

Overview of changes to BLM sage-grouse instruction memorandum on oil and gas leasing

Effective December 27, 2017, the Bureau of Land Management (BLM) posted six new instruction memoranda (IM) guiding implementation of the current management plans governing conservation and management of greater sage-grouse habitat across 10 states. These IMs revise or supersede guidance issued by the BLM in September 2016 and, overall, could undermine the terms and commitments of these plans. The most wholesale changes are to the guidance on implementing the oil and gas leasing and development prioritization objective.

IM 2016-143 <https://www.blm.gov/policy/im-2016-143>

IM 2018-26 <https://www.blm.gov/policy/im-2018-026>

While the BLM's original guidance was not as strong as we would have liked and left room to undermine the requirements, commitments and overall goals of the greater sage-grouse plans, the new guidance seems to be moving farther away from this important component of the plan.

The previous IM on oil and gas leasing and development focused on how to accomplish the objective stated in the sage-grouse plans to (emphasis added):

... prioritize oil and gas leasing and development outside of identified [priority habitat management areas] PHMAs and [general habitat management areas] GHMAs. **This is to further limit future surface disturbance and encourage new development in areas that would not conflict with GRSG.** This objective is intended to guide development to lower conflict areas and as such protect important habitat and reduce the time and cost associated with oil and gas leasing development by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

The 2016 guidance states: "The objectives of this IM are: to ensure consistency across BLM offices when implementing the GRSG Plans decisions aimed at avoiding or limiting new surface disturbance in Priority Habitat Management Areas (PHMAs), including Sagebrush Focal Areas (SFAs), 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."

In stark contrast to the current plans and previous guidance, the new guidance seems to focus on how to not take the prioritization objective seriously, stating: "In effect, the BLM does not need to lease and develop outside of GRSG habitat management areas before considering any leasing and development within GRSG habitat."

The previous guidance included not only a general commitment to look at lease nominations outside habitat first but also a set of parcel-specific factors that BLM is required to consider in evaluating proposed areas for lease. Those factors included:

Parcels immediately adjacent or proximate to existing oil and gas leases and development operations or other land use development should be more appropriate for consideration before parcels that are not near existing operations. This is the most important factor to consider, as the objective is to minimize disturbance footprints and preserve the integrity of habitat for conservation.

And also:

Parcels in areas of lower-value sage-grouse habitat or further away from important life-history habitat features (for example, distance from any active sage-grouse leks) are more appropriate for consideration than parcels in higher-value habitat or closer to important life-history habitat features (i.e. lek, nesting, winter range areas). At the time the leasing priority is determined, when leasing within GHMA or PHMA is considered, BLM should consider, first, areas determined to be non-sage-grouse habitat and then consider areas of lower value habitat.

There is no trace of these factors in the new guidance and just a general statement that does not actually point to factors affecting the greater sage-grouse or its habitat, stating (emphasis added):

BLM Offices may also take into consideration other prioritization considerations, but only insofar as they are consistent with the governing land use plan. An example would be to prioritize outside of areas where a GRSG adaptive management trigger has been tripped. **Other prioritization considerations may include office workload capacity, first-in/first-out, priority for unit obligation wells, processing the easiest applications first, operator drilling plans, operator proposals for units, potential drainage cases, and other resource values that must be considered.**

Similarly, the previous guidance included a set of prioritization factors for development – a/k/a approving drilling on existing leases - which included:

- Well locations in an area with existing production facilities and surface disturbance should be more appropriate for consideration before well locations that are not immediately adjacent or proximate to existing operations.
- Well locations within areas having completed field-development Environmental Impact Statements or Master Development Plans that allow for adequate site-specific mitigation and conformance with the GRSG land use Plans may be more

appropriate for consideration than well locations that have not been evaluated by the BLM in this manner.

- Well locations in areas of lower-value GRSG habitat or distant from important life-history habitat features (for example, distant from any active GRSG leks) may be more appropriate for consideration than well locations in higher-value habitat or closer to important life-history habitat features.

Once again, these factors have been removed altogether and replaced with a reference to applying “reasonable and appropriate site-specific measures” but no mention of prioritization.

Further, the previous guidance included a set of “other tools” to reduce impacts from oil and gas leasing and development, including mitigation, lease suspension and limiting new leasing (emphasis added):

Where a lease in PHMA or GHMA has expired because the primary term has elapsed and no drilling has occurred (or where the lease is not held by production), **the BLM will not re-offer these parcels, and may only consider offering such lands if and when an EOI is submitted and the BLM determines it is appropriate to lease the lands if located in areas open to leasing under the approved Plans.** Future leasing of the lands will be considered under the sequential prioritization approach described above, including the Factors to be Considered While Evaluating EOIs and provided that the new stipulations from the GRSG land use Plans are attached to the lease.

These other tools have also been removed from the guidance.