

Bureau of Land Management Announces NEPA Scoping Process to Incorporate Greater Sage-Grouse Conservation Measures in 68 Resource Management Plans and 9 Land and Resource Management Plans

Bureau of Land Management Announces NEPA Scoping Process to Incorporate Greater Sage-Grouse Conservation Measures in 68 Resource Management Plans and 9 Land and Resource Management Plans

Insight — 12/9/11

On December 9, 2011, the Bureau of Land Management (BLM) published a Notice of Intent to prepare Environmental Impact Statements (EISs) and Supplemental EISs to evaluate sage-grouse conservation measures in 77 land use plans across the western states. See 76 Fed. Reg. 77,008 (Dec. 9, 2011). BLM is the lead agency for this process, and the U.S. Forest Service (USFS) will be a cooperating agency. The EISs will be managed in two regions. The Eastern Region includes BLM land use plans in Colorado, Wyoming, North Dakota, South Dakota, and parts of Utah and Montana. The Western Region includes land use plans in Idaho, Nevada, Oregon, California, and parts of Utah and Montana.

In April 2010, the U.S. Fish and Wildlife Service (FWS) published its listing decision for the greater sage-grouse, indicating that the listing was "Warranted but Precluded" due to higher listing priorities inside the agency. The FWS identified conservation measures to include in land management agencies' land use plans as the principal regulatory mechanism to assure adequate conservation of the species. The FWS has a timeline for its listing decision, and BLM and USFS have established a deadline of incorporating conservation measures into land use plans by September 2014, in advance of the FWS deadline, in order to avoid a potential listing of the species. The FWS timeline and related BLM efforts could be affected by sage-grouse listing litigation pending in the federal district court in Idaho. See *Western Watersheds Project v. Fish and Wildlife Service*, 10-cv-229 (D. Idaho).

Comments submitted during the scoping period are due February 7, 2012. Additional public comment opportunities will accompany the EISs and SEISs. Documents pertaining to the Eastern region will be coordinated by

BLM's Wyoming State Office in Cheyenne, Wyoming. Documents associated with the Western Region will be managed by BLM's Nevada State Office in Reno, Nevada. While public lands in Utah fall in either region, all comments relating to Utah should be sent to the Western Region.

BLM drafted an Instruction Memorandum (IM) providing direction to BLM field offices for greater sage-grouse interim management which apply to ongoing and proposed authorization of activities that affect the sage-grouse and its habitat in areas managed by the agency. The most recent draft was issued for federal and state agency comment on November 23, 2011. The interim measures prescribed by the IM are designed to minimize sage-grouse habitat loss and restore and maintain habitat until long-term management measures are incorporated into the applicable land use plans. Under this IM, states, working with BLM, will have the opportunity to create their own conservation plans if they are legally enforceable and adopted by the state BLM office, as is the case in Wyoming. Wyoming Governor Matt Mead, Secretary of the Interior Ken Salazar, and representatives of western states met December 8, 2011 in Cheyenne, Wyoming to discuss Wyoming's Sage-Grouse Core Area Protection strategy and other state-led efforts to keep the sage-grouse from listing under the Endangered Species Act. The November 23, 2011 draft IM is not yet final and is subject to change.

For more information about sage-grouse related law, policy, or litigation, contact Bill Myers at (208) 383-3954 or Maryt Fredrickson at (307) 778-4214.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.