

RAFAEL M. GONZALEZ, JR.  
Acting United States Attorney  
CHRISTINE G. ENGLAND, Idaho State Bar No. 11390  
Assistant United States Attorney  
District of Idaho  
1290 West Myrtle Street, Suite 500  
Boise, ID 83702  
Tel: (208) 334-1211; Fax: (208) 334-9375  
Email: [Christine.England@usdoj.gov](mailto:Christine.England@usdoj.gov)

TODD KIM  
Assistant Attorney General  
LUTHER L. HAJEK, CO Bar No. 44303  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
999 18th Street, South Terrace, Suite 370  
Denver, CO 80202  
Tel: (303) 844-1376; Fax: (303) 844-1350  
E-mail: [luke.hajek@usdoj.gov](mailto:luke.hajek@usdoj.gov)

*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT, <i>et al.</i> ,	)	Case No. 1:16-cv-00083-BLW
Plaintiffs,	)	
v.	)	<b>DEFENDANTS' STATUS REPORT</b>
U.S. DEPARTMENT OF THE INTERIOR, <i>et al.</i> ,	)	
Defendants.	)	

---

Defendants U.S. Department of the Interior *et al.* hereby submit this status report pursuant to the Court’s May 24, 2021 Order, ECF No. 283.

The background of this case is explained in Defendants’ May 10, 2021 Status Report, ECF No. 282, and Defendants provided an update in the July 9, 2021 Status Report, ECF No. 285. The current status of the U.S. Bureau of Land Management’s (“BLM”) and the U.S. Forest Service’s (“Forest Service”) evaluation of Sage Grouse policy is discussed below.

BLM is currently evaluating three separate aspects of Sage Grouse policy. First, on August 13, 2021, BLM published a notice in the Federal Register announcing that it has re-initiated a process under the National Environmental Policy Act (“NEPA”) to evaluate a proposal to withdraw approximately 10 million acres of land from location and entry under the mining laws to conserve Sage Grouse habitat. *See* 86 Fed. Reg. 44,742 (Aug. 13, 2021). BLM’s Federal Register notice responds to the Court’s order granting partial summary judgment to Plaintiffs on that claim and remanding the action back to the Department of the Interior. *See* Feb. 11, 2021 Mem. Decision and Order, ECF No. 264.

Second, BLM is evaluating existing policy regarding compensatory mitigation, which is challenged in Plaintiffs’ Sixth Claim. *See* First Supp. Compl. ¶¶ 188-93. That claim is directed towards policies initiated during the prior administration and set forth in certain Secretary’s orders and guidance documents, including Secretary’s Order (“SO”) Nos. 3349 and 3360, Solicitor’s Office M-Opinion M-37046 and Instruction Memorandum (“IM”) 2019-018. *Id.* ¶ 189. Following her confirmation, Secretary of the Interior Debra Haaland issued Secretary’s Order No. 3398 (Apr. 16, 2021), available at: <https://www.doi.gov>. That order rescinds SO Nos. 3349 and 3360. *Id.* § 4. SO 3398 also directs Department of the Interior staff to “review and revise as necessary all policies and instructions that implemented” the SOs revoked by the order.

*Id.* § 5. On July 12, 2021, BLM issued IM 2021-038, which rescinded IM 2019-018. *See* Exhibit 1. Defendants expect that M-37046 will likewise be rescinded or revised, but that has not yet occurred.

Third, BLM is evaluating the Greater Sage Grouse Resource Management Plan Amendments issued in 2019 (the “2019 Plans”), which were preliminarily enjoined by the Court, *see* Oct. 16, 2019 Mem. Decision and Order, ECF No. 189, as well as the six Supplemental Environmental Impact Statements and records of decision issued at the end of 2020 and the beginning of 2021, respectively. BLM intends to publish a notice in the Federal Register notice to announce a scoping period for a new planning process within sixty days. This new process will address inclusion of any new information and revisit the deficiencies previously identified by the Court.

The Forest Service also is evaluating Sage Grouse policy. The Forest Service continues to work on a planning process that was initiated in 2017. The Forest Service issued a Final EIS and draft records of decision for Proposed Land Management Plan Amendments for pre-decisional objections on July 31, 2019. *See* <https://www.govinfo.gov/content/pkg/FR-2019-07-31/pdf/2019-16283.pdf>. Under Forest Service regulations, the Final EISs and draft records of decision were subject to a pre-decisional objection process. *See* 36 C.F.R. 219 subpart B. The period for filing objections closed on October 1, 2019, and the Forest Service sent responses to the objections on August 31, 2020. The Forest Service is working on final records of decisions, and it is uncertain when those decisions may be issued.

In light of the foregoing, Defendants request that these proceedings continue to be put on hold for an additional sixty days, at which point Defendants will provide a further update regarding the agencies’ respective policies and planning processes with respect to Sage Grouse

conservation. The agencies may take actions, or initiate planning, that would obviate the need to proceed to the merits of the claims regarding compensatory mitigation policy and the 2019 Plans. Allowing the agencies this additional time would preserve the parties' and the Court's resources by avoiding potentially unnecessary litigation. Courts have broad discretion to stay proceedings and to defer judicial review in the interest of justice and efficiency. *See Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 879 n.6 (1998) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.") (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936)); *see also CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

Respectfully submitted this 7th day of September, 2021,

RAFAEL M. GONZALEZ, JR.  
Acting United States Attorney  
CHRISTINE G. ENGLAND, Idaho State Bar No.  
11390  
Assistant United States Attorney  
District of Idaho  
1290 West Myrtle Street, Suite 500  
Boise, ID 83702  
Tel: (208) 334-1211; Fax: (208) 334-9375  
Email: [Christine.England@usdoj.gov](mailto:Christine.England@usdoj.gov)

TODD KIM  
Assistant Attorney General

LUTHER L. HAJEK, CO Bar No. 44303  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
999 18th Street, South Terrace, Suite 370  
Denver, CO 80202  
Tel: (303) 844-1376; Fax: (303) 844-1350  
E-mail: [luke.hajek@usdoj.gov](mailto:luke.hajek@usdoj.gov)

*Attorneys for Defendants*