
DONALD J. ARMENTROUT - SOMETIMES WILDLIFE SURVIVE BECAUSE OF BUREAU OF LAND MANAGEMENT/STATE FISH AND GAME AGENCY RELATIONSHIPS; SOMETIMES IN SPITE OF THEM

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Abstract: Successful wildlife issue solving occurs on public lands when the Bureau of Land Management (BLM) - State Fish and Game Agency relationship focuses on what they can do for wildlife. Unfortunately all too many times these successes are overshadowed by misunderstandings of agency roles and missions, territorialism, and miscommunication on the part of one or both agencies. I provide a history of the legislative, judicial, and regulatory actions which have defined the BLM's role in wildlife management. Recommendations are provided which should help in moving beyond past errors and into a more successful record of cooperation.

Successful management of wildlife on lands administered by the Bureau of Land Management (BLM), normally referred to as public lands, requires constant, effective coordination, and cooperation between the BLM and state wildlife agencies. This need for coordination and cooperation has been brought about by a history of legislation, judicial review, and regulation which mandates that the BLM is the land management agency for public lands and, therefore, the habitat manager on public lands. This fact only conflicts politically with the fact that Congress recognizes, and the Legislature in each of the 50 states has determined, that wildlife belong to the state in which they reside, and wildlife population management is the responsibility of their state wildlife agency. Adding to the confusion is the Endangered Species Act of 1973, as amended, which gives the U.S. Fish and Wildlife Service jurisdiction over how federally listed wildlife species are managed on public, and other federal lands.

Misunderstanding, and failure to accept each agency's jurisdictional role in wildlife management, leads to confusion, territorialism, and harm to the wildlife resource. The objective of this paper is to provide the reader with a historical background which defines the BLM's role in wildlife management. It is my hope that the information

provided here leads to a better understanding of the shared responsibility BLM and state wildlife agencies have for the wildlife resource and allows for more effective wildlife management.

1934 TO 1946: The Taylor Grazing Act of 1934 institutionalized the first significant recognition of the importance of wildlife on public lands (Muhn and Stuart 1988). Lands within Grazing Districts were officially opened to hunting and fishing, and the Secretary of the Interior was allowed to work with state wildlife agencies in managing wildlife habitat. Beginning in New Mexico and Oregon, one wildlife representative was added to the grazing advisory board. By 1939 all grazing advisory boards had at least one wildlife representative.

The Oregon and California Revested Lands Act of 1937 mandated the General Land Office more conservation responsibilities (Muhn and Stuart 1988). The revested lands were those lands granted to the Oregon and California Railroad Company in 1866 for construction of a railroad line from Portland, Oregon to the California border. To enhance the Government Land Office's (GLO) administration of the O&C lands the law called for implementation of a sustained yield cutting program. Lumber production was not to exceed forest

regeneration so that continuous forest production could be assured. The law also stated the lands could be used for grazing, recreation, watersheds, and wildlife.

President Harry Truman using his 1946 Reorganization Plan No. 3, merged the General Land Office and the Grazing Service forming the Bureau of Land Management (Muhn and Stuart 1988). U.S. Senator Guy Gordon, Oregon, read a prophetic statement into the Congressional Record, July 13, 1946. *I frankly say...that the very title of the bureau raises a very big question mark in my mind. It seems to me that the very purpose to be subserved is to change the historical policy of the United States from one of holding the public lands for transfer to ownership under private persons, to one of proprietary handling on the part of the United States government.*

1946 to 1960: BLM continued the Grazing Service's policy toward wildlife. Wildlife was reported to be an important part of BLM's range program (Muhn and Stuart 1988). District managers were instructed to work closely with their advisory board's wildlife representative and state officials in managing wildlife on public lands. Some states did help the BLM in rangeland reseeding projects which increased forage for wildlife as well as for livestock. During 1955, the BLM's basic policy toward wildlife continued to be concern for habitat. BLM Director Wozzley explained: *The management of wildlife [was] strictly on a basis of cooperation between the BLM as administrator of vast public land acreages, supporting large wildlife populations, and the respective states recognized as the owners of the wildlife* (Muhn and Stuart 1988).

THE 1960s: A young multiple use philosophy was endorsed within the BLM with passage of the Classification and Multiple Use Act (CMU Act) of 1964. BLM was reorganized to reflect new programs and authorities under this mandate. Concerns for wildlife, recreation, soil, and water resources were integrated into traditional programs (range, forestry, lands, and minerals) through a land use planning process.

Inventories of wildlife habitat on the public lands began in earnest after passage of the CMU Act. These inventories documented that public lands provide important habitat for wildlife, including approximately 3 million big game animals. Eighty-five percent of the desert bighorn sheep's habitat existed on BLM lands (Muhn and Stuart 1988).

In 1961 BLM hired its first biologist. Bob Smith, former Chief of Arizona Game and Fish Department, was brought into the Washington Office to lead BLM's newly created Wildlife Division. District Offices began hiring wildlife biologists in 1965, and began to enter into research projects with other agencies. Also in 1961, BLM signed a cooperative agreement for wildlife habitat management with the Arizona Game and Fish Department, and proceeded to reintroduce wild turkey and pronghorns on public lands in the Arizona Strip District.

THE 1970s: The Bald Eagle Protection Act of 1972 prohibited the poisoning of bald or golden eagles. This caused significant changes in the U.S. Fish and Wildlife Service's (USFWS) Animal Damage Control program (now in the Department of Agriculture) and the activities of livestock operators on public lands. In January 1977, the USFWS published guidelines forbidding activities resulting in disturbance to the birds (Muhn and Stuart 1988).

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.* 1973) provided for the federal listing of wildlife threatened with extinction and for designation of critical habitat by the USFWS. The act requires BLM to protect listed species and their habitats, and to consult with USFWS on activities which may affect species or on critical habitats. The act also provided for closer working relationships between the agencies in developing recovery plans for threatened or endangered species. In most states a Memorandum of Understanding (MOU) between the BLM and the state wildlife agency requires that the BLM consult with the state wildlife agency on any activities which may affect state listed species.

A test of the constitutionality of the Wild and Free Roaming Horse and Burro Act resulted in the Supreme Court hearing arguments from Thomas S. Kleppe, Secretary of the Interior, Appellant versus State of New Mexico et al. The decision of Kleppe, Secretary of the Interior v New Mexico et al. was rendered June 17, 1976 (426 U.S. 529, 96 S. Ct. 2285). A rehearing was denied October 4, 1976. The Supreme Court found in favor of the Secretary of the Interior. However, the Court did not restrict itself to the question of the Wild and Free Roaming Horse and Burro Act. In the opinion delivered by Mr. Justice Marshall, the Court discussed the power of Congress under the property and treaty clauses including, their powers in relation to wildlife. The treaty clause permits Congress to enter into and enforce treaty to protect migratory birds despite state objections. As pointed out by the Court, under the property clause Congress has the power to thin overpopulated herds of deer on federal lands contrary to state law (Hunt v United States, 278 U.S. 96 1928). Justice Marshall wrote...But Hunt, which upheld the government's right to kill deer that were damaging foliage in the national forests, only holds that damage to the land is a sufficient basis for regulation; it contains no suggestion that it is a necessary one. Basically, the Court in Kleppe v New Mexico held that Congress had full powers over the care, treatment, and management of public and federal lands.

On October 21, 1976, the Federal Land Policy and Management Act of 1976 was signed into law (90 Stat. 2744, 43 U.S.C. 1701 *et seq.*). The Federal Land Policy and Management Act of 1976 (FLPMA) defined the BLM's role in wildlife management. Within Sec. 102. (a) *The Congress declares that it is the policy of the United States that-(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occu-*

pancy and use;... The BLM manages for the health of the public lands, and where appropriate provides food and habitat for fish and wildlife along with other uses. Section 103 (l) defines fish and wildlife development and utilization as a principal or major use, along with domestic livestock grazing, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. FLPMA requires that the BLM maintain the health of the land while balancing principal and major uses as appropriate.

1980 TO PRESENT: Throughout the 1980s the BLM moved strongly toward cooperative and coordinated wildlife management through development of approximately 400 Habitat Management Plans (HMP) in cooperation with state wildlife agencies. To date over half of these plans have been implemented. Fish and Wildlife 2000, a strategic plan for the wildlife program was put into action. Since its inception the Fish and Wildlife 2000 program has been responsible for development of 20 National Strategy Plans for managing habitats used by several groups of fish and wildlife such as the *Mountain Sheep Ecosystem Management Strategy in the 11 Western States and Alaska*, dated 1995. Most of these plans were developed through active cooperation and coordination between the BLM and state wildlife agencies. Implementation of these plans has been slower than first anticipated.

On March 18, 1983, the Secretary of the Interior signed 43 CFR§ 24 entitled *Department of the Interior Fish and Wildlife Policy; State-Federal Relationships*. The Secretary's intent in issuing this regulation is to ... *strengthen and support, to the maximum legal extent possible, the missions of the States and the Department of the Interior to conserve and manage effectively the nation's fish and wildlife.* A primary purpose for issuing this regulation is to clarify and provide support for cooperative interagency management relationships in order to foster improved conservation of fish and wildlife. This cooperation is to be based upon a clear understanding of federal as well as state responsibilities in management of fish and wildlife resources. An example of this form of understand-

ing specific to the BLM is that the Secretary is empowered to close areas to hunting, fishing or trapping for specific reasons such as public safety, administration, or compliance with provisions of applicable law. This closure power is a power... to close areas to particular activities for particular reasons and does not in and of itself constitute a grant of authority to the Secretary to manage wildlife or require or authorize the issuance of hunting and/or fishing permits or licenses. This authority is not normally exercised without the concurrence of the state wildlife agency.

To further direct the BLM toward management of healthy rangelands the Secretary of the Interior, on February 22, 1995, enacted 43 CFR§ 4180 entitled *Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration*. Within these regulations the Secretary directed that minimum standards developed under this regulation must address the following:...(4) *Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and (5) Habitat quality for native plant and animal populations and communities*. These Rangeland Health Standards are developed through a Resource Advisory Committee (RAC) whose membership represents a cross section of the regional population and interests including representatives for the environment and wildlife. In some cases state wildlife agencies have been active on the RAC while others have not. The RACs also developed grazing guidelines to insure the Rangeland Health Standards are going to be met. Once established by the RACs, these standards apply at all times. If guidelines are needed to insure other uses such as off-highway vehicle (OHV) traffic is not adversely impacting rangeland health then the RAC can develop necessary OHV guidelines. Monitoring to determine if standards for native species are being met requires a cooperative effort between the BLM and state wildlife agencies.

CONCLUSION: Based on law and politics, those who manage the land, manage the habitat while those who are deemed owners of wildlife manage the populations. Leopold (1933) however, pointed out that without a mixture of sound habitat and, in

the case of game animals, sound harvest management, healthy wildlife populations cannot exist. Since the beginning of the Grazing Service, the BLM has been a land management agency. The right of the states to manage wildlife populations is also a matter of law. These laws, regulations, policies, and other political issues tend to separate the BLM biologists and state wildlife agency biologists from a fundamental truth. Just as there are not loose ends in an ecosystem, there is no conceivable way wildlife will survive without the merging of habitat and population management.

RECOMMENDATIONS: What must happen more than it does at present, and continue to grow into the future, is that wildlife habitat, and wildlife population biologists and managers, focus solely on the biology of the issue. We all must admit that no individual or agency among us fully understands the ecological fundamentals which drive wildlife habitat and population dynamics (Noss and Cooperrider 1994). We must recognize differences between the BLM and state wildlife agencies only to the extent that each agency must operate under different sets of laws and directions. Recognizing these differences and accepting them provides the platform for mutual working benefit. I have often wondered who is really watching out for the wildlife resource while agencies and their biologists struggle to see who is king-of-the-hill. Total adaptive management requires that all participants recognize that ecosystems as well as procedures are not clearly understood by everyone. We, as wildlife biologists, must recognize the strength in total adaptive management and practice it continually, remembering the only goal is wildlife health.

LITERATURE CITED

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QUESTIONS, ANSWERS AND COMMENTS - DONALD ARMENTROUT PRESENTATION

KEVIN HURLEY, WYOMING: Don, I've got a question. I'll address it to you, and perhaps some other people can help answer this. Let me say at the outset, in Wyoming we have a really good working relationship with both the BLM and the Forest Service. Still, I do question some policies. When we as a state fish and game agency plan a transplant from point A to point B, the Forest Service has told us according to their manuals and policies, that is a state wildlife agency action, go for it. But the BLM tells us they need to do a NEPA analysis and issue a decision on our proposal.

I'm trying to figure out why the two systems are so different. We've had two examples of sheep transplants in recent years which the BLM and the department have been very much in sync on, but the public perception, especially by landowners, has been very adverse. Why does BLM have to approve our agency's proposal? Why does there need to be a decision by BLM on a state wildlife agency transplant proposal?

DON ARMENTROUT: Because BLM is under FLPMA, which is the act which tells BLM what to do, and this is not a categorically excluded action under NEPA. The Department of Interior regs are implemented. Now, the Forest Service works for the Department of Agriculture, their regulations may be different and they have a different act that authorizes how they manage the land; that's the difference.

HURLEY: I cannot figure out why there are two different interpretations of NEPA.

ARMENTROUT: There are categorical exclusions that exclude certain actions from NEPA. The Interior Department's categorical exclusion list may be different than the Forest Service's. Under some conditions, there are categorical exclusions, but when you hit a wilderness study area or a wilderness area on BLM, all bets are off. Categorical exclusions do not apply. It's different regulations. The Council On Environmental Quality directs each agency to develop their own regulations. DOD's regulations are different than Interior that are different than Agriculture that are different than Commerce.

UNIDENTIFIED SPEAKER: The difference appears to me as an interpretation on whether NEPA is only required for federal actions so the Forest Service has interpreted a transplant as not being a federal action. It is not a federal action and consequently, we don't do NEPA. It may be the BLM interprets transplants as a federal action and that's the reason why you must follow NEPA. It sounds like it's not regulation, it's an interpretation of whose action it really is.