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## Judge voids nearly 1 million acres of oil and gas leases, saying Trump policy undercut public input

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A federal judge in Idaho has voided nearly 1 million acres of oil and gas leases on federal lands in the West, saying that a Trump administration policy that limited public input on those leases was “arbitrary and capricious.”

The ruling Thursday by U.S. Chief Magistrate Judge Ronald E. Bush represented a win for environmentalists, who challenged the leasing policy as part of a broader effort to block drilling in habitat for the imperiled greater sage-grouse. The contested area spans 67 million acres across 11 Western states.

As the Trump administration has pushed to expand domestic energy production — earlier this month the Interior Department celebrated the fact that last year more than 1 billion barrels of oil were produced from drilling offshore and on public land — it has adopted several measures to curb public comment on regulatory decisions.



Male greater sage-grouse perform a mating ritual on a lake near Walden, Colo., in 2013. Environmentalists challenged the Trump administration as part of a broader effort to block drilling in habitat for the sage-grouse. (David Zalubowski/AP)

While the effort has accelerated the timeline for drilling, it has also raised legal concerns.

Drew Caputo, an attorney for the environmental group Earthjustice, said in an email Friday that administration officials “almost treat the public like an inconvenience that might slow down or get in the way of them passing out special interest favors to their friends in industry.”

“That’s anti-democratic, and it shows what they really think about the public,” Caputo said. “It’s also illegal, which is one of the reasons they keep losing environmental cases in court.”

The Bureau of Land Management issued an instruction memorandum in January 2018 aimed at speeding up leasing by streamlining environmental reviews and reducing the amount of time the public could comment on, and later protest, arrangements to drill.

“Faster and easier lease sales, at the expense of public participation, is not enough,” wrote the judge, who reinstated previous requirements that call for a 30-day public comment and administrative protest period.

Bush noted that the memo setting the new terms for leasing was issued without soliciting public comment and was “more edict in nature” than advisory.

BLM spokesman Derrick Henry said in an email Thursday that the directive at issue was part of the agency’s effort to make “common-sense adjustments” to how minerals are extracted from federal land.

“In particular, we remain committed to a simpler, more effective leasing process,” Henry said. “To do this, we have been working within our legal authorities to alleviate or eliminate unnecessary and burdensome regulations, while at the same time upholding public health and environmental protections, including sage-grouse conservation.”

Officials said they were reviewing the ruling before making a decision on whether to appeal.

The two groups that challenged the directive, the Western Watersheds Project and the Center for Biological Diversity, said the decision provided a respite for a species that faces threats to its habitat. Their abundance, or lack of it, reflects the health of sagebrush across the West, which supports hundreds of other species. Once numbering as many as 16 million, development and disease has shrunk the total number of greater sage-grouse to fewer than 500,000.

“The court wasn’t fooled by the agency’s efforts to disguise its intention to provide greater influence to extractive energies, and the sage grouse and 350 other sagebrush-dependent species will benefit from today’s win,” Talasi Brooks, a staff attorney with Western Watersheds Project, said in a statement.

Energy industry officials decried the ruling, saying the plaintiffs deliberately chose to sue in Idaho because the state does not have much oil and gas development.

“This decision is so divorced from the rule of law that you would be hard pressed [to find] another judge in the entire federal court system who would say that producing leases should be canceled because of a minor question of process,” said Western Energy Alliance President Kathleen Sgamma, whose group represents oil and gas firms and intervened in the case on the federal government’s side.

Nearly a year ago, the administration lifted Obama-era protections on nearly 9 million acres of federal land aimed at conserving sage-grouse habitat. At the time, Trump officials argued that the move would give the states greater say in setting the terms for energy development within their borders.

Skirmishes over the extent to which the public can weigh in on energy and environmental decisions has become a flash point under the Trump administration. Both the Interior Department and the Environmental Protection Agency have reversed policies on multiple occasions without soliciting public comment first, and Interior has accelerated its timeline for environmental reviews for major policy decisions. At one point, the Bureau of Land Management's regional offices established different standards for accepting public comments, with some dictating they could only be submitted in person or by fax rather than email.

During an environmental review process last year on whether to restart coal leasing on federal land, the public was given 20 days to comment. When members of Native American tribes complained and asked that the comment period be extended to between 45 and 90 days, BLM added five.

[Power companies want a rule limiting mercury pollution to stay in place. The EPA is changing it anyway.]

In March 2018, Jeffrey White, a federal judge appointed by George W. Bush, chastised the EPA for cutting the public out of a decision to delay an Obama-era rule restrict the use of pesticides that could harm farm workers.

"It is undisputed that when EPA delayed the Pesticide Rule in January, March and June 2017, it did so without providing any notice or opportunity to comment," White wrote in his opinion favoring the farm workers.

And earlier this week, activists, former federal officials and Democratic members of Congress accused the White House's Council on Environmental Quality of making it difficult for the public to comment about the Trump administration's plan to narrow the scope of the National Environmental Policy Act, a 50-year-old law that was designed to encourage public participation in decisions about major projects that affect their communities.

The CEQ would typically convene more than a half dozen hearings on a proposal to change the rules around NEPA, gatherings that would be scheduled in regions around the country, said Christy Goldfuss, a former CEQ chairman during the Obama administration.

But the Trump administration scheduled just two hearings; one in Denver and one on Tuesday in Washington, D.C. Participants repeatedly complained about the fact that they had to fly from as far as California and Florida to comment in person. One activist said it cost her \$1,000 to fly from Florida to Washington and stay in a hotel, a price she could not afford. Her bill was paid by the Moving Forward Network, a coalition of environmental justice groups.

The administration also reduced the time for public comment on the proposed NEPA changes by 30 days. "This change will silence communities that could be harmed the most by federal actions," said Goldfuss, who spoke at Tuesday's hearing the proposed changes. But Howard Feldman, the American Petroleum Institute's senior director for regulatory and scientific affairs, testified that the law had become so burdensome it needed to be overhauled.

Chase Huntley, who directs The Wilderness Society's climate and energy program, said in an interview Friday that the administration seems to disregard the public's role in major development decisions, such as the oil and gas leases. "A centerpiece of this effort has been the administration's efforts to silence the public and local communities," he said.