

APPENDIX 'B'

Existing regulatory and administrative authorities for agencies involved in the Sage Grouse Conservation Plan for Nevada and portions of eastern California

Existing state and federal regulatory mechanisms are adequate for implementation of this plan. Existing regulatory and administrative authorities for involved agencies are described below.

State of Nevada

The State of Nevada has declared in NRS 501.00, that “wildlife in this state not domesticated and in its natural habitat is part of the natural resources belonging to the people of the state of Nevada”, and that “the preservation, protection, management and restoration of wildlife within the state contribute immeasurably to the aesthetic, recreational and economic aspects of these natural resources”. NRS 501.105 charges the Nevada Wildlife Commission with the “preservation, protection, management and restoration of wildlife and its habitat.” Nevada Division of Wildlife is authorized in NRS 501.331 to “administer the wildlife laws of the state”, and NRS 501.337 authorizes the Administrator of NDOW to “carry out the policies and regulation of the commission.

State of California:

Bureau of Land Management

The Federal Land Policy and Management Act (FLPMA) of 1976 is the primary federal law that governs most land uses on BLM-administered lands although other federal laws also provide management direction. Memorandums of Understanding (MOU's) are not binding decision-making documents, but do provide general management direction and emphasis.

Land use plans (LUP's) can be either Resource Management Plans or Management Framework Plans depending on the Resource Area. These plans were developed with public participation and meet the requirements of the FLPMA. These plans establish the management direction for resource uses of public lands administered by the BLM and are, in most cases, the primary decision-making documents (43 CFR 4100).

Most Resource Areas within the range of Sage Grouse in Nevada have LUP objectives either specific to Sage Grouse habitat management or general objectives dealing with managing special status species. In the cases where LUP's do not have either Sage Grouse or general special status species objectives, other authorities (e.g., grazing regulations) will be used until LUP maintenance, amendment or revision incorporates such objectives.

In 1995 new grazing regulations were finalized (60 FR, February 22, 1995) that included Subpart 4180 addressing the “Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.” Within the scope of these regulations, 43CFR 418.2(d), includes specific direction to the BLM State Directors to develop standards that among other things would address: “(4) Habitat for endangered, threatened, proposed, candidate, or special status species; and; (5) Habitat quality for native plant and animal populations and communities...” (43 CFR 4180.2 (d)...) In addition, 43CFR 4180.2(e) requires development of guidelines to address: “(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Federal Candidate, and other special status species to promote their conservation.

BLM national policy directs State Directors to afford State-designated sensitive species the same level of protection as provided for federal candidate species (BLM 6840 Manual). Specifically the policy direction states:

“BLM shall carry out management, consistent with the principles of multiple use, for the conservation of candidate [and sensitive] species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as threatened/endangered. Specifically, BLM shall:

1. Determine the distribution, abundance, reasons for the current status, and habitat needs for candidate [and sensitive] species occurring on land administered by BLM, and evaluate the significance of lands administered by BLM or actions in maintaining those species.
2. For those species where lands administered by BLM or actions have a significant affect on their status, manage the habitat to conserve the species by:
 - a. Including candidate [and sensitive] species as priority species in land use plans.
 - b. Developing and implementing rangewide and/or site-specific management plans for candidate [and sensitive] species that include specific habitat and population management objectives designed for recovery, as well as the management strategies necessary to meet those objectives.
 - c. Ensuring that BLM activities affecting the habitat of candidate [and sensitive] species are carried out in a manner that is consistent with the objectives for those species.
 - d. Monitoring populations and habitats of candidate [and sensitive] species to determine whether management objectives are being met.

Forest Service

The National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA) are the primary laws that govern uses on National Forest lands.

The National Environmental Policy Act is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101) and provides means (section 102) for carrying out the policy. The first priority for planning to guide management of the National Forest System is to maintain or restore ecological sustainability of national forests and grasslands to provide for a wide variety of uses, values, products and services.

The National Forest Management Act requires the Secretary of Agriculture to specify “guidelines for land management plans developed to achieve the goals which provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives” (16 U.S.C. 1604 (g) (3)(B)). In accord with this diversity provision, the Secretary promulgated a regulation that provides in part: “fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area” (36 CFR 219.19, 1982 edition).

The Forest Service Manual provides specific direction for managing threatened, endangered, sensitive and candidate species on National Forest lands, Forest Service Manual section 2670.31-32, which state:

Place top priority on conservation and recovery of endangered, threatened, and proposed species and their habitats through relevant National Forest System, State and Private Forestry, and Research activities and programs.

Establish through the Forest planning process objectives for habitat management and/or recovery of populations, in cooperation with States, the FWS, and other Federal agencies.

Through the biological evaluation process, review actions and programs authorized, funded, or carried out by the Forest Service to determine their potential for effect on threatened and endangered species and species proposed for listing.

Avoid all adverse impacts on threatened and endangered species and their habitat except when it is possible to compensate adverse effect totally through alternatives identified in a biological opinion rendered by the FWS; when an exemption has been granted under the act, or when the FWS biological opinion recognizes an incidental taking. Avoid adverse impacts on species proposed for listing during the conference period and while their Federal status is being determined.

Initiate consultation or conference with the FWS when the Forest Service determines that proposed activities may have an adverse effect on threatened, endangered, or proposed species or when Forest Service projects are for the specific benefit of a threatened or endangered species

Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species. Protect individual organisms or populations from harm or harassment as appropriate.

Assist States in achieving their goals for conservation of endemic species.

As part of the National Environmental Policy Act process, review programs and activities, through a biological evaluation, to determine their potential effect on sensitive species.

Avoid or minimize impacts to species whose viability has been identified as a concern.

If impacts cannot be avoided, analyze the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole.

Establish management objectives in cooperation with the States when a project on National Forest System lands may have a significant effect on sensitive species population numbers or distribution. Establish objectives for Federal candidate species, in cooperation with the FWS and the States.

Almost all the National Forest lands in the State of Nevada are managed by the Humboldt-Toiyabe National Forest which is part of the Inter-Mountain Region of the Forest Service. Small portions in the western part of the State are managed by the Lake Tahoe Basin Management Unit and the Inyo National Forest which are part of the Pacific Southwest Region. Existing land and resource management plans for both the Humboldt and the Toiyabe National Forests include specific standards and guidelines to manage rangeland and riparian habitats to provide for sage grouse needs. If the Humboldt and Toiyabe National Forest Land and Resource Management Plans do not have sufficient sage grouse or general special status species

objectives to reflect current information which is being compiled through this State planning effort, the plans may be amended or revised to establish specific standards and guidelines for sage grouse.

Fish and Wildlife Service

The Endangered Species Act (Act) [16 U.S.C. 1531 *et seq.*] identifies the Secretary of the Interior and Commerce as the responsible authorities for ensuring conservation for species at risk of extinction. In the State of Nevada the United States Fish and Wildlife Service (FWS) is the primary regulatory authority reviewing conservation efforts to protect species.

In June 2000, a draft ruling was published in the Federal Register outlining the proposed “Policy for the Evaluation of Conservation Efforts When Making Listing Determinations”. The purpose of this policy is to ensure consistent and adequate evaluation and formalization of conservation efforts when making listing decisions under the Act. This policy also facilitates the development of conservation efforts that sufficiently improve a species status so as to make listing a species as threatened or endangered unnecessary. This policy applies to formal conservation efforts developed with or without a specific intent to influence a listing decision with or without the FWS.

Section 4(a) (1) of the Act states that we must determine whether a species is threatened or endangered because of the following five factors:

The present or threatened destruction, modification or curtailment of its habitat or range.

Overutilization for commercial, recreational, scientific, or educational purposes.

Disease or predation.

The inadequacy of existing regulatory mechanisms.

Other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b) (1) (A) requires the FWS to take into account those efforts being made by any State or foreign nation, or political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction.

Conservation efforts must meet the following criteria:

The certainty that the conservation effort will be implemented.

Adequate funding, staffing, or other resources to implement the effort as described.

Authority of the parties to implement the effort.

Authorizations (permits, landowner permission.)

Voluntary participation necessary to implement.

Regulatory mechanisms (laws, regulations, ordinances).

High level of certainty that funding will be provided.

Implementation schedule.

Approval of all parties.

Certainty that the conservation effort will be effective.

The nature of threats is adequately described.

Explicit objectives for conservation efforts and dates they will be achieved.

Quantifiable, scientifically valid parameters to measure progress.

Monitoring and report progress.

Principles of adaptive management are incorporated

Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals should be aware that the Act mandates specific timeframes for making listing decisions; we cannot delay the listing process to allow additional time to complete the development of a conservation agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act which would establish only those prohibitions necessary for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery or delisting.

U.S. Fish and Wildlife Service National Wildlife Refuges: The National Wildlife Refuge System Improvement Act of 1997 (NWRISA, Public Law 105-57) and the National Environmental Policy Act (NEPA) are the primary laws that govern the management of refuge lands. There are number of other laws such as the Endangered Species Act, Clean Water Act, Clean Air Act (burning), Migratory Bird Treaty Act, Fish and Wildlife Coordination Act, and State Historic Preservation Act that the agency must comply with when implementing projects. Summaries of all of the laws that govern agency activities can be found on the internet at <http://laws.fws.gov>.

The System was created to conserve fish, wildlife, and plants and their habitats and this conservation mission has been facilitated by providing Americans opportunities to participate in compatible wildlife-dependent recreation, including fishing and hunting, on System lands and so that they better appreciate the value of and need for fish and wildlife conservation.

Under the NWRSIA, the Service shall prepare comprehensive conservation plans for each refuge within 15 years of the enactment of the Act. Each plan shall identify and describe the following.

The purpose of each refuge.

The distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the refuge.

The archaeological and cultural values of the refuge.

Areas within the refuge that are suitable for use as administrative sites or visitor facilities.

Significant problems which may adversely affect the populations and habitats of fish, wildlife, and plants within the refuge and actions necessary to correct or mitigate such problems.

Opportunities for compatible wildlife-dependent recreational uses.

In preparing each comprehensive conservation plan under the NWRSIA, and any revision to such a plan, the Service shall to the maximum extent practicable and consistent with the NWRSIA do the following:

Consult with adjoining Federal, State, local and private landowners and affected State conservation agencies;

Coordinate the development of the conservation plan or revision with relevant State conservation plans for fish wildlife and their habitats; and

Develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans.

There are six National Wildlife Refuges with lands in Nevada. Their names and headquarters locations are: 1) Ash Meadows in Pahrump; 2) Desert in Las Vegas; 3) Pahrangat in Alamo; 4) Ruby Lake in Ruby Valley; 5) Sheldon in Lakeview, Oregon; and 6) Stillwater in Fallon. Each of these refuges is managed independently under a refuge manager and has or will be developing their own comprehensive conservation plan.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) is the federal agency that works with private landowners to help them protect natural resources.

The Soil Conservation Act of 1935 (Public Law 74-46) established a "Soil Conservation Service" within the U.S. Department of Agriculture. The Soil Conservation Service (later called the Natural Resources Conservation Service) was initially charged with developing and prosecuting a continuing program of soil and water conservation. The Natural Resources Conservation Service has since evolved from an erosion-control agency to one with many natural resource conservation programs, including the National Cooperative Soil Survey. The NRCS is charged

with completing soil investigations in the field and preparing maps of soils that have been identified and classified. A soil survey report accompanies the soil maps which provides information about the soils in the survey area and lists interpretations for each soil in terms of suitability for different uses, i.e., roads, crop production, ponds, etc...

The mission of the NRCS is to help people live on the land in a sustainable way. To meet this responsibility, the NRCS offers technical assistance, voluntarily requested, to ranchers and farmers in the development of conservation systems uniquely suited to their land and particular way of doing business. The NRCS also works with urban and rural communities to curb soil erosion, conserve and protect water supplies, enhance wildlife habitat, and solve other resource problems.

Conservation Districts, which are local units of government, are the heart of the NRCS conservation delivery system. Organized by locally elected citizens under state law, conservation district supervisors know the most about local needs. NRCS and conservation districts are bound together by mutual conservation objectives as well as legislation and formal agreements with the Secretary of Agriculture.

Other State Agencies

In addition to the Nevada Division of Wildlife (NDOW), other state agencies provide technical assistance, grant funding, and information services that benefit Sage Grouse and habitat. One of the important roles of state agency programs is coordination with private landowners for resource conservation.

Though private land probably amounts to less than 4 million acres of the estimated 31 million acres of inhabited sage grouse range, private riparian, floodplain, and adjacent bench land holdings can provide disproportionately important sage grouse habitat. Therefore private landowners, especially those involved with farm and ranch operations, urban development, and mine operations, are important stakeholders. State agencies and programs identified below can, in addition to their primary purposes, benefit Sage Grouse. Once informed about the Nevada Sage Grouse Conservation Strategy, state agencies are likely to identify many opportunities for supporting Local Groups in the preparation and implementation of local Sage Grouse Conservation Plans, as well as avoiding actions that may be unintentionally harmful.

Nevada Division of Forestry (NDF) - The Nevada Division of Forestry is involved in a spectrum of wildfire management decisions and activities that can protect or rehabilitate sage grouse habitat, including suppression, prevention and protection, rehabilitation, and prescribed burns. Agency staff participates in strategic and front line decisions that determine assignment of fire fighting equipment and personnel based on resources at risk of burning. Involvement of the NDF in local fire districts and suppression actions is important to controlling the spread of cheatgrass. Encouraging and assisting in property owners creating defensible space allows wildfire-fighting crews to focus on resource protection. Controlled burns may also be used as a vegetation management tool for the enhancement of the sagebrush ecosystem.

In addition to fire fighting, resource programs operated by NDF can conserve and enhance sage grouse habitat through proper management of forests and Pinyon-Juniper woodlands on privately owned land. These include the Stewardship Incentives, Forestry Incentives, Forest Stewardship, Forest Health, Nursery and Seedbank, and Defensible Space Programs. The first two mentioned programs offer grant-funding opportunities where qualifying conditions are met. Technical assistance is offered under all programs.

The Seedbank has become a vitally important program, especially for rehabilitation of burned areas on private land. The Nursery and Seedbank program provides native plant materials for post-burn rehabilitation and riparian and meadow rehabilitation on private land.

The NDF also operates a Conservation Camp program that provides training for prison crews to fight fires and work on resource conservation projects. The Conservation Camp program provides a means for accomplishing vegetation management project work on private land.

Populations of state listed critically endangered plant species are managed under regulations administered by the NDF. Such plant populations and related habitats may require special management attention in sage grouse habitat rehabilitation or enhancement projects.

Nevada Natural Heritage Program (NNHP) - The NNHP collects information on the occurrences, distribution, and population status of rare and sensitive plant and animal species. In coordination with other biologists and ecologists, the NNHP provides the state's List of Sensitive Animals and Plants and the Scorecard 2000: Highest Priority Conservation Sites. The Program is also in the process of describing and mapping the array of vegetation communities in Nevada. Awareness of the distribution of sensitive and rare populations and related ecological information can be integrated into local sage grouse conservation plans to ensure that the needs of vulnerable plant and animal species are considered. The Program has experience in setting up cooperative conservation agreements and recovery implementation teams for sensitive and rare plants and animals.

Nevada Division of Environmental Protection (NDEP) - The Nevada Division of Environmental Protection (NDEP) is charged with responsibilities for the maintenance or achievement of state water quality standards. The NDEP emphasizes a watershed approach to control of nonpoint sources of pollution. Watershed improvements also can produce Sage Grouse habitat improvements. Watershed improvement projects may qualify for Clean Water Act Section 319 grant funding. Examples are projects for reseeding eroding upland sites with perennial grasses, controlling channel erosion, and rehabilitating riparian zone and meadows. In the course of reviewing and granting funds for Section 319 projects, agencies should look for potential detrimental effects to Sage Grouse.

The NDEP regulates mineral development and mineral exploration activities. Reclamation of mining and exploration sites is part of the duties. In coordination with the NDOW, NDEP can help ensure that mining activities avoid, minimize, or mitigate impacts on sage grouse and habitat. Reclamation project design and the timing of activities in the sagebrush ecosystem should take into consideration sage grouse habitat needs.

Nevada Division of Conservation Districts (NDCD) - The NDCD is the state administrative lead for 28 conservation districts in Nevada. Conservation districts and the Natural Resources Conservation Districts work closely to promote agricultural practices that will conserve renewable resources (i.e., soil, water, wildlife, and vegetation) on private land. The division also provides staff services to the State Conservation Commission. The NDCD has an important role in providing information to the commission, districts, and rural communities on the Nevada Sage Grouse Conservation Strategy, and implementation of the local conservation plans. The state allocates \$5,000 per year to each conservation district for projects to better manage, conserve,

or enhance renewable resources. In addition to their primary purpose, these projects are opportunities to enhance sagebrush ecosystems and riparian habitats for sage grouse.

Nevada Division of State Lands (NDSL) - The NDSL is involved in assisting local government in the preparation or updating of master land use plans and federal public land policies. In addition, NDSL staff act as a liaison for state and local interests in a variety of federal land and resource agency actions. The involvement of NDSL with local government private and public land use decisions presents opportunities for building awareness of the SGCS and the local conservation planning processes. The NDSL has played a significant role facilitating the preparation of the Nevada Sage Grouse Conservation Strategy, and will continue to directly assist in the preparation of local sage grouse conservation plans and the statewide sage grouse habitat conservation plan.

Nevada Department of Agriculture (NDOA) - The NDOA is the lead agency for Nevada's Coordinated Invasive Weed Strategy. Controlling the spread of invasive weeds following vegetation and soil disturbing activities will promote recovery of native vegetation in the sagebrush ecosystems. Revegetation following weed control activities can help improve conditions for sage grouse habitat. Time invasive weed control activities to avoid disturbances where sage grouse are known to occur.

Sage grouse can Cultivation and soil preparation practices on agricultural lands may be adjusted to provide better sage grouse habitat conditions without economic losses. Information provided through the NDOA to farmers and ranchers.

Stakeholder Participation

Stakeholders are defined as those parties with an interest in Sage Grouse conservation, either having management responsibility for either the species or its habitat, or as affected users of lands containing Sage Grouse habitat, or as parties expressing concern over the well-being of the species. Stakeholders not presently involved in the Governor's Team effort will be encouraged to participate in the local conservation planning efforts, representing themselves or an organizational affiliation. The Nevada Association of Counties (NACO) will facilitate the bringing together of stakeholders and organization of planning teams at the local level. Voluntary participation in the local planning process will be considerable – most implementation strategies remain to be created at the local level. Of course, the prospect of a listing of the Sage Grouse as either Threatened or Endangered remains a strong incentive for local stakeholders, particularly resource users, to participate in the planning process. Other incentives to resource users and rural communities sufficient to encourage them to implement Sage Grouse conservation measures have yet to be identified. The Governor's Team has recommended that the development of incentives be a part of the local planning process, thinking that few are more qualified to develop effective incentives than the affected users themselves.

Regulatory Mechanisms

The State of Nevada regulates the harvest of Sage Grouse through its Wildlife Commission and Division of Wildlife on non-tribal lands. Both entities have established a long record of administration and regulation of the Sage Grouse hunt. Should upcoming research demonstrate that modifications to existing hunt regulations are necessary, the statutes and regulations are already well in place and will only require modification themselves to reflect new recommendations. Sage Grouse harvest on tribal lands is regulated by tribal governments,

which will likely need only to revise current regulations from time to time. No new regulatory mechanisms governing Sage Grouse harvest are anticipated.

For a review of federal land management regulatory mechanisms, please refer to the *Authority* section above. Land management agencies have the authority to restrict or modify extractive resource uses on their lands in order to maintain the sustainability of the land. Should regulatory actions regarding resource uses become necessary to effect Sage Grouse conservation, the land management agencies already have sufficient regulatory mechanisms to implement those actions. Tribal lands are managed under the authority of tribal governments. No new regulatory mechanisms regarding land use are anticipated.

It is unknown at this time what county ordinances might become necessary to implement Sage Grouse conservation at the local level. These will be developed along with participation incentives by the local planning teams. County governments will be counted upon to authorize and administer those ordinances as they become necessary.