UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and CENTER FOR BIOLOGICAL DIVERSITY, Plaintiffs, vs. RYAN K. ZINKE, Secretary of Interior; DAVID BERNHARDT, Deputy Secretary of Interior; and UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the United States, Defendants, and, STATE OF WYOMING; WESTERN ENERGY ALLIANCE, Defendants-Intervenors.	Case No.: 1:18-cv-00187-REB **MEMORANDUM DECISION AND ORDER RE:** **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT (PHASE ONE) (Dkt. 135)** **FEDERAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Dkt. 140)** **DEFENDANT-INTERVENORS' MOTION FOR PARTIAL SUMMARY JUDGMENT (Dkt. 148)**

Pending before the Court are the following motions: (1) Plaintiffs' Motion for Partial Summary Judgment (Phase One) (Dkt. 135); (2) Federal Defendants' Motion for Partial Summary Judgment (Phase One) (Dkt. 140); and (3) Defendant-Intervenors' Motion for Partial Summary Judgment (Dkt. 148). The Court has heard oral argument from counsel and has carefully considered the record. Being fully advised, the Court enters the following Memorandum Decision and Order.

I. SUMMARY OF DECISION

The Bureau of Land Management ("BLM") is a federal agency that, among other things, handles the leasing of oil and gas rights on certain federal lands. The procedures for doing so changed in 2018 with the implementation of a new Instruction Memorandum ("IM"), supplying

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changed instructions to the agency's offices about how to handle such leases. This new direction is known as IM 2018-034.

Plaintiffs Western Watersheds Project and Center for Biological Diversity (collectively "WWP" or "Plaintiffs") contend that IM 2018-034 unlawfully restricts public participation in and environmental review of BLM oil and gas lease decisions that affect and threaten sage-grouse populations and habitats across the western United States. WWP asks the Court to (1) vacate the challenged provisions of IM 2018-034 and reinstate the rules previously in effect under IM 2010-117 (issued during the prior presidential administration), until BLM changes these procedures through notice-and-comment rulemaking; and (2) vacate the leases and underlying decision documents for those lease sales utilizing IM 2018-034.

Soon after the Complaint was filed, the State of Wyoming ("Wyoming") and an oil and gas industry association known as Western Energy Alliance ("WEA") (collectively "Defendant-Intervenors"), asked to intervene in the lawsuit, which the Court allowed.[1]

Initially, the Court conducted a hearing to consider WWP's request for a preliminary injunction. On September 21, 2018, under the legal standards that apply to preliminary injunctions and the requirements of federal law found in FLPMA, NEPA, and the APA, the Court concluded that WWP showed a substantial case for success on the merits of their claims and that irreparable harm was likely to result in the absence of a preliminary injunction. Further,

[1] Plaintiffs' First Amended Complaint added the Normally Pressured Lance Natural Gas Development Project ("NPL Project") to the "Final Actions" collectively challenged in the First, Second, and Third Claims for Relief; it also added a new Seventh Claim for Relief alleging that the NPL Project's Environmental Impact Statement ("FEIS") and Record of Decision ("ROD") were deficient under the Federal Land Policy and Management Act ("FLPMA"), the National Environmental Policy Act ("NEPA"), and the Administrative Procedure Act ("APA"). The proponent of the NPL Project, Jonah Energy LLC ("Jonah"), then moved to intervene, which the Court also allowed, but later severed WWP's NPL Project-related claims and transferred them to the United States District Court for the District of Wyoming. *See generally* 7/9/19 MDO (Dkt. 150).

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the Court concluded, after weighing the equities and the public interest, that such equities tipped in favor of, and the public interest was best served by, issuing a preliminary injunction.

The preliminary injunction required that, for oil and gas leases scheduled for the fourth quarter of 2018 and thereafter, BLM must (1) re-implement certain provisions contained in IM 2010-117 as to the nature of, and time periods for, public involvement and protest in the oil and gas leasing process; and (2) discontinue the use of conflicting procedures contained in IM 2018-034. In general, these interim requirements allowed a fuller opportunity for public involvement and comment in BLM's decision-making processes affecting potential oil and gas leases on federal lands in areas of federally-recognized sage-grouse habitat – at least until the merits of WWP's claims could be adjudicated and resolved.

The preliminary injunction did not apply to BLM oil and gas lease procedures on lands that are not within federally-recognized boundaries encompassing sage-grouse habitat management areas; nor did it apply to oil and gas leases that had been the subject of sales already conducted up to that point in time or that were currently scheduled in the remainder of the third quarter of 2018. Federal Defendants did not appeal the Court's preliminary injunction order, but instead postponed upcoming December 2018 lease sales in sage-grouse habitats to follow the procedures of IM 2010-117.

Following the filing of the Administrative Record for IM 2018-034 and the pertinent lease sales, on October 15, 2019, the Court conducted a hearing to consider the parties' cross-motions for summary judgment. Under the legal standards that apply to motions for summary judgment (alongside injunctions generally and, again, FLPMA, NEPA, and the APA), the Court is persuaded that the rationale behind issuing the preliminary injunction remains solid and, as such, enters partial summary judgment in WWP's favor. In doing so, the Court finds that IM 2018-034's at-issue provisions are set aside and replaced by IM 2010-117's corresponding

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provisions until BLM changes these procedures through notice-and-comment rulemaking. As with the preliminary injunction, however, this relief applies only to oil and gas lease sales contained in whole or in part within sage-grouse habitat management areas. Additionally, the June and September 2018 oil and gas lease sales in Nevada, Utah, and Wyoming that applied IM 2018-034 are set aside.

II. BACKGROUND

The Court has previously described the general contours of this case. *See* (Dkts. 54, 66, 74, 111, 150).[2] Broadly speaking, WWP challenges what it contends are unlawful actions by the Trump Administration, through Federal Defendants, to promote and expedite oil and gas leasing on public lands. WWP alleges that the manner and fact of such leasing "will adversely impact essential habitats and populations across the range of the greater sage-grouse . . ., and violate bedrock environmental laws including [FLPMA], [NEPA], and the [APA]." First Am. Compl. ¶ 1 (Dkt. 78). More specifically, WWP alleges that Federal Defendants have issued a series of orders, scientific reports, and directives that cast aside and disregard previously-implemented protections for sage-grouse populations. At the same time, contends WWP, such actions also limit or preclude opportunities for public involvement during the oil and gas leasing process – materializing in five "final" lease sales that impact sage-grouse habitats (the June 2018 Nevada, September 2018 Nevada, June 2018 Wyoming, September 2018 Wyoming, and September 2018 Utah lease sales, collectively identified as the "Phase One" lease sales). *See id*. at ¶¶ 1a, 225a-225ll; *see also* WWP's Mem. ISO MPSJ, p. 3 (Dkt. 135-1).

[2] Accordingly, for reasons of efficiency and consistency, the Court will integrate those portions of its September 21, 2018 Memorandum Decision and Order and Preliminary Injunction where appropriate, particularly when understanding that it previously examined in depth WWP's likelihood of success on the merits alongside similar (if not identical) arguments renewed here, with the Court now moving on to the actual merits of WWP's claims in the context of the parties' cross-motions for summary judgment.

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According to WWP, these leasing actions violate the 2015 Sage-Grouse Plan Amendments to BLM Resource Management Plans, FLPMA, NEPA, and the APA. *See* First Am. Compl., ¶¶ 276-307 (Dkt. 78). Further, WWP asserts, two recently-implemented BLM IMs revised previously existing BLM leasing processes without any public procedures (notice and comment) or environmental review: (1) IM 2018-026, which overrides the "prioritization" requirement of the 2015 Sage-Grouse Plan Amendments (prioritizing oil and gas leasing outside of identified sage-grouse habitat); and (2) IM 2018-034, which impacts environmental analyses of oil and gas leasing and development decisions, while limiting public notice and involvement in those decisions. *See id*. at ¶¶ 98-112. The pending motions pertain to IM 2018-034 under WWP's Fourth and Fifth Claims for Relief.

IM 2018-034, issued on January 31, 2018, claims this purpose:

> **Purpose:** This Instruction Memorandum (IM) sets out the policy of the Bureau of Land Management (BLM) to simplify and streamline the leasing process to alleviate unnecessary impediments and burdens, to expedite the offering of lands for lease, and to ensure quarterly oil and gas lease sales are consistently held in accordance with the Mineral Leasing Act (30 U.S.C. § 226), Executive Order 13783, and Secretary Order 3354.

IM 2018-034, "Purpose" p. 1 (BLMW828). It "supersedes existing policy" contained in IM 2010-117 and replaces "any conflicting guidance or directive found in the BLM Manual or Handbook." *Id*.

According to WWP, BLM issued IM 2018-034 without any public notice, comment, or environmental review, and directs BLM offices to discard procedures under the previous IM 2010-117 for environmental reviews and limit public involvement in oil and gas leasing decisions. Such action, WWP contends, violates FLPMA, NEPA, and the APA. WWP requests that the Court vacate the challenged provisions of IM 2018-034 and the leases issued in reliance on IM 2018-034, while reinstating corresponding provisions from IM 2010-117 until BLM

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