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BLM and the Forest Service Finalize Greater Sage-Grouse Land Use Plan Amendments Across the West

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On September 24, 2015, the Bureau of Land Management (BLM) and the U.S. Forest Service issued their final Record of Decision (ROD) on the sage-grouse land use plan amendments, ushering in sweeping changes to public land management across 10 western states. The land use plan amendments were initially triggered by the Fish and Wildlife Service's (FWS or the Service) decision in 2010 that the greater sage-grouse was "warranted" for listing under the Endangered Species Act (ESA), but that the listing was precluded by higher priority listing activities. The warranted finding was premised on the existing threats to the sage-grouse across its range, as well as the lack of adequate regulatory mechanisms to conserve the species. BLM's and the Forest Service's land use plan amendments are a response to the latter finding and will be implemented with the goal of ultimately reducing the identified threats. On September 22, 2015, the FWS endorsed the plan amendments, announcing its decision that listing the greater sage-grouse was no longer warranted in light of historic conservation efforts on the part of BLM, the Service, and state, local, and private stakeholders.

The plan amendments themselves will require significant changes in land use patterns and practices, and have already triggered four legal challenges—one from the State of Idaho challenging the Idaho plan, one from the State of Nevada challenging the Nevada Plan, another from a coalition of northern Nevada counties and mining companies challenging the Nevada plan, and one from the Wyoming Stock Growers Association challenging the Wyoming plan. The lawsuits allege violations of the Federal Land Policy and Management Act, National Environmental Policy Act, National Forest Management Act, and other laws.

The land use plans generally divide sage-grouse habitat into Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA). Within PHMA, the final plans designate 10 million acres of sagebrush focal areas (characterized as the "best of the best" habitat "essential for the species survival"), which BLM and the Forest Service have proposed be withdrawn from mineral entry. Pending completion of the two-year withdrawal process, the sagebrush focal areas are temporarily segregated from mineral entry.

Other significant land management changes under the plan amendments

generally include:

- A 3% surface disturbance cap on land uses in PHMA in states other than Wyoming, where a 5% disturbance cap was imposed, consistent with Wyoming's Sage-Grouse Executive Order. The 3% cap is subject to exception where the project applicant can show a net conservation gain through offsite mitigation, methods for which have not yet been fully defined.
- A density disturbance cap of one energy or mining facility per 640 acres.
- Conservation buffers around sage-grouse communal breeding locations—known as leks—which generally prohibit surface disturbance within 3.1 miles of active leks, except in Wyoming, where lek buffers are 0.6 miles in PHMA and 0.25 miles in GHMA, and in South Dakota, where lek buffers in GHMA are 0.6 miles.
- Designation of PHMA and GHMA as open to fluid mineral leasing, but subject to no surface occupancy stipulations, with the exception of Wyoming (no surface occupancy stipulations will only apply within 0.6 miles of a lek in PHMA and within 0.25 miles of a lek in GHMA), Colorado (areas within one mile of both PHMA and GHMA are closed to leasing, other areas within PHMA can be leased subject to no surface occupancy stipulations, and areas within two miles of a lek in GHMA can be leased subject to no surface occupancy), and South Dakota and portions of Montana (in GHMA, areas within 0.6 miles of a lek are subject to no surface occupancy stipulations, and the remaining area is open to leasing).
- Designation of PHMA as exclusion areas and GHMA as avoidance areas for wind energy development, except in Wyoming, where PHMA is designated as avoidance and no restrictions are placed on GHMA and other minor exceptions for wind projects in South Dakota.
- Designation of both PHMA and GHMA as exclusion areas for solar energy development, with minor exceptions in GHMA in some states such as Oregon, North Dakota, and portions of Montana.

As public land users and other stakeholders mull over the final land use plan amendments, concerns over how the agencies will implement and enforce the changes abound. Legal challenges to key provisions of the plans also raise questions about how the Service's "not warranted" finding, which is closely tied to the plans, would fair if those challenges are successful. For more information on the not warranted finding and proposed land withdrawals, readers can follow the embedded links.

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