

To: Theurer, Lyndsay[ltheurer@blm.gov]
Cc: Joel Brumm[jbrumm@blm.gov]; Anthony Kerwin[akerwin@blm.gov]; Timothy Fisher[tjfisher@blm.gov]; Marcia DeChadenedes[mdechade@blm.gov]
From: Magee, Gerald (Jerry)
Sent: 2017-11-21T18:53:54-05:00
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Subject: Re: Question on IM 2009-226 vs. 2000-062 - Interim Management Policy for Newly Created National Monuments
Received: 2017-11-21T18:54:08-05:00
[IM 2000-062 Interim Mgt for New Natl Monuments.docx](#)
[IM 2009-226 Interim Mgt Policy for New NLCS units under OPLMA.docx](#)
[IM2009-226 mgt actions for new designations att1.pdf](#)
[Checklist for New Monuments April 2013.docx](#)
[Instructions-Checklist for New Monuments April 2013.docx](#)
[NMs NCAs List of IMs and IBs 07202015.xlsx](#)

Hi Lindsay,

Good sleuthing to find that 2009 IM. After several searches, I finally found the missing attachment in one of my more obscure directories (under "IMs and IBs" as opposed to "New Monument Guidance").

I have attached other docs that may be of interest to you. (I cc'd several others who might find the gathered attachments useful for archival or sharepoint purposes.)

One particular attachment is an excel spreadsheet listing "all" NLCS guidance as of 2015. I qualified "all," b/c I notice that IM 2009 226 doesn't appear on the list. But you'll see some interesting items, including a link to IM 2000 062. I made a Word version of it and attached it.

I also attached a 2013 "New Monuments Checklist" and the more detailed and informative "New Monuments Checklist Instructions." These were all I had in my "New NLCS Units" e file, but they are more current than the 4 pp attachment we were looking for.

As for expiration dates, all of the IMs are technically expired. The theory is that you can extend an IM only once (I believe) and after that, if you still need the guidance you should put it in a manual (which is no small task, so rarely undertaken).

What we tend to do is continue using IMs/IBs after their expiration dates if they still provide useful/helpful guidance and nothing better has replaced them. (A side benefit of this approach is you can also ignore expired IMs that you don't like.)

Legally, although an expired IM is technically no longer "current," following it's guidance provides a level of consistency that can help BLM avoid "arbitrary and capricious" rulings. It's similar to "accepted or standard medical practice" at the time of treatment.

An expired IM isn't that far down on the legal defensibility hierarchy, as it falls into the "policy" range that's already pretty much at the bottom. Most hierarchies of authority follow the order depicted below:



And for each of these categories, there are equally weighted court cases interpreting those categories (in order of US Supreme Ct, US Circuit Courts of Appeal, and then Federal District Courts).

But needless to say, Policies and Guidance are at the bottom of the list, primarily helping us to avoid "arbitrary and capricious" rulings for random processes, unsupported conclusions, and faulty or non good faith analyses.

So my take is that an expired IM that still provides logical guidance that hasn't been replaced by anything newer is still better than nothing at all.

Sorry for the sidetrack. Just letting you know that we do rely on past, relevant guidance regardless of its expiration date, honoring the thought processes and precedential value that it contains (principle of stare decisis: to stand by things decided).

I hope all of this helps.

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On Tue, Nov 21, 2017 at 1:47 PM, Theurer, Lyndsay <ltheurer@blm.gov> wrote:

Also I noticed the 2009 one was temporary expiring in 2010, so it obviously wasn't intended to replace the 2000-062 one. I typed the wrong 2000 IM number in my previous email. So I guess my only remaining questions are whether IM-2000-062 was permanent or also temporary? Do you know a working link or have this as a PDF? When I search 2000 IMs nothing comes up.

~Lyndsay

On Tue, Nov 21, 2017 at 1:22 PM, Theurer, Lyndsay <ltheurer@blm.gov> wrote:

Hi Jerry,
Do you have any idea how I can get to IM 2009-226 attachment 1 "Management Actions for Newly Designated National Landscape Conservation System (NLCS) Units". This is the link I have found to the IM, <https://www.blm.gov/policy/im-2009-226>, but I can't see the 4 page attachment. I'm also wondering if this 2009 IM replaced 2000-226 Interim Management Policy for new monuments (in references you sent), or simply supplements it, and both are relevant? I'm reviewing all the citations you send, the solicitor's response on which RMP, etc. related to upcoming projects in the expansion area.

Thanks

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