

Sage grouse ruling scrambles leasing outlook

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A federal judge's decision this week casts uncertainty over large areas of Western public land that the Trump administration has offered up to the oil and gas industry.

Judge B. Lynn Winmill of the U.S. District Court for the District of Idaho on Wednesday temporarily reinstated Obama-era protections for the iconic sage grouse from oil and gas drilling on federal land, pending the outcome of a broader lawsuit opposing Trump administration revisions.

Under the "energy first" agenda of the Trump White House, oil and gas leasing has shot up. Regulations perceived to hamper industry's success — like the restrictions put in place to protect the bird — have been pared away.

In Wyoming, the state with the largest share of the bird's population, 90% of a September federal oil and gas lease sale was within sage grouse habitat. It reflects a larger trend of leasing in the bird's domain across the West and is a significant shift from Obama protections that prioritized oil and gas leasing outside the bird's habitat.

Under those rules, sage grouse areas proposed for lease by industry were often withheld from sale or burdened with extensive additional requirements.

The ruling Wednesday upsets those Trump-era amendments and triggers yet another regulatory change that frustrates producers on public land.

"Every couple of years a new change, a new lawsuit decision, certainly impacts our comfort level, to be honest, with operating on federal lands," said Paul Ulrich, government affairs director for Wyoming gas company Jonah Energy and a member of the state's sage grouse management team.

Overlapping interests

The sage grouse is a ground-dwelling bird whose habitat overlaps with oil and gas interests across large areas of the West, as well as with ranchlands and some mining operations.

The bird was headed for an endangered species listing ahead of state and federal work to create conservation plans to address the gradual fragmentation of its habitat. Finalized in 2015, the plans were given a five-year trial period, with a review scheduled in 2020.

A listing would deal a significant blow to industry interests in the West and to local economies dependent on oil and gas. States like Wyoming, with the greatest number of birds at stake and more than half of its income from industry, were some of the most proactive in working on conservation plans.

A Backcountry Hunters and Anglers [study](#) from 2017 showed three-quarters of the bird's priority habitat was on federal land, but a minority overlapped with high oil and gas development potential. Still, some areas of the West saw more overlap than others. In Wyoming, where most of the bird's population resides, about half of the priority habitat overlapped with medium- to high-potential oil areas on federal land and mineral acreage.

When the Trump administration took office, the sage grouse regulations were among those reviewed for their burden on business interests — in particular the oil and gas sector.

Citing Western anger in 2017, President Trump's then-Interior Secretary Ryan Zinke promised to reform the 2-year-old conservation strategies. That led to the 2019 amendments the Idaho court stayed on Wednesday ([Greenwire](#), Oct. 17).

Although the preliminary injunction is a temporary halt to the Trump amendments, Michael Saul, a senior attorney at the Center for Biological Diversity — one of the conservation groups that had asked the federal court for the injunction — said the judge was pretty clear in his assessment that the challengers were likely to succeed on the merits of the case ([Energywire](#), Oct. 17). Conservation groups hope the Bureau of Land Management will have to continue to follow the Obama-era plans.

One wrinkle may be if BLM decides to appeal the preliminary injunction — and wins. So far, the agency has not commented on whether it is considering challenging the court order.

"Our hope would be that BLM would take this, stop trying to push through the 2019 changes but ultimately go back to the drawing board and take a broader look at 2015 plans," Saul said.

Trump amendments

Many conservation groups argue the Trump administration's changes to the sage grouse regulations were a giveaway to oil and gas.

For example, under the Obama-era plans, BLM had to meet detailed conditions in order to excuse oil and gas operators from complying with certain requirements.

"In many of the states, that required a unanimous decision from BLM, the Fish and Wildlife Service, and the state wildlife agency," Saul said.

All of them had to attest that any ecological harm caused by the project could be mitigated. That changed in 2019, when the amended plans gave BLM much more discretion to provide exemptions, even if other agencies disagreed.

One of the biggest changes has been to oil and gas auctions and BLM's decisions about where industry can look for oil and where it cannot.

Brian Rutledge, Sagebrush Ecosystem Initiative director for the Audubon Society and one of the architects of federal and state plans to conserve the bird, said Wednesday's ruling may have the largest near-term effect on leases in places like Wyoming.

The court decision affects some 800,000 acres in sage grouse habitat that is up for lease in approaching sales, according to the Wilderness Society's count. But there has also been a spike in leasing activity in recent years, brought on by an industry-friendly White House, reduced timelines for environmental review and — for a time after Trump took office — rising oil prices.

Whether the court decision will cause BLM to now enact stricter Obama-era provisions on the recently leased areas — should oil companies seek to drill on their leased acreage — is yet to be seen.

Brad Purdy, a spokesman for BLM Wyoming, said the case was being reviewed for potential impacts to current and future leases in the state.

Bruce Pendery, a lawyer for the Wilderness Society, said there is legal precedent for the Interior Department to add restrictions at the permitting phase based on the court decision.

"I think it's almost a given that BLM will have to step in and ask for a little bit more," he said.

There are a few other areas where the impacts of the preliminary injunction will be the most clear, Saul said.

For example, under its 2015 plan, Colorado had to put in place a 1-mile radius of protection around sage grouse leks, or areas where the birds gather in the spring to select a mate. Those protections had been revoked under the 2019 amendments.

Chris Arend, communications director for the Colorado Department of Natural Resources, said DNR was still reviewing the decision by the court and its impact on Colorado.

"[R]egardless of which Greater Sage-Grouse plan the courts ultimately determine should be in place, we will use that framework to maximize conservation measures on the ground working in close partnership with local communities across our state," Arend said in an emailed statement.

In Utah, around 2 million acres of general habitat management area exempted in 2019 is also now subject to protections again under the Obama-era standards.

The order also restores protections from oil and gas development to around 9 million acres of sagebrush focal areas, which were considered the most vulnerable habitat areas. Several states, including Idaho, allowed weaker protections on these lands in the 2019 amendments. However, the order does not restore protections from hardrock mining.

'More litigation'

While environmental groups argue they've secured a significant victory against the Trump administration, industry is less sure that the temporary stay heralds great change on the ground.

Kathleen Sgamma, executive director of the Western Energy Alliance, said impacts on oil and gas development would be "fairly limited."

She dismissed the judge as an advocate whom environmental groups had targeted for this case because of his past public land and sage grouse decisions.

Sgamma noted that environmental groups have been fighting leasing even before the Trump administration.

"This ruling was not a surprise," she said.

A decision in March forced BLM to amend its review of Wyoming leases from the Obama years because the agency had failed to account for the cumulative impact leasing has on climate change.

That's "further proof that they will never be satisfied until all oil and natural gas leasing is stopped," Sgamma said of environmental groups.

"The only thing for sure is more litigation," she said in an email.

Wyoming Gov. Mark Gordon (R) said in a statement yesterday he was "disappointed" in the judge's decision as the Trump amendments had made federal plans more closely resemble Wyoming's. He said lawsuits act as a "roadblock" prohibiting collaboration.

Some conservationists argue the damage to sage grouse and their habitat has already been done.

Rutledge, of the Audubon Society, said more than half of Idaho's population has been wiped out since the last count.

"We are closing in rapidly on a need for a listing," he said.

A [report](#) prepared by Western EcoSystems Technology Inc. for Audubon, the Wilderness Society and the National Wildlife Federation found that increased leasing activity between 2015 and 2019, as well as increased applications for drilling permits, would degrade the bird's habitat if the development were to occur.

Ulrich, of the Wyoming oil and gas company, said impacts vary. In Wyoming, plans have remained stable even with the uncertainties at the federal level — Wyoming's work partially inspired the federal approach taken in 2015, to protect habitat where the bird population is most healthy.

The revisions that have been heavily criticized by environmental groups didn't harm Wyoming's bird outlook, he said. Wyoming oil and gas producers have been dealing with sage grouse regulations since state plans were developed in 2008, he said.

What's frustrating is the uncertainty, he said.

"These lawsuits are irritating when we know we've done things right in Wyoming," Ulrich said. "But we can understand that the issue is larger than that."