



Conservation Issues Briefing

February 2012

Announcing a New Conservation Policy and Law Clearinghouse for NCEL Members

Thanks to a generous grant from the Wood Tiger Fund, NCEL is partnering with Ruth Musgrave, J.D., of Wildlife Policy Consulting Associates to develop a new clearinghouse on conservation issues that impact states. The clearinghouse will consist of periodic briefings on the very latest developments on issues of interest; an in-depth collection of resources for specific issues; and links to organizations that have expertise in, and can assist with, particular issues. The conservation clearinghouse will cover issues pertaining to endangered species, fish and wildlife, public lands, land and water use, urban sprawl, and climate change.

We encourage all members to review this initial briefing, which covers only a sampling of the many conservation issues that may be of interest, and give us your feedback. Tell us what conservation issues are of importance in your state, issues you would like to see covered in the next briefing, and what kinds of resources or research you would find useful.

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Invasive Species

Invasive species of plants and animals are wreaking havoc on the nations' lands and waterways. In the courts and through state and federal legislation, states are attempting to control the spread of and damages caused by invasive species. Below are just a few examples of recent developments in invasive species policy and litigation.

U.S. Supreme Court Won't Hear Great Lakes States on Carp Invasion

The U.S. Supreme Court just refused to hear the claims of Great Lakes states to win protective measures to prevent highly invasive and damaging Bighead and Silver carp from entering Lake Michigan through the Illinois and Mississippi River systems. The states of Michigan, Minnesota, Ohio, Pennsylvania and Wisconsin attempted to obtain a preliminary injunction that would have required additional efforts to block the species' advance into the Great Lakes. They were previously denied relief by both an Illinois federal court and by the Seventh Circuit Court of Appeals. The Supreme Court also declined to hear appeals by the State of Michigan on three similar cases in 2010. The current Supreme Court case is *Michigan v. U.S. Army Corps of Engineers*, No.11-541 (U.S.S.Ct., Feb 27, 2012).

States Grapple over Asian Carp Solutions

A bi-partisan letter was sent by state and federal lawmakers asking the U.S. Army Corps of Engineers to adopt a proposed plan from the Great Lakes Commission and the Great Lakes and St. Lawrence Cities Initiative, that would cut the link between the Great Lakes and Mississippi River watersheds so that Asian carp and other invasive species cannot enter the Great Lakes. Some business and government leaders in Illinois and Indiana oppose the separation. –from wsj.com, Feb.3, 2012.

In addition, fishing, environment, and private property groups in January 2012 sent an open letter to Minnesota Governor Dayton thanking him for his efforts to stop the Asian carp and asking for implementation of “strong and immediate actions” to stop the advance of the species into Minnesota.

Giant Invasive Snakes Cannot be Imported – But Exhibitors are Excluded

In response to the explosion of giant non-native snakes in the Everglades ecosystem, the U.S. Department of the Interior in January banned the importation of four nonnative constrictor snakes. And a federal bill, [HR511](#), introduced by Congressman Rooney (R-FL), would add nine species of constrictor snakes to the list of injurious species under the Lacey Act. The bi-partisan bill passed the U.S. House Judiciary

EPA is Proposing New Ballast Water Discharge Restrictions

As part of an agreement with the State of Michigan and environmental organizations, the EPA has issued, and is taking comments on, a new [draft Vessel General Permit](#) that governs discharges, or ballast water, from large vessels. The new draft includes for the first time numeric effluent limits to control the release of invasive species in ballast water. And as a Congressional moratorium on regulating smaller vessel discharge expires at the end of 2013, a proposed Small Vessel General Permit would regulate incidental discharges from smaller vessels as well. In addition, last summer a federal appeals court held that vessels must meet state and tribal discharge requirements as well as federal requirements (*Lake Carriers Assoc. v. EPA*, D.C.Cir., July 22, 2011).

Committee on February 29. The committee did accept an amendment from Rep. Ross, R-Fla. that exempts USDA-licensed exhibitors from the trade restriction.

***Editor's Note:** The National Academy of Sciences in January 2012 reported that in the Everglades recently, Burmese pythons have wiped out 99 percent of opossums, raccoons and other small to medium mammals, as well as 87 percent of bobcats.*

Maryland Takes Legislative Action on Invasive Plants

In the 2011 Maryland legislative session, [HB831](#) added provisions for the state's Invasive Plants Advisory Committee, as well as for invasive plant prevention and control. The bill was signed into law in April of 2011. It requires in part that regulations be adopted by October 2012, that establish a science-based risk assessment protocol for invasive plants, and that create a two-tiered regulatory approach for controlling invasive plants.

Resources for States on Invasive Species Laws, Strategies and Science:

- The U.S. Department of Agriculture's National Agricultural Library houses a National Invasive Species Information Center with comprehensive information on invasive species. Searches can be done by state resources, by multistate resources, and by subject. See www.invasivespeciesinfo.gov.
- The Environmental Law Institute's Invasive Species Program has a number of reports, model laws, strategies and other tools for states to manage invasive species. For example, the report "Cooperative Prevention of Invasive Wildlife Introduction in Florida" (2008) analyzes state and federal efforts to control invasive species, and makes recommendations to harmonize those efforts. See www.eli.org/Program_Areas/Invasives/index.cfm.

Public Lands

Several state legislatures and governors are asserting that states should own or control some or all federal lands within a state's borders. Despite years of litigation in which courts have consistently held that states may not legally assert control over federal lands, state bills and litigation are reaching a crescendo this winter.

UT Legislature Attempts to Put Federal Lands under State Control

A series of bills just passed the Utah House of Representatives that demand that Congress transfer all federal lands in the state to state authorities. See, for example, HJR3 Federal Transfer of Public Lands – demands federal government turn over its lands to the state; HCR1 Concurrent Resolution – letter of demand to federal government; HB176 County Land Use Plans - for counties to recommend land use legislation for federal lands; HB209 Utah Lands Protection Act – redefines sovereign lands to include federal lands claimed by the state (to see all related bills, including HB91 and HB148, search "federal lands" in www.le.utah.gov/dtforms/AllBills.html). Utah Governor Gary Herbert has voiced support for the legislation. However, on February 28 at a congressional hearing BLM Director Abbey stated that such legislation has "no chance" and is divisive and unproductive, and the Utah State Legislature's own attorneys stated that the bills are likely unconstitutional. –from Salt Lake Tribune, Feb. 28, 2012.

ID Governor Claims Western States Should Control Federal Land

Idaho Governor Otter announced to group of Western congressional lawmakers that Western states should control federal forest lands in their states, in part to control the potential for forest fires. Over 60% of Idaho land is federal. The U.S. Forest Service, however, is providing \$5.7 million to the State of Idaho for three large forest management projects. In the meantime, the Arizona legislature is considering legislation similar to Utah's. GOP Presidential candidates have each expressed various levels of support for turnover of ownership or control of federal lands to states.

WY to Appeal Roadless Rule Challenge to U.S. Supreme Court

After the Tenth Circuit Court of Appeals reversed a Wyoming federal court and upheld the validity of the [2001 Roadless Area Conservation Rule](#) on federal lands, the State of Wyoming announced on February 24 that it will appeal the ruling to the U.S. Supreme Court. The Roadless Rule restricts development on about 50 million acres of roadless areas in national forests. The Roadless Rule has been upheld separately by the Ninth Circuit Court of Appeals. The 10th Circuit opinion is *State of Wyoming v. U.S. Dept. of Agriculture*, Nos.08-8061, 09-8075 (10th Cir., October 21, 2011).

Wolves

Wolves are found in as many as 18 states across the nation, and currently state wolf management and listing actions are extremely contentious. State legislatures are debating numerous management provisions that merit comparison. Concurrently, the U.S. Fish and Wildlife Service is moving fast on delisting wolves, which leaves management to the states. At the end of February 2012 the USFWS issued a "Lower 48 State and Mexico Gray Wolf Listing 5-Year Review" which recommends delisting wolves across the nation, including areas such as the Northeast, Central Rocky Mountains and the Great Plains where wolves are not currently found. The Service will consider leaving ESA listing in place for Pacific Northwest wolves.

WY: Gray wolves were delisted in the Rocky Mountain region with the exception of Wyoming, because its state plan was not considered viable. However, a gray wolf plan for Wyoming was approved by the federal government in February, despite a scientific peer review that indicated that the wolf plan is deficient. The plan allows a minimum of 10 breeding pairs and 100 wolves outside of Yellowstone National Park. Wolves will be treated as trophy animals in northwest Wyoming, and as predators everywhere else which can be shot on sight. Hunting may also be allowed in the John D. Rockefeller National Parkway, although it is opposed by the National Park Service.

ID: A legislative bill would allow killing wolves by any means available, including live baiting with pets and electronic calling. On February 29, [S1305](#) was tabled because it was

thought that it would jeopardize the ESA delisting of the wolf by the U.S. Fish and Wildlife Service.

WA: The [Washington Wolf Conservation and Management Plan](#) was passed unanimously by the State Fish and Wildlife Commission in December 2011. In the current legislative session, [HB2365](#) passed the House and awaits a vote on the Senate floor. It contains provisions for a livestock depredation fund. The bill does allow taking of wolves without a permit when wolves are attacking livestock, in contradiction to the plan. It also reclassifies the gray wolf as a "game species," no matter what the listing classification.

CA: The Department of Fish and Game on February 28, 2012 received a [petition](#) to list the gray wolf as a state endangered species. A sole wolf entered Northern California in December,

and is currently protected under the federal ESA. Petitioners state that it is a matter of time before more wolves become established in the state, and that state listing under the California Endangered Species Act would allow for a state recovery plan for the species. – from Los Angeles Times, Feb. 27, 2012.

Great Lakes Wolves: Wolves were delisted from the ESA in the Great Lakes region on January 27, 2012. The Final Rule is found at 76 Fed.Reg. 81666 (Dec.28, 2011). The Wisconsin Senate will vote in early March on a bill that would allow hunting and trapping of wolves, including using bait and dogs, and hunting at night.

IL: Two men are being prosecuted in separate incidents in northern Illinois for illegally killing a gray wolf. Gray wolves are protected under state law as a threatened species. Killing a

threatened species in Illinois is a Class A misdemeanor, punishable by fines up to \$2,500 and/or 364-days in jail. Wolves were federally delisted north of I-80 in Illinois, but remain listed under the Illinois Endangered Species Protection Act. – from Journals Standard.com, Feb. 9, 2012.

OR: HB 4158, which would have given the Oregon Fish and Wildlife Commission authority to adopt rules authorizing take of wolves related to livestock depredation, passed the House but died in a Senate committee. But [HB4005](#), which establishes a tax credit as compensation for livestock losses from wolves, passed the House without containing lethal control language. The tax credit does not affect the \$100,000 state livestock loss compensation fund.

Greater Sage-Grouse

The Greater Sage-Grouse is found in eleven states (CA, OR, WA, NV, MT, ND, ID, SD, WY, NE, CO, UT), but has been on the decline for some time. Its current and historic distribution is displayed at www.westernwatersheds.org/wildlife/sage-grouse/distribution. The sage-grouse is not listed under the federal Endangered Species Act; in 2010 the U.S. Fish and Wildlife Service determined that ESA listing was warranted, but precluded by higher priority actions. The bird was placed on the list of candidate species.

Recent Litigation over Sage-Grouse Management

In 2011 a federal court in Idaho held that the BLM must re-assess Resource Management Plans for sage-grouse in Idaho and Wyoming (*Western Watersheds v. Salazar*, No.08-516 (U.S.Dist.Ct., D.Id., Sept. 28, 2011). The plaintiff in December 2011 filed for permanent injunctive relief, which, if granted after a hearing in February, will restrict many activities on Western lands. In another lawsuit, the same federal court required increased protections for sage grouse on BLM lands in Idaho, noting that “grazing must yield” when it conflicts with sage grouse (*Western Watersheds v. Salazar*, No.4:08-CV-435-BLW (U.S.Dist.Ct., D.Id., Feb.6, 2012). –for an excellent summary of agency and court actions regarding the sage-grouse, see an article by the Marten Law Firm: <http://www.martenlaw.com/newsletter/20120117-potential-esa-sage-grouse-listing>.

Recent State Action on Sage-Grouse

- The state fish and wildlife agencies under the Western Association of Fish and Wildlife Agencies produced the [Greater Sage-Grouse Comprehensive Conservation Strategy](#) that was signed in 2007.
- In 2009 the State of Wyoming instituted a state-led effort for Sage-Grouse Core Area Protection.

- A multi-state and federal Sage-Grouse Task Force was created in December 2011 to create a state-led plan for conservation of the species. On February 13, the governors of Colorado and Wyoming were named co-chairs of the task force along with BLM chief Abbey.
- The Western Governors' Association published an "Inventory of State and Local Governments' Conservation Initiatives for Sage Grouse" in December 2011. See www.westgov.org/reports. "The Western Governors Wildlife Council recommends that state and local governments and their partners review the elements included in this inventory, and give strong consideration to the initiatives recorded here when strengthening their own state sage-grouse conservation efforts."
- The Utah Legislature in February failed to pass a request for \$25,000 for the Office of Species Conservation to hold state sage-grouse meetings, noting that the agency had not requested the funds. Utah Governor Otter also requested \$500,000 from the U.S. Department of the Interior to fund the state's sage grouse task force, but has not received a commitment.

Climate Change Adaptation

The impacts of climate change are increasing and accelerating in all states, and with legislative action stalled on the federal level, states are left to deal with the complex task of adaptation to climate change, in an attempt to minimize the impacts of climate change to wildlife and habitat. Recent state, federal and nonprofit teamwork has produced strategies and reports, and there now exist several excellent resources for states:

- A coalition of state and federal fish and wildlife agencies, co-chaired by the New York Division of Fish, Wildlife and Marine Resources, has produced a draft "[National Fish, Wildlife and Plants Climate Adaptation Strategy](#)" for coordinating planning for adaptation to help limit damage to natural resources from climate change. Comments on the draft close on March 5, 2012; the final strategy is planned for release May-June 2012.
- [Climate Change 101: Climate Adaptation](#) by the Pew Center on Global Climate Change, now the Center for Climate and Energy Solutions, describes regional impacts of climate change, projected changes, adaptation planning, reports and resources for policy work on climate adaptation.
- The Pew Center for Climate and Energy Solutions ("C2ES") describes the status of all 50 states as well as regions with regard to statewide and regional initiatives and state climate adaptation plans. The Center also provides state news and key state legislation, though it covers energy as well as climate adaptation issues. The site is updated regularly. See www.c2es.org/states-regions.

Water

U.S. House rewrites CA water law: In spite of opposition from the Western States Water Council with 18 member states, the U.S. House passed [HR1837](#), the "Sacramento-San Joaquin Valley Water Reliability Act." The bill preempts California state water law, nullifies an agreement between the State of California and the federal government, and overturns all protections for endangered salmon and other listed fish in that region. —from Los Angeles Times, Feb. 29, 2012.