

Attachment 3

OFFICE OF SPECIES CONSERVATION

BRAD LITTLE
Governor

MICHAEL R. EDMONDSON
Administrator



P.O. Box 83720
Boise, Idaho 83720-0195

304 N. Eighth Street, Suite 149
Boise, Idaho 83702-5833

October 19, 2021

June Shoemaker
Deputy State Director, Resources
Bureau of Land Management
1387 S. Vinnell Way
Boise, ID 83709

RE: BLM – OSC Sage-grouse Mitigation Understanding

Dear Ms. Shoemaker,

This letter is in response to your August 26th letter regarding the BLM and State of Idaho's MOA on Sage-grouse.¹ The State of Idaho accepts your proposal to continue working collaboratively on sage-grouse management, including mitigation, while we work to update the MOA to ease conflict with BLM policies resulting from Instruction Memorandum 2021-038.

We appreciate that BLM's continued commitment to recognize the designated state agency as a cooperating agency as this will promote effective coordination and communication. Up to this point the BLM and the State of Idaho have been working together to address any mitigation questions with the help of the State's Habitat Quantification Tool and Mitigation Principles document. The State's Mitigation Principles Document aligns with many of the same elements that are contained within Appendix F of the 2015 ARMPA including following the mitigation hierarchy and ensuring the immediate and long-term effectiveness of mitigation

The State of Idaho agrees to continue to provide recommendations to the BLM regarding sage-grouse habitat management as well as compensatory mitigation consistent with the State's Mitigation Principles Document and our mutual MOA.

We look forward to continuing to work with the BLM on sage-grouse planning and conservation actions. Have your staff continue to work with my Terrestrial Program Manager and Policy Advisor, Joshua Uriarte. He can be reached at Joshua.uriarte@osc.idaho.gov or by phone at 208-332-1556.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Edmondson".

Mike Edmondson
Administrator

¹ Letter Reference Number: 6840/9219 (930)



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657
<https://www.blm.gov>



AUG 26 2021

In Reply Refer To:
6840/9219 (930)

Mike Edmondson, Administrator
Idaho Governor's Office of Species Conservation (OSC)
304 N. 8th Street Ste. 149
Boise, Idaho 83702

RE: Bureau of Land Management (BLM) – OSC Sage-grouse Mitigation Memorandum of Agreement

Dear Mr. Edmondson:

On July 12, 2021, the BLM released Instruction Memorandum (IM) 2021-038 which rescinded IM 2019-018, BLM's Compensatory Mitigation Policy. The BLM and OSC acknowledge and agree that the current Memorandum of Agreement (MOA) signed in March 2019, between the BLM and the State of Idaho will require updating after new direction and policy is received from the Department of the Interior regarding the implementation of compensatory mitigation.

In the interim, we propose that OSC and the BLM work together to follow the strategy outlined in the Mitigation section (Appendix F) of the Idaho and Southwestern Montana Approved Resource Management Plan Amendment (ARMPA, 2015) which aligns with the BLM's existing mandates and project permitting processes. Management actions subject to the National Environmental Policy Act (NEPA) must comply with the Federal Land Policy and Management Act (FLPMA, 1976) and the Land Use Plan as Amended which *could* include compensatory mitigation.

Additionally, we propose that OSC and the BLM continue to implement the portions of the MOA that are not in conflict with the new IM. The BLM will continue to recognize the designated State agency as a cooperating agency for any proposed land use planning decision or project related to sage-grouse and will continue to coordinate with project proponents regarding potential onsite or offsite mitigation obligations. The State of Idaho and the BLM will continue working with other cooperating agencies using the State's Mitigation Principles document and Habitat Quantification Tool as well as the Mitigation section of the ARMPA to provide technical guidance and to quantify functional acres when assessing actions that result in habitat loss and degradation.

Please advise if the OSC concurs with BLM's proposal as we implement sage-grouse planning and conservation actions. Thank you for your consideration in this matter.

Sincerely,



June E. Shoemaker
Deputy State Director, Resources

RECEIVED BY OSC
SEP 01 2021

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF IDAHO
AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE**

I. INTRODUCTION AND BACKGROUND

Greater Sage-Grouse (GRSG) 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 the 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 Idaho manages the GRSG and its habitat as directed by Executive Order 2015-04. The primary agencies charged with management are the Idaho Department of Lands, the Governor’s Office of Species Conservation and the Idaho Department of Fish and Game. The Idaho Constitution requires the Department of Lands and the Idaho Board of Land Commissioners to manage State lands to “secure the maximum long term financial return...” to the Public School Permanent Endowment Fund. Idaho Constitution, Article IX, §4, 8. Concurrently with the foregoing responsibility, the Idaho Fish and Game Commission is charged with preserving, protecting perpetuating and managing all wildlife within the State of Idaho. Idaho Code § 36-103. The Governor’s Office of Species Conservation is tasked with coordinating all state departments and divisions with duties and responsibilities affecting endangered species, threatened species, candidate species, species petitioned to be listed, and rare and declining species. Idaho Code § 67-818.

On June 7, 2017, the Secretary of the Interior issued Order 3353 (hereafter SO 3353) with a purpose of enhancing cooperation among eleven western states and the United States Bureau of Land Management (BLM) in managing and conserving GRSG. The strategy set out in SO 3353 is to support a partnership that allows the Department of the Interior and the Eleven Western States to maintain healthy populations of Sage-Grouse and improve collaboration and integration of State and local concerns and approaches into sagebrush management and conservation on Federal lands. Among other ways, the SO 3353 set out that the BLM shall develop and enter into Memorandums of Understandings with States to integrate their management into BLM’s land management decisions.

The SO 3353 also directed a new Interior Review Team, consisting of the BLM, the United States Fish and Wildlife Service, and United States Geological Survey, to coordinate with a pre-existing Sage-Grouse Task Force. The Sage-Grouse Task Force was established in 2011 as a forum for high-level State and Federal representatives to meet and evaluate policies, programs, management actions, data sharing, and other actions affecting conservation of the Sage-Grouse

and the sagebrush ecosystem, as well as the health of the communities and economies of the American West.

The SO 3353 directed the Interior Review Team to evaluate the 2015 GRSG plans and associated policies to identify provisions that may require modification to complement state efforts to conserve the species (among other tasks). The SO 3353 sought to reconcile the BLM's land use plans (also called Resource Management Plans or RMPs) to be consistent or more consistent with the individual state plans and to better balance the BLM's multiple use and sustained yield mission as specifically required by SO 3349, and entitled *American Energy Independence*.¹

On August 4, 2017, the Interior Review Team submitted its Report in Response to SO 3353. In this report the team recommended modifying the GRSG RMP decisions and associated policies to better align with the individual state plans. The reason the Interior Review Team recommended this was because after the meeting there was a clear need to: (1) address issues related to habitat assessment and monitoring, including the Habitat Assessment Framework, and grazing management; (2) take advantage of flexibility in the 2015 GRSG Plans to support energy, mineral, and other development; (3) increase consistency between the BLM and States on density and disturbance caps and mitigation; and (4) in some cases, allow adjustments to habitat boundaries and address issues with adaptive management. On August 4, 2017, the Secretary issued a memo to the Deputy Secretary directing the BLM to implement the recommendations found in the report.

As one action in implementing this direction, the BLM published draft RMP amendments/Draft Environmental Impact Statements (EISs) on May 4, 2018 (83 Fed. Reg. 19801). The purpose of the draft RMP amendments/Draft EISs is to "enhance cooperation with the states by modifying the approach to GRSG management in existing RMPs to better align with individual state plans and/or conservation measures and DOI and BLM policy." The BLM Idaho accepted public comments for 90 days and held 3 public meetings (Marsing, Twin Falls & Idaho Falls) and, thereafter, considered and incorporated the public comments as appropriate into its EIS.²

¹ The Secretary issued SO 3349 to implement an Executive Order that President Donald Trump issued on March 28, 2017, entitled "Promoting Energy Independence and Economic Growth" (hereafter Trump EO 13783). Trump 2017 EO 13783 rescinded a prior 2015 Executive Order that had required departmental agencies to develop certain mitigation policies. Accordingly, the Secretary of the Interior issued 3330 to implement the Executive Order, and Secretary Zinke rescinded SO 3330 through SO 3349. SO 3349 directed BLM, among other departmental agencies, to reexamine its mitigation policies and practices in order to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families. Pursuant to the SO 3349 as required by Trumps EO 13783, BLM issued an Instruction Memorandum, No. 2019-018, on Offsite Compensatory Mitigation. This IM allows BLM to consider either state-requested or a proponent's voluntary compensatory mitigation in permitting or approving an action on federal lands, but in no event may BLM authorize an activity that would cause unnecessary or undue degradation as prohibited by FLPMA Section 302(b).

²The Idaho Draft RMP Amendment Draft EIS focused on the issues of the designation of sagebrush focal areas, mitigation standards, lek buffers, disturbance and density caps, and adjustments to habitat boundaries to reflect new information. The Draft RMP Amendment/Draft EIS evaluated two alternatives in detail: The No Action Alternative (Alternative A) and an action alternative (Management Alignment Alternative).

II. PARTIES

This Memorandum of Agreement (MOA) is entered into by and between the State of Idaho and the Idaho State Office of the United States Department of the Interior, Bureau of Land Management (BLM Idaho). The State of Idaho is responsible for protecting, preserving, perpetuating and managing Idaho's wildlife resources as required by state law and regulations.

The BLM Idaho manages public lands in the State of Idaho mainly under the Federal Land Policy and Management Act's (FLPMA). The FLPMA requires the BLM to adhere to principles of multiple use and sustained yield to "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use." FLPMA specifically provides that it neither enlarges nor diminishes the authority of the states in managing fish and resident wildlife. See 43 U.S.C. § 1732(b). 1732(b) also provides that FLPMA does not modify or change any provisions of Federal law related to endangered or threatened species. Currently, the US Fish and Wildlife Service has determined that listing the GRSG is not warranted at this time. 80 Fed. Reg. 59857-58 (October 2, 2015). Therefore, the State of Idaho and the BLM find it in their best interests to work cooperatively together to protect the GRSG and its designated priority habitat across the landscapes and under their jurisdictions with uniformly applied state protections.

III. AUTHORITIES AND POLICIES

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

- A. Applicable Idaho Law and regulations, including Idaho Constitution, Article IX, §4, 8; Idaho Executive Order 2012-02; Idaho Executive Order 2015-04; Idaho Code 58-101; Idaho Code 36-103; Idaho Code 67-818; and the forthcoming Idaho Mitigation Framework in late summer 2019.
- B. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1787.
- C. 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.
- D. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370h (NEPA).
- E. Secretary's Order 3353, Greater Sage-Grouse Conservation and Cooperation with Western States (June 7, 2017).
- F. Secretary's Memorandum, Improving the BLM's 2015 Sage-Grouse Plans (Aug. 4, 2017).
- G. BLM Instruction Memorandum no. 2018-093, *Compensatory Mitigation* (December 6, 2018).

- H. BLM Manual 6840, Special Status Species Management Manual for the Bureau of Land Management (Dec. 12, 2008).

IV. PURPOSE

The purpose of this MOA is to enhance coordination across a greater landscape between the State of Idaho and the BLM Idaho relating to the management and protection of GRSG and its habitat. This coordination will provide that public lands, whether under State or Federal jurisdiction, will be managed to the greatest extent possible,³ cooperatively, for the protection of the GRSG since the State of Idaho is vested with the authority to protect the GRSG and its habitat as resident state wildlife.

V. RESPONSIBILITIES OF THE SIGNATORIES

A. The State of Idaho

1. The Governor or the relevant state agency designated by the Governor, shall perform the duties and obligations of a cooperating agency when the BLM Idaho prepares NEPA documents for proposed actions in Greater Sage-Grouse habitat, should the State elect to seek cooperating agency status.
2. At the request of the BLM, the Governor or designated State agency shall timely review any proposed project in GRSG habitat on public lands managed by the BLM Idaho to determine whether that proposed project complies with the State policies and programs relating to GRSG conservation. In instances where the Governor or designated agency determines that the Federal-State coordinated landscape would benefit the GRSG or its habitat by the proposed project complying with State policies and programs, including the implementation of onsite mitigation or offsite compensatory mitigation, the Governor or designated agency hereby agrees to make such recommendations to the project proponent and to the BLM in writing.

B. BLM Idaho

1. When authorizing uses on the public lands that it manages, the BLM Idaho shall verify that those uses are in conformance with its approved land use plans, including the land use planning decisions relating to GRSG conservation.
2. The BLM Idaho shall require avoidance, minimization, and other onsite mitigation, consistent with its approved land use plans and as the BLM Idaho determines to be appropriate under FLPMA's principles of multiple use and sustained yield, or as may be otherwise required by law.

³ BLM must refrain from authorizing any activity that would cause or effectuate an unnecessary or undue degradation of resources as prohibited by FLPMA, Section 302(b).

3. The BLM Idaho shall recognize the Governor or designated State agency as a cooperating agency under NEPA for any proposed land use planning decision relating to GRSG conservation or any proposed project sited in GRSG habitat.
4. The BLM Idaho will coordinate with the Governor or designated State agency when developing or updating policies relevant to GRSG conservation.
5. The BLM Idaho shall timely notify the Governor when it receives an application or a proposal for a project sited on GRSG habitat, and shall encourage each such project proponent to coordinate with the Governor or designated state agency relating to any such project to the extent necessary for the Governor or designated State agency to provide a written recommendation regarding the proponents potential for on or offsite mitigation obligations to the BLM.
6. If the project proponent agrees to incorporate the State's recommendation into its application, including offsite compensatory mitigation, then the BLM will analyze the recommendation as part of the "proposed action" alternative in its NEPA analysis.
7. If the proponent does not include the State's recommendation for either onsite or offsite mitigation into its application, the BLM Idaho will describe the Governor's recommendations and analyze it in a separate alternative in the appropriate NEPA document(s) and disclose whether project proponents have incorporated the Governor's recommendations into their proposals. However, the BLM will not deny a proposed authorization in GRSG habitat solely on the basis that the proponent has not included the Governor's recommendation for mitigation.
8. Once the BLM evaluates the appropriate mitigation as provided, whether the State recommended for on-site or off-site, and only if the proponent voluntarily agrees to it will the BLM require that State recommended mitigation in its Record of Decision or Decision Memo.
9. As directed by the BLM's 2018-093 Instruction Memorandum, the BLM may only require the imposition of Compensatory Mitigation (typically off-site or substitute resources) if either the project proponent voluntarily agrees or if it is mandated by the State. This means that unless required by another law (not FLPMA), the BLM cannot coerce or compel the project proponent to accept off-site Compensatory Mitigation to achieve the BLM's approval. However, the BLM may require the project proponent to avoid, minimize, rectify and/or reduce harms as it deems appropriate on-site in order for the BLM to avoid making a finding that "unnecessary and undue degradation" will occur from the proposed use on Federal public lands. As provided by the Instruction Memorandum, the BLM must refrain from all instances of authorizing any activity that causes unnecessary or undue degradation contrary to FLPMA Section 302(b).

VI. DISPUTE RESOLUTION

If a dispute arises regarding the terms or the implementation of this MOA, the following steps will be taken:

All Parties agree to resolve disputes expeditiously as possible. If a dispute arises among the Parties regarding the terms or the implementation of this MOA, the following steps will be taken: 1) The Parties shall first attempt to resolve the dispute between themselves through a face-to-face meeting; 2) If there is no resolution at this level, then within 30 days of that meeting, either Party may elevate the issue to appropriate officials within the BLM Idaho and the State; 3) If no resolution is reached at this level, then within 60 days of the face-to-face meeting the dispute will be elevated by either Party to the Washington office of the BLM and/or the Governor's office for resolution.

VII. ADMINISTRATIVE PROVISIONS

- A. Nothing in this MOA is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the State of Idaho or the BLM Idaho.
- B. Nothing in this MOA binds the State of Idaho or the BLM Idaho to perform beyond their respective authorities.
- C. Nothing in this MOA may be construed to obligate the State of Idaho, the BLM Idaho, or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this MOA obligate the State of Idaho or the BLM Idaho, 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 State of Idaho or the BLM Idaho may affect their ability to fully implement all the provisions identified in this MOA.
- E. Specific activities that involve the transfer of money, services, or property between or among the State of Idaho or the BLM Idaho will require execution of separate agreements or contracts.
- F. Nothing in this MOA is intended to or will be construed to restrict the State of Idaho or the BLM Idaho from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. This MOA 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 State of Idaho or the BLM Idaho under this MOA will be subject to the Freedom of Information Act, 5 U.S.C. § 552, et seq. (FOIA) or subject to release by the state under similar public release laws. To the extent permitted by law, BLM Idaho will redact or protect confidential or like proprietary information subject to applicable FOIA exemptions.

- I. All press releases and public statements issued by the State of Idaho or the BLM Idaho concerning or characterizing this MOA will be jointly reviewed and agreed to by delegated staff representing each of the undersigned signatories.
- J. Periodic meetings of the State of Idaho or the BLM Idaho will be scheduled to review progress and identify opportunities for advancing the purposes of this MOA.
- K. The State of Idaho or the BLM Idaho may terminate participation in this MOA 60 days after providing written notice to the other party.
- L. The State of Idaho or the BLM Idaho may amend or modify this MOA through written agreement among the State of Idaho or the BLM Idaho.

VIII. SIGNATURES

- A. All signatories have the appropriate delegation of authority to sign this MOA.
- B. The Parties have executed this MOA on the dates shown below.



Brad Little
Governor
State of Idaho

Dated: 3-14-2019



Peter J. Ditton
Acting State Director
Bureau of Land Management, Idaho

Dated: 3/12/2019

Attachment:
Exhibit A

Exhibit A

The principal contacts for this MOA are:

June E. Shoemaker
Deputy State Director, Resources
Bureau of Land Management
1387 South Vinnell Way
Boise, Idaho 83709
(208) 373-3801

Scott Pugrud
Administrator Office of Species Conservation (OSC)
Idaho Governor's Office of Species Conservation
Boise, Idaho 83720
(208) 332-1555