

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF OREGON, ACTING BY AND THROUGH  
THE OREGON DEPARTMENT OF FISH AND WILDLIFE,  
AND  
THE BUREAU OF LAND MANAGEMENT  
OREGON/WASHINGTON STATE OFFICE**

**I. INTRODUCTION AND BACKGROUND**

Greater Sage-grouse is a species managed by the State of Oregon that is dependent on sagebrush steppe ecosystems. State agencies responsible for fish and wildlife management possess broad legal rights and responsibilities 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. 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 CFR 24.3(a)). The Bureau of Land Management (BLM) manages habitat that supports a variety of state-managed wildlife species, including the majority of habitat in Oregon used by sage-grouse, pursuant to the Federal Lands Policy and Management Act of 1976 (FLPMA) and other Federal statutes and regulations: 43 U.S.C. 1701, et seq., and 43 CFR 1600, et seq. Through this shared responsibility in management of sage-grouse and its habitat, the State of Oregon and the BLM remain deeply committed to close coordination to help ensure conservation, enhancement, and restoration of habitat for sage-grouse and other sagebrush-obligate species.

The State of Oregon manages sage-grouse and its habitat as directed by Oregon Revised Statutes Chapters 496, 516, 517, 522, 526, and 530. The State of Oregon, through the Department of Fish and Wildlife (ODFW), adopted the Fish and Wildlife Habitat Mitigation Policy in 1991 (Oregon Administrative Rule (OAR) 635-415-0000-0025). Oregon further refined its focus on sagebrush and sage-grouse-specific conservation and population maintenance through collaborative efforts with partners in creating the Greater Sage-Grouse Conservation Assessment and Strategy (2011), the Sage-Grouse Core Area Habitat Assessment (2011), and sage-grouse-specific land use and mitigation programs individually codified into the OAR in 2015. The State’s sage-grouse-specific rules (OAR 635-140-0000 et seq.) incorporate and supplement previous assessments, strategies, and plans mentioned above, including population and habitat goals, related policies and objectives, and the core-area approach.

Oregon’s sage-grouse mitigation rules, in addition to 2015 land use rules adopted by the Oregon Land Conservation and Development Commission (OAR 660-023-0015), were incorporated into and advanced as part of Oregon’s broader and comprehensive landscape-scale planning efforts associated with the Oregon Sage-Grouse Action Plan (2015). The State of Oregon adopted the Action Plan in September 2015 through the Governor’s Executive Order 15-18, which, in combination with and by referencing the OARs, provides direction to State agencies that permit and implement actions in sage-grouse habitat. Taken together, these State-based efforts represent

a landscape-level approach that identifies target sage-grouse population levels; describes a hierarchy of importance for sage-grouse habitat (core, low density, and general); provides strategic guidance on how to maintain, preserve, and improve sage-grouse habitat across Oregon; and provides direction on how to evaluate and address potential impacts of specific development actions in sage-grouse habitat through use of impact thresholds, a hierarchy of mitigation requirements, the Oregon Greater Sage-Grouse Habitat Mitigation Program Operations and Administration Manual (Mitigation Manual), and a habitat quantification tool (HQT) to calculate the amount of compensatory mitigation required to offset development impacts and achieve a net conservation benefit.

On June 7, 2017, the Secretary of the Interior issued Secretarial Order (SO) 3353 with the purpose of enhancing cooperation among eleven Western States and the BLM in managing and conserving sage-grouse. The strategy set out in SO 3353 is to support a partnership that allows the DOI and the eleven Western States to maintain healthy populations of sage-grouse and improve collaboration and integration of state and local concerns and approaches sagebrush management and conservation on Federal lands. Among other ways of potentially supporting this partnership, SO 3353 directed the BLM to develop and enter into memorandums of understanding with states to integrate their management into the BLM's land management decisions.

Secretarial Order 3353 also directed a new Interior Review Team, consisting of the BLM, the U.S. Fish and Wildlife Service, and U.S. Geological Survey, to coordinate with the 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 sage-grouse and the sagebrush ecosystem, as well as the health of the communities and economies of the American West. Secretarial Order 3353 directed the Interior Review Team to evaluate the 2015 Greater Sage-grouse plans and associated policies to identify provisions that may require modification to complement state efforts to conserve the species (among other tasks).

On August 4, 2017, the Interior Review Team submitted its report in response to SO 3353. In this report, the team recommended modifying the sage-grouse resource management plan (RMP) decisions and associated policies to better align with the individual state plans. On the same day, 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 (EIS) on May 4, 2018 (83 Federal Register 19801). The BLM Oregon/Washington (OR/WA) accepted public comments for 90 days, held two public meetings, and considered and incorporated the public comments it received, as appropriate, into its EIS.

On December 6, 2018, the BLM Washington Office issued Instruction Memorandum (IM) 2019-018, which directed the BLM to not require compensatory mitigation from public land users, except where specifically required by law. The IM clarifies that the policy does not affect the ability of the BLM to incorporate and enforce compensatory mitigation as a component of compliance with a state mitigation plan, program, or authority. On March 15, 2019, the BLM published the record of decision amending its 2015 Approved Resource Management Plan

Amendment (ARMPA) for Greater Sage-Grouse. The record of decision provides for additional consistency and alignment with the State of Oregon's Greater Sage-Grouse Action Plan, associated programs, and authorities. The ARMPA clarifies and formalizes coordination between the BLM and the State of Oregon in applying compensatory mitigation measures to approved actions.

## **II. PURPOSE**

The purpose of this Memorandum of Agreement (MOA) is to document a coordinated approach to mitigation across Oregon's Greater Sage-grouse habitat, comply with the State's program for compensatory mitigation, and track progress toward meeting the BLM Oregon/Washington's (OR/WA) net conservation gain objective and the State of Oregon's net conservation benefit standard. The BLM and the State of Oregon have established legal measures to avoid and minimize impacts to important sage-grouse habitat. The ARMPA implemented allocation decisions by habitat management areas to direct resource development away from priority habitat. These land use allocation decisions identify the foreseeable development and activities that are allowed, restricted, or excluded for all or part of the planning area based on desired future conditions. In addition, the ARMPA contains a disturbance and density cap, adaptive management responses, required design features, best management practices, buffers, and seasonal restrictions to avoid direct disturbance to sage-grouse and its habitat. The Oregon Sage-Grouse Action Plan provides a unified approach to sage-grouse conservation that outlines how threats to sage-grouse have been assessed and should be addressed in Oregon. Threats to sage-grouse that stem from development actions have been addressed through strengthening Oregon's existing land use rules. Specifically, OARs 660-023-0115 and 635-140-0000 through 0025 define sage-grouse habitat, population level goals, and development characteristics that impact sage-grouse. In addition, the rules establish a mitigation hierarchy (avoidance, minimization, and compensatory mitigation) for development actions in sage-grouse habitat and specific mitigation requirements (net conservation benefit, additionality, and durability). These statutory provisions also prescribe assessment methods and identify short- and long-term development disturbance density caps. The shared goal of the BLM and the State is to direct new development away from these priority areas to less important habitats. We recognize the economic value of these areas, however, and development proposals are anticipated.

## **III. PARTIES**

This MOA is entered into by and between the State of Oregon, acting by and through the ODFW and the BLM OR/WA State Office.

## **IV. AUTHORITIES AND POLICIES**

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

- A. Applicable Oregon Revised Statutes and regulations including Chapters 496, 516, 517, 522, 526, 530 and OAR 635-415-0000-0025, OAR 635-140-0000-0025, and OAR 660-023-0015.

- B. Federal Land Policy and Management Act, as amended, 43 U.S.C. §§ 1701–1787.
- C. Applicable DOI and BLM regulations, including 43 CFR 24 (Department of the Interior Fish and Wildlife Policy: State-Federal Relationships) and 43 CFR 1610 (Resource Management Planning).
- D. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370(h).
- E. Oregon Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment. Bureau of Land Management (September 2015).
- F. Oregon Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment. Bureau of Land Management (March 2019).
- G. Secretarial Order 3353, Greater Sage-Grouse Conservation and Cooperation with Western States (June 7, 2017).
- H. Secretarial Order 3349, American Energy Independence (March 29, 2017).
- I. Department of the Interior Secretary’s memorandum, Improving the BLM’s 2015 Sage-Grouse Plans (Aug. 4, 2017).
- J. Bureau of Land Management Washington Office IM 2019-018, Compensatory Mitigation (December 6, 2018).

**V. RESPONSIBILITIES OF THE SIGNATORIES**

**A. ODFW**

1. The ODFW will perform the duties and obligations of a cooperating agency when the BLM OR/WA prepares NEPA documents for proposed projects sited in State-designated Greater Sage-grouse core, low density, or general habitat (as those habitat types are defined in OAR 660-023-0115(6) and OAR 635-140-0015) that is determined through ODFW and BLM coordination to require application of the mitigation hierarchy, including compensatory mitigation.
2. The ODFW will coordinate with the BLM to determine if a project will have residual impacts (as defined on page F-7 of the ARMPA) to sage-grouse or its habitat.
3. The ODFW will maintain the option to not request cooperating agency status on a project-specific basis if:
  - a. The project is sited to avoid and minimize impacts to sage-grouse; and
  - b. The amount of residual impact is determined to be negligible; or

- c. The development size and impact is less than criteria set forth in OAR 660-023-0115(7).
4. Upon receiving notification of projects that trigger multiple permitting jurisdictions or processes (Federal, State, and/or local agencies), the ODFW will convene and coordinate an interagency review team (IRT) as described in the Mitigation Manual to coordinate agencies' application of relevant mitigation hierarchies, processes, and communications with the project proponent.
5. The ODFW will attend pre-application conferences with the BLM, the project proponent, the county, or a relevant combination thereof, for any project proposal relevant to sage-grouse and on BLM-administered land, as outlined in OAR 660-023-0115(8). Pre-application conferences provide an opportunity for early information sharing and help ensure consistency with Federal, State, and county land use permitting and mitigation programs related to Greater Sage-grouse conservation.
6. The ODFW will provide timely review of development applications in sage-grouse habitat on public lands administered by the BLM OR/WA to determine whether the proposed project complies with Oregon's Greater Sage-grouse policies and programs.

In instances where the ODFW determines that, after applying BLM or State mitigation hierarchies (OAR 635-140-0025), compensatory mitigation is required to ensure consistency with State policies and programs, the ODFW will:

- a. Use the State's HQT to determine the loss of functional sage-grouse habitat that would result from a proposed development action.
- b. Determine the amount of compensatory mitigation necessary to replace the loss of functional sage-grouse habitat and achieve a net conservation benefit to address residual development impacts to sage-grouse (OAR 635-140-0025(3)). Compensatory mitigation will be based on the calculated loss of functional habitat due to residual development impacts to sage-grouse.
- c. Follow the Mitigation Manual to address additional components of the State's sage-grouse mitigation program to provide a predictable, transparent, equitable, and science-based approach for assessing development in sage-grouse habitat while ensuring the effectiveness of compensatory mitigation.
- d. Ensure that compensatory mitigation achieves additionality, durability, and a net conservation benefit as defined in the Mitigation Manual and OAR 635-140-0025(3).

- e. Provide timely application review and development assessment results to the project proponent and the BLM in writing and address questions or concerns as part of the IRT process.
7. The ODFW will strive to make relevant State policies and processes consistent, transparent, timely, and science-based in order to simplify and streamline coordinated planning and permitting.

#### B. BLM OR/WA

1. When authorizing uses on BLM-administered lands, the BLM OR/WA will verify that those uses are in conformance with its approved land use plans, including the land use planning decisions relating to sage-grouse conservation.
2. The BLM OR/WA will notify the ODFW when there is development interest or a proposal/application is received for a project in sage-grouse habitat. Upon notification of a project proponent's interest in advancing a development action, or as soon as possible, the BLM OR/WA will convene and conduct pre-application conferences with the ODFW, the project proponent, the county, or a relevant combination thereof to provide consistency with State and county land use permitting and mitigation programs related to sage-grouse conservation. Early communication and coordination between relevant entities will assist in evaluation and provide a consistent understanding of: (a) project footprint boundaries, (b) the existence of any direct or indirect effects to sage-grouse populations or habitat, and (c) proposed and current development impacts in Greater Sage-grouse habitat.
3. The BLM OR/WA will require and apply a mitigation hierarchy of avoidance, minimization, and other onsite mitigation to project proposals on public lands it administers, consistent with its approved land use plans (including the ARMPA) and the governing Federal statutory and regulatory mandates and administrative directives.
4. The BLM will coordinate and share its mitigation hierarchy analysis with the ODFW, work with the ODFW to determine if a project will have residual impacts to sage-grouse, inform the project proponent of the BLM's role in ensuring consistency with the State's sage-grouse mitigation program, and require the proponent to contact the ODFW for information on the State's pre-application process and compliance with the State's mitigation program.
5. Where the ODFW, through coordination with the BLM OR/WA, determines the State's mitigation program or authority is not required to issue a permit for a project proposal, the ODFW will provide recommendations on compensatory mitigation. The BLM OR/WA will incorporate these recommendations along with other BLM information into the BLM's NEPA analysis. For project-specific proposals on BLM-administered land, the BLM OR/WA will analyze and disclose

the effects of compensating for residual impacts according to State recommendations and not compensating for residual impacts in its project-specific NEPA documentation. Project proponents are free to volunteer compensatory mitigation based on the BLM's analysis to reduce residual project impacts.

6. The BLM OR/WA will coordinate with the ODFW to ensure the BLM uses the Oregon HQT to evaluate both the impact of proposed actions on sage-grouse habitat and the benefits of proposed compensatory mitigation in its NEPA analyses. The BLM OR/WA will also work with the State in evaluating whether a proposed action is consistent with the State's policies and programs, including its administrative rules and mitigation manual.
7. Where the ODFW, through coordination with the BLM OR/WA, determines the State's mitigation plan, program, or authority would require compensatory mitigation, the BLM OR/WA will ensure consistency with State law, policy, and programs by incorporating and enforcing that State-directed compensatory mitigation as a condition of permits or authorizations issued by the BLM OR/WA. The BLM will include the required mitigation in all of its action alternatives in a NEPA analysis.
8. In close coordination with the ODFW, and as outlined in the Monitoring Framework, Appendix D, of the ARMPA and the ODFW's Mitigation Manual, the BLM will monitor the implementation and effectiveness of both mitigation (including compensatory mitigation) applied at multiple scales and progress toward meeting the net conservation gain objective.
9. The BLM OR/WA will invite the ODFW as a cooperating agency under NEPA (42 U.S.C. 4331(a)) for any proposed project sited in sage-grouse habitat (including the State of Oregon's designated core, low density, and general habitats) that is determined through ODFW and BLM coordination to require the application of the mitigation hierarchy. If another State agency requests cooperating agency status, the BLM OR/WA will also recognize that status or establish the Governor's Office as the overall designated cooperating agency on behalf of multiple State agencies.

#### C. Both Parties

1. The ODFW and the BLM OR/WA will identify possible locations in sage-grouse habitat to implement mitigation actions that meet the requirements of the State's Sage-Grouse Action Plan and Greater Sage-Grouse Conservation Strategy (OAR 635-140-0000 through 0025) and are consistent with applicable Federal statutes, regulations, and other directives. If those BLM-administered actions meet State mitigation credit standards, they can be applied as mitigation credits in the State's compensatory mitigation evaluation and decision process.

2. Both parties will strive to ensure durability of mitigation efforts by identifying areas with a low potential for development and high level of protection.

## **VI. DISPUTE RESOLUTION**

The State of Oregon and the BLM OR/WA agree to resolve any disputes as expeditiously as possible. If a dispute arises regarding the terms or the implementation of this MOA, the following steps will be taken:

- A. The parties will first attempt to resolve disputes related to application of the parties' mitigation hierarchies and related requirements to an individual project by convening the IRT for that project. The ODFW will convene such meeting as described in the Mitigation Manual.
- B. When a project-related or program dispute cannot be resolved within the IRT, the dispute would be elevated to the BLM OR/WA State Director and the ODFW Director for resolution. The party seeking resolution will provide a written statement of the dispute, along with any rationale or supporting documents, to the other party's corresponding office. The BLM OR/WA State Director and the ODFW Director or their delegates will engage in discussions in an attempt to arrive at a consensus. The BLM OR/WA State Director and the ODFW Director will be the final level for dispute resolutions.
- C. Where a dispute arises and multiple State agencies have authority over the proposed project, the Governor's Office and the BLM OR/WA State Director will resolve the issue.

## **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 ODFW or BLM OR/WA.
- B. Nothing in this MOA binds the ODFW or the BLM OR/WA to perform beyond their respective authorities.
- C. Nothing in this agreement may be construed to obligate the ODFW, the BLM OR/WA, 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 ODFW, the BLM OR/WA, 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 ODFW or the BLM OR/WA 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 ODFW or the BLM OR/WA will require execution of separate agreements or contracts.
- F. Nothing in this MOA is intended to or will be construed to restrict the ODFW or the BLM OR/WA 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 ODFW or the BLM OR/WA under this MOA may be subject to the Freedom of Information Act, 5 U.S.C. 552, et seq. (FOIA), and the Oregon Public Records Act. The State of Oregon and the BLM OR/WA agree to consult one another prior to releasing potentially privileged or exempt documents.
- I. Periodic leadership meetings between the ODFW and the BLM OR/WA will be scheduled to review progress, identify opportunities for advancing the purposes of this MOA, and discuss and resolve any changed circumstances (e.g., new Federal or State law) applicable to the provisions of the MOA.
- J. The ODFW or the BLM OR/WA may terminate participation in this MOA 30 days after providing written notice to the other party.
- K. The ODFW or the BLM OR/WA may amend or modify this MOA through advance written notice and agreement to the other party.

### VIII. SIGNATURES

All signatories have the appropriate delegation of authority to sign this MOA.

  
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Theresa M. Hanley  
Acting State Director, Oregon/Washington  
Bureau of Land Management

9-9-2019  
Date

  
\_\_\_\_\_  
Curt Melcher  
Director  
Oregon Department of Fish and Wildlife

9/16/19  
Date