THURSDAY, JANUARY 17, 2013

FRIDAY'S FORECAST

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VOL. 134 NO. 3

# GUNNISON COUNTRY TIMES

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# Sage grouse deemed 'endangered'

## FWS' announces long-awaited proposal to list imperiled bird

**Will Shoemaker**
*Times Editor*

Federal wildlife officials are proposing to list the Gunnison Sage-grouse with a status that affords the highest protection under the Endangered Species Act (ESA) in an attempt to avoid extinction.

In the latest turn of events in an ongoing saga over the imperiled bird, the U.S. Fish and Wildlife Service (FWS) announced a plan last week to designate the bird as "endangered" under the ESA. Simultaneously, FWS is proposing 1.7 million acres of "critical habitat" for the species' conservation.

With the proposal comes a 60-day comment period, and FWS leaders have until Sept. 30 of this year to make a final determination.

While FWS leaders have indicated for years that the bird would likely be "listed," the proposal comes close to confirming the worst fears of those locally who have worked to prevent such an outcome. At the same time, environmentalists close to the issue are hailing the recent announcement.

Over the last decade, the species' ESA status has been batted back and forth like a badminton birdie, but the latest announcement may signal a foreseeable end to the uncertainty — though not in the direction that many locals hoped it would go.

Countless conservation easements, habitat improvement projects and efforts aimed at stemming the tide of regulation — should the grouse ultimately receive ESA protection — have consumed local government leaders and landowners alike for the better part of a decade.

FWS officials recognize that the Gunnison Basin population of the bird — by far the largest — is stable. It's declines to six other, satellite populations of the grouse throughout southwest Colorado and southeastern Utah that appear to have swayed FWS officials.

"The ability of all remaining populations and habitat areas to retain the attributes required for long-term sustainability of this landscape-scale species is highly diminished, causing the species to meet the definition of endangered," FWS leaders wrote in a prepared statement last week.

Sage grouse ▸ A8

# Mueller trial enters first week

Frederick Mueller, second from left, appears to wipe tears from his face as lead defense attorney Mike DeGeurin, at right, and his team observe proceedings.

*Photo by Matt Smith*

## Sides present opening arguments, begin calling witnesses

**Laura Anderson**
*Times Staff Writer*

The first week of proceedings in the trial of Frederick Mueller, accused of first-degree murder in the death of his wife, has been slow going.

It took three days last week to narrow a jury pool of 600 down to 14, and a day-and-a-half to wade through the testimony of the first three witnesses, who were called to the stand following opening statements on Jan. 10. But at the urging of Judge J. Steven Patrick for proceedings to pick up momentum, by mid-day Wednesday — following about three days of testimony — 11 witnesses had taken the stand.

Mueller, a businessman from San Angelo, Texas, was charged in February of last year with the premeditated murder of his wife Leslie, whose body was recovered from Cottonwood Creek in rural Hinsdale County on May 3, 2008. The cause of death was originally thought to be an accident. However, investigators took four years to build a case against Mueller.

According to special prosecutor Matthew Durkin of the Colorado Attorney General's Office, Leslie Mueller's injuries, or lack thereof, "tell the story of her death." Though Mueller claimed his wife fell 15 to 20 feet off a cliff into a shallow granite-lined pool below, an autopsy showed that the victim had no major bruises, contusions or broken bones that would be consistent with sustaining such a fall.

"Two people went for a walk, only one came back," Durkin repeated during opening arguments. "The defendant is willing to tell you a story that's impossible."

But according to lead defense attorney Mike DeGeurin, the inci-

Mueller ▸ A8

# Contents of *mine* plan unveiled

## HCCA obtains proposal via *appeal, mulling over contents*

**Will Shoemaker**
*Times Editor*

Following the appeal of a decision by U.S. Forest Service leaders not to unveil the contents of a Plan of Operations for a molybdenum mine on Mt. Emmons near Crested Butte, local environmental group High Country Citizens' Alliance has obtained the document.

**INSIDE**

For a map depicting a preliminary Plan of Operations for a molybdenum mine on Mt. Emmons, see page **A4**.

While the 80-page plan has not been formally accepted by the Forest Service — and is likely to change in coming months — HCCA leaders say the document offers a glimpse of what a mine on Mt. Emmons would look like. And, it's no surprise, they're not pleased — due in large part to potential impacts to

Mine ▸ A4

# The day cattle skied Schuykill Ridge

## Backcountry skiers make heroic efforts to save bovines stranded at 11,400 feet

**Chris Dickey**
*Times Publisher*

It's part "City Slickers" and part Jon Krakauer book.

In one story, there's a group of urban dwellers (starring Billy Crystal) who find inspiration and happiness by a calf named Norman that they save while on a trumped up cattle drive. Then there are the real-life stories of extreme outdoor adventure, including one about an ill-fated Mount Everest expedition, that made the author famous.

Cattle ▸ A8

# Cattle

▶ from page A1

Except neither Hollywood, Krakauer — or Walt Disney, for that matter — could make up what transpired in the mountains above Crested Butte this past Sunday and Monday.

Imagine the surprise of a group of four avid backcountry skiers when, on Sunday, they crested a knoll to find cattle atop a ridge at about 11,400 feet, stranded amidst a sea of snowy peaks.

One was a heifer, they were later told.

"I guess that's a younger cow," said one of the four, Jon Brown of Gunnison, laughing at the group's lack of agricultural terminology.

Upon inspection, the group — which also included longtime Crested Butte adventurers Billy Laird, Pat O'Neill and Josh Shifferly — discovered two other bovines. One was obviously dead. The other was down, nearly covered in snow, but breathing.

Cattle grazing in the Gunnison Basin high country are typical in the summer months, but most get herded back to their home ranches come fall. Sometimes, however, strays don't make it. Last year, for example, at least 11 cattle belonging to Bill Trampe went missing and weren't found until the dead of winter, most of them frozen inside a dilapidated cabin near Conundrum Hot Springs, high in the Elk Mountains between Crested Butte and Aspen.

Back at the high point of what is known locally as Schuykill Ridge, Laird was able to get cell reception. He called his wife, Julie, to see if she could locate the cattle's owner. The group then skied down their intended run, a steep, avalanche-prone, expert-only, backcountry chute.

By the time they reached the valley bottom, along the Slate River north of Crested Butte, Laird had received a call from lifelong Gunnison Basin rancher Curtis Allen. The cattle were his.

"I said, 'Do you want us to try to get them down?,'" Laird recalled. "He said, 'That'd be awesome.'"

So back up the mountainside, all 2,500 vertical feet of it, they went, using a common backcountry technique where "skins" are applied to the bottom of skis to give them traction for climbing uphill.

"We just wanted to save a couple of cows and help a local rancher," O'Neill explained in an e-mail to the *Times*.

Except, the skiers couldn't exactly herd the livestock off the mountain. The cattle had been camped out in a small area along the ridge where the snow had been packed down hard.

"We could push on them and get them moving," Laird said. "But as soon as they'd get off that tracked out area, they'd sink up to their belly into the snow."

The mission was aborted after about an hour, but the thought of rescue lingered.

Cattle ▶ A12

Two cattle remained standing as a group of skiers began making their rescue plans.

*Courtesy photo*

# Sage grouse

▶ from page A1

### Impacts from listing still unclear

Agency leaders contend that the Gunnison Sage-grouse now occupies only approximately seven percent of its historic range.

Habitat loss and fragmentation from roads and powerlines is the principal threat to the species, according to FWS.

"From what I understand and what we've been told, 'endangered' means the full force of the law," said Gunnison County Wildlife Conservation Coordinator Jim Cochran.

Of course, exactly what that means is still unclear.

It's long been feared that a listing decision could mean far-reaching federal regulations on land use. However, Patty Gelatt, FWS' supervisor in Grand Junction, suggested that is not necessarily the case.

Should the agency ultimately decide to list the bird, critical habitat would only come into play if a proposed activity includes a federal "nexus." For example, if that proposal is on federal land, requires a federal permit or government funding is involved, she said.

Under a listing scenario, consultation with the FWS could be required for private landowners if its determined that a proposal would be a "take" of the species, she added.

### Programs could lessen the blow

But initiatives in the Gunnison Basin over the course of the last decade have sought to lessen the impact on both landowners and users of public land, should the species be listed.

The Candidate Conservation Agreement with Assurances (CCAA) — an agreement between Colorado Parks and Wildlife and FWS — seeks to allow ranchers the opportunity to continue their operations much as they always have despite a potential listing. Last summer, 11 landowners rangewide had entered into the program and 16 more were in the process of being approved — totalling 51,000 acres in all.

Likewise, the local office of the Bureau of Land Management has taken the lead in developing a similar sort of agreement for public lands. It's called a Candidate Conservation Agreement (CCA), and would provide a management scheme for how current activities could continue.

FWS has yet to approve the document, though grouse conservation proponents are hoping that will happen prior to a final listing determination.

Gelatt called this a "screening tool" for specific proposals on public land. "We're supportive of the CCA," she said, noting that

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## FWS HOSTING PUBLIC MEETINGS

The U.S. Fish and Wildlife Service will conduct three informal public meetings on the agency's proposal to list the Gunnison Sage-grouse as an "endangered" species under the Endangered Species Act. Meetings will be held from 5-7 p.m., and will provide an opportunity for the public to learn about the proposal and provide written comments on the listing proposal. Dates and locations are as follows:

**Jan. 23**
Gunnison Fairgrounds, Fred R. Field Western Heritage Center, 275 S. Spruce St., in Gunnison

**Jan. 30**
Holiday Inn Express, 1391 South Townsend Ave., in Montrose

**Jan. 31**
Dove Creek Community Center, 403 West 7th St., in Dove Creek

For more information about the Gunnison Sage-grouse and to obtain a copy of the proposal, visit http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse. To learn more about the Endangered Species Program, visit http://www.fws.gov/endangered/.

# Mueller

▶ from page A1

dent was a "tragic accident."

"What you're going to see is there has been some distortion of evidence, exaggeration of evidence," he told the jury during his opening statements. "It started four years ago and continues today."

He contended that Mueller could not have seen his wife fall from where he was standing, and that investigators never chose to disclose to Mueller that his wife's actual cause of death was drowning, not from injuries sustained from falling off a cliff, as Mueller described.

Mueller was seen wiping tears from his eyes during opening arguments as DeGuerin described how Mueller told his then-14-year-old son Alex that his mother had died. Alex Mueller was at his parents' home in Lake City on the afternoon of Leslie Mueller's death, and is expected to testify in the trial.

Seated in support of Mueller during opening arguments were both his parents and those of his late wife, as well as the Muellers' two daughters and Frederick Mueller's current wife Wendee Walker-Mueller.

### First responders' accounts

Justin Sparks took the stand on Monday, recalling that Mueller drove to his house on the evening of the incident. He said that Mueller was frantic and yelling that his wife had fallen and that he believed her to be dead.

Sparks called 911 and told dispatch that, according to Mueller, the accident occurred up Cataract Gulch.

However, Sparks joined Mueller and they began driving toward Cottonwood Creek, said Sparks, which shares a trailhead with Cataract Gulch but follows a different trail.

Sparks said on the drive he began to become uneasy about Mueller, who claimed his wife fell off a cliff, hit her head and shoulders and drifted face-down into the stream.

He said he told Mueller to return to the trailhead to redirect responders while Sparks searched for Leslie. After running upstream about a quarter-mile, he saw her lime-green jacket. Her head and torso were submerged under a log, he said. Sparks recalled that the water was shallow and that Mueller's right side was resting on river rocks. The water was about knee-deep on her left side, he said.

Sparks said he pulled her onto the side of the creek and began performing CPR, though he believed her to be dead at that time. After rescuers arrived, Sparks testified that Mueller acted like a bystander as they moved his wife out of the creek and into a vehicle.

On Tuesday morning, the prosecution called to the stand Marcia Connell, an EMT who responded to the scene and attempted to resuscitate the victim. She testified that Mueller seemed "flat," and that he didn't seem to express much emotion.

Deputy District Attorney Keith Mandelski asked Connell if the defendant's physical behavior was "similar" to other cases she'd encountered where one family member was injured while others were left unharmed, as in a car accident.

"No," replied Connell. Earlier in her testimony, she recounted, "It impacted me that he didn't seem to have expressive emotions."

### Pathologist recounts autopsy

Dr. Michael Benziger, a forensic pathologist who performed the autopsy on Leslie Mueller, took the stand Tuesday. He described that the primary mechanism of death by drowning is asphyxia, which is triggered by a rise in carbon dioxide in the bloodstream. That causes the instinctual reaction to breathe, he said. After about a minute and a half, most people will take a breath or pass out, at which point water is respirated into the lungs. He said the entire process of drowning can take five to six minutes.

Benziger noted that Leslie Mueller did not have injuries consistent with a fall, such as broken wrists or hands, which would come from attempting to break a fall.

He also noticed that all of her clothes were intact and virtually undisturbed, except that she was missing one shoe, which was never recovered. He said she had quite a bit of blood around her face and neck, due to an incision made in her throat in an attempt to resuscitate her.

She had very few injuries, and a full-body x-ray found no broken bones. She did have a "goose egg" bump on her forehead, Bensizer said, but further investigation showed that it was not a significant injury and that her skull was undamaged. She likely received the bump shortly before her death, he said.

"I do not feel that this would have rendered her unconscious," Benziger testified. "It would startle you, it would hurt, but it would not render you unconscious."

Benziger was asked if he'd ever performed an autopsy on a body that had been carried down a mountain stream. Benziger replied that he had. He said that bodies get beat up "pretty readily" during those types of situations and that clothing will often be disturbed and damaged.

"There were no significant injuries related to being taken down a mountain stream," he added. Benziger determined that her cause of death was drowning.

For more up-to-date coverage of the Mueller trial, visit www.gunnisontimes.com. Also, stay tuned for continued coverage in future issues of the *Times*.

*(Laura Anderson can be reached at 970.641.1414 or laura@gunnisontimes.com)*

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projects that would fall outside its scope would still require consultation.

Megan Mueller, a biologist with Denver-based environmental group Rocky Mountain Wild, suggested that both the federal-lands CCA and the private-lands CCAA "will reduce the regulations even more for people in Gunnison County," should the sage grouse become listed.

Further, Mueller noted that federal funding — for conservation planning and protection of habitat — becomes available only when a species is listed.

**Litigation on the horizon?**

Additionally, for the last six years, Gunnison County's own sage grouse preservation efforts have taken flight through a program that includes land use, conservation and education components.

But what more can be done?

"I think you'll hear that question everyplace," said Cochran. "What more can be done, besides stopping all human activity?"

In 2000, FWS decided that declines in the population of the Gunnison Sage-grouse made it warranted for listing — thus designating the bird a "candidate" species.

Then, in 2006, FWS determined that listing the bird was not warranted, thereby removing it as a candidate species. But it was subsequently discovered that Bush Administration officials improperly interfered with decision-making for several species, including the Gunnison Sage-grouse.

In September 2010, FWS again designated the sage grouse a candidate species. And a monumental settlement between FWS and two environmental groups was reached in 2011 that committed the agency to a timeline for making final listing decisions for the Gunnison Sage-grouse and other species.

For Mark Salvo of WildEarth Guardians — one of those two environmental groups — FWS' proposed "endangered" designation was no surprise.

"It's important for conservation of the Gunnison Sage-grouse," he said.

For a species whose fate has been largely driven by one lawsuit after another, time will tell whether FWS' final determination in September is actually the end-all to more than a decade of regulatory uncertainty.

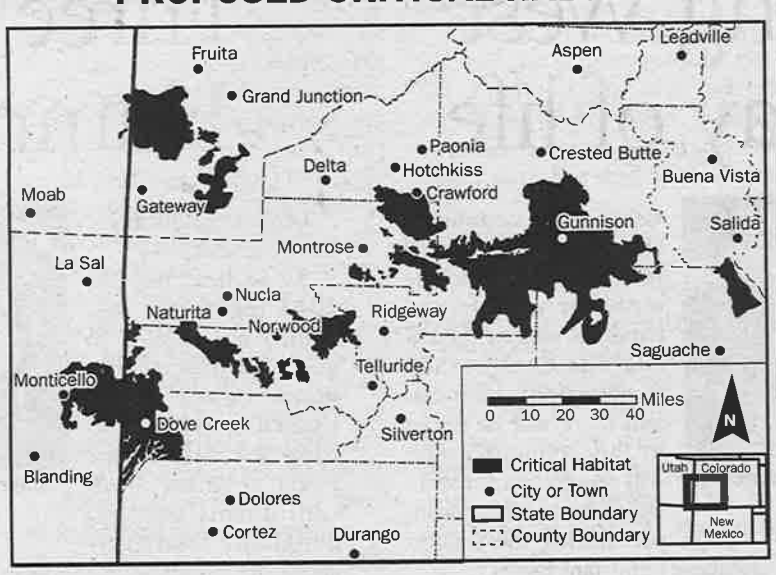
In 2006, Colorado Cattlemen's Association filed a suit in support of FWS' decision not to list the sage grouse.

The association last week decried the recently proposed listing of the bird.

"There is much to understand and react to before a decision to file a lawsuit is made, not the least of which is close consultation with our members and affiliated local cattlemen's associations who will be impacted by such a decision by FWS," said Terry Fankhauser, executive vice president for the group. "At this time, we would not rule out this legal avenue, though."

*(Will Shoemaker can be contacted at 970.641.1414 or editor@gunnisontimes.com)*

**GUNNISON SAGE-GROUSE PROPOSED CRITICAL HABITAT**




*Map/Gunnison Country Times*

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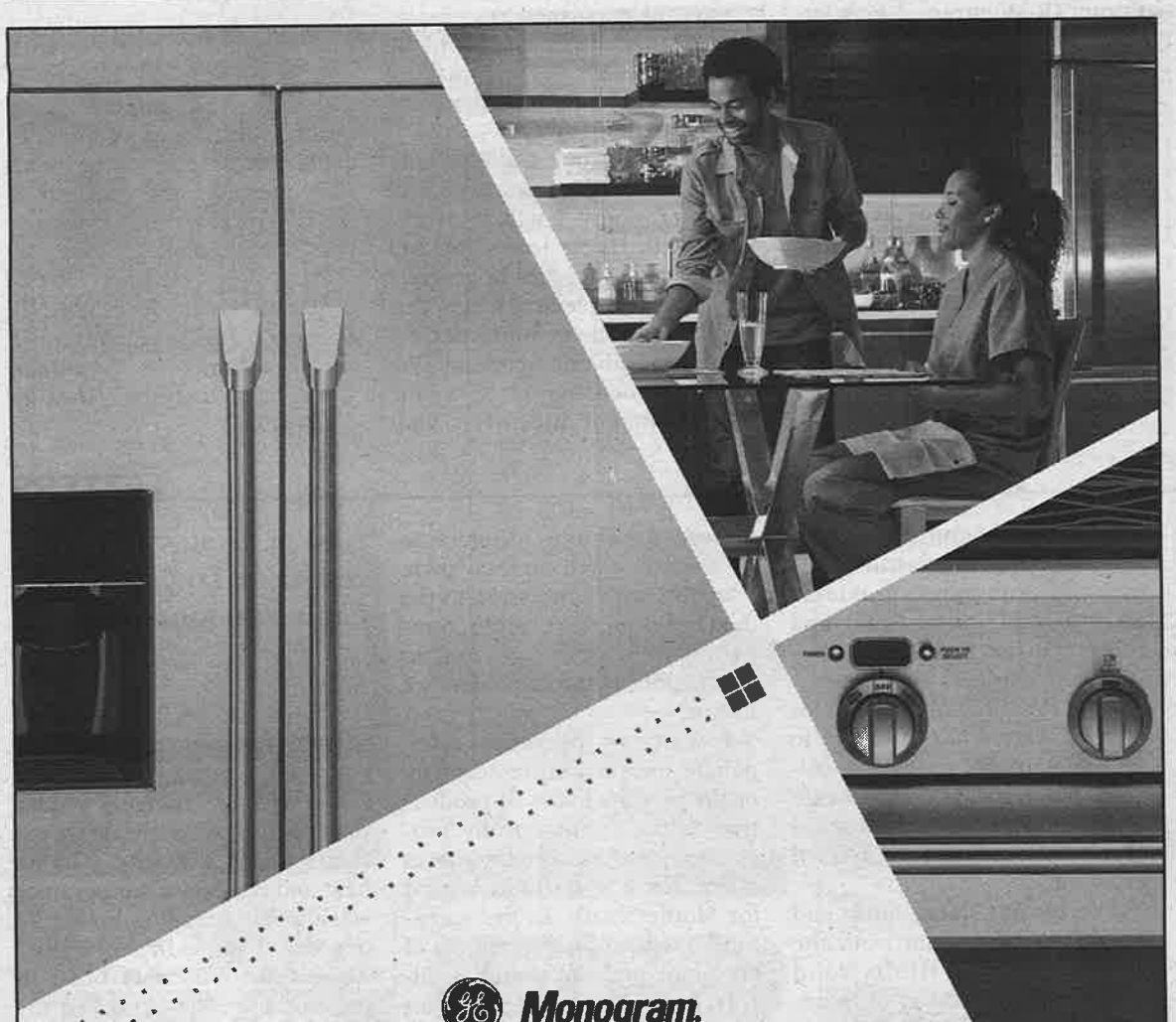

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