



## Greater Sage Grouse Habitat – Bureau of Land Management Will Reevaluate Land Withdrawals

### At Issue? Impacts on 10 million acres of public lands

On May 11, 2021, the Bureau of Land Management (BLM) announced it will take another look at its greater sage grouse conservation plans and the agency's process related to the possible withdrawal of up to 10 million acres of habitat from mineral location and entry. See the BLM announcement [here](#).

The agency's long-delayed announcement comes after two federal court judges ordered the agency to re-think its plans: (1) a May 2020 federal Court's decision in Montana vacating oil and gas lease sales on BLM lands in Wyoming and Montana [see opinion [here](#)], and (2) a February 2021 federal Court's decision in Idaho that vacated the Trump administration's decision to stop withdrawal of millions of acres of public lands for mineral development [see opinion [here](#)]. The focus of the courts' opinions is BLM's management plans that were designed to support sagebrush ecosystems on which sage grouse rely.

### Background

In 2015, the Obama administration's Fish & Wildlife Service (FWS) determined that listing the greater sage-grouse under the Endangered Species Act was "not warranted." The agency decided that the primary threats to the species had been ameliorated by conservation efforts implemented by federal, state, and private landowners.

Two years later in 2017, without completing an environmental review of the decision, the Trump administration canceled the possible withdrawal of up to 10 million acres of federal lands in the West from mineral development. That decision was

overturned in February 2021 by U.S. District Court Judge B. Lin Winmill of the District of Idaho who ordered the BLM to consider whether or not a mineral withdrawal is needed for greater sage grouse conservation. The judge ordered the agency to re-initiate the environmental review process pursuant to the National Environmental Policy Act (NEPA). On May 10, 2021, the BLM filed a status report with the court, confirming it would comply with the Court's order.

The February 2021 ruling in Idaho followed the May 22, 2020 decision of a U.S. District Court Judge in Montana in a lawsuit challenging BLM's resource management plans, the agency's Instruction Memoranda related to the greater sage grouse, and subsequent oil and gas lease sales on public lands. The claims were based on alleged violations of the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), and the Federal Land Policy and Management Act (FLPMA). In that case, Chief District Court Judge Brian Morris held that BLM's 2018 Instruction Memorandum and the agency's subsequent oil and gas lease sales in Wyoming and Montana violated FLPMA. The Court remanded the matters back to the agency for review and ordered the BLM to undertake actions consistent with the opinion.

The impact of Judge Morris's order was substantial. The Court stated:

The Court recognizes that the **Government and states will need to return millions of dollars to the interested parties who won lease sales**, but that economic harm does not rise to the level of harm that the Ninth Circuit has previously considered significant enough to warrant remand without vacatur. See Cal. Cmty. Against Toxics, 688 F.3d at 993-94 (noting that remand with vacatur would disrupt a "billion-dollar venture").

Given the agency's errors, the Court cannot see "a serious possibility that the [agency would] be able to substantiate its decision on remand." Allied-Signal, Inc., 988 F.2d at 151. The Court instead will follow the normal procedure in the Ninth Circuit and **vacate the 2018 IM and the lease sales in their entirety except for the portion of the Butte parcels that did not cover sage-grouse habitat.**

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