



## **BLM Releases Instruction on Prioritizing Development in Greater Sage-Grouse Habitat**

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On September 1, 2016 the Bureau of Land Management (BLM) released internal guidelines for prioritizing oil and gas development within greater sage-grouse habitat. The guidelines make clear that BLM should first look at non-habitat proposals before addressing proposals within greater sage-grouse habitat. This prioritization is to apply whether the proposed oil and gas project is for development of an existing lease or a nomination for a new lease.

The BLM's guidelines are part of a series of Instruction Memoranda (IM) providing guidelines for implementation of BLM's greater sage-grouse land use plans and plan amendments, which were finalized September 2015. Of note, a specific IM regarding mitigation, which will impact operators most, is still forthcoming.

The IM addressing prioritization, IM No. 2016-146: Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization O&G Prioritization IM), outlines how BLM field staff should prioritize oil and gas applications for permits to drill and other development within greater sage-grouse habitat, and how BLM should address oil and gas nominations for new leases in greater sage-grouse habitat.

### **O&G Prioritization IM**

While BLM Director Neil Kornze is quoted in the Bureau's press release as saying that the IMs will "provid[e] the flexibility needed to respond to local situations and concerns . . ." the O&G Prioritization IM authorizes BLM field offices to (1) refuse to issue further leases in greater sage-grouse habitat, and (2) refuse to permit further development in greater sage-grouse habitat on valid existing leases.

The O&G Prioritization IM states that objectives of the IM are "aimed at avoiding or limiting new surface disturbance in Priority Habitat Management Areas (PHMAs), . . . and minimizing surface disturbance in General Habitat Management Areas (GHMAs); and to provide clarity to the BLM Field Offices on how to move forward with oil and gas leasing and development activities within designated GRSG habitats." O&G Prioritization IM at 2. The O&G Prioritization IM also calls for preparation of an Environmental Impact Statement (EIS) where potential environmental impacts of a proposed action "could be significant." *Id.* at 2.

There is little clarification, at this time, as to how the mechanics of the prioritization will work. For instance, it is uncertain whether BLM will state there is a deficiency with a proposed application for permit to drill (APD) and so will delay processing due to a deficiency, or whether BLM will utilize some other mechanism for delaying processing an APD proposed in greater sage-grouse habitat.

### **Specific concerns with the O&G Prioritization IM**

#### *Prioritization sequence for permit processing in or near greater sage-grouse habitat:*

- Re-states that the purpose of the IM is to “sequentially prioritize the leasing and development of oil and gas resources on public lands outside of GRSG habitat based on the GRSG Plans’ conservation goals to avoid or limit new surface disturbance in [PHMAs] and minimize surface disturbance in [GHMAs].” *Id.* at 9.
- Directs Field Offices to first consider project proposals in non-greater sage-grouse habitat, then GHMA, then PHMA.
- Suggests prioritization factors including whether the proposal is an area with existing production facilities and surface disturbance; in an existing Federal oil and gas unit; in an area having completed field-development EISs or Master Development Plans.
- Directs Field Offices to process project proposals in greater sage-grouse habitat anticipated to result in a net conservation gain before all other proposals in habitat.
- Provides that conditions of approval (COAs) must be attached to the permit, including “all appropriate conservation objectives and mitigation requirements, such as required design features (RDF) from the GRSG land use Plans.” *Id.* at 10.
- Authorizes Field Offices to consider project proposals on a first-in/first-out basis only after consideration of the other prioritization factors.

#### *Prioritization sequence for leasing in or near greater sage-grouse habitat:*

- Directs Field Offices to first consider nominations for leases in non-greater sage-grouse habitat, then GHMA, then PHMA.
- Emphasizes that BLM has ***discretion*** in offering lands for leasing
- Requires that if BLM does offer greater sage-grouse habitat lands in a competitive oil and gas lease sale, the State Office is required to provide a briefing to the BLM Washington Office 15 days prior to the first National Environmental Policy Act (NEPA) documentation for the lease sale is posted or released for public comment, and again 15 days before a lease sale is held, explaining any protests related to greater sage-grouse issues and how the State Office plans to resolve the protests.
- Where BLM decides not to offer a nominated parcel for lease, BLM must only explain to the nominator why the parcel is not being offered.

BLM states at the end of the O&G Prioritization IM that it must honor valid existing rights, but also emphasizes that it “has the authority to apply reasonable [COAs].” *Id.* at 11.

Overall, the O&G Prioritization IM makes clear to BLM Field Offices that no new leases should be issued in greater sage-grouse habitat, and that no new development should be authorized in greater sage-grouse habitat without first ensuring extensive and costly conditions of approval are incorporated.

### **Greater Sage-Grouse IMs:**

The seven BLM greater sage-grouse implementation IMs issued on September 1 include:

[IM 2016-145](#), Tracking and Reporting Surface Disturbance and Reclamation

[IM 2016-144](#), Gunnison and Greater Sage-Grouse (including the Bi-State Distinct Population Segment) Habitat Assessment Policy

[IM 2016-143](#), Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization

[IM 2016-142](#), Incorporating Thresholds and Responses into Grazing Permits/Leases

[IM 2016-141](#), Setting Priorities for Review and Processing of Grazing Authorizations in Greater Sage-Grouse Habitat, DD: 2/1/2017

[IM 2016-140](#), Process for Assessing, Coordinating, and Implementing Greater Sage-Grouse Land Use Plan Adaptive Management Hard and Soft Triggers

[IM 2016-139](#), Policy for Resource Management Plan Effectiveness Monitoring for Renewable Resources with Additional Guidance for Plans Implementing the Greater Sage-Grouse Conservation Strategy

The full text of each IM is available at [www.blm.gov/sagegrouse](http://www.blm.gov/sagegrouse) in the Documents and Resources section.

For more information on the BLM greater sage-grouse IMs or implementation of the BLM greater sage-grouse land use plans and plan amendments, please contact [Theresa Sauer](#).