

**Testimony of
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On behalf of the National Association of State Departments of Agriculture**

**As submitted to the
House Committee on Agriculture, Subcommittee on Conservation and Forestry
Public Hearing to Focus on The Farm Economy: Impacts of Environmental Regulations and
Voluntary Conservation Solutions**

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Introduction

Chairman Glenn ‘GT’ Thompson, Ranking Member Lujan Grisham, and distinguished members of the Subcommittee on Conservation and Forestry: good morning and thank you for the invitation to testify on the subject of The Farm Economy: Impacts of Environmental Regulations and Voluntary Conservation Solutions.

My name is Celia Gould, and I am the Director of the Idaho State Department of Agriculture and a lifelong cattle rancher. I also Chair the Natural Resources and Environment Committee for the National Association of State Departments of Agriculture (NASDA). NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories. State departments of agriculture serve as the “boots on the ground” for a wide variety of important agricultural programs including, animal disease and pest detection and prevention, environmental protection and conservation as well as promoting agricultural products locally, nationally and throughout the world. For many states agriculture is a key economic driver. Idaho is one of those states. In addition to the famous Idaho potato, our farmers and ranchers produce over 185 different commodities, with over 27 of those commodities ranking in the top ten in the nation. We cannot grow or prosper without a thriving agricultural economy.

In Idaho, over 60% of the land mass is managed by the federal government. In fact, Idaho has a greater percentage of land managed by the U.S. Forest Service than any other state in the union. Accordingly, the State of Idaho must interact with federal land management agencies frequently. We are also co-regulators and partners to some degree with many other federal agencies, not just those that manage land. As a result we have developed relationships with the federal government, some positive and productive, and others that need improvement. Today’s hearing is timely for certain issues we are dealing with in Idaho and throughout the inter-mountain west. I appreciate the opportunity to testify in front of this committee.

The selection and subsequent management of endangered species, wildfire suppression and mitigation, and public lands grazing are a few important issues for western states. The programs that deal with these issues are primarily the responsibility of one or more federal agencies. States have, or should have, a critical voice in the direction these federal programs are headed. More often than not state leaders are left frustrated with the lack of meaningful participation and collaboration on these topics and others that impact, sometimes severely, our

agricultural industries in the West. My goal here today is to showcase some of the examples representative of the vast efforts going into voluntary conservation in the West. These efforts are most effective and poignant when federal regulations encourage the role of the states in land management, conservation, and regulatory decisions. I will be focusing on issues most relevant to the West; however, the basic principles contained within my remarks can be applied throughout the country.

Successes, Challenges & Solutions

In my remarks below, I have highlighted some key conservation initiatives that have been developed at the state level in Idaho. Additionally, I discuss how those conservation initiatives correlate with federal land management agency core missions and how Idaho has interacted with its federal partners. Those interactions have not been entirely positive. I also discuss some challenging issues that have left me, my counterparts in other western states and other state level directors frustrated. From my perspective, the relationships between state and federal agencies do not need to be strained and adversarial. More can and should be done collaboratively. Accordingly, I offer up a few observations for potential solutions going forward. Ultimately, the objective is to provide a regulatory and support structure for our farmers and ranchers to continue the tradition of supplying our nation and the world with an affordable, safe and abundant supply of food and fiber: a goal in which we all have a stake.

Successes

Rangeland Fire Protection Associations (RFPAs) are a major asset in suppressing rangeland wildfires, especially in key sage grouse habitat. However, local involvement on range fires has not always been accepted or welcomed. Federal policy prohibited ranchers from fighting fires on public lands. Recently that policy came to a head in Idaho when a BLM fire crew showed up on a fire that appeared to be under control and asked two local ranchers who responded to the lightning ignited blaze to leave the scene. A five acre fire later turned into a 40,000 acre fire. Ranchers throughout Idaho felt the BLM policy was unacceptable. During the winter of 2012, Idaho ranchers contacted the Idaho Department of Lands and the BLM to begin building a public-private partnership, which became the genesis for Rangeland Fire Protection Associations. *See generally, Mountain Home Ranchers Form Idaho's First Rangeland Fire Protection Assoc. With Idaho Dept. of Lands, BLM*, Steve Stuebner, www.lifeontherange.org. RFPAs are non-profit organizations established to prevent or suppress range fires and keep them to more manageable sizes. Led by trained local volunteers, primarily Idaho ranchers, RFPAs are often the first to respond and provide initial attack on wildfires until federal and state fire crews and resources arrive on the scene. Local ranchers are first responders to rangeland fires due in large part to their knowledge of the land and proximity to the fire when it starts. Before 2012, Idaho ranchers were not allowed to fight rangeland fires on public land because of safety concerns raised by federal fire managers. However, the State of Idaho developed a training program and found equipment and resources to help address those safety concerns. Today our local ranchers are volunteering their time to become professionally trained and are utilizing interagency fire suppression resources to lead the attack on rangeland wildfires. Their efforts have resulted in fewer catastrophic, large-scale rangeland wildfires in Idaho.

This past fire season local RFPAs in Idaho trained 230 members in six different regions protecting nearly six million acres of Idaho rangeland, with nearly one million of those acres are private rangelands that were

previously unprotected. RFPAs often times use ranch equipment but are also acquiring equipment through the Federal Excess Personal Property program and other state programs. Training is provided by the BLM in cooperation with the Idaho Department of Lands. USDA NRCS is also valuable partner with wildfire recovery, especially their EQIP program. We appreciate NRCS's partnership model and the special EQIP dollars they made available for fire recovery last fall.

RFPAs provide federal and state land managers a quick first response by trained volunteers. With this new opportunity, ranchers are no longer required to watch from the sidelines as forage on private pasture, public grazing allotments and wildlife habitat burn up as a fire grows in size and intensity. Key sage grouse habitat is better protected from large scale catastrophic wildfire, the number one threat to the survival of sage grouse in Idaho. The cooperation between these private, non-profit associations, the State of Idaho and the BLM have made important inroads towards public-private partnerships that serve as a successful model for future projects. This grassroots initiative borne from a desire and motivation to protect the landscape came from ranchers taking the initiative to work with their federal and state agency partners. The ISDA does not play a significant role in fire prevention programs. However, things can get extremely busy for our agency when a catastrophic fire has displaced multiple producers that need forage or pasture for their cattle. Producers are typically not allowed back on their allotment for at least two years following a fire. I am hopeful that this partnership leads to fewer producers being displaced as a result of wildfires.

The Idaho Range Program was codified by the Idaho legislature in 2009, directing my department, the Idaho State Department of Agriculture (ISDA) to provide "support, coordination and expertise" to livestock producers and land and wildlife management agencies. *See* Idaho Code § 22-103(23). This new legislative support provides a framework for the ISDA to build a robust and collaborative Range Program. The ISDA Range Program is modeled after our neighboring State of Wyoming's program. The Wyoming Department of Agriculture has been an invaluable partner in building the concept for our program in Idaho. Other western states are looking at the work and value these programs are providing and developing similar programs suited to the needs of their individual states. This is the best plan for building programs that have the most potential to serve local needs well. We are committed to sharing our knowledge and experience, much like our friends in Wyoming have done for us, to help build productive state-based range programs throughout the West. Cross-border cooperation with neighboring states builds consistency and predictability in issues we have in common.

The ISDA Range Program has a significant role to play in cooperating with and amplifying the voluntary conservation and stewardship of Idaho ranchers. With the help of partners from the University of Idaho, the Idaho Rangeland Resource Commission and the Idaho Cattle Association, range monitoring in Idaho is taking off. One important goal of the ISDA Range Program is to engage, advise and train permittees in monitoring their grazing allotments on an annual basis. Those objectives come to fruition in ISDA's Range Photo Monitoring Program, which relies heavily on the voluntary efforts of ranchers. The information collected as part of this program helps determine if progress is being made toward established rangeland health objectives and goals. The program emphasizes a more coordinated and cooperative monitoring process that increases the level of participation between federal land managing agencies, state agencies and permittees when performing rangeland health assessments and other monitoring activities. Cooperative rangeland monitoring is an important tool to help manage livestock grazing on public lands administered by federal and state agencies and to maintain or achieve desired range conditions. BLM has agreed to accept and consider the data submitted by permittees when making

allotment level decisions. This important data is gathered pursuant to agreed upon photo monitoring protocols to ensure that it meets BLM standards for data collection. This effort is significant because the data represent current conditions on each allotment, whereas before the BLM was relying on old, out of date photo-point monitoring data or none at all.

The Governor's Sage Grouse Management Plan was developed by a task force convened by Governor Otter in March 2012. The stakeholders participating represented industry, sportsmen, conservation groups and elected officials charged with developing a state plan designed to protect the Greater sage-grouse and preclude its listing as an Endangered Species while maintaining working landscapes. This group developed a plan following eight different meetings and emphasized finding collaborative solutions to address the primary threats to the survival of the bird in Idaho, namely wildfire exacerbated by the spread of invasive species. The group's work culminated into an alternative for amending multiple federal land-use plans in Idaho that balanced conservation of the species (through addressing the primary threats) with the continuation of traditional land use activities. The Governor's Alternative was later selected as a co-preferred alternative within the planning effort for federal lands in Idaho. In September 2015, the U.S. Fish and Wildlife Service determined that ongoing conservation efforts had significantly reduced the threats to the point where sage-grouse were no longer warranted for protection under the Endangered Species Act across its entire 11 western state range. Collaborative efforts from state and federal agencies, private landowners, and conservation groups are credited for the decision to not list the species. The *Idaho Statesman* described the effort as an "all lands' conservation strategy across the West that officials describe as the biggest land-planning effort ever undertaken for a single species." See Unprecedented Collaboration Leads to Sage Grouse Decision, Idaho Statesman, Rocky Barker, September 22, 2015.

Subsequent to the work of the task force described above, Idaho continues to invest in sage grouse conservation efforts on state and private lands with willing landowners. State agencies have been implementing the Governor's Sage Grouse Conservation Strategy which demonstrates Idaho's commitment to preserving sage grouse. In state fiscal year 2016, the State of Idaho was able to leverage \$2 for every state dollar spent on conservation actions. To date, these efforts have resulted in almost \$2 million for on-the-ground conservation projects and wildfire prevention and suppression actions. At the Idaho State Department of Agriculture, we focus on providing technical advice to decision makers on rangeland health issues, particularly on how correctly managed grazing can be used to reduce fine fuels.

In May 2015, Idaho formed a Sage Grouse Actions Team, which includes key state and federal agency partners. This team is charged with identifying projects and funding sources for sage grouse that can be implemented on the ground quickly. This group has placed a great emphasis on those projects that can aid in ameliorating the threats of wildfire and invasive species on sage grouse. In fact, a large portion of the state funding available for sage grouse in FY16 has been allocated towards those types of projects. This included equipping RFPAs, implementing strategic fuel breaks to slow the spread of wildfire, restoring key sage grouse habitat areas, and monitoring sage grouse activity and conservation practices.

Unfortunately, actions at the federal level threaten much of the voluntary conservation and collaborative efforts being undertaken to protect Greater sage-grouse in Idaho. The details of some of those actions are laid out in the next section below.

Challenges

I have highlighted a few success stories that Idaho has achieved by leveraging voluntary conservation strategies and the goodwill that Idaho citizens are willing to contribute to preserve our western heritage and the values that are important to all of us. However, in detailing these accomplishments I have foreshadowed a few frustrations as well. A consistent and pervasive policy within many federal agencies that can only be described as an overly pejorative and draconian federal bureaucracy is all too common. Oftentimes, federal agencies do not view states and their respective agencies as co-managers or co-regulators, but instead minimize the state's role and often ignore or overrule state plans, policies or priorities. If voluntary grassroots and on-the-ground efforts are to have success or continue to be negotiated, the states, which are closest to these efforts, should serve a more prominent role than they currently are in the development and implementation of federal programs and their attendant regulations within the borders of their states.

The BLM Planning Rule 2.0 is now out for public comment. The fundamental shift in the BLM's planning process is a good illustration of the problem outlined. The rule claims to enhance state and local government opportunity to participate in the process, however, a more detailed review of the rule does not support that conclusion. The development of the proposed rule itself presented a perfect opportunity for the BLM to engage its state and local partners to identify areas of needed improvement, craft a process that takes full advantage of the important perspectives and priorities that states can provide and roll out the proposal to the public in lock-step with the states. Instead, the rule was developed, like is all too common today, by Washington D.C. officials, only engaging state partners in the same process it engages the general public. A process that is sure to ignore the important priorities or policies of the individual states and further erode the principles of federalism that are embedded within our history and national charter.

This process of minimizing the states participation is inappropriate given the clear congressional direction codified in BLM's organic statute. The Federal Land Policy and Management Act (FLPMA) directs BLM, to "establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." *See* 43 U.S.C. 1712(f). It is evident from the language of the statute Congress perceived the role of state and local governments to be separate from and in addition to the general public's participation. In addition, Congress has stated that land use planning should

consider[] the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for *meaningful* public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including **early** public notice of proposed decisions which may have a significant impact on non-federal lands.

43 U.S.C. 1712(a) sec. 202 (emphasis added). I am here today, in part, because the congressional mandates contained throughout FLPMA with respect to engaging state and local governments in a meaningful and early way are not being followed adequately.

The Intermountain Region Bighorn Sheep Risk Assessment currently being developed by the USFS is another area of concern for Idaho and other western states. In February 2014, the USFS released a briefing paper which outlined its plan to implement a bighorn sheep and domestic sheep management framework within USFS Region 4. Idaho responded by outlining its concerns with the proposed framework. Chief among the concerns described and communicated to the USFS is the lack of any role for the State of Idaho in the construction of the proposed management framework. This is a deeply concerning trend, especially given the state's responsibility to manage wildlife within its borders. Nowhere within the National Forest Management Act does it empower the USFS to supersede the State's role in managing bighorn sheep. It is hard to understand why the USFS would silo themselves into developing a unilateral management framework where it is clearly within the purview of the state to manage bighorn sheep populations. Idaho's stated policy is to maintain bighorn sheep populations without causing undue economic hardship on the domestic sheep industry or individual sheep producers. A viable bighorn sheep population and a viable domestic sheep industry are important components to the state's economy and history. The multiple-use mandate that governs the USFS cannot be fully understood or correctly implemented without the input and participation of state agencies and Idaho stakeholders. The proposed management framework as of today's hearing is yet to be completed for Idaho. We are working to improve state and stakeholder engagement at this time. It simply begs the question why the State of Idaho must fight for a seat at the table? This kind of inward-looking process by federal agencies is yet another example of a trend which contradicts and disincentivizes stakeholder investment into voluntary initiatives, including those that promote conservation.

The Idaho and Southwestern Montana Greater Sage-Grouse Final Approved Resource Management Plan Amendment was released in September 2015, determining the Greater sage-grouse did not warrant endangered species protection. Coinciding with this release, the BLM added an additional regulatory layer described as Sage Grouse Focal Areas. This new plan superseded and fundamentally changed Idaho's local, scientifically-based collaborative plan. Most incongruent and concerning to our ranch families in Idaho is the elevation of livestock grazing as a primary threat to greater sage-grouse. The decision to add an additional layer of regulation, including misclassifying livestock grazing, ignores the science, data and collaborative work that so many interest groups contributed to and agreed upon. Importantly, it prevents using proper grazing as a tool to remove fine fuels in and around greater sage-grouse habitat. Moreover, it is an affront to the notion that local collaboration, local ideas, and local efforts garner the greatest results.

In contrast to the federal plan, Idaho focused the majority of its conservation planning efforts on addressing the primary threats to greater sage-grouse, wildfire and invasive species. The Idaho plan centers on an innovative approach to addressing primary threats through the application of a three-tiered habitat conservation system and an associated adaptive management strategy. This approach allows the state to elevate the level of conservation on certain sage-grouse habitat if an adaptive regulatory mechanism is triggered in Core habitat, regardless of land ownership. The Idaho plan also implements proactive actions that aim to protect key sage-grouse habitat through a greater emphasis on wildfire prevention, suppression and restoration. The creation of Rangeland Fire Protection Associations, for example, has already proven to be an effective tool in decreasing the response time to wildfires in remote areas of sage-grouse habitat and thus helping to prevent large scale wildfires.

Months of collaborating with the local Idaho BLM Office and key stakeholders over the refinements of the co-preferred alternatives led Idaho to genuinely believe that the state-federal collaboration was going to be a success. The type of collaboration employed for the development of the sage-grouse plan in Idaho mirrored that of the Idaho Roadless Rule collaborative, where industry groups, conservation organizations, counties, and state and federal agencies came together to craft a locally-derived solution that is preferred to a top-down one-size fits all approach. However, the decision by the Washington BLM office to fundamentally change the sage grouse plan for Idaho at the eleventh hour has undermined the fragile coalition built through the collaborative process. The outcome of all of the above described efforts is now uncertain as a result of litigation.

Solutions

These few examples highlight the fundamental need to seriously re-assess how federal agencies work and cooperate with state agency partners. Federal agency personnel will never fully understand the unique socio-economic, cultural and conservation needs unique to the individual states. The standard practice that has increasingly frustrated states, local governments and the regulated community is a top-down, one size fits all decision process. This undermines collaborative, local solutions and deflates enthusiasm for conservation initiatives. State and local leaders are closely connected to the citizens that are affected most by the regulatory framework we are discussing. A more meaningful engagement with state and local governments improves the regulated community's opportunity to interact with its government on all levels and provides a perspective that is otherwise missed. It must be remembered and emphasized, however, that this process should not replace the engagement of the general public, but should bolster and enhance it.

There are several specific actions that officials at all federal levels should consider, designed to improve collaboration, support voluntary conservation initiatives, develop strong inter-governmental relationships and minimize the threat of costly, protracted litigation. Those actions include:

1. Engage the States in a Meaningful Way: Federal agencies should conduct robust federalism consultations early in the regulatory process, and include participation of a wide range of state regulatory agencies, including state departments of agriculture. These consultations should occur *prior* to publication of a proposed rule. Throughout this process, it is important to emphasize state regulatory agencies are not simply stakeholders, but are instead partners with federal agencies in the implementation of a host of programs. States can—and should—be used more as resources for federal agencies. Often states have a wealth of data, experience, and expertise that would help federal agencies better develop and implement regulatory programs.
2. Improve economic analyses that more realistically account for economic costs to states: Federal agencies should engage state regulatory agencies and stakeholders to evaluate proposed regulations, availability of required resources, and whether expected outcomes merit those expenditures.
3. Incorporate flexibility in regulatory programs: Federal agencies should engage state regulatory partners in creating programs that may provide local and state flexibility. We continue to encourage our federal partners to look for ways to engage state agencies in creating programs to provide additional flexibility—

especially when the alternative may be an undue regulatory burden on the regulated community. Such consultation and robust outreach will facilitate recognition of state equivalency regulatory programs and prevent duplicative regulatory layers. Additionally, federal agencies should look to state and regional directors within their own agencies to help craft local solutions. States interact frequently with local federal leaders and have more confidence in their ability to understand local issues.

4. Renew focus on utilization of best available science: Regulations must be based on the best available, sound, validated, and peer-reviewed science and rely on science-based risk assessments. Moreover, regulatory agencies must ensure policymakers do not misuse or inappropriately apply invalidated or unrelated scientific findings to policy determinations. We especially appreciate the work the Office of Pest Management Policy (OPMP) executes to ensure policy or regulatory initiatives are based on scientifically sound positions. OPMP is an invaluable resource and advocate for including sound science in the development of regulatory actions impacting agriculture, and we encourage increased support for OPMP's activities, as well as ensuring OPMP's perspectives are advanced in the interagency review process.

5. Congress Should Hold Federal Agencies Accountable: Federal statutes commonly provide clear direction to federal agencies to engage stakeholders, especially states, under the partnership model. For example, the National Forest Management Act provides:

inasmuch as the majority of the Nation's forests and rangeland is under private, State, and local governmental management and the Nation's major capacity to produce goods and services is based on these nonfederally managed renewable resources, the Federal Government should be a catalyst to encourage and assist these owners in the efficient long-term use and improvement of these lands and their renewable resources consistent with the principles of sustained yield and multiple use;

National Forest Management Act of 1976, 16 U.S.C. 1600, Sec. 2(5).

Conclusion

Federal agencies play a significant role in the day to day lives of Idaho citizens, especially those engaged in agriculture. These agencies, in order to achieve a higher level of success and public acceptance, must not ignore an important responsibility to engage state agencies in a meaningful and productive way. This is not a trivial matter. The examples of success I have included in my testimony have the common denominator of being inclusive and collaborative. There is no reason this model cannot be successfully implemented at the federal level.