

MEMORANDUM OF UNDERSTANDING

Among

THE UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT,  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE,  
THE UNITED STATES DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE  
CONSERVATION SERVICE  
AND THE STATE OF WYOMING

To Promote a Cohesive and Consistent Conservation Strategy for the Greater Sage-Grouse and  
its Habitat in Wyoming

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and among the United States Department of the Interior (DOI), Bureau of Land Management (BLM), Wyoming State Office by and through the Wyoming State Director; the United States Department of Agriculture, Forest Service (U.S. Forest Service), Rocky Mountain and Intermountain Regions, by and through the Regional Foresters; United States DOI, Fish and Wildlife Service (FWS), Wyoming Ecological Services Field Office, by and through the Field Supervisor; the United States Department of Agriculture, Natural Resources Conservation Services (NRCS), by and through the State Conservationist; and the State of Wyoming, by and through the Office of the Governor. All signatories to this MOU will collectively be hereinafter referred to as the “Parties.”

This MOU sets forth objectives and describes how the Parties will develop intergovernmental communication and mechanisms to provide a cohesive and consistent conservation strategy for the Greater sage-grouse and its habitat in Wyoming. Consistent with the BLM Greater Sage-grouse Resource Management Plans (RMP) and Records of Decision and U.S. Forest Service Greater sage-grouse Land and Resource Management Plans and Records of Decision (collectively referred to as “federal plan(s)” hereafter) and Executive Order 2015-4, Greater Sage-Grouse Core Area Protection (EO 2015-4), this MOU documents the cooperation and understanding between the Parties regarding the achievement of a no net loss or net conservation gain through compensatory mitigation for projects in Greater sage-grouse habitat<sup>1,2,3</sup>.

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<sup>1</sup> BLM and U.S. Forest Service Greater sage-grouse habitat designations are largely consistent with Version 3 of State of Wyoming habitat designations for Greater sage-grouse (see Footnotes 2 and 3). Executive Order 2015-4

## I. BACKGROUND

Since 2007, the State of Wyoming has worked with representatives of federal, state and local governments, conservation and sportsmen's organizations, and a wide variety of industries – agriculture, mining, oil and gas, wind generation, transmission and more – to develop a credible, lasting model for conservation of the Greater sage-grouse and its habitat. Wyoming's strategy is embodied in EO 2015-4. In September 2015, the BLM and U.S. Forest Service approved federal plans that incorporate specific conservation measures to conserve Greater sage-grouse and its habitat in Wyoming. Wyoming's strategy and the federal plans are designed to protect Greater sage-grouse and its habitat using a suite of tools and mechanisms that work in concert together by reducing habitat loss and fragmentation through lek buffers, disturbance limits, and excluding activities, and by monitoring the amount and density of disturbance with a sophisticated mapping platform.

Wyoming's strategy is conservation of important habitat essential to the maintenance of the Greater sage-grouse populations through avoidance and minimization of activities, with compensatory mitigation employed where avoidance and minimization are inadequate or impossible to prevent long-term residual impacts to the species and its habitat. In those instances where avoidance and minimization are inadequate to protect Core Population Area Greater sage-grouse and its habitat, impacts will be offset through compensatory mitigation actions to benefit Greater sage-grouse that achieve no net loss or a net conservation gain for the species (see EO 2015-4, Attachment A and H, and State of Wyoming Greater Sage-Grouse – Compensatory Mitigation Framework). The BLM and U.S. Forest Service, through federal plans, have adopted a complementary strategy. In authorizing third party actions that result in Greater sage-grouse habitat loss and degradation, the Wyoming federal plans provide that, subject to valid existing rights and consistent with applicable law, land management agencies require mitigation that provides a no net loss or a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. Ultimately, project impacts should be offset by implementing avoidance, minimization and/or compensatory mitigation

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utilizes Version 4, which does not align completely with areas identified in Version 3 mapping. The BLM and U.S. Forest Service are undertaking actions to better align management areas consistent with Version 4 mapping.

<sup>2</sup> The U.S. Forest Service, to meet National Forest Management Act population viability standards, has designated 309,200 acres on the Thunder Basin National Grasslands and Bridger-Teton National Forest as Priority-Core, which is not consistent with Executive Order 2015-4. Further, Executive Order 2015-4 designated Connectivity Corridors have been designated by the U.S. Forest Service as Priority-Connectivity (68,800 acres) in its land and resource management plans. These differences in habitat designation will influence compensatory mitigation requirements as outlined in Section III below.

<sup>3</sup> The BLM Buffalo Field Office Approved RMP for Greater Sage-Grouse Habitat designates Core Population Connectivity Corridors as Priority Habitat Management Areas, a designation generally reserved for Core Population Areas in Executive Order 2015-4. Management direction for these Core Population Connectivity Corridors is consistent with Executive Order 2015-4, Connectivity Areas.

strategies that deliver the greatest benefit to the species, including offsite or other mitigation options where appropriate. If a proposed project does not comply with the stipulations contained in EO 2015-4 or the respective federal plan, the permitting party may deny authorization of the project or consider modification of the project, which may, as a condition of approval of the project, require compensatory mitigation.

## **II. STATEMENT OF PURPOSE:**

The purpose of this MOU is to affirm the relationship between the Wyoming Greater Sage-Grouse Compensatory Mitigation Framework (Framework) and the federal plans. State agencies – Wyoming Wildlife and Natural Resource Trust (WWNRT), Game and Fish Department (WGFD), Department of Agriculture, State Engineer, Department of Environmental Quality, Office of State Lands and Investments (OSLI), State Parks and Cultural Resources, Department of Transportation, Water Development Commission, Oil and Gas Conservation Commission, and the Office of the Governor – have entered into a Memorandum of Agreement which incorporates the Framework. This MOU documents the cooperation between the Parties and the process the Parties will use when applying compensatory mitigation.

## **III. OBJECTIVES**

The Parties agree that the following objectives are central to this MOU:

- A. Establishing a framework for state-federal cooperation for purposes of Greater sage-grouse habitat conservation management activities;
- B. Collaborating to address related issues affecting the Greater sage-grouse ecosystem;
- C. Promoting economic and conservation goals;
- D. Continuity of implementation within federal, state and local jurisdictions.
- E. Flexibility and adaptability, including through adaptive management;
- F. Successful and sustainable multiple use of subject lands;
- G. Promoting conservation in an innovative and integrated manner;
- H. Continued and transparent communications and information-sharing among key stakeholders; and
- I. State-federal collaboration to achieve a no net loss or net conservation gain, as appropriate, for Greater sage-grouse habitat to further species conservation and enhancement in Wyoming.

**IV. AUTHORITIES AND POLICIES:** This MOU is entered into under various legal authorities and policies, including, but not limited to, the following authorities:

- The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*; 43 U.S.C. § 1737(b);

- The National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321 *et seq.*;
- Secretarial Order No. 3330, Improving Mitigation Policies and Practices of the Department of the Interior;
- 600 DM 6, Departmental Manual, Landscape-Scale Mitigation Policy;
- CEQ regulations, 40 C.F.R. Part 1500;
- DOI NEPA regulations, 43 C.F.R. Part 46;
- BLM Planning regulations, 43 C.F.R 1601.0-1 *et seq.*;
- Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (Nov. 3, 2015);
- BLM Mitigation Manual Section MS-1794 and Handbook H-1794-1; BLM IM No. 2017-021;
- BLM's 2015 Record of Decision and Greater Sage-Grouse Approved Resource Management Plan Amendments for Wyoming;
- BLM's Authority to Address Impacts of its Land Use Authorizations through Mitigation, Solicitor's Memorandum M-37039, December 21, 2016;
- U.S. Forest Service Greater Sage-grouse Record of Decision for Northwest Colorado and Wyoming with Attached Land Management Plan Amendments for Thunder Basin National Grassland, Bridger Teton National Forest, and Medicine Bow National Forest (2015);
- 16 USC 473, Organic Administration Act of 1897;
- Public Law 86-517, 16 USC 528, Multiple-Use Sustained Yield Act of 1960;
- Public Law 94-588, 16 USC 1600, the National Forest Management Act of 1976;
- State of Wyoming Executive Order 2015-4; Greater Sage-Grouse Core Area Protection;
- The Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544);
- Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742 *et seq.*);
- Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-667);
- Fish and Wildlife Improvement Act, 1978 (16 U.S.C. §§ 7421 *et seq.*);
- Soil Conservation and Domestic Allotment Act (16 U.S.C. §§ 590a *et seq.*);
- Agricultural Act of 2014 (Pub. L. 113-79, 128 Stat. 649 (Feb. 7, 2014)); and
- Other relevant federal/state laws and policies.

**V. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

The Parties share a common interest in conserving Greater sage-grouse and its habitat in Wyoming. The BLM and U.S. Forest Service manage the public lands, including conserving, enhancing, and restoring Greater sage-grouse habitat consistent with the federal plans. Under its management authority of the Greater sage-grouse and permit authority (e.g., water, oil and gas, mining, etc.), the State of Wyoming has an interest in working in coordination with the BLM and U.S. Forest Service to enhance mitigation options and improve habitat on public lands in Wyoming by providing for effective mitigation.

Effective interagency cooperation through coordinated project planning and use of the Framework are of mutual benefit and interest to the Parties of this MOU.

In consideration of the foregoing, the Parties agree as follows:

**A. MUTUAL COMMITMENTS OF THE PARTIES:**

The Parties agree to work collaboratively and put forth a good faith effort to achieve mutually acceptable outcomes consistent with the goals of EO 2015-4 and the respective federal plans. As such, all Parties agree to use the Wyoming Greater Sage-Grouse Compensatory Mitigation Framework (as described below in the Commitments section) when it is determined that compensatory mitigation is required.

The Framework provides a method for computing the degree of impact (debits) and the value of compensatory mitigation offset (credits) required to ensure that projects comply with EO 2015-4 or federal plans. Credits must meet a high standard for quality, durability and other ecological values. Similarly, impacts to different types of habitat result in varying debits based on the value and importance of the habitat and degree and duration of the impact. The Framework is structured in a manner to provide net conservation gain at a statewide scale and to account for indirect effects.

**B. STATE OF WYOMING COMMITMENTS:**

The State of Wyoming will cooperate with the BLM and U.S. Forest Service on project proposals. The State of Wyoming will work in coordination with the BLM and U.S. Forest Service to develop and implement mitigation strategies, including, but not limited to the Framework.

The State of Wyoming will participate on the Wyoming Greater Sage-grouse Compensatory Mitigation Oversight Group, and will evaluate and provide recommendations on project mitigation plans pursuant to this MOU.

**C. BLM COMMITMENTS:**

As appropriate and consistent with applicable law, the BLM will work with the State of Wyoming on project proposals as described in Appendix D (or equivalent) of the Wyoming Sage-grouse plans and Federal and State Permitting Agency Coordination on Proposed Projects MOU. Additionally, the BLM will include the State of Wyoming as a cooperating agency in the NEPA process for projects in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) in accordance with BLM MOU WY-930-1501. In furtherance of

the cooperating agency relationship, and as appropriate, the BLM will also coordinate with the State of Wyoming during the pre-application and scoping processes, throughout the comment period, development and analysis of alternatives, and through the issuance of a final decision on the proposed project.

The BLM will implement actions to achieve the goal of net conservation gain (PHMA) consistent with the Wyoming Strategy (EO2015-4) that includes “compensatory mitigation as a strategy that should be used when avoidance and minimization are inadequate to protect Core Population Area Greater sage-grouse.” When the BLM determines through NEPA analysis that residual impacts from an anthropogenic disturbance cannot be avoided or minimized, the BLM agrees to incorporate the Framework as the primary tool to evaluate and quantify debits and calculate the number of credits required for compensatory mitigation. It is recognized that the BLM or the project proponent may desire to utilize an alternative mechanism other than the Framework and further it is recognized that the BLM or the project proponent may desire to apply compensatory mitigation in a variety of manners, including proponent-initiated projects, conservation banks, exchanges, and other methods. In either instance, the Parties agree that the alternative method will be evaluated by the Wyoming Compensatory Mitigation Oversight Group to assure the alternative method meets the same standards as those outlined by each of the parties involved in permitting the project. The Wyoming Compensatory Mitigation Oversight Group is made up of representatives of the BLM, U.S. Forest Service, FWS, NRCS, Governor’s Office, WWNRT, OSLI, and WGFD.

In those instances where the BLM, after coordination with the State of Wyoming, determines mitigation is required which would not otherwise be required by the State of Wyoming, the BLM will work with the Wyoming Compensatory Mitigation Oversight Group to determine the level of offset adequate to address the impact. In those cases the State of Wyoming may elect to demonstrate achievement of either a no net loss or net conservation gain as prescribed by the appropriate federal plan on at least an acre-to-acre replacement basis and will provide documentation to the appropriate federal agency for use in the appropriate NEPA analysis and to the Wyoming Compensatory Mitigation Oversight Group. This approach will only apply in cases where the proposed action is compliant with EO 2015-4, and where the BLM determines residual impacts to the Greater sage-grouse and its habitat exist that warrant additional mitigation.

The BLM will participate on the Wyoming Greater Sage-grouse Compensatory Mitigation Oversight Group, and will evaluate and provide recommendations on project mitigation plans pursuant to this MOU.

**D. U.S. FOREST SERVICE COMMITMENTS:**

As appropriate and consistent with applicable law, the U.S. Forest Service will coordinate and collaborate with the State of Wyoming on project proposals as described in Appendix B of the Greater Sage-grouse Record of Decision. Additionally, the U.S. Forest Service will include the State of Wyoming as a cooperating agency in the NEPA process for projects in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) in accordance with U.S. Forest Service MOU 16-MU-11020000-008. In furtherance of the cooperating agency relationship, and as appropriate, the U.S. Forest Service will also coordinate with the State of Wyoming during the pre-application and scoping processes, throughout the comment period, development and analysis of alternatives, and through the issuance of a final decision on the proposed project.

When the U.S. Forest Service determines through NEPA analysis that residual impacts from an anthropogenic disturbance cannot be avoided or minimized and exceed EO 2015-4 stipulations or U.S. Forest Service Greater sage-grouse Land and RMP Record of Decision standards and guidelines, the U.S. Forest Service agrees to incorporate the Framework as the primary tool to evaluate and quantify debits and calculate the number of credits required for compensatory mitigation. It is recognized that the U.S. Forest Service or the project proponent may desire to utilize an alternative mechanism other than the Framework and further it is recognized that the U.S. Forest Service or the project proponent may desire to apply compensatory mitigation in a variety of manners, including proponent-initiated projects, conservation banks, exchanges, and other methods. In either instance, the Parties agree that the alternative method will be evaluated by the Wyoming Compensatory Mitigation Oversight Group to assure the alternative method meets the same standards as those outlined by each of the parties involved in permitting the project.

In those instances where the U.S. Forest Service, after coordination with the State of Wyoming, determines mitigation is required which would not otherwise be required by the State of Wyoming, the U.S. Forest Service will work with the Wyoming Compensatory Mitigation Oversight Group to determine the level of offset adequate to address the impact. In those cases the State of Wyoming may elect to demonstrate achievement of either a no net loss or net conservation gain as prescribed by the appropriate federal plan on at least an acre-to-acre replacement basis and will provide documentation to the U.S. Forest Service for use in the appropriate NEPA analysis and to the Wyoming Compensatory Mitigation Oversight Group. This approach will only apply in cases where the proposed action is compliant with EO 2015-4, and where the U.S. Forest Service determines residual impacts to the Greater sage-grouse and its habitat exist that warrant additional mitigation.

The U.S. Forest Service will participate on the Wyoming Greater Sage-grouse Compensatory Mitigation Oversight Group, and will evaluate and provide recommendations on project mitigation plans pursuant to this MOU.

**E. FWS COMMITMENTS:**

The FWS will participate on the Wyoming Greater Sage-grouse Compensatory Mitigation Oversight Group, and will evaluate and provide recommendations on project mitigation plans pursuant to this MOU.

**F. NRCS COMMITMENTS:**

As appropriate and consistent with applicable law, the NRCS will:

- A. Coordinate and collaborate with the State of Wyoming on project proposals that fall under the purview of EO 2015-4;
- B. Provide technical assistance, when requested, for the planning of conservation actions to improve sage grouse habitats; and
- C. Make available financial assistance to agricultural producers for the conservation of sage grouse habitat.

The NRCS will participate on the Wyoming Greater Sage-grouse Compensatory Mitigation Oversight Group, and will evaluate and provide recommendations on project mitigation plans pursuant to this MOU.

**VI. STANDARD PROVISIONS**

- 1. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by applicable laws of the United States and the State of Wyoming.
- 2. **Contacts.** Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

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**BLM**  
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**U.S. Forest Service**

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**FWS**

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U.S. Fish and Wildlife Service  
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**NRCS**

Astrid Martinez, State Conservationist  
Wyoming State Office  
Natural Resource Conservation Service  
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**State of Wyoming**

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3. **Entirety of the Agreement.** This MOU, consisting of twelve (12) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
4. **Severability.** Should any portion of this MOU be determined to be illegal, unenforceable, or become null and void, the remainder of this MOU shall continue in full force and effect, and any Party may renegotiate the terms affected by the severance.
5. **Payment.** No payment will be made to any Party by another as a result of this MOU. Each party will pay its own costs.
6. **Nonbinding Agreement.** 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 Parties.

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Nothing in this MOU binds the Parties to perform beyond their respective authorities.

Nothing in this agreement may be construed to obligate any agency of 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 any agency of the United States to spend funds on any particular project or purpose, even if funds are available.

The mission requirements, funding, personnel, and other priorities of the Parties may affect their ability to fully implement all the provisions identified in this MOU.

Specific activities that involve the transfer of money, services, or property between or among the Parties will require execution of separate agreements or contracts.

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.

7. **Participation in Similar Activities.** Nothing in this MOU is intended to or will be construed to restrict the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

8. **Sovereign Immunity.** The Parties do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

9. **Public Records.** Any information furnished between the Parties under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, and Wyoming Public Records Act, W.S. § 16-4-201 through 205. Specific information that may be confidential shall be marked so by the Party that believes the information to be confidential. The Parties agree to consult one another prior to releasing potentially privileged or exempt documents in accordance with any applicable statute and regulations.

10. **Publicity.** All press releases and public statements issued by the Parties concerning or characterizing this MOU will be jointly reviewed and agreed to by delegated staff representing each of the undersigned Parties.

11. **Dispute Resolution.** Conflicts between the Parties concerning procedures under this MOU which cannot be resolved at the operational level will be referred to the Wyoming Greater sage-grouse Compensatory Mitigation Oversight Group for resolution. If resolution cannot be reached, conflicts will be referred to the BLM Wyoming State Director, Rocky Mountain and Intermountain Region Regional Foresters, the Wyoming Ecological Services Field Supervisor, the NRCS State Conservationist, and the Governor of Wyoming for final resolution.

12. **Termination.** Any Party may terminate its involvement with this MOU upon providing a 30 day written notice of such termination to the other Parties. During this period, the Parties will enter negotiations to resolve any disagreement(s). If the disagreement(s) have not been resolved by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing, but are not concluded by the end of the 30-day period, the Party initiating the termination notice may request that termination be postponed for an additional 30-day period or longer while the negotiations continue.

13. **Amendments.** Any Party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU, which are mutually agreed upon by and between the Parties to this MOU, shall be incorporated by written instrument, executed and signed by all Parties to this MOU.

14. **Term of the MOU.** This MOU shall become effective once all Parties have signed the MOU, and it shall remain in full force and effect for 15 years. The Parties agree to reevaluate this MOU should there be substantive changes, modifications, revisions, or amendments to Executive Order 2015-4 to determine if this MOU should be modified or terminated.


15. **Authorized Representatives.** By signature below, each Party certifies that the individuals listed in this document are representatives of the individual Parties and are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the Parties hereto have executed this MOU as of the last date written below.



Mary Jo Rugwell, State Director  
BLM Wyoming State Office

02/03/2017

Date



Brian Ferebee, Regional Forester  
U.S. Forest Service Rocky Mountain Region

02/10/2017

Date



<sup>ra</sup> Nora Rasure, Regional Forester  
U.S. Forest Service Intermountain Region

02/14/2017

Date



Tyler Abbott, Field Supervisor  
FWS Wyoming Ecological Services Field Office

2/6/2017

Date



Astrid Martinez, State Conservationist  
NRCS Wyoming State Office

2-27-17

Date



Matthew H. Mead, Governor  
State of Wyoming

3/1/17  
Date