

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF NEVADA’S DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES  
AND  
THE BUREAU OF LAND MANAGEMENT NEVADA AND CALIFORNIA STATE  
OFFICES  
FOR COMPENSATORY MITIGATION IN GREATER SAGE-GROUSE HABITAT IN  
NEVADA**

**I. INTRODUCTION AND BACKGROUND**

Greater Sage-Grouse is a state-managed species that is dependent on sagebrush steppe ecosystems. State agencies responsible for fish and wildlife management possess broad responsibility for protecting and managing fish, wildlife, and plants within their borders, except where specifically preempted by federal law. State agencies are at the forefront of efforts to maintain healthy fish and wildlife populations and to conserve at-risk species. As Department of the Interior (DOI) regulations recognize, states generally “possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State.” 43 C.F.R. § 24.3(a).

The State of Nevada manages the Greater Sage-Grouse and its habitat as directed by Nevada Revised Statutes Chapters 232, 321, and 501. Additionally, State of Nevada Executive Order 2018-32 (December 7, 2018) states that, “together with the Nevada [Greater] Sage-grouse Conservation Plan and Nevada Conservation Credit System (CCS), constitute Nevada’s strategy and primary mechanism to conserve and ensure conservation of the Greater Sage-Grouse and their habitats.” In 2014, the State of Nevada developed the CCS and Scientific Methods Document/Habitat Quantification Tool to analyze and quantify impacts of either enhancement and protection of Greater Sage-Grouse habitat or effects associated with anthropogenic disturbances. The CCS, managed through the Nevada Department of Conservation and Natural Resources (DCNR) Division of State Lands, operationalizes market transactions and reports net benefit from all transactions processed by the CCS. The Sagebrush Ecosystem Council is the oversight body responsible for directing the operations of the CCS and making policy decisions including facilitating and overseeing all credit generation and transactions.

On June 7, 2017, the Secretary of the Interior issued Secretarial Order 3353 with a purpose of enhancing cooperation among eleven western states and the Bureau of Land Management (BLM) in managing and conserving Greater Sage-Grouse. SO 3353 directed an Interior Review Team, consisting of the BLM, the U.S. Fish and Wildlife Service (USFWS), and US Geological Survey (USGS), to coordinate with the Sage-Grouse Task Force. They also were directed to review the 2015 Greater Sage-Grouse plans and associated policies to identify provisions that may require modification. This would be done to make the BLM’s land use plans (also called Resource Management Plans or RMPs) more consistent with the individual state plans and better balance the BLM’s multiple use and sustained yield mission, as directed by Secretarial Order 3349, *American Energy Independence*. On August 4, 2017, the Interior Review Team submitted its *Report in Response to Secretarial Order 3353*. In this report, the team recommended modifying the Greater Sage-Grouse RMP decisions and associated policies to better align with the

individual state plans. On August 4, 2017, the Secretary issued a memo to the Deputy Secretary directing the BLM to implement the recommendations found in the report.

The BLM completed its planning effort that modified past Greater Sage-Grouse RMP decisions with the signing of a Record of Decision on March 8, 2019. The 2019 Nevada and Northeastern California Greater Sage-Grouse Approved RMP Amendment aims to “enhance cooperation with the states by modifying the approach to Greater Sage-Grouse management in existing RMPs to better align with individual state plans and/or conservation measures and DOI and BLM policy.”

## **II. PARTIES**

This Memorandum of Understanding (MOU) is entered into by and between the State of Nevada’s DCNR, BLM Nevada and BLM California. The State of Nevada, through DCNR, conserves, protects, manages, and enhances Nevada’s natural resources, while the State of Nevada Department of Wildlife (NDOW) specifically protects, conserves, manages and restores Nevada’s wildlife and its habitat.

BLM Nevada and California manage public lands in the State of Nevada under Federal Land Policy and Management Act (FLPMA) principles of multiple use and sustained yield. BLM California’s Northern California District Office manages approximately 1.6 million acres surface acres in northwestern Nevada. FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and wildlife. On December 6, 2018, the BLM issued Instruction Memorandum (IM) no. 2019-018, *Compensatory Mitigation*, which provides that “[e]xcept where the law specifically requires, or as described in this IM, the BLM must not require compensatory mitigation from public land users.” IM 2019-018 further specifies that “where a state has endorsed an offsite compensatory mitigation program, and utilizes the program as part of a state mitigation plan, program or authorization, BLM may enter into an agreement with the state to obtain information about the amount of compensatory mitigation that the state would require from a project proponent if the proposed activity on Federal lands were taking place on State lands.” Additionally, the Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (2019) states that: “The BLM will cooperate with the States’ to determine appropriate project design and alignment with State’s policies and requirements, including those regarding compensatory mitigation, such as the State of Nevada Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law).”

## **III. PURPOSE**

This MOU between DCNR and BLM is entered into in order to define the process and responsibilities that the DCNR and BLM will follow relating to compensatory mitigation for projects proposed in Greater Sage-Grouse habitat on BLM-managed public lands, using the CCS and Nevada Greater Sage-Grouse Conservation Plan. This MOU further documents the cooperation between the DCNR and BLM regarding the use of the Nevada CCS as a tool to evaluate mitigation options that address impacts from anthropogenic disturbances to achieve a net gain in habitat conservation. The State began to implement the Nevada CCS as obligatory compensatory mitigation to offset impacts to Greater Sage-Grouse and their habitat at the signing of State of Nevada Executive Order 2018-32, an Order on use of the Nevada Greater Sage-Grouse Conservation Plan and Credit System (December 7, 2018).

**IV. AUTHORITIES AND POLICIES**

The following authorities and policies apply to this MOU and its implementation:

- A. Applicable Nevada Revised Statutes and regulations including Chapters 232, 321, and 501.
- B. State of Nevada Executive Order 2018-032-Establishing Use of the Nevada Greater Sage-Grouse Conservation Plan and Credit System (December 7, 2018),
- C. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–1787.
- D. Applicable DOI and BLM regulations, including 43 C.F.R. Part 24, *Department of the Interior Fish and Wildlife Policy: State-Federal Relationships* and 43 C.F.R. subpart 1610, *Resource Management Planning*.
- E. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321–4370h (NEPA).
- F. Secretary’s Order 3353, *Greater Sage-Grouse Conservation and Cooperation with Western States* (June 7, 2017).
- G. Secretary’s Memorandum, *Improving the BLM’s 2015 Sage-Grouse Plans* (Aug. 4, 2017).
- H. BLM Instruction Memorandum no. 2019-018, *Compensatory Mitigation* (December 6, 2018).

**V. RESPONSIBILITIES OF THE SIGNATORIES**

	<b>State of Nevada</b>	<b>BLM Nevada and California</b>
<b>Project Initiation (Project Proposal Development)</b>	DCNR will discuss with the project proponent the need for using the HQT to analyze the actual alternatives that are incorporated into the NEPA document. After the initial discussion between BLM, DCNR, NDOW, and the project proponent (the parties), DCNR will provide documentation regarding regulatory process steps associated with implementation of the HQT/CCS.	Upon project initiation, but prior to NEPA, BLM will facilitate a discussion among BLM, DCNR, NDOW, and the project proponent (the parties) to assess avoidance and minimization measures that should be considered for incorporation into the proponent’s final project proposal submission.
<b>Cooperating Agency Relationship Establishment</b>	DCNR may accept BLM’s request to be a cooperating agency for the National Environmental Policy Act	At the initiation of the NEPA analysis process, BLM shall request DCNR and NDOW to be a cooperating agency.

	<b>State of Nevada</b>	<b>BLM Nevada and California</b>
	(NEPA) analysis process, and shall perform the duties and obligations of a cooperating agency.	
<b>Development of the NEPA Range of Alternatives</b>	All parties will work collaboratively to develop a range of alternatives.	
<b>Incorporation of HQT Analysis Results into the NEPA Analysis</b>	Once a range of alternatives has been developed for the NEPA action, DCNR shall use the most current version of the Habitat Quantification Tool (HQT) to quantify project impacts for all alternatives. DCNR shall provide the parties with notification of the results of this HQT analysis (estimated number of debits, if any, that may result from the proposed project and alternatives) and of any necessary State-mandated compensatory mitigation obligation to offset impacts to Greater Sage-Grouse and their habitats as a result of anthropogenic disturbance through the use of the CCS.	BLM shall incorporate results of the HQT analysis for each alternative into the draft NEPA documents being prepared for the proposed project.
<b>Confirmation of Approved Mitigation</b>	DCNR shall provide the parties with a letter of verification that describes the project proponent's confirmed credit obligation and approved mitigation plan once completed. This letter shall be issued prior to the finalization of the BLM's NEPA document for inclusion in the NEPA analysis.	BLM shall use DCNR's letter to verify that the proposed project complies with the State of Nevada's Greater Sage-Grouse Conservation Plan (2014, as amended) and all applicable State requirements relating to its proposal.
<b>State Mitigation Compliance Verification</b>	If the project proponent is not complying with State law, DCNR shall provide the BLM with notification of non-compliance.	Upon receipt of notification of non-compliance from DCNR, BLM shall immediately notify the proponent that they are not in compliance with the permit/authorization and are

	<b>State of Nevada</b>	<b>BLM Nevada and California</b>
		required to rectify the situation with DCNR.

**VI. DISPUTE RESOLUTION**

Should any signatory to this MOU or designated state agency outlined within this process object to actions proposed or the manner in which the terms of this MOU are implemented, the following process will be implemented: All Parties agree to resolve disputes expeditiously. If a dispute arises among the Parties regarding the terms or the implementation of this MOU, the following steps will be taken: The Parties shall first attempt to resolve the dispute among themselves. If there is no resolution at this level within 30 days, either Party may elevate the issue to the appropriate officials within BLM Nevada and DCNR. In the event that there is no resolution at this level, within 30 days, the dispute may be elevated by either Party to the BLM Director in Washington, D.C. or the Office of the Governor.

**VII. ADMINISTRATIVE PROVISIONS**

- A. Nothing in this MOU is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the DCNR and BLM.
- B. Nothing in this MOU binds the DCNR and BLM to perform beyond their respective authorities.
- C. Nothing in this agreement may be construed to obligate the DCNR and BLM or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate the DCNR and BLM, or the United States to spend funds on any particular project or purpose, even if funds are available.
- D. The mission requirements, funding, personnel, and other priorities of the DCNR and BLM may affect their ability to fully implement all the provisions identified in this MOU.
- E. Specific activities that involve the transfer of money, services, or property between or among the DCNR and BLM will require execution of separate agreements or contracts.
- F. Nothing in this MOU is intended to or will be construed to restrict the DCNR and BLM from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

- H. Any information furnished between the DCNR and BLM under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. § 552, et seq. (FOIA). The DCNR and BLM agree to consult one another prior to releasing potentially privileged or exempt documents.
- I. All press releases and public statements issued by the DCNR and BLM concerning or characterizing this MOU will be jointly reviewed and agreed to by delegated staff representing each of the undersigned signatories.
- J. Quarterly meetings of the DCNR and BLM will be scheduled to review progress and identify opportunities for advancing the purposes of this MOU.
- K. A DCNR and BLM may terminate participation in this MOU 30 days after providing written notice to the other DCNR and BLM.
- L. A DCNR and BLM may amend or modify this MOU through agreement among all DCNR and BLM.

**INSERT SIGNATURE PAGE**

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