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Office of the Governor

December 19, 2018

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BLM NVSO IAC

Mr. Brian Amme
Acting State Director, Nevada
U.S. Bureau of Land Management
1340 Financial Boulevard
Reno, NV 89502

Re: Governor's Consistency Review of the 2018 Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement

Dear Mr. Amme:

I would like to take this opportunity to thank Deputy Secretary David Bernhardt and Brian Steed, Bureau of Land Management Deputy Director for Policy and Programs, for the successful implementation of Secretarial Order No. 3353 (S.O. 3353) and the resulting 2018 Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendment/Final Environmental Impact Statement (2018 RMP/EIS).

The 2015 Resource Management Plan Amendments for the Greater Sage-Grouse (2015 RMP) created confusion and uncertainty at the field level for many of the natural resource-based land users and rural communities whose culture and economies are linked with sagebrush ecosystems on public land. A central premise of S.O. 3353 was the imperative that wildlife and other local land uses, and the sagebrush ecosystems upon which they all depend, could best be managed under a strategy of collaboration that integrates State and local concerns and approaches for sagebrush steppe management and conservation. With mindful consideration to not compromise the conservation benefits afforded in the 2015 RMP, targeted management actions and allocations from the 2015 RMP that were inconsistent with State Plans, and created unintended consequences, were identified for analysis in the 2018 RMP/EIS.

The 2018 RMP/EIS is the product of improved cooperation and partnerships between the State of Nevada and the Bureau of Land Management (BLM), Nevada State Office. I have great appreciation for the expertise and leadership that Nevada BLM planners brought to the RMP Amendment and EIS process, which was completed efficiently and effectively in close coordination with Nevada's cooperating agencies and public participation.

Under the direction of the Nevada Sagebrush Ecosystem Council (Council), it was determined that this effort was an opportunity to update the 2014 Nevada Sage-Grouse Conservation Plan (Plan). In conjunction with the 2018 RMP Amendment, the Council made several revisions and additions to the Plan and Conservation Credit System (CCS) to establish even further consistency between State and Federal management policy.

On December 6, 2018, the BLM issued Instructional Memorandum 2019-018 to address compensatory mitigation. On Friday, December 7, 2018, I signed Executive Order 2018-32 to ensure the use of our Plan and the CCS for compensatory mitigation of anthropogenic disturbances in Sage-Grouse habitat management areas. Also on December 7, 2018, the Environmental Protection Agency Notice of Availability for the Nevada and Northeastern California Proposed RMP Amendment and Final EIS was published. Together, these State and Federal Actions represent the extraordinary concurrence to create a cohesive policy and sound strategy for Nevada to achieve conservation of Greater Sage-Grouse in a cooperative manner.

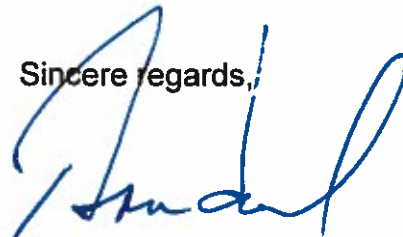
As a final measure of consistency and definition, and to assure that these State and Federal actions work together as intended, I recommend the following:

- 1 The 2018 RMP/EIS as it appears on pages 2-13 through 2-19 regarding mitigation, and as it appears on pages 2-19 through 2-22 regarding the Allocation Exception Process, be updated to incorporate BLM Instructional Memorandum 2019-18 and State of Nevada Executive Order 2018-32, as shown in Attachment "A".
- 2 To clarify the exception process for all allocations, the footnote on Table 2-1 on page 2-6 should be added to Figure 2-12b on page A-25.
- 3 An asterisk should be added to the column titled "Proposed Plan Amendment" on Table 2-1 on page 2-6 to correlate with the footnote asterisk on page 2-6.

There is little doubt that unforeseen situations may arise as these Resource Management Plan Amendments are put to the true test of implementation. However, it is my sincere hope that the mutual trust we have developed through this process will set the new norm for resolving future State/Federal land management conflicts on public land in a strong, collaborative manner.

Again, thank you for your leadership and for the professional manner of your staff as we worked through difficult issues to achieve the best outcome for the Greater Sage-Grouse.

Sincere regards,



BRIAN SANDOVAL
Governor

Governor's Consistency Review on the BLM Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement

Attachment "A"

December 19, 2018

Issue: Compensatory Mitigation

- **Inconsistency**: The Proposed Plan Amendment's approach to mitigation is inconsistent with the State of Nevada's Executive Order 2018-32, establishing use of the Nevada Greater Sage-Grouse Conservation Plan and Credit System. The Proposed Plan Amendment's reference to the BLM's compensatory mitigation policy should also be updated to reflect the latest policy, IM 2019-018.
- **Recommendation to Remedy Inconsistency**: Recommend making the following edits to the Proposed Plan Amendment's mitigation language as it appears on page 2-13 of the FEIS in the BLM's Record of Decision/Approved Resource Management Plan Amendment:

Revised to align with current BLM policy and guidance regarding mitigation issued on ~~July 24, 2018 through IM 2018-093~~ December 6, 2018 through IM 2019-018, Compensatory Mitigation.

- *When authorizing third-party actions in designated Greater Sage-Grouse habitat, the BLM will seek to achieve the planning-level Greater Sage-Grouse management goals and objectives through implementation of mitigation and management actions, consistent with valid existing rights and applicable law. Under this Proposed Plan Amendment, management would be consistent with the Greater Sage-Grouse goals and objectives, and in conformance with BLM Manual 6840, Special Status Species Management. In accordance with BLM Manual 6840, the BLM will undertake planning decisions, actions and authorizations "to minimize or eliminate threats affecting the status of [Greater Sage-Grouse] or to improve the condition of [Greater Sage-Grouse] habitat" across the planning area.*
- *The BLM has determined that compensatory mitigation must be voluntary unless required by other applicable law and in recognition that state authorities may also require compensatory mitigation (IM ~~2018-093~~ 2019-018, Compensatory Mitigation, ~~July 24, 2018~~ December 6, 2018). Therefore, consistent with valid existing rights and applicable law, when authorizing third-party actions that result in habitat loss and degradation, the BLM would consider voluntary compensatory mitigation actions only as a component of compliance with a state mitigation plan, program, or authority, such as required by State of Nevada Executive Order 2018-32, or when offered voluntarily by a project proponent.*
- *In all Greater Sage-Grouse habitat, before authorizing third-party actions that result in habitat loss and degradation within the State of Nevada, the BLM will complete the following steps, in alignment with the State of Nevada's Greater Sage-Grouse Conservation Plan (2014, as amended), including avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions:*

1. *Notify the State of Nevada's Sagebrush Ecosystem Technical Team to determine if the State requires or recommends any additional mitigation – including compensatory mitigation – under State regulations, policies, or programs, such as required by State of Nevada Executive Order 2018-32, related to the conservation of Greater Sage-Grouse.*
2. *Incorporate state required or recommended mitigation into the BLM's NEPA decision-making process, if the State of Nevada's Sagebrush Ecosystem Technical Team determines that there are unacceptable residual impacts on Greater Sage-Grouse or its habitat and compensatory mitigation is required as a part of State policy or authorization, such as required by State of Nevada Executive Order 2018-32, or if a proponent voluntarily offers mitigation.*
3. *Analyze whether the compensatory mitigation:*
 - *achieves measurable outcomes for Greater Sage-Grouse habitat function that are at least equal to the lost or degraded values;*
 - *provides benefits that are in place for at least the duration of the impacts; and*
 - *accounts for a level of risk that the mitigation action may fail or not persist for the full duration of the impact.*
4. *Verify that the project proponent has coordinated with the State of Nevada's Sagebrush Ecosystem Technical Team to ensure it complies with the State of Nevada's Greater Sage-Grouse Conservation Plan (2014, as amended) and all applicable State requirements relating to its proposal.*
- *Project-specific analysis will be necessary to determine how a compensatory mitigation proposal addresses impacts from a proposed action. The BLM will cooperate with the State to determine appropriate project design and alignment with State policies and requirements, including those regarding compensatory mitigation, per State of Nevada Executive Order 2018-32. When the BLM is considering compensatory mitigation as a component of the project proponent's submission or based on a requirement of or recommendation from the State, the BLM's NEPA analysis would will evaluate the need to avoid or minimize impacts of the proposed project and achieve the goals and objectives of this RMPA. The BLM will defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action.*
- *The BLM would not deny a proposed authorization in Greater Sage-Grouse habitat solely on the grounds that the proponent has not proposed or agreed to undertake voluntary compensatory mitigation, unless required by an existing state authority such as State of Nevada Executive Order 2018-32.*
- *The BLM would continue to apply the mitigation hierarchy as described in the CEQ Regulations at 40 CFR 1508.20; however, the BLM would focus on avoiding, minimizing, rectifying or reducing impacts over time. Compensation, which involves replacing or providing substitute resources for the impacts (including payment) would only be considered when voluntarily offered by a proponent, ~~in coordination with the States of Nevada and California.~~ or as a component of compliance with a state mitigation plan, program, or authority, such as required by State of Nevada Executive Order 2018-32.*
- ***Appendix F** has been removed from the Proposed Plan Amendment. The BLM would ensure project design is aligned with State requirements—including compensatory mitigation—that may be necessary to comply with State policies and programs for the conservation of Greater Sage-Grouse. Where compensatory mitigation is required as part*

of a state plan, program, or authority, such as Nevada State Executive Order 2018-32, the BLM will include the required mitigation in all of its action alternatives in a NEPA analysis. ~~When the BLM is considering compensatory mitigation as a component of the project proponent's submission or based on a recommendation from the States, the BLM's NEPA analysis would evaluate the need for resolving or eliminating impacts of the proposed project and achieving the goals and objectives of this RMPA. Additional project-specific analysis would be necessary to determine how the compensatory mitigation proposal supports BLM's obligation to evaluate and appropriately implement mitigation to address impacts from a project proposal.~~

- *On BLM-administered lands within Nevada and California, when authorizing third-party actions that would result in direct, indirect, or cumulative impacts on Greater Sage-Grouse or their habitat, the BLM would defer to the State of Nevada's most current version of the Habitat Quantification Tool (HQT) to quantify those impacts to ensure consistency in tracking/reporting changes to Greater Sage-Grouse habitat quality and quantity.*

Issue: Allocation Exception Process - Land Tenure Actions and Compensatory Mitigation

- **Inconsistency:** The Proposed Plan Amendment's approach for addressing exceptions to land use plan allocations, specifically regarding land retention tied to PHMA, GHMA, and OHMA is not consistent with the State of Nevada's Executive Order 2018-32, establishing use of the Nevada Greater Sage-Grouse Conservation Plan and Credit System. Use of compensatory mitigation (through the use of the State of Nevada's Conservation Credit System) to offset residual impacts to Greater Sage-Grouse or its habitat should be considered as a criteria component for allowing land disposal actions, including exchanges to be considered in PHMA, GHMA, and OHMA.
- **Recommendation to Remedy Inconsistency:** Recommend making the following edits to the Proposed Plan Amendment's allocation exception language as it appears on pages 2-19 through 2-22 of the FEIS in the BLM's Record of Decision/Approved Resource Management Plan Amendment:

In PHMA, GHMA, and OHMA, the State Director may grant an exception to the allocations and stipulations described in Table 2-1: Comparative Summary of Alternatives if one of the following applies (in coordination with NDOW, SETT, and/or CDFW):

- The location of the proposed activity is determined to be unsuitable (by a biologist with Greater Sage-Grouse experience using methods such as Stiver et. al. 2015); lacks the ecological potential to become marginal or suitable habitat; and would not result in direct, indirect, or cumulative impacts on Greater Sage-Grouse and its habitat. Management allocation decisions would not apply to those areas determined to be unsuitable because the area lacks the ecological potential to become marginal or suitable habitat;*
- The proposed activity's impacts could be offset to result in no adverse impacts on Greater Sage-Grouse or its habitat, through use of the mitigation hierarchy consistent with Federal law and the state's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32. In cases where exceptions may be granted for*

projects with a residual impact, voluntary compensatory mitigation consistent with the state's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 would ~~with the State's management goals could~~ be one mechanism by which a proponent achieves the RMPA goals, objectives, and exception criteria. When a proponent volunteers compensatory mitigation as their chosen approach to address residual impacts, the BLM can incorporate those actions into the rationale used to grant an exception. The final decision to grant a waiver, exception, or modification would be based, in part, on criteria consistent with the state's Greater Sage-Grouse management plans and policies.

- iii. The proposed activity would be authorized to address public health and safety concerns, specifically as they relate to federal, state, local government and national priorities.*
- iv. Renewals or re-authorizations of existing infrastructure in previously disturbed sites or expansions of existing infrastructure that do not result in direct, indirect, or cumulative impacts on Greater Sage-Grouse and its habitat.*
- v. The proposed activity would be determined a routine administrative function conducted by federal, state or local governments, including prior existing uses, authorized uses, valid existing rights and existing infrastructure (i.e., rights-of-way for roads) that serve a public purpose and would have no adverse impacts on Greater Sage-Grouse and its habitat, consistent with the state's mitigation policies and programs.*
- vi. Exceptions to lands that are identified for retention in Figure 2-12b would be considered for disposal or exchange if (a) they were identified for disposal through previous planning efforts ~~or either as part of the due process of carrying out~~ address a Congressional Act (e.g., the respective Lincoln and White Pine County Conservation, Recreation, and Development Acts), (b) the agency can demonstrate that the disposal, including land exchanges, would have no adverse direct, indirect or cumulative impacts on Greater Sage-Grouse and its habitat, or (c) adverse impacts on Greater Sage-Grouse or its habitat could be offset, through use of voluntary compensatory mitigation, consistent with Federal law and the state's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32.*