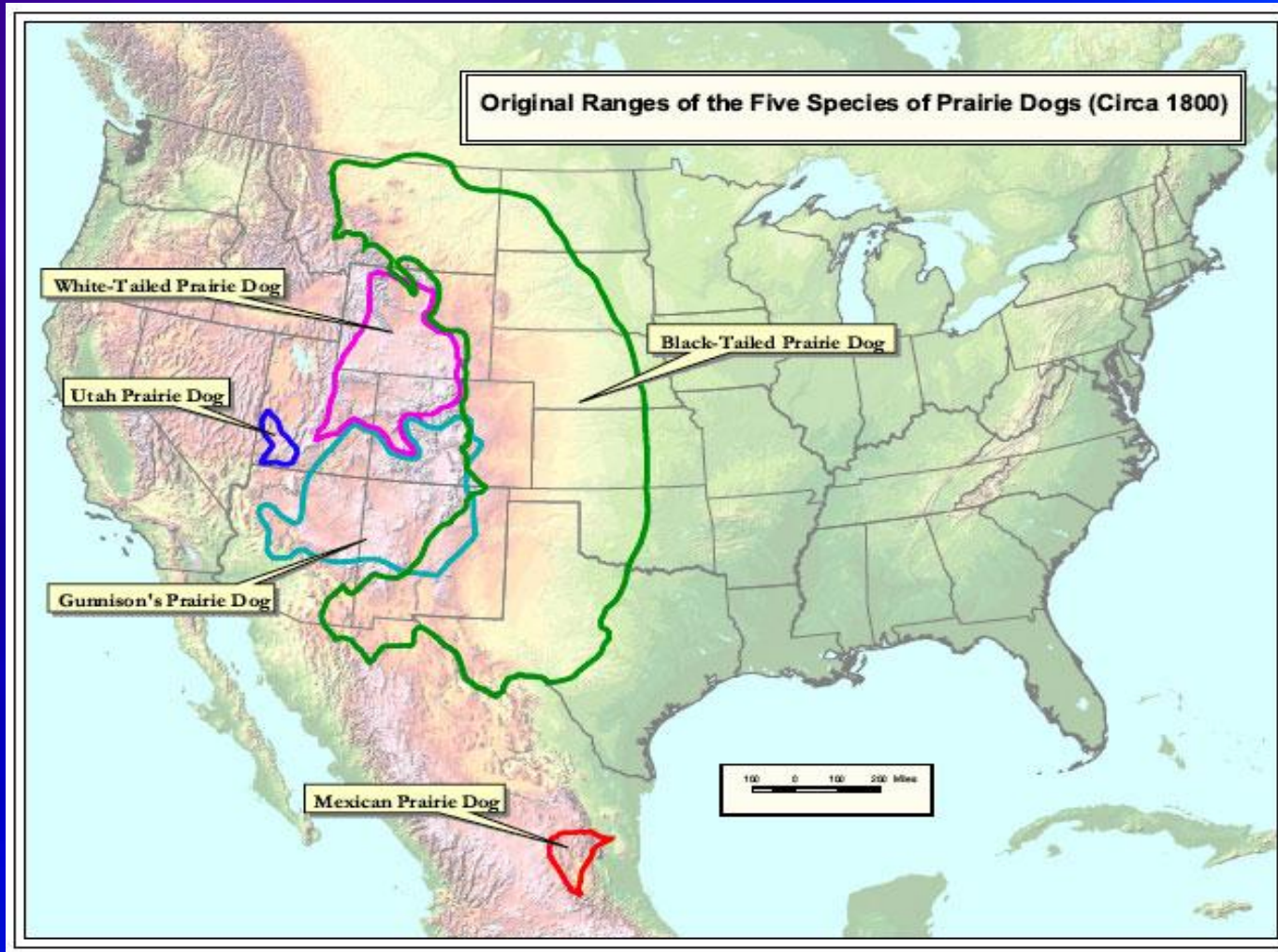
Endangered Species Act

- Citizens Petition Provisions
 - Petition the Fish and Wildlife Service
 - 90-Day Finding
 - Warranted Finding
 - 12-Month Finding
 - Proposed Rule
 - Final Rule
 - Critical Habitat Designation

How to Become an Environmental Plaintiff

- Univ. of Denver School of Law Environmental Law Clinic
- “Protect the environment while teaching students practical legal skills that will translate into any practice area.”
- Uinta Basis Hookless Cactus lawsuit

Prairie Dogs





Blacktail Prairie Dog



Gunnison Prairie Dog



Whitetail Prairie Dog



Utah Prairie Dog

White and Black Tailed Prairie Dogs

- **White Tailed Prairie Dog**
 - Current Range: Western Wyoming and Colorado, Eastern Utah and Southern Montana
 - 2004 90-Day Finding: No substantial scientific information indicating that listing may be warranted
 - 2008 Notice of a status review and 12-Month Finding
 - 12-Month Finding expected June 2010
- **Black Tailed Prairie Dog**
 - Current Range: North Dakota to Texas
 - 2004 Not Warranted Determination
 - 2007 suit; new petition; new suit
 - 2008 90-Day Finding that listing may be warranted;
 - Status review and 12-Month Finding

Gunnison and Utah Prairie Dogs

- Gunnison Prairie Dog
 - Feb. 2008 Partial 12-Month Finding
 - Warranted but precluded
- Utah Prairie Dog
 - Primarily in southern Utah
 - Down graded to threatened species

Opportunities for Industry Input

- Federal Register Notices – public comment
- 90-Day, 12-Month, Proposed Rule, Final Rule
- Designation of Critical Habitat (where operations could be substantially impacted), *e.g.* MSO
- Survey information, etc.

BLM Sensitive Species

- Nearly every wildlife and plant species that has been raised as an issue Examples: Sage-Grouse
- Authority: FLPMA and BLM Manual on Special Status Species
- Purpose: promote conservation and reduce likelihood of ESA listing in the future
- Federal lease stipulations and notices
- APDs: COAs used for protection

Sage-Grouse Overview

- ESA Listing Petitions and litigation
- RMP litigation
- Recent IBLA Opinions

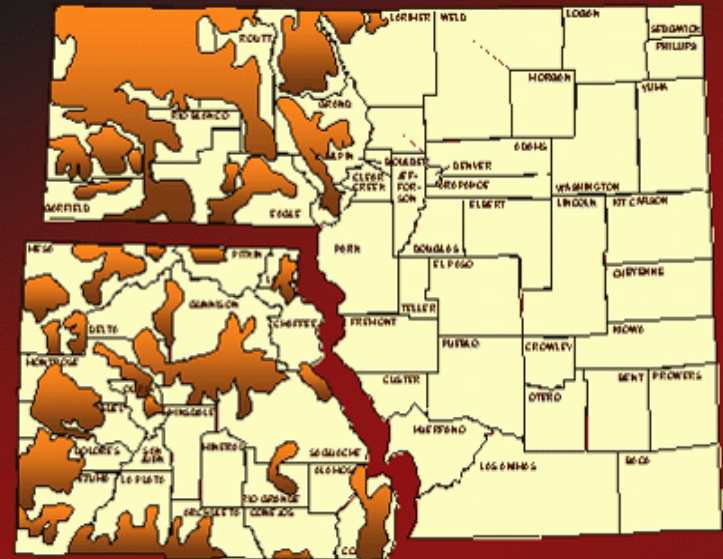
Ramifications of Sage-Grouse Listings

- Critical habitat designations
- More restrictive development, avoidance, surveys and monitoring
- Additional lease stipulations for new leases

Gunnison Sage-Grouse



Present



Historical

Pending ESA Listing Suits – Gunnison Sage-Grouse

- Gunnison Sage-Grouse
 - April 2006 – Decision that listing is not warranted (12-Month Finding)
 - Nov. 2006 – Complaint challenging 12-Month Finding and Decision
 - Aug. 2009 Settlement: FWS to reconsider its 12-Month Finding that Listing is not warranted
 - New 12-Month Finding by June 30, 2010

Greater Sage-Grouse

- 2004 90-Day Finding that listing may be warranted and initiation of status review for 12-Month Finding
- 2005: 12-Month Finding that listing was not warranted
- 2006: Western Watersheds Project challenges 12-Month Finding in Federal Court in Idaho
- Judge Lyne Winmill finds that FWS's 12-Month finding is in error
- New 12-Month Finding on Greater Sage-Grouse by Feb. 26, 2010
- Appeal to the Ninth Circuit Court of Appeals

RMP Litigation: A Shift In Strategy

- *Western Watersheds Project v. Kempthorne*, 08-cv-516 (D. Idaho)
- 18 RMPs – 34.5 Million Acres of Land
- Utah RMPs: Moab, Price, Richfield, Kanab, Vernal and Monticello
- Wyoming RMPs: Kemmerer, Pinedale, Rawlins and Casper

RMP Litigation: A Shift In Strategy

- Idaho RMPs: Craters of the Moon Monument, Pocatello, Snake River Birds of Prey
- Montana RMP: Dillion
- Nevada and California RMPs: Ely, Surprise, Eagle Lake and Alturas RMPs

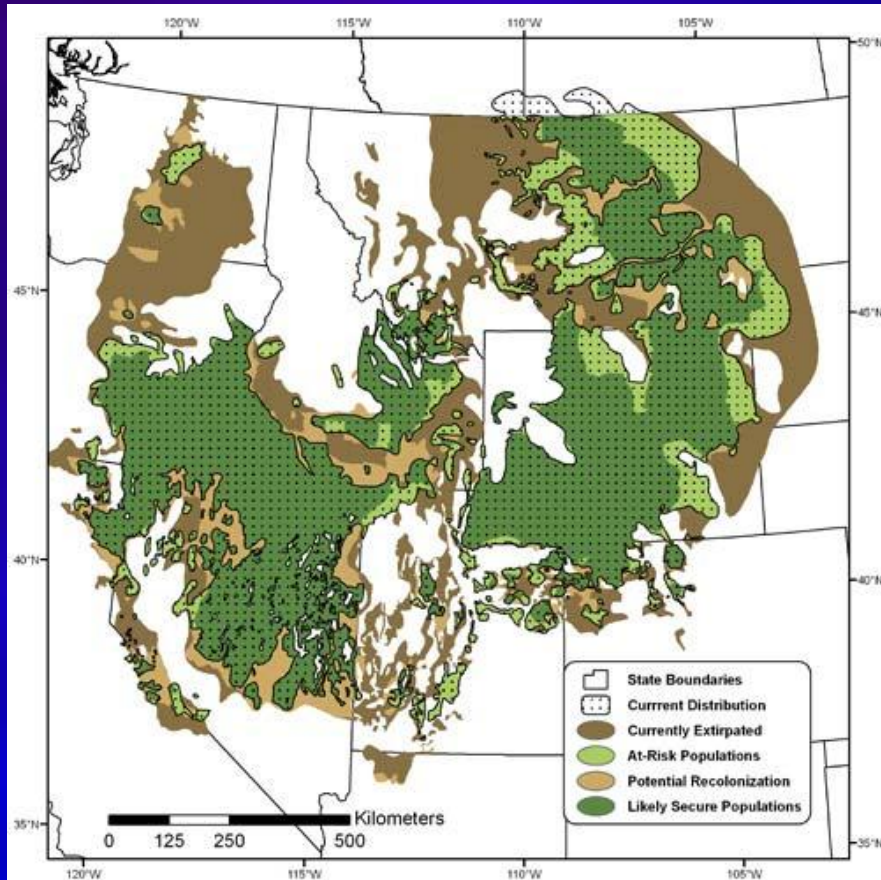
One Judge to Rule Them All



One Judge to Rule Them All

- Feb. 2009: Motion to Sever
- Motion to Reconsider
- Utah RMPs: Stiles Report – Develop policy and direction for consistency in the RMPs

Sage-Grouse



- Wyoming Hunting Season:
 - Area 1 – September 19-30
 - Area 4 – September 19-25
- Idaho Hunting Season:
 - Area 2 – September 19-25
 - Daily Bag Limit: 1
 - Area 3 – September 19-October 11
 - Daily Bag Limit: 2
- Colorado Hunting Season:
 - September 12-18, 2009
- 2008 Distribution (USGS)

Interior Board of Land Appeals

- *Yates Petroleum Corp.*, 176 IBLA 144 (2008)
 - Challenge to COAs for APDs
 - BLM applied more strict COAs than included in lease stipulations
 - BLM's application of three mile buffer for leks did not violate lease rights, the RMP
 - BLM has the regulatory flexibility to protect sage grouse
- Recent Wyoming Outdoor Council SDR and attempts to expand this decision to require the three-mile buffer

Interior Board of Land Appeals

- *Maycock, PRBRC, BCA, 177 IBLA 1 (2009)*
- 2-Mile Buffer for leks is not as protective as BLM originally believed
- Lack of support in EA/Record to support conclusions
- BLM nor the project proponent could rebut the more recent studies indicating that the 2-mile buffer adequately protected sage-grouse

Interior Board of Land Appeals

- *Sorenson Ranch Company*, IBLA 2008-236 (April 29, 2009)
- One active lek; 8 inactive (3 in project area and 5 within 2 miles)
- Nothing distinguishable from *Maycock* and *Yates* decisions
- Inadequate buffers and protections for leks
- BLM all but acknowledge that the 2-mile buffer is not as effective as originally contemplated

FWS Climate Change Strategic Plan

- Six Guiding Principles
- Three Key Strategies
 - Adaptation
 - Mitigation
 - Engagement
- Five Year Action Plan
- Public review and comments due
November 23, 2009

BLM Instruction Memorandum 2009-224

- Use and Application of the Fluid Minerals Surface and Environmental Monitoring Element (Sept. 30, 2009)
- “To ensure adequate monitoring of oil, gas, and geothermal development”
- Are BLM’s standards being met
- Determine whether permit requirements and COAs are effective in achieving their desired intent

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