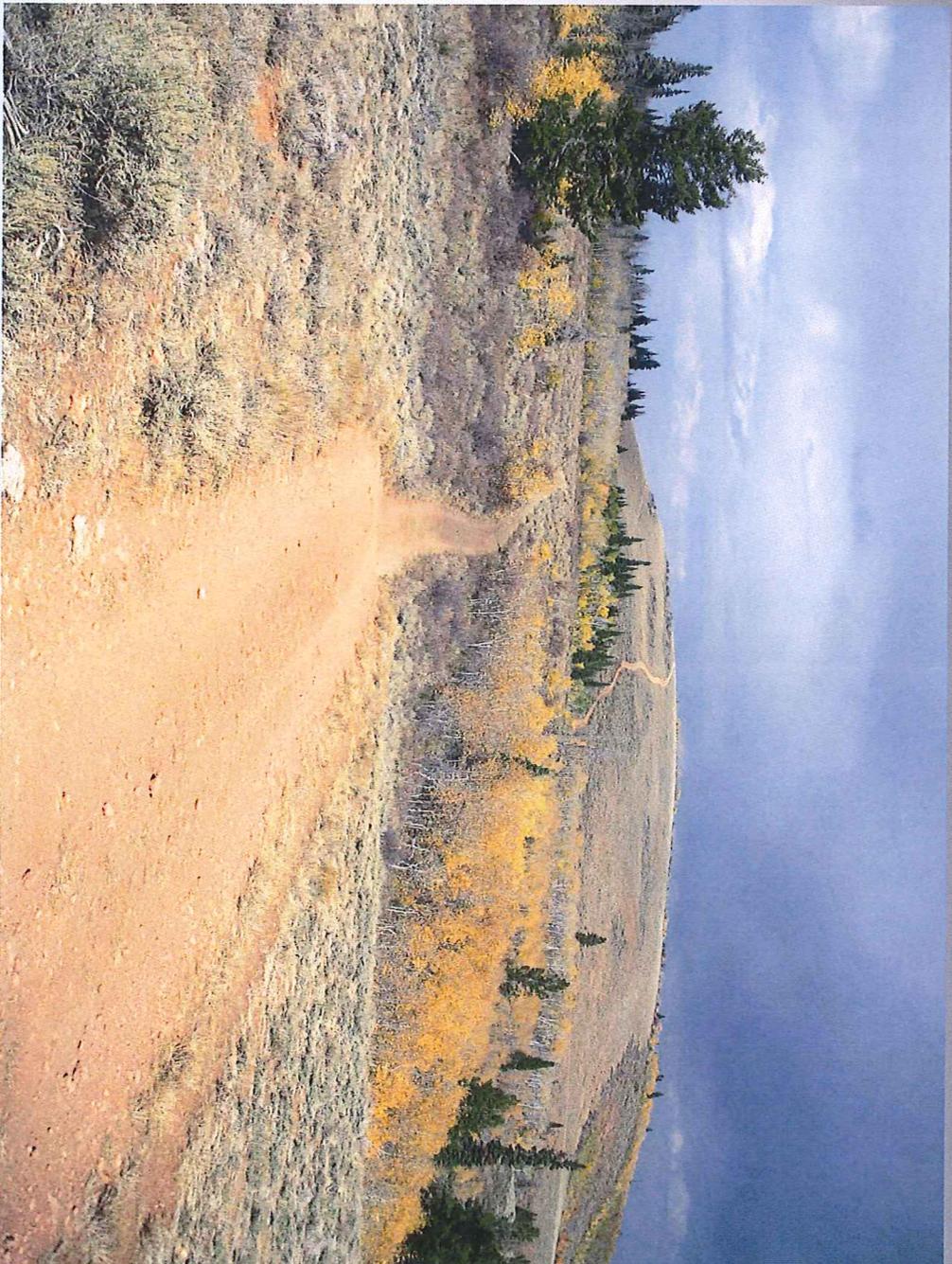


# Public Land Policy Coordination Office Duties and Activities

- Policy coordination with local, state, and federal players
- Archaeological Permitting
- Resource Development Coordination Committee
- Provide staff support to the Constitutional Defense Council



# R.S. 2477 Rights-of-Way in Utah



## Revised Statute (R.S.) 2477

“The right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted.”

(Act of July 26, 1866, ch. 262 §8; 14 Stat. 251, 253, *codified at* 43 U.S.C. §932)



# FEDERAL LAND MANAGEMENT AND POLICY ACT (FLPMA)

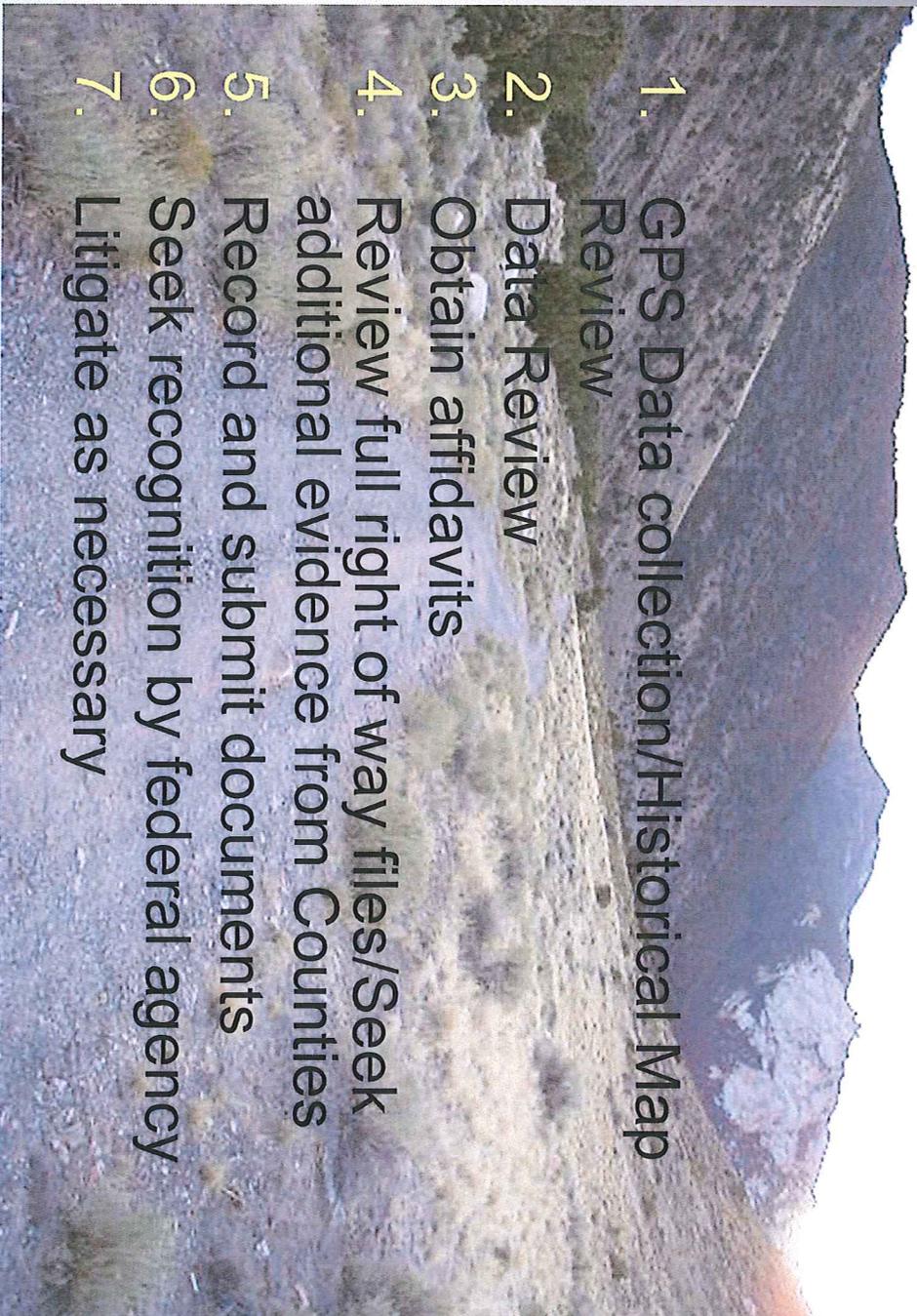
"Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act"

(Sec. 701. *codified at 43 U.S.C. 1701*)



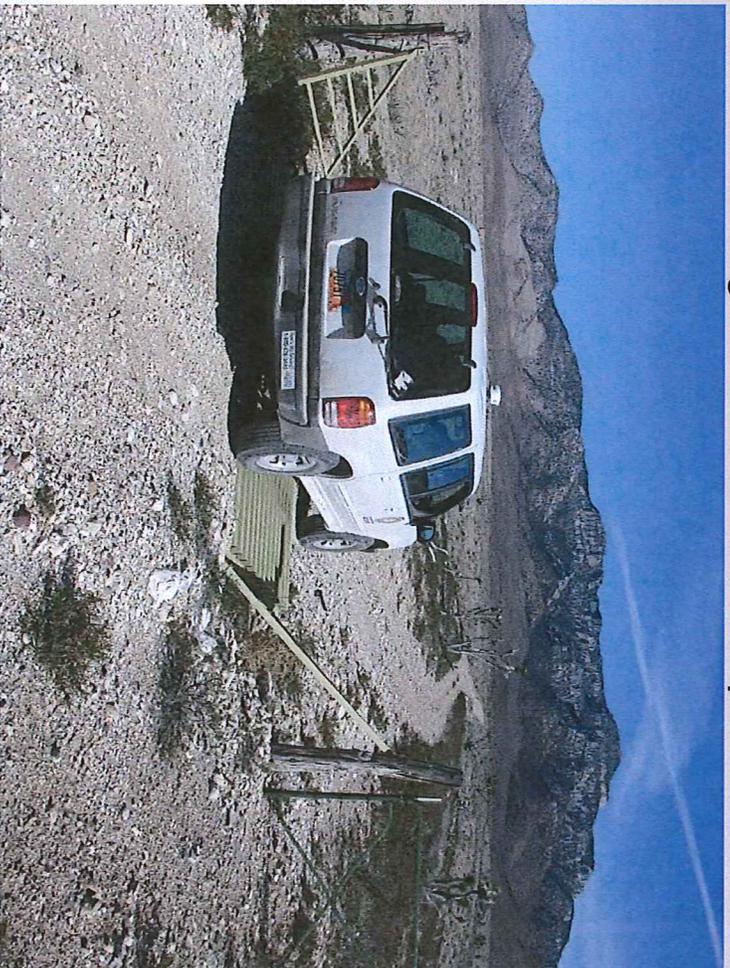
# R.S. 2477 Right of Way Effort

1. GPS Data collection/Historical Map Review
2. Data Review
3. Obtain affidavits
4. Review full right of way files/Seek additional evidence from Counties
5. Record and submit documents
6. Seek recognition by federal agency
7. Litigate as necessary



# Step 1: GPS Data Collection

- B roads done first (federal funds)
- GPS data and photos collected
- Review against historical maps



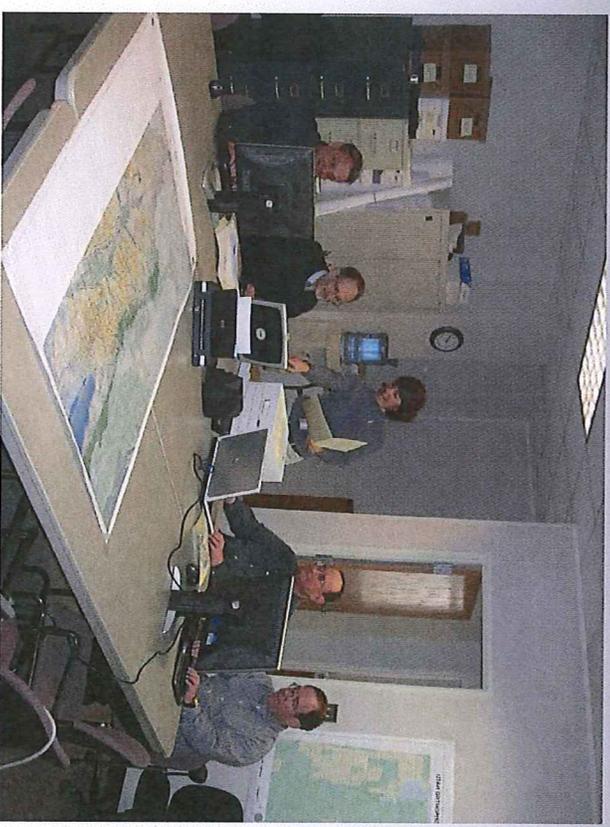
## Step 2: Data Review

- Fix issues with road names (County Unique number for every distinct road; Road spurs have different names)
- Digitize as necessary using historical photography as an aid



## Step 3: Obtain Affidavits

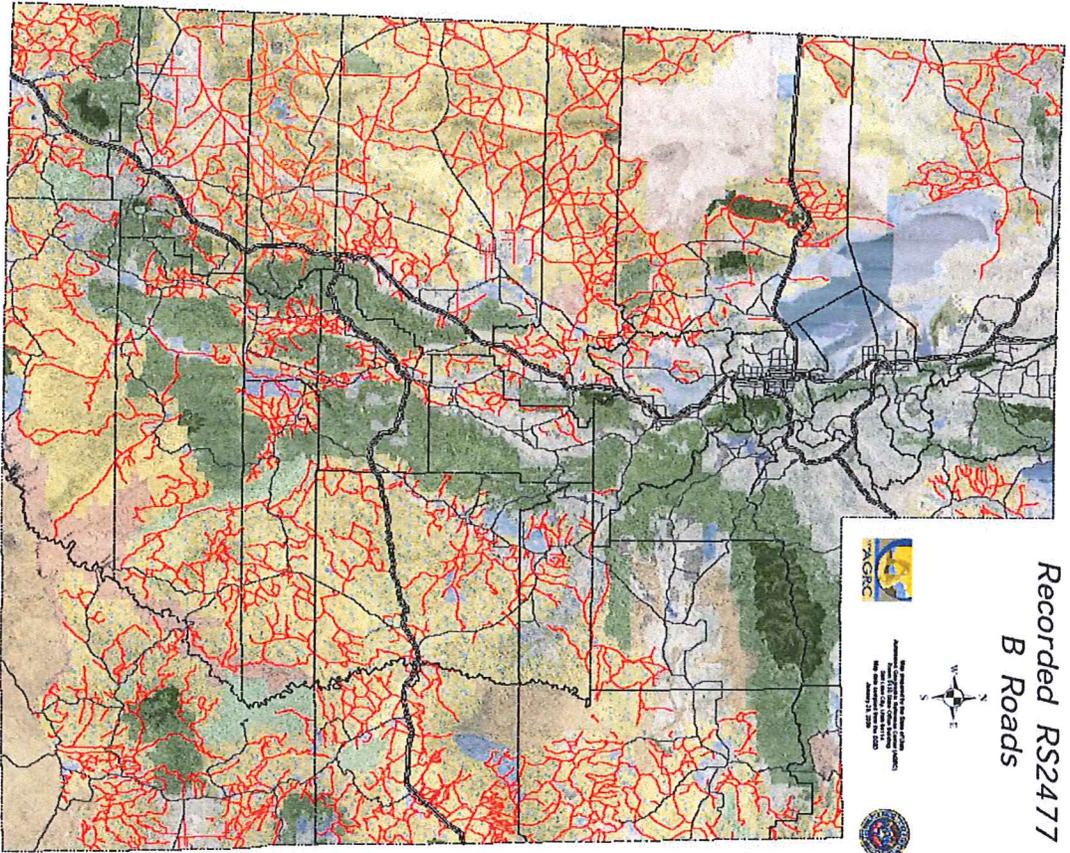
- Road team meets with witnesses and obtains two affidavits, if possible, on each right of way
  - Approximately 4 to 5 times more D roads than B roads
- Road team updates road list and submits to AGRC
  - Meeting with County to discuss road list



# Step 4: Review Right of Way Files

- Document Preparation
  - AGRC prepares packets for each road
- Team prints packets and combines affidavits into individual right of way files
- Team submits individual files to Governor's Designee (PLPCO Director) for signature





**Recorded RS2477  
B Roads**



The Association of Oregon Road Builders and Contractors  
1111 NE Oregon Street, Suite 200  
Portland, Oregon 97232  
Phone: 503.241.1234  
Fax: 503.241.1235  
www.aorbc.org





# UTAH R.S. 2477 Roads

(By County)

County	B roads	D roads	Total
Beaver	171	895	1066
Box Elder	60	167	227
Carbon	41	90	131
Daggett	18	62	80
Duchesne	15	59	74
Emery	116	298	414
Garfield	147	1350	1497
Grand	182	900	1082
Iron	72	1392	1464
Juab	169	571	740
Millard	218	1949	2167
Piute	93	7	100
Rich	29	209	238
San Juan	240	2767	3007
Sanpete	20	402	422
Sevier	91	585	676
Tooele	152	1780	1932
Uintah	123	2416	2539
Utah	17	22	39
Washington	90	372	462
Wayne	126	301	427
<b>Total</b>	<b>2190</b>	<b>16594</b>	<b>18784</b>

## Step 5. Seek recognition by federal agency.

- Non-Binding Recordable Disclaimer
- Use of FLPMA <sup>Non-binding determination</sup> Title 5 permits
- Recordable Disclaimers of Interest



## Bald Knoll Road Non Binding Determination

“The Bureau of Land Management has completed, for its land management purposes only, a preliminary non-binding determination (NBD) for the Bald Knoll Road in Kane County. Based on review of information submitted by Kane County and information in BLM records, the BLM Utah State Office has made the preliminary determination that the Bald Knoll Road is a valid R.S. 2477 right-of-way.

The Bald Knoll road is located in Kane County, approximately 20 miles northeast of Kanab. Total length of the road is approximately nine miles, with nearly the entire length crossing public lands administered by the BLM.”



# Step 6. Litigate as Necessary

## Quiet Title Act

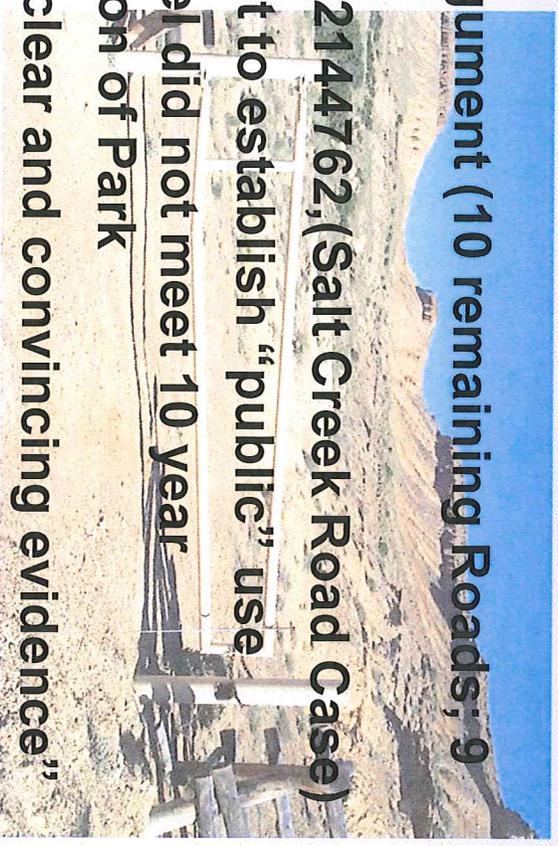
“The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.”

(28 USC § 2409a(a))



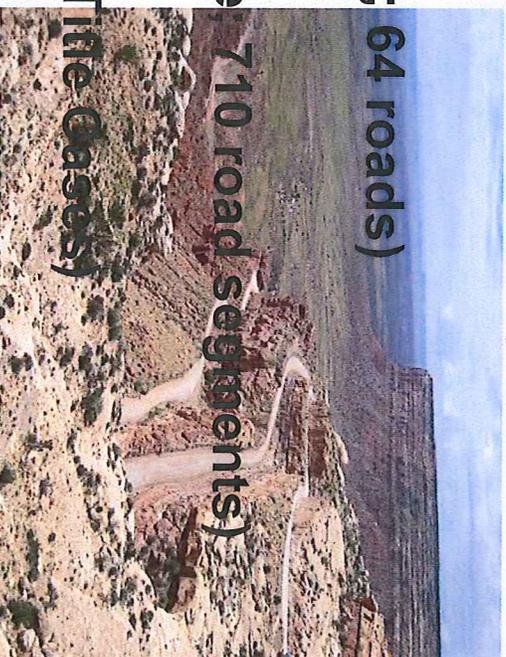
## Utah R.S. 2477 Litigation Cases

- Kane County v. U.S., 2011 WL 2489819, (Quiet Title Case; 15 Roads, State of Utah as Intervenor)
  - S.J. Ruling - 5 Roads, incl. Skutumpah Road are R.S. 2477 ROWs
  - Ten years public use not only method to establish R.S. 2477 ROW
  - Post-trial briefing/Closing argument (10 remaining Roads; 9 day trial)
- San Juan County v. U.S., 2011 WL 2144762, (Salt Creek Road Case)
  - Single entity use not sufficient to establish “public” use
  - Motorized use for scenic travel did not meet 10 year requirement prior to reservation of Park
  - Use must be established by “clear and convincing evidence”
  - Intervention by SUWA not allowed



# R.S. 2477 Litigation Cases cont'd

- Emery County Case (Quiet Title Case; 7 Closed Roads)  
Oral Argument on Summary Judgment - District Court
- Juab County Case (Quiet Title Case; 3 Closed Roads)  
Settlement Ongoing – over one year
- Garfield County v. U.S. (Quiet Title Case; 94 Roads)  
Case filed
- Kane Co. v. U.S. (“Hole in the Rock”; 64 roads)  
Case filed
- Kane County v. U.S. (Quiet Title Case; 710 road segments)  
Case filed
- Other Counties (21 Counties; Quiet Title Cases)  
Complaints being drafted





PROTECTING SAGE GROUSE AND  
THEIR HABITAT IN UTAH AND  
ACROSS THE WEST

2012

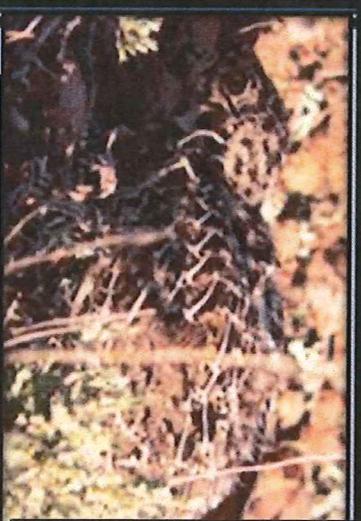


# What is a sage-grouse?

Male (Cock)



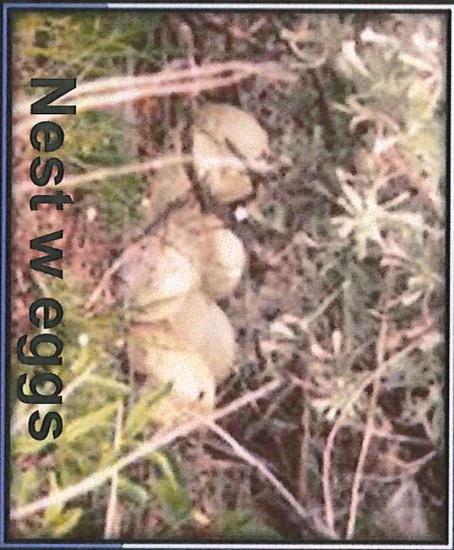
Chick



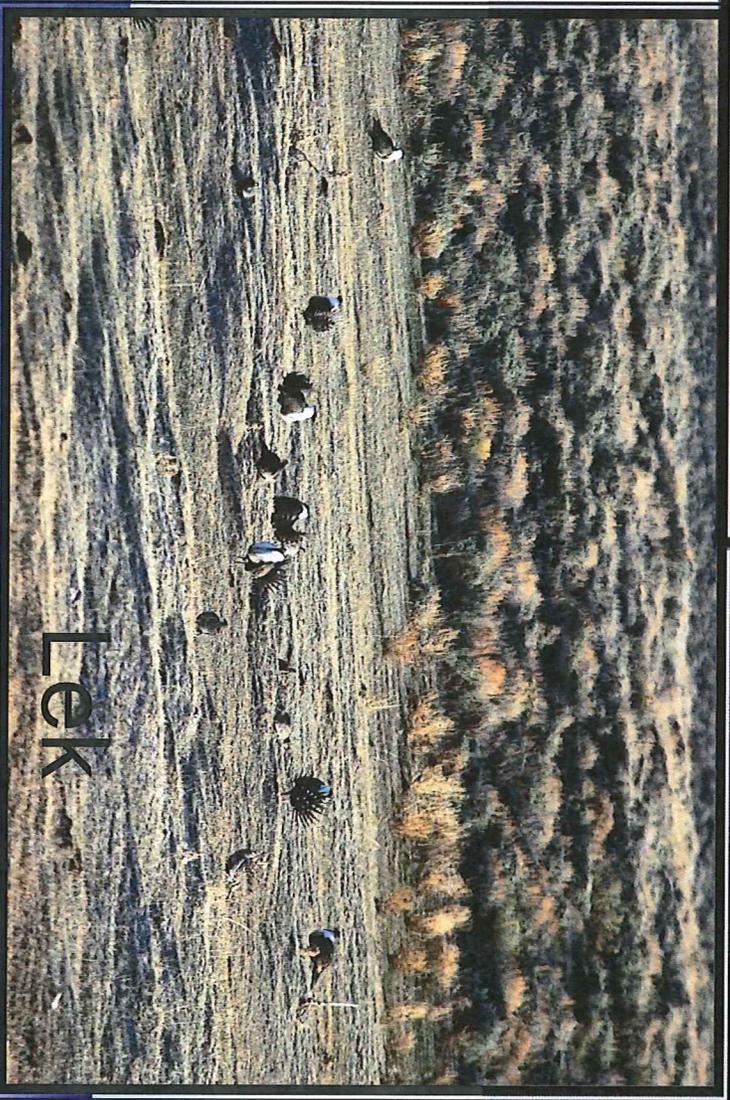
Female (Hen)



Nest w eggs

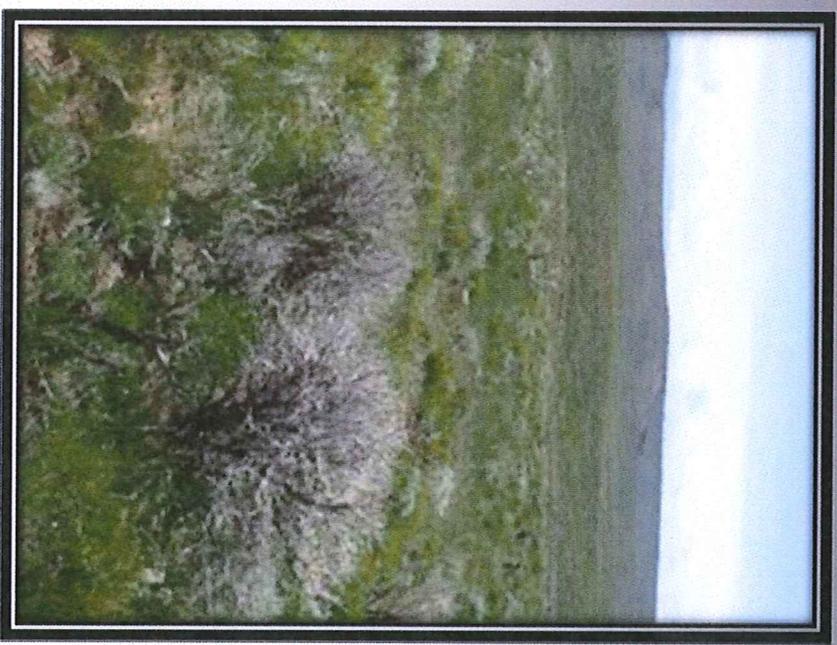


Lek



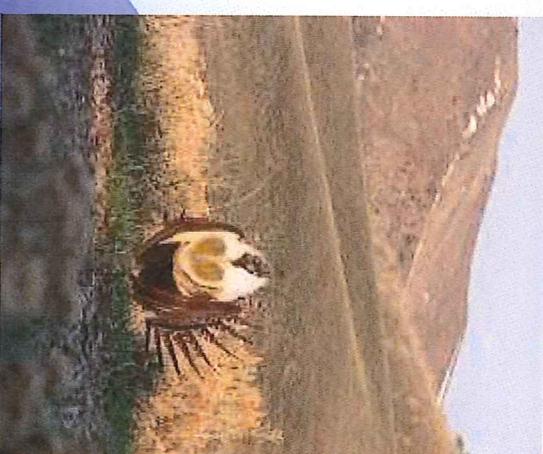
# Where do Sage Grouse live?

- Sage-grouse need sagebrush.
- Landscape-scale species.
- Not all sagebrush has sage-grouse.
- Sage-grouse eat **ONLY** sagebrush leaves Nov – March.
- Sagebrush must extend above snow in winter.



# Leks and Other Habitat

- Leks
  - Traditional breeding area
  - Center point for populations
    - Most hens nest within 4 miles of a lek
- Why are leks important?
  - Lek counts used for population estimates and trends
- Management must include all seasonal habitat (nesting, brood-rearing, transitional, and winter)



# Listing of the Sage -Grouse

- A listing under the provisions of the Endangered Species Act would affect use of property and resources in 11 Western States
- Affects federal, state, and private property (No one may harm the species or its habitat)
- Places the species under exclusive federal control



# Petitions to List the Sage grouse

## Extensive History

1999 - 2003: FWS  
received 8 petitions



1999 - Columbia Basin populations

Photo © James Yule  
Used by permission

2001 - Mono Basin population (and 2005)

2002 - Western subspecies

2002 - Greater sage-grouse range-wide

2002 - Eastern subspecies

2003 - Greater sage-grouse range-wide (2)

# Recent Petitions

- 2005 – FWWS determined “not warranted”
- Challenged by Western Watersheds Project in Idaho federal court (Judge Winnmill)
- Court ordered a relook at the decision, based on alleged interference with the scientific data
- Utah moved to intervene in the case, intervention reluctantly granted.
- Other environmental groups challenged a whole series of ESA issues in D.C.



# Latest Listing Decision

## March 2010

- Warranted, but precluded by higher priorities
- WWP challenged this in federal court
  - Judge Winnill reluctantly upheld
  - Held evidentiary hearing recently on sufficiency of BLM plans
- Final decision by 2015
- Listing likely unless the situation changes



# Listing Factors

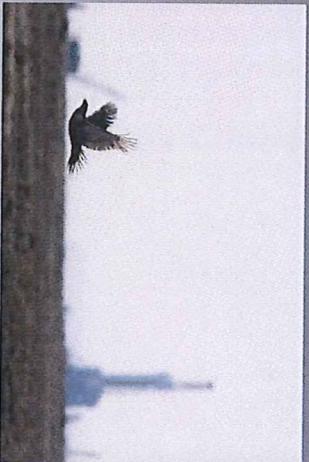
- A. Present or threatened destruction, modification, or curtailment of habitat or range
- B. Overuse for commercial, recreational, scientific or educational purposes
- C. Disease or predation
- D. Inadequacy of existing regulatory mechanisms
- E. Other natural or manmade factors affecting the species continued existence



Photo © James Yule  
Used by permission

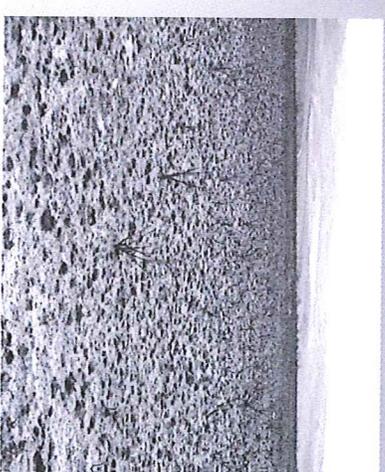
# Primary Threat

## Habitat Fragmentation



### Energy Development

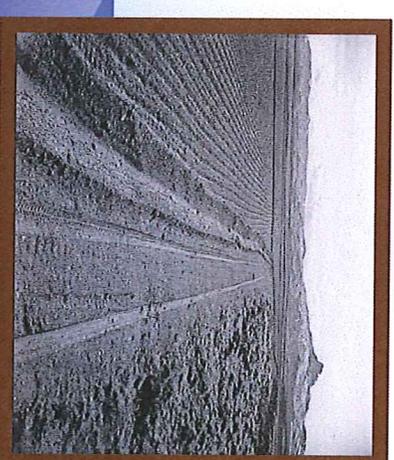
- NE WY: 79% decline in 12 years
- No effect with  $\leq 1$  well pad per sq mi
- Most fields 16-128 pads per sq mi



- Invasive Species/Fire

Historic fire cycle 200-350 years; now 70 to 158 years

- In Great Basin: 27% of sage-grouse habitat has burned since 1980
- 



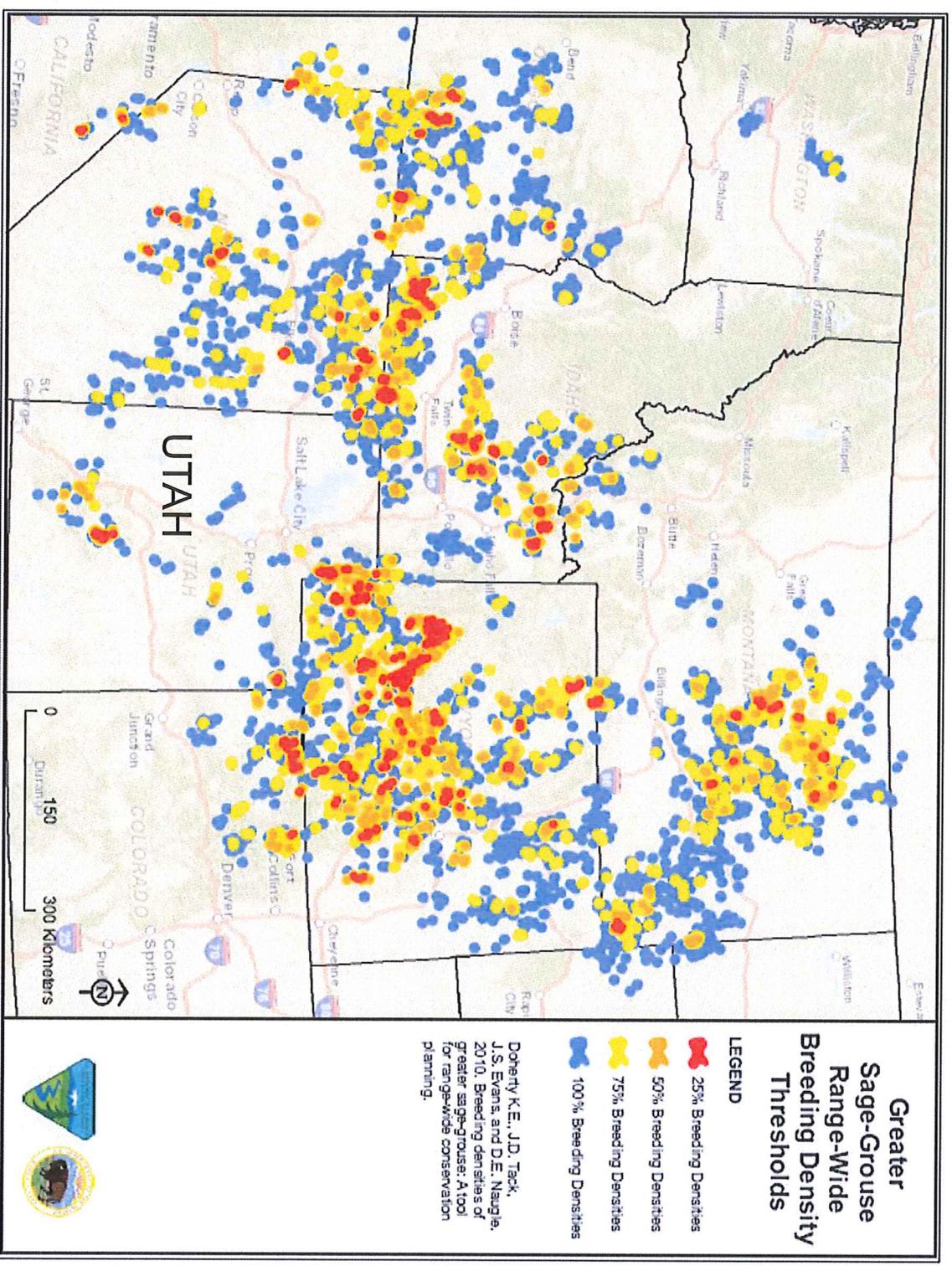
## Second Threat Inadequate Regulatory Mechanisms

FWS considered all governmental and other protection tools (mechanisms) including:

- Federal
- State
- County
- Conservation efforts



# Range-wide Lek Density Map



# Wyoming's Efforts

- Gov Fruedenthal (D) convened a group to make recommendations about steps Wyoming could take to avoid a listing.
- Federal, state, and local governments, ranchers, oil and gas interests, the conservation community, academia etc were involved.

Plan that was accepted by the Fish and Wildlife Service as adequate to protect the species



## Utah's Efforts to Date

- Utah has been working to protect sage grouse in a proactive manner for years and has spent millions of state and federal dollars improving over 500,000 acres since 2004.
- A strong partnership among state, local, federal agencies, and private landowners is based on a shared commitment to achieve sound stewardship
- Utah initiated Local Working Groups in 2004, under the general direction of Utah State University, to consider sage grouse planning on a local basis.

# Local working group plans

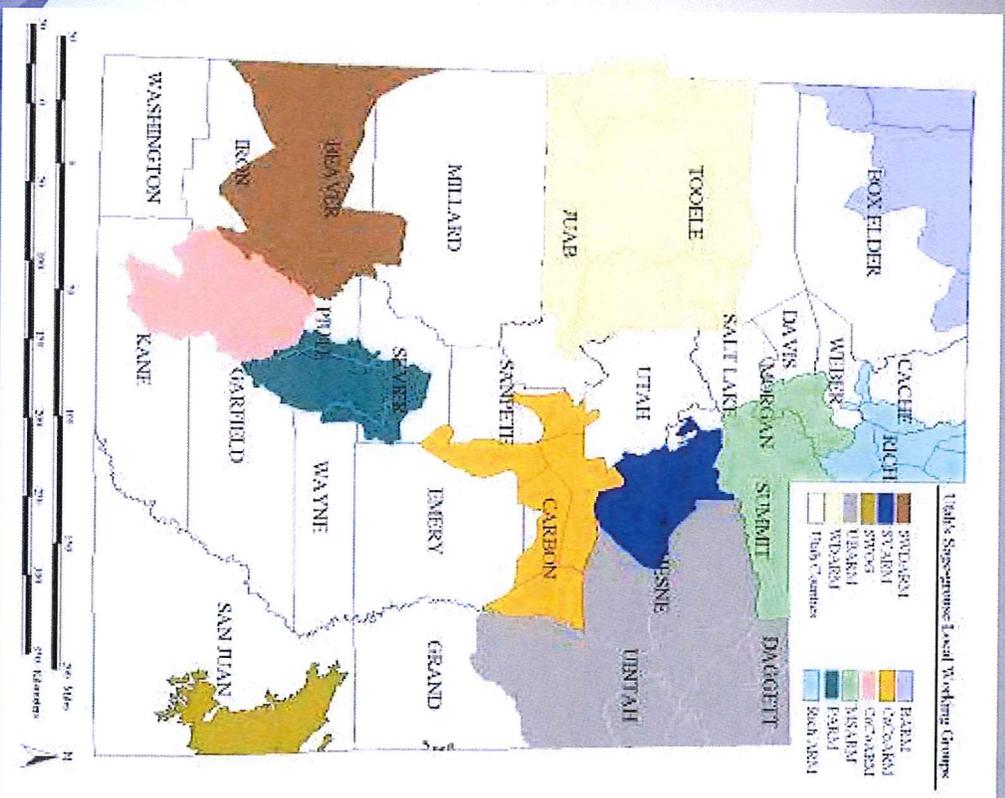
Each plan identifies threats to sage-grouse

- Development
- Loss of quality habitat
- Drought and weather
- Parasitism/disease
- Wildfire
- Predation
- Hunting/Poaching
- Improper grazing
- Invasive plants

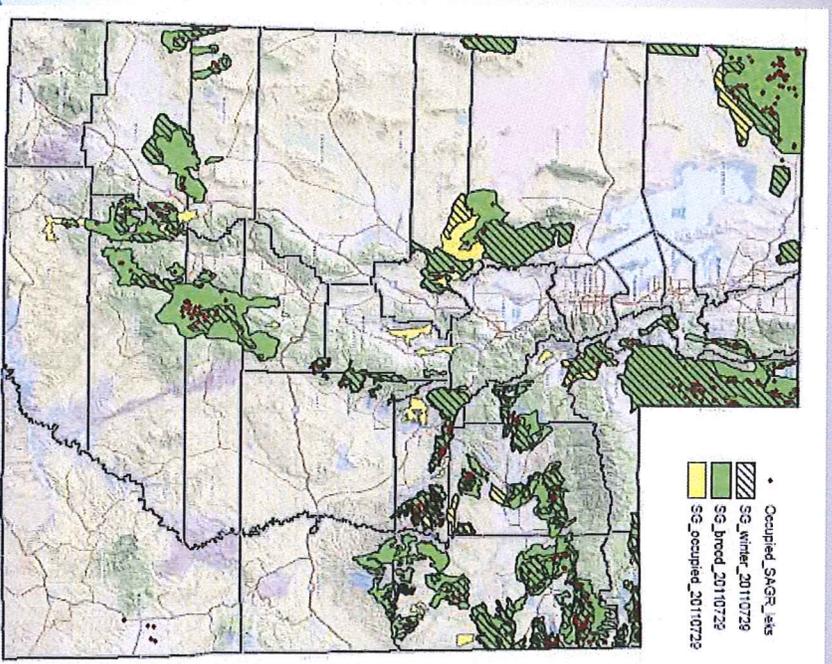


# Utah Sage-grouse Local Working Groups

- West Box Elder LWG
- Rich County Adaptive Resource Management
- Morgan/Summit LWG
- West Desert LWG
- Strawberry Valley LWG
- Uintah Basin LWG
- Castle Country LWG
- Southwest Desert LWG
- Parker Mountain LWG
- Color Country LWG
- San Juan County LWG (Gunnison sage-grouse)



# Distribution of Sage-grouse in Utah



**Approximately 14%  
of Utah is currently  
Occupied Sage-  
grouse Habitat**

# Utah Sage-grouse Lek Areas

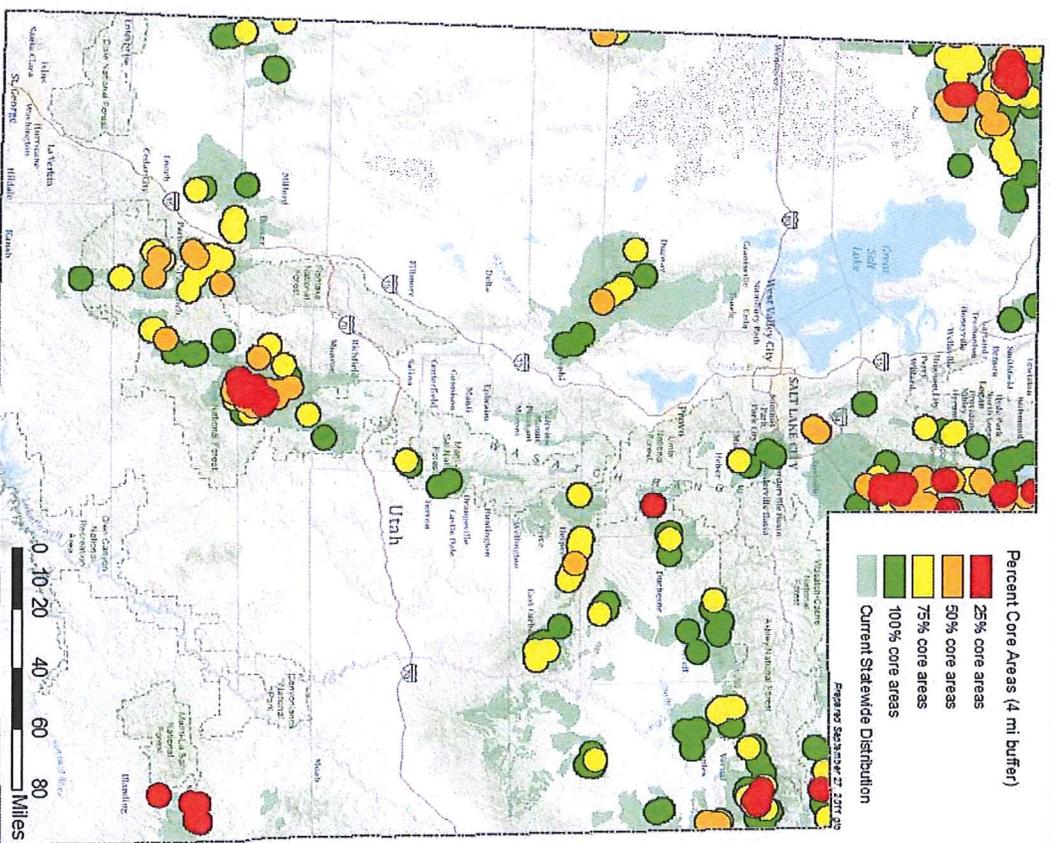


Figure 5. Important sage-grouse breeding density areas for Utah, based on 2002-2011 lek counts.

## Utah Governor's Sage Grouse Working Group

- Convene a capable team of experts to identify the essential components of a Utah solution to address the threat of a Sage Grouse listing.

- Consider biology, economics, legal and historic precedents, protection for private property rights, energy and market realities

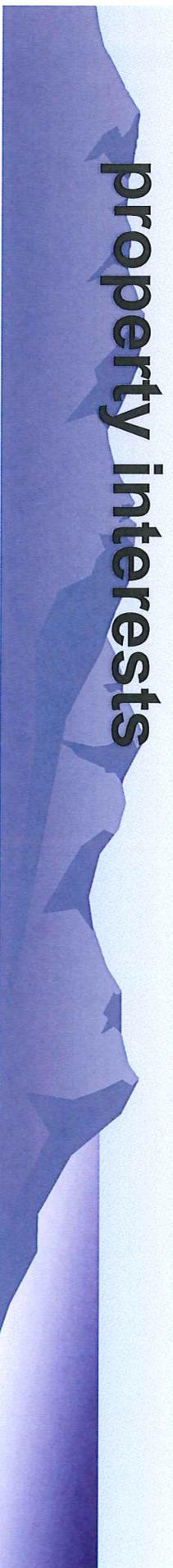
### Team consists of representatives from:

- Governor's Office
- Oil and Gas Industry
- Agriculture
- Division of Wildlife Resources
- School and Institutional Trust Lands Administration
- Private Landowner
- The Nature Conservancy
- Office of Energy Development
- County Commissioners (2)
- Oil Shale Industry
- Bureau of Land Management
- Fish and Wildlife Service
- Forest Service
- National Resources Conservation Service



# Considerations for a Utah Plan

- **Must be better than the provisions under a ESA listing decision**
- **Must consider the needs of the species**
- **Must consider the economic needs of Utah**
  - **Energy industry, recreation, ranching all vital**
- **Must protect private property and property interests**



## • SUMMARY AND STATUS

- Sage grouse are a landscape species.
- Sage grouse populations in Utah have declined.
- Utah is important in the range-wide conservation picture.
- Utah can protect sage grouse habitat without infringing on private property rights.
- Utah can protect sage grouse **and** Utah's economic vitality and opportunity.

- **Status of Working Group and Utah Plan Development**

Working Group approved a set of draft recommendations and directed staff to incorporate changes as agreed.

PLPCO is working to educate elected officials about the Utah's sage grouse planning and to prepare final draft recommendations.

Recommendations are expected to be presented to the Governor by the end of the month.



## Budget Fiscal Year 2012

Category	PLPCO	Federal Review	Litigation	Total
Dept/Unit/Appro	590/8110/RXA	060/1810/CAH	060/3200/CCA	
<b>Revenue</b>				
General Fund	328,900	0	0	328,900
CDC	1,366,000	250,000	1,000,000	2,616,000
Beginning Budget	400,000		1,000,000	
Closing Budget	(321,989)	(157,530)	(1,045,276)	
Lapsing	(185,251)	0		(185,251)
<b>Total</b>	<b>1,587,660</b>	<b>92,470</b>	<b>954,724</b>	<b>2,759,649</b>
<b>Expenditures</b>				
Personnel	696,127	0	578,558	1,274,685
Current Expense	891,533	142,470	376,167	1,410,170
<b>Total</b>	<b>1,587,660</b>	<b>142,470</b>	<b>954,725</b>	<b>2,684,855</b>



## Budget Fiscal Year 2013

Category	PLPCO	Federal Review	Litigation	Total	CDC
Dept/Unit/Appro	590/8110/RXA	060/1810/CAH	060/3200/CCA		060/8100/CTA
Revenue					
General Fund	328,500	0	0	328,500	0
CDC	1,383,100	250,000	1,000,000	2,633,100	1,838,400
Sovereign Lands	1,000,000	0	0	1,000,000	0
<b>Total</b>	<b>2,711,600</b>	<b>250,000</b>	<b>1,000,000</b>	<b>3,961,600</b>	<b>1,838,400</b>

### Expenditures

Personnel	1,523,000	0	550,000	2,073,000	0
In-State Travel	35,000	1,000	35,000	71,000	0
Out-State Travel	50,000	0	5,000	55,000	0
Current Expense	206,600	64,000	20,000	290,600	0
Attorneys	365,000	135,000	365,000	865,000	0
IT Current Expense	532,000	50,000	25,000	607,000	0
Other	0	0	0	0	0
<b>Total</b>	<b>2,711,600</b>	<b>250,000</b>	<b>1,000,000</b>	<b>3,961,600</b>	<b>1,838,400</b>
FTE	16	0	5	21	3
AG FTE	3	1	0	4	3
Carry forward from					
FY 2012	321,989	157,530	1,045,276	1,524,795	

