

# Appendix J

## Mitigation



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## **J. Mitigation**

### **J.1 Part I – Regional Mitigation Strategy**

#### **J.1.1 General**

In undertaking BLM/USFS management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM/USFS will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Mitigation will follow the regulations from the White House Council on Environmental Quality (CEQ) (40 CFR 1508.20; e.g. avoid, minimize, and compensate), hereafter referred to as the mitigation hierarchy. If impacts from BLM/USFS management actions and authorized third party actions that result in habitat loss and degradation remain after applying avoidance and minimization measures (i.e. residual impacts), then compensatory mitigation projects will be used to provide a net conservation gain to the species. Any compensatory mitigation will be durable, timely, and in addition to that which would have resulted without the compensatory mitigation (see glossary).

The BLM/USFS, via the WAFWA Management Zone Greater Sage-Grouse Conservation Team, will develop a WAFWA Management Zone Regional Mitigation Strategy that will inform the NEPA decision making process including the application of the mitigation hierarchy for BLM/USFS management actions and third party actions that result in habitat loss and degradation. A robust and transparent Regional Mitigation Strategy will contribute to greater sage-grouse habitat conservation by reducing, eliminating, or minimizing threats and compensating for residual impacts to greater sage-grouse and its habitat.

The BLM's Regional Mitigation Manual MS-1794 serves as a framework for developing and implementing a Regional Mitigation Strategy. The following sections provide additional guidance specific to the development and implementation of a WAFWA Management Zone Regional Mitigation Strategy.

#### ***Developing a WAFWA Management Zone Regional Mitigation Strategy***

The BLM/USFS, via the WAFWA Management Zone Greater Sage-Grouse Conservation Team, will develop a WAFWA Management Zone Regional Mitigation Strategy to guide the application of the mitigation hierarchy for BLM/USFS management actions and third party actions that result in habitat loss and degradation. The Strategy should consider any State-level greater sage-grouse mitigation guidance that is consistent with the requirements identified in this Appendix. The Regional Mitigation Strategy should be developed in a transparent manner, based on the best science available and standardized metrics.

As described in Chapter 2, the BLM/USFS will establish a WAFWA Management Zone Greater Sage-Grouse Conservation Team (hereafter, Team) to help guide the conservation of greater sage-grouse, within 90 days of the issuance of the Record of Decision. The Strategy will be developed within one year of the issuance of the Record of Decision.

The Regional Mitigation Strategy should include mitigation guidance on avoidance, minimization, and compensation, as follows:

- Avoidance
  - Include avoidance areas (e.g. right-of-way avoidance/exclusion areas, no surface occupancy areas) already included in laws, regulations, policies, and/or land use plans (e.g. Resource Management Plans, Forest Plans, State Plans); and,
  - Include any potential, additional avoidance actions (e.g. additional avoidance best management practices) with regard to greater sage-grouse conservation.
- Minimization
  - Include minimization actions (e.g. required design features, best management practices) already included in laws, regulations, policies, land use plans, and/or land-use authorizations; and,
  - Include any potential, additional minimization actions (e.g. additional minimization best management practices) with regard to greater sage-grouse conservation.
- Compensation
  - Include discussion of impact/project valuation, compensatory mitigation options, siting, compensatory project types and costs, monitoring, reporting, and program administration. Each of these topics is discussed in more detail below.
    - Residual Impact and Compensatory Mitigation Project Valuation Guidance
      - A common standardized method should be identified for estimating the value of the residual impacts and value of the compensatory mitigation projects, including accounting for any uncertainty associated with the effectiveness of the projects.
      - This method should consider the quality of habitat, scarcity of the habitat, and the size of the impact/project.
      - For compensatory mitigation projects, consideration of durability (see glossary), timeliness (see glossary), and the potential for failure (e.g. uncertainty associated with effectiveness) may require an upward adjustment of the valuation.
      - The resultant compensatory mitigation project will, after application of the above guidance, result in proactive

conservation measures for Greater Sage-grouse (consistent with BLM Manual 6840 – Special Status Species Management, section .02).

- Compensatory Mitigation Options
  - Options for implementing compensatory mitigation should be identified, such as:
- Utilizing certified mitigation/conservation bank or credit exchanges.
- Contributing to an existing mitigation/conservation fund.
- Authorized-user conducted mitigation projects.
  - For any compensatory mitigation project, the investment must be additional (i.e. additionality: the conservation benefits of compensatory mitigation are demonstrably new and would not have resulted without the compensatory mitigation project).
- Compensatory Mitigation Siting
  - Sites should be in areas that have the potential to yield a net conservation gain to the greater sage-grouse, regardless of land ownership.
  - Sites should be durable (see glossary).
  - Sites identified by existing plans and strategies (e.g. fire restoration plans, invasive species strategies, healthy land focal areas) should be considered, if those sites have the potential to yield a net conservation gain to greater sage-grouse and are durable.
- Compensatory Mitigation Project Types and Costs
  - Project types should be identified that help reduce threats to greater sage-grouse (e.g. protection, conservation, and restoration projects).
  - Each project type should have a goal and measurable objectives.
  - Each project type should have associated monitoring and maintenance requirements, for the duration of the impact.
  - To inform contributions to a mitigation/conservation fund, expected costs for these project types (and their monitoring and maintenance), within the WAFWA Management Zone, should be identified.
- Compensatory Mitigation Compliance and Monitoring

- Mitigation projects should be inspected to ensure they are implemented as designed, and if not, there should be methods to enforce compliance.
- Mitigation projects should be monitored to ensure that the goals and objectives are met and that the benefits are effective for the duration of the impact.
- Compensatory Mitigation Reporting
  - Standardized, transparent, scalable, and scientifically-defensible reporting requirements should be identified for mitigation projects.
  - Reports should be compiled, summarized, and reviewed in the WAFWA Management Zone in order to determine if greater sage-grouse conservation has been achieved and/or to support adaptive management recommendations.
- Compensatory Mitigation Program Implementation Guidelines
  - Guidelines for implementing the State-level compensatory mitigation program should include holding and applying compensatory mitigation funds, operating a transparent and credible accounting system, certifying mitigation credits, and managing reporting requirements.

### ***Incorporating the Regional Mitigation Strategy into NEPA Analyses***

The BLM/USFS will include the avoidance, minimization, and compensatory recommendations from the Regional Mitigation Strategy in one or more of the NEPA analysis' alternatives for BLM/USFS management actions and third party actions that result in habitat loss and degradation and the appropriate mitigation actions will be carried forward into the decision.

### ***Implementing a Compensatory Mitigation Program***

The BLM/USFS need to ensure that compensatory mitigation is strategically implemented to provide a net conservation gain to the species, as identified in the Regional Mitigation Strategy. In order to align with existing compensatory mitigation efforts, this compensatory mitigation program will be managed at a State-level (as opposed to a WAFWA Management Zone, a Field Office, or a Forest), in collaboration with our partners (e.g. Federal, Tribal, and State agencies).

To ensure transparent and effective management of the compensatory mitigation funds, the BLM/USFS will enter into a contract or agreement with a third-party to help manage the State-level compensatory mitigation funds, within one year of the issuance of the Record of Decision. The selection of the third-party compensatory mitigation administrator will conform to all relevant laws, regulations, and policies. The BLM/USFS will remain responsible for making decisions that affect Federal lands.

## J.1.2 Glossary Terms

**Additionality:** The conservation benefits of compensatory mitigation are demonstrably new and would not have resulted without the compensatory mitigation project. (adopted and modified from BLM Manual Section 1794).

**Avoidance mitigation:** Avoiding the impact altogether by not taking a certain action or parts of an action. (40 CFR 1508.20(a)) (e.g. may also include avoiding the impact by moving the proposed action to a different time or location.)

**Compensatory mitigation:** Compensating for the (residual) impact by replacing or providing substitute resources or environments. (40 CFR 1508.20)

**Compensatory mitigation projects:** The [restoration](#), [creation](#), [enhancement](#), and/or [preservation](#) of impacted resources (adopted and modified from 33 CFR 332), such as on-the-ground actions to improve and/or protect habitats (e.g. chemical vegetation treatments, land acquisitions, conservation easements). (adopted and modified from BLM Manual Section 1794).

**Compensatory mitigation sites:** The durable areas where compensatory mitigation projects will occur. (adopted and modified from BLM Manual Section 1794).

Durability (protective and ecological): the maintenance of the effectiveness of a mitigation site and project for the duration of the associated impacts, which includes resource, administrative/legal, and financial considerations. (adopted and modified from BLM Manual Section 1794).

**Minimization mitigation:** Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (40 CFR 1508.20 (b))

**Residual impacts:** Impacts that remain after applying avoidance and minimization mitigation; also referred to as unavoidable impacts.

**Timeliness:** The lack of a time lag between impacts and the achievement of compensatory mitigation goals and objectives (BLM Manual Section 1794).

## **J.2 Part II – Idaho Mitigation Framework**

### **Framework for Mitigation of Impacts From Infrastructure Projects On Sage-Grouse And Their Habitats**

#### **Sage-Grouse Mitigation Subcommittee of the Idaho Sage-Grouse State Advisory Committee<sup>1</sup>**

**December 6, 2010**

### **J.2.1 Introduction**

The Conservation Plan for Greater Sage-grouse in Idaho (Idaho Sage-Grouse Advisory Committee 2006; as amended in 2009) calls for the development of a “proposal for a mitigation and crediting program for sagebrush steppe habitats in Idaho and recommendations for policy consideration” (Measure 6.2.4.). In early 2010, the Idaho Sage-grouse Advisory Committee (SAC) established the Mitigation Subcommittee to complete this task.<sup>1</sup> The Mitigation Subcommittee met several times from the late spring, through the fall of 2010 and found broad areas of agreement among its diverse participants.

This report presents the Mitigation Subcommittee’s consensus recommendations for the creation of an Idaho-based program to compensate for the impacts of infrastructure projects on sagegrouse and their habitats. This program – called the Mitigation Framework – would serve as a science-based “mitigation module” that project developers and government regulators could use to achieve compensatory mitigation objectives called for in project plans and permits. While compensatory mitigation may help offset certain impacts arising from infrastructure projects, mitigation should not be considered a substitute for first avoiding and then minimizing impacts.

In addition, it is important to recognize that federal and state regulatory or land-management agencies, and county or local governments may also require additional stipulations, conditions of approval or other requirements as well as on-site mitigation, in accordance with applicable law, regulation or policy.

This document proposes a general outline or “skeleton” of policies and procedures for such a program. The Mitigation Framework is designed to be transparent, inclusive, and accountable to defined objectives. The Subcommittee’s purpose is to describe the program in enough detail to foster a dialogue among SAC members, spot important issues and points of agreement, and assess the level of support for developing a functioning mitigation program for Idaho sagegrouse and their habitats.

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<sup>1</sup> Subcommittee participants: John Robison and Lara Rozzelle, Idaho Conservation League; Brett Dumas, Idaho Power Company; Paul Makela and Tom Rinkes, BLM; Don Kemner, Idaho Department of Fish and Game; Will Whelan and Trish Klahr, The Nature Conservancy; Rich Rayhill, Ridgeline Energy, LLC; Lisa LaBolle and Kirsten Sikes, Idaho Office of Energy Resources; Nate Fisher, Idaho Office of Species Conservation; John Romero, Citizen at Large.

## J.2.2 Executive Summary

The state of Idaho is seeing an increasing number of infrastructure projects, such as transmission lines and wind energy facilities, proposed in the state's sagebrush steppe ecosystems. Where federal permits are required, the environmental review process for these projects will analyze how these projects affect sage-grouse and will consider a range of potential mitigation measures to avoid, minimize, or offset any impacts. It is likely that the environmental review process will lead at least some developers and agencies to implement compensatory mitigation.

Compensatory mitigation consists of compensating for residual project impacts that are not avoided or minimized by providing substitute resources or habitats, often at a different location than the project area. For sage-grouse, this would include, among other things, protecting and restoring sagebrush habitats to offset habitat losses and other effects of infrastructure projects.

This framework describes the general outline for a sage-grouse compensatory mitigation program in Idaho. This program would employ an "in-lieu fee" approach to compensatory mitigation through which a project developer would pay funds into an account managed by the mitigation program for performance of mitigation actions that provide measureable benefits for sage-grouse and their habitats within Idaho.

The Mitigation Framework does not alter the legal standards or procedures for review and approval of infrastructure projects. Rather, it offers an option that project developers and/or regulators may choose for implementing mitigation plans and agency permit conditions. It should be emphasized that this program would not relieve project developers and permitting agencies of their obligation to avoid and minimize environmental impacts through appropriate project siting, design and implementation.

Although the initial focus is on sage-grouse, the Mitigation Framework can be readily adapted to provide compensatory mitigation for other sagebrush obligate and associated species. The suitability of the Framework for other species and natural features has not been evaluated.

The objectives of the Mitigation Framework include:

- Provide a credible, efficient, transparent, and flexible mechanism to implement compensatory mitigation;
- Ensure that sage-grouse impacts are offset by actions that benefit the affected species and habitats;
- Provide increased certainty for developers and agencies;
- Involve private and public partners in crafting solutions;
- Provide developers the opportunity to offset the impacts of project development and operation on sage-grouse and sage-grouse habitat, and provide a consistent

mechanism to offset impacts to the species that can be evaluated in future reviews of the species' status; and

- Evaluate issues based on best available scientific information, while acknowledging and responding to scientific uncertainty.

The Mitigation Framework would be established through a memorandum of agreement (MOA) among entities that have the capacity and commitment to assist in its implementation. Such parties may include land and wildlife management agencies, counties, tribes, participating private infrastructure development companies, and non-governmental organizations. The MOA would define the specific roles and responsibilities, procedures, and tasks needed to operate an Idaho-based compensatory mitigation program.

The Mitigation Framework envisions a program with the following attributes: (1) a Mitigation Team and program administrator to steer the mitigation program and ensure strong oversight; (2) technically sound and transparent guidelines for estimating compensatory mitigation costs; (3) a science-based statewide strategy to guide the selection of mitigation actions that will receive funding; (4) provisions that the costs of operating the program will be borne by infrastructure developers that use the Mitigation Framework to deliver compensatory mitigation; (5) monitoring the implementation and effectiveness of mitigation actions funded by the Mitigation Framework program; (6) a system to track benefits provided by the Mitigation Framework to sage-grouse habitat in Idaho; and (7) periodic evaluation and adaptation of the Mitigation Framework program.

This framework provides only a general outline of a proposed Idaho-based compensatory mitigation program. It is intended to assess the level of support for crafting the agreements and completing the technical tasks needed to bring the Mitigation Framework into being.

### **J.2.3 Discussion**

#### **I. The Role of Compensatory Mitigation in Infrastructure Development and Sage-grouse Conservation**

##### ***A. Mitigation Basics***

Broadly defined, “mitigation” refers to a wide range of measures that are taken to avoid, minimize, rectify, reduce, or compensate for the adverse impacts of actions affecting the environment. See 40 C.F.R. § 1508.20 (definition of “mitigation” in National Environmental Policy Act (NEPA) rules). In this general sense, mitigation should be an integral part of all phases of project planning and implementation.

The focus of this report is on compensatory mitigation – also known as “biodiversity offsets” or “offsite mitigation.” Compensatory mitigation consists of compensating for residual project impacts that are not avoided or minimized by providing substitute resources or habitats, often at a different location than the project area. For instance, a project developer may fund the restoration of a particular type of habitat in order to replace or “offset” similar habitat that is lost as a result of project construction.

This Framework adopts an “in-lieu fee” approach to compensatory mitigation. Under this approach, a project developer provides funding to a compensatory mitigation program administrator who then distributes the funds to the appropriate government agency, foundation or other organization for performance of mitigation actions. In an in-lieu fee program, the responsibility for actually delivering the compensatory mitigation is transferred from the developer to the program administrator once the developer provides the necessary funds to the in-lieu fee program. It is important to emphasize that compensatory mitigation does not relieve project developers and permitting agencies of their obligation to avoid and minimize environmental impacts. This Framework endorses the principle known as the “mitigation hierarchy,” which holds that decision makers should consider the elements of environmental mitigation in the following order of priority:

1. Avoid environmental impacts through project siting and design;
2. Minimize the impacts during construction, operation, maintenance, and decommissioning by implementing appropriate conservation measures related to timing and conduct of project activities;
3. Restore areas that have been disturbed or otherwise rectify on-site project-related impacts to the greatest extent practicable; and
4. Compensate for residual impacts (direct and indirect effects that are not mitigated on-site) by providing replacement habitats or other benefits.

This means that compensatory mitigation is addressed only after efforts to avoid, minimize, and mitigate the impacts have been addressed. It also should be noted that significant impacts to habitat areas that support special functions and values for sage-grouse may simply not be replaceable through mitigation and therefore the best course may be to avoid those areas altogether.

### ***B. Need for an Idaho Compensatory Mitigation Program***

In recent years, the state of Idaho has seen an increase in the number of major infrastructure projects proposed in the state’s sagebrush steppe ecosystems. Several current proposals involve high voltage transmission lines that would cross over hundreds of miles of sage-grouse habitat. Large scale energy infrastructure projects such as wind farms may also affect large areas of sagegrouse habitat. Where these projects are located at least partially on federally managed public lands they will be required by federal law to go through an extensive environmental review process under NEPA before relevant federal permits are issued. The NEPA process requires the permitting agencies to consider the projects’ environmental effects (both positive and negative), alternatives, and potential mitigation measures. Impacts on sage-grouse will be one of the topics analyzed in the NEPA process.

Even after efforts are taken to avoid and minimize impacts, it is possible that some of these infrastructure projects will degrade some sage-grouse habitat, cause direct sage-grouse mortality, or lead to indirect effects such as avoidance of previously occupied habitat. The extent to which project developers and regulators adopt compensatory mitigation as a means to offset these impacts is not fully known. However, it is likely that at least some developers and regulators will seek to implement compensatory mitigation to benefit sage-grouse and their habitats. Energy companies and other developers face daunting challenges in carrying

out compensatory mitigation for sage-grouse habitat. Just identifying specific mitigation actions requires a major effort. Actually implementing sagebrush restoration and enhancement projects is even more difficult and expensive – typically involving years of effort and a significant risk of failure. Delivering this type of technically complex environmental mitigation may be well outside the core business of many infrastructure developers.

### ***C. Advantages of the Mitigation Framework***

The Mitigation Framework proposes to respond to these challenges by creating a statewide program to deliver scientifically sound compensatory mitigation for multiple projects. Project developers and regulators would no longer have to design, fund and implement their own mitigation programs. Instead, they would have the option of contributing money to a central fund overseen by agencies with expertise in habitat management and non-governmental partners with similar experience. This approach to compensatory mitigation offers three major advantages. The first advantage stems from the increased efficiency of an Idaho-wide mitigation program compared with fragmented, project-by-project mitigation programs. Mitigation efforts require a significant investment in planning, administration, project oversight, and monitoring. The Mitigation Framework would consolidate these functions, thus avoiding needless duplication. The second advantage is that a state mitigation fund can be used for sage-grouse conservation more strategically and at a greater scale than project-by-project mitigation. As described in more detail below, the Mitigation Framework would fund sage-grouse habitat protection and restoration projects in accordance with a statewide strategy that uses landscape-scale analyses to identify the specific measures and habitats that will provide the greatest benefit for Idaho sagegrouse populations. This Idaho-based mitigation strategy will be integrated with other conservation strategies throughout the range of sage-grouse to ensure that actions taken in Idaho benefit the species as a whole. Third, this method can engage the capacity and competence of natural resources agencies, local governments, private companies, and non-governmental organizations. The Mitigation Framework proposes to enlist these entities in shaping Idaho’s strategy, developing criteria for use of the fund, and proposing and implementing habitat protection and restoration projects. The benefits of the Mitigation Framework can be summarized as follows:

#### *Benefits for Project Developers:*

An efficient and reliable mechanism for meeting compensatory mitigation objectives and permit conditions; and increased certainty regarding project costs.

#### *Benefits for Regulatory Agencies:*

Increased certainty that in-lieu fees will result in strategic “on-the-ground” mitigation actions that benefit sage-grouse.

#### *Benefits for Sage-Grouse:*

Increased certainty that scientifically sound mitigation actions that benefit sage-grouse and offset impacts and habitat losses associated with infrastructure development will be implemented.



#### ***D. Ensuring Accountability***

In-lieu fee compensatory mitigation does pose one potentially significant drawback that must be acknowledged and addressed: a poorly designed program may lack accountability for delivering meaningful on-the-ground benefits for sage-grouse. Simply having a project developer contribute to an in-lieu fee mitigation account does not by itself compensate for the sage-grouse impacts caused by the project. Actual mitigation is possible only after well-conceived habitat protection and restoration projects are planned, funded, implemented, monitored, and successful in achieving stated objectives. The Mitigation Framework seeks to ensure accountability by adopting a series of rigorous and transparent procedures. As described below, the Framework would: (1) ensure that program administration and monitoring functions are adequately funded; (2) provide technically sound guidelines for estimating the costs of delivering compensatory mitigation; (3) establish a science-based statewide strategy to guide the program; (4) develop project selection criteria and a request for proposals based on the strategy; (5) require monitoring of the implementation and effectiveness of mitigation actions funded by the program; (6) track benefits the Mitigation

Framework program provides to sage-grouse in Idaho; and (7) require periodic evaluation of the program. Taken together, these procedures provide a high degree of certainty that the Mitigation Framework will be able to turn in-lieu fee payments into tangible, lasting compensatory mitigation for sage-grouse. As described in greater detail in Section E, below, project developers that seek to use the Mitigation Framework will need to show two things. First, they will need to show that their projects' impacts on sage-grouse and their habitats have been evaluated using a scientifically sound process. Second, they will need to show that their contributions to the mitigation fund reflect the Mitigation Framework's compensation guidelines to ensure that funding will be adequate to offset project impacts. Having demonstrated those things, the project developers should then be able to rely on their in-lieu fee contribution to the mitigation account as satisfying their compensatory mitigation objectives or obligations.

## **II. Core Elements of Idaho Sage-Grouse Mitigation Program**

### ***A. Program Objectives***

- Provide a credible, efficient, transparent, and flexible mechanism to implement compensatory mitigation;
- Ensure that sage-grouse impacts are offset by mitigation actions that benefit the sage-grouse and their habitats;
- Provide increased certainty for developers and agencies;
- Involve private and public partners in crafting solutions;
- Provide developers the opportunity to offset project impacts on sage-grouse and sage-grouse habitat, and provide a consistent mitigation mechanism that can be evaluated in future reviews of the species' status; and
- Evaluate issues based on best available scientific information while acknowledging and responding to scientific uncertainty.

### ***B. Scope***

The Mitigation Framework proposes to mitigate for impacts to Idaho sage-grouse and their habitats in Idaho. The initial focus of the Mitigation Framework is on sage-grouse. However, this program can be readily adapted to provide compensatory mitigation for other sagebrush obligate and associate species, such as pygmy rabbits, if project developers and regulators call for such mitigation.

Whether this Framework is suited for mitigation of impacts to a broader suite of species or natural features has not been evaluated. It should be noted that some subcommittee members expect to advocate in other forums that compensatory mitigation should extend beyond sagegrouse. The Mitigation Framework focuses on infrastructure projects because this type of development is the most likely to give rise to compensatory mitigation under existing environmental policies. As used here, the term “infrastructure” refers to building structures that significantly disturb sage-grouse habitat, including but not limited to projects for electricity transmission, energy generation, pipeline conveyance, transportation, communications, and similar purposes. The Mitigation Framework is not intended to apply to existing projects that are not changing in scope or to the renewal of on-going activities, such as grazing permits. In addition, the Framework is not suited to projects with minor impacts because their contributions to the mitigation program would be too small to justify the effort needed to establish and administer inlieu fee payments.

### ***C. Integration with Environmental Review Procedures***

The Mitigation Framework does not alter the legal standards or procedures for review and approval of infrastructure projects. Rather, the Framework offers an option that project developers and/or regulators may choose for implementing mitigation plans and agency permit conditions. The Mitigation Framework is intended to complement the environmental review process conducted pursuant to NEPA and other federal environmental laws as well as county land use planning authorities. Many energy and other infrastructure projects undergo review and approval at the county level. The issues examined and the level of environmental analysis varies widely among individual counties and individual developers. If a county or developer decides to address sage-grouse impacts, it will be able to use the Mitigation Framework as a mechanism for meeting compensatory mitigation objectives that may arise from the county permitting process.

### ***D. Mitigation Strategy***

The next step focuses on the Mitigation Team’s task of developing a statewide, science-based strategy that will guide the use of the mitigation fund. The mitigation program strategy would establish priorities for the use of compensatory mitigation funding based on factors/risks identified in the U.S. Fish and Wildlife Service’s 12-Month Findings for Petitions to List Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered (USFWS 2010) and in the Conservation Plan for Greater Sage-grouse in Idaho (2006). The strategy sets mitigation priorities with a landscape view of sage-grouse needs and highlights mitigation opportunities in Idaho based on best available science. In setting priorities, the strategy considers species and community size, landscape condition, and regional context. The strategy is responsive to the threats and risks described in the sage-grouse 12- month



findings. The strategy will also generally describe the types of mitigation actions, project specifications, and best practices that are likely to produce measurable benefits for sage-grouse habitat. Finally, the strategy addresses both implementation and effectiveness monitoring requirements for mitigation actions funded through the program. The Mitigation Framework's strategy will draw heavily from the State of Idaho's sage-grouse conservation plan but has a narrower focus. It is intended to provide the specific guidance on program priorities, accepted mitigation measures, and geographic areas of emphasis that potential mitigation project sponsors will need to know when they apply for funds. The strategy plays a crucial role in steering mitigation funding to those activities and places that can provide the most effective benefits for Idaho sage-grouse populations consistent with strategies to increase the viability of the species throughout its range. To this end, the strategy will address one of the major policy questions that arise in the design of compensatory mitigation systems: how closely should the mitigation actions be linked to the type and location of the habitat that was originally affected by the infrastructure project. Stated in the alternative, does removal of the mitigation action from the area of impact improve the effectiveness of or benefit from the action. Some compensatory mitigation systems place a heavy emphasis on this link by favoring "in-kind" and "on-site" compensatory mitigation over "out-of-kind" and "off-site" compensatory mitigation. The subcommittee members generally favor an approach that allows funding to flow to the projects and locations within Idaho that will provide the greatest overall positive impact on sage-grouse populations. The Mitigation Framework calls for a monitoring program that would assess habitat gains provided by mitigation actions and compare them with the mitigation objectives of the participating infrastructure projects. The nature and purpose of this monitoring is described more fully in Mitigation Program Step 4, below.

Once the strategy is complete, the Mitigation Team will develop project ranking criteria and procedures that will guide the selection of the mitigation actions that will receive funding. The goal is to fund projects that provide high quality, lasting benefits based on landscape scale analyses that actually compensate for project impacts.

#### ***E. Compensation Guidelines***

The Mitigation Framework Program will develop guidelines that may be used by developers and/or regulators to determine the cost of meeting their compensatory mitigation objectives. These compensatory mitigation objectives determine the extent of compensatory mitigation for each project and are generally incorporated into project plans or permits. The compensation guidelines will provide transparent, technically sound principles for determining how much it costs to deliver habitat mitigation for sage-grouse. In other words, the guidelines will represent best estimates of the true cost of implementing the mitigation actions needed to meet each project's compensatory mitigation objectives. The guidelines may be used by the project developer and the Mitigation Framework Program Administrator to establish the in-lieu fee that the developer will contribute to the mitigation fund. Specific valuation methods will be developed at a later time and will likely draw from compensatory mitigation systems used elsewhere in the West. Although the details have yet to be worked out, the following outline illustrates the core concepts and principles (shown in bold lettering) that are likely to be employed by the MOA parties in setting the Mitigation Framework's in-lieu fee structure.

- A common unit of measurement would be established for describing and tracking both the project impacts and the benefits of any compensatory mitigation actions. This unit of measurement can be a physical unit such as “acres impacted” or more specifically “acres of summer brood rearing habitat impacted” or “habitat units” lost.
- While the “common unit of measurement” noted above addresses the area of habitat impacted and mitigated, habitat compensation ratios are used to address the quality of the habitat affected by the infrastructure project. These ratios could specify the number of acres of mitigation required per acre of impacted habitat based on the size, habitat quality/condition and function of the impacted habitat; for more critical or important habitat, more mitigation acres might be required. Thus, habitats with higher quality and importance could have higher compensation ratios.
- Several factors are taken into account in calculating how much it will cost to actually compensate for the acres or habitat units. The recommended approach is to evaluate on the costs of implementing a conceptual portfolio of potential mitigation actions or offset activities that provide benefits for sage-grouse. This portfolio of model projects would include a balanced mix of accepted habitat protection and restoration measures reflecting the types of projects expected to be funded by the mitigation program (in accordance with the strategy discussed above). Examples of projects in this portfolio may include such actions as restoring sagebrush canopy and a native understory on recently burned land, improving riparian areas and wet meadows in early brood-rearing habitat, conservation easements to prevent habitat loss, and land management practices that improve sage-grouse habitat. Project costs include the full range of expenses needed to complete all phases of the mitigation action, including administration and monitoring. The average costs of these model mitigation actions per acre or habitat unit is the foundation of the in-lieu fee calculation.
- In addition, the in-lieu fee should also be adjusted to take into consideration the issue of lag time –the time between when habitat is lost at the impacted site relative to when habitat functions are gained at the compensation site.
- The fee also needs to account for contingencies associated with delivering compensatory mitigation, including an estimate of the risk of failure (i.e., the probability that offsite mitigation will not result in any measureable conservation outcomes) for each mitigation site or project.
- In addition to the fee calculated above, costs for establishing and operating the program, including travel, technical consultation and monitoring of program effectiveness must be included. This overhead fee could range from 5-15% depending on the size and complexity of the proposed mitigation program.

### ***F. Program Structure and Oversight***

The Mitigation Framework would be established through a memorandum of agreement (MOA) among the entities that would participate in its implementation. The MOA would define the specific roles and responsibilities, procedures, and tasks needed to operate an Idaho-based compensatory mitigation program. The MOA would serve as a joint powers agreement for state and local government parties. The MOA would establish the following administrative structure for the Mitigation Framework:

**1. Core Team:** A core group would oversee the Mitigation Framework program and provide policy-level guidance for the Science Team and Fund Administrator, described below. The Core Team would be composed of three to seven representatives of diverse perspectives among the MOA signatories.

**2. Science Team:** A team of experts drawn from MOA signatories and other targeted organizations will administer the science-based and technical aspects of the program. The Science Team would consist of several individuals with expertise in relevant areas such as habitat protection and restoration, landscape ecology/spatial analysis, wildlife biology, sage-grouse ecology, project development, and mitigation policy.

The Team would focus on developing the policies and statewide strategy that will guide the program, making requests for mitigation project proposals (RFPs), ranking mitigation proposals that will receive funding, tracking monitoring reports and project benefits, and evaluating program success.

**3. Program Administrator:** A program administrator will be responsible for fund management and administrative tasks. The program administrator will provide administrative support for the Mitigation Team, manage the mitigation account, and administer grants, contracts, and other agreements.

**4. Advisory Committee:** A broader advisory committee consisting of agencies, companies and organizations with the skills and commitment that will provide useful advice to the Core Team regarding the implementation of the Mitigation Framework. The specific make up of each of these groups will be determined at a later time. Potential participants in the Mitigation Framework include but are not limited to representatives of:

*State of Idaho:*

Department of Fish and Game  
Office of Energy Resources  
Office of Species Conservation  
Idaho Department of Lands

*United States:*

Bureau of Land Management  
U.S. Fish and Wildlife Service  
U.S. Forest Service  
Natural Resources Cons. Service

*Energy Companies:*

Idaho Power  
Ridgeline Energy  
Idaho Tribes  
Idaho Sage-Grouse Advisory Committee  
Sage-Grouse Local Working Groups

*Non-Governmental Organizations:*

Idaho Conservation League  
The Nature Conservancy  
Idaho Counties  
Public Land Users (e.g., grazing interests)

### ***G. Funding the Mitigation Program***

The costs of administering the program will be sustained by the project developers that seek compensatory mitigation. Therefore, a portion of the in-lieu fee that project developers contribute to the mitigation account will be applied for program administration. As noted above, protecting and restoring sagebrush habitats are time consuming and expensive undertakings. Ensuring that these activities are conducted with strong oversight should be viewed as an exceptionally wise investment.

## **III. Mitigation Program Steps**

The Mitigation Framework envisions a five-step process for developing, implementing, and monitoring compensatory mitigation.

### ***A. Step 1 – Assessment of Project Impacts and Development of Mitigation Objectives***

Assessment of project impacts should be undertaken by the project developers proposing new infrastructure projects and the government agencies that conduct environmental reviews of those projects. Although the Mitigation Framework process is not responsible for this step, it is nevertheless crucial to the integrity of the mitigation program. Specifically, the Framework's success in achieving its goal of offsetting major infrastructure project impacts on sage-grouse depends on an accurate accounting of those impacts. For many projects, this analysis will be done as part of the environmental review procedures required by NEPA. As noted above, NEPA requires federal agencies to address the full range of direct, indirect and cumulative impacts of the proposed project, alternatives to the proposed action, and potential mitigation before they act on permit applications. Once impacts have been assessed and compensatory mitigation objectives set, the project developer is ready to engage the Mitigation Framework, starting with determining the developer's in-lieu fee contribution.

### ***B. Step 2 – Determine the In-lieu Fee Contribution***

The goal of Step 2 is to use valuation techniques, such as the guidelines presented above, to convert the complex range of project impacts, including direct, indirect and cumulative impacts, into monetary terms that become the basis for the in-lieu fee payment. The accepted in-lieu fee compensatory mitigation plan could be a condition of the instrument approving the project (FONSI, ROD, right-of-way grant, conditional use permit, etc.) and thus legally requires the project developer comply with the approved mitigation plan.

### ***C. Step 3 – Commitment of Mitigation Funds by Project Developer***

Infrastructure project developers can employ the Mitigation Framework by entering into an agreement with the program administrator with regard to a specific infrastructure project. This project agreement sets forth the parties' respective responsibilities, including the project developer's commitment to pay the in-lieu fee. Importantly, the agreement provides that the project developer's funds can only be used for the purposes set forth in the Mitigation Framework. The agreement may also include "conditions" as requested by regulatory agencies or project developers. For instance, the agreement might provide that the in lieu fee will be used to fund mitigation actions in specific geographic areas in order to meet permit requirements. The program administrator, based on consultation with the MOA parties, may decline to enter into an agreement that is inconsistent with the Mitigation Framework

principles or includes conditions that are burdensome or unworkable. Once the agreement specifying the payment structure and schedule is signed, the project developer makes the required in-lieu fee deposits to an interest bearing account managed by the program administrator. After the completion of this step, the project developer is no longer engaged in the Mitigation Framework – unless it has decided to participate as a MOA party.

***D. Step 4 – Issue Request for Proposals (RFP) and Select, Implement, and Monitor Mitigation Actions***

At least at annual intervals, the Mitigation Team will issue an RFP that invite private companies, non-governmental organizations, and agencies to submit proposals for sage-grouse habitat protection, restoration, and/or enhancement actions. The RFP will provide guidance to mitigation project sponsors on program priorities and criteria. These priorities and criteria will be drawn from the mitigation program strategy including identification of geographic areas where mitigation might provide the greatest benefits as well as identification of the threats that present the highest risk to the species or its core habitat. The Mitigation Team should also reach out to federal, state, and local agencies, non-governmental organizations and the general public in order to facilitate discussion, engage stakeholders, raise awareness of the program and generate responses to the RFP. The RFP will solicit project proposals that contain an operation or implementation plan and address at least the following elements:

- Geographic area;
- Threats addressed and how the mitigation action project will offset impacts resulting from those threats;
- An analysis of current sage-grouse conditions in the area;
- Resource goals and objectives the mitigation action project will seek to provide;
- A description of any coordination with federal, state, tribal and local resource management and regulatory authorities or other stakeholder involvement required to complete the mitigation action (e.g., requirement for NEPA compliance or county permit);
- A description of recent or proposed projects and events in the vicinity of the proposed project, if any, such as fire rehabilitation treatments, restoration or enhancement treatments or other activities that complement the effectiveness or intent of the proposed, mitigation action;
- A description of the long term protection, management, stewardship for the project being implemented, and the entity responsible for these activities; and
- A commitment to periodic evaluation and reporting on the progress of the project in meeting stated goals and objectives, including a process for adaptively redirecting the project if necessary.

When selecting projects, the Mitigation Team will estimate the biological benefits of the projects activities, the likely success of those activities, the duration of benefit expected and measure those benefits in relation to the strategy and RFP objectives. Mitigation Team and

the program administrator will work together on continuing program administration and oversight including annual reporting of program activities, expenditures, and benefits. An annual program report will describe program activities, budget, and assessment of whether the mitigation strategy and associated projects are benefitting sage-grouse and at what level or scale. The Mitigation Team and/or Program Administrator should implement a monitoring program to measure and validate whether project-specific objectives have been met. Monitoring is required of all compensatory mitigation actions to determine if the project is meeting its performance standards and objectives. As mentioned above, at regular intervals, the total habitat and/or population gains provided by the programs will be compared with the habitat/population losses associated with the participating infrastructure projects. The purpose of this comparison is to evaluate the mitigation program and make any necessary program adjustments – particularly if the monitoring shows that the mitigation benefits are not compensating for habitat losses. This comparison will not be a basis for imposing new, unexpected requirements on the infrastructure project developers.

#### **J.2.4 Conclusion**

The framework of policies, principles and procedures outlined above are meant to start a dialogue among parties engaged in sage-grouse conservation and infrastructure development. If these parties agree with the Mitigation Subcommittee that there is great value in establishing an Idaho-based compensatory mitigation program, then this framework will mark the beginning of an inclusive effort to fill in the details and complete the tasks needed to bring such a program into being. We have confidence in our collective ability to create a compensatory mitigation program that will benefit infrastructure developers, agencies, conservation interests, and – not least – Idaho’s sage-grouse.

### **J.3 Part III – Idaho - Net Conservation Gain Process**

#### **J.3.1 Introduction**

The Net Conservation Gain strategy is a means of assuring that proposed anthropogenic activities, when approved and implemented will not result in long-term degradation of Greater Sage-Grouse habitat or population and will have a net conservation benefit to the species. The steps below describe a screening process for review of proposed anthropogenic activities. The goal of the process is to provide a consistent approach regardless of the administrative location of the project and to ensure that authorization of these projects will not contribute to the decline of the species. Though the initial Steps (1-6) are done prior to initiating the NEPA process, the authorized officer must ensure that appropriate documentation regarding the rationale and conclusion for each is included in the administrative record.

The flow chart provides for a sequential screening of proposals. However, Steps 2-6 can be done concurrently.

#### **J.3.2 Step 1**

This screening process is initiated upon formal submittal of a proposal for authorization for use of federal lands (BLM or Forest Service). The actual documentation would include, at a



minimum, a description of the location, scale of the project, and timing of the disturbance and would be consistent with existing protocol and procedures for the specific type of use. It is anticipated that the proposals would be submitted by a third party.

### **J.3.3 Step 2**

This initial review would evaluate whether the proposal would be allowed as prescribed in the Greater-Sage-Grouse Land Use Plan Amendment. For example, certain activities are prohibited in suitable habitat, such as wind or solar energy development. If the proposal is an activity that is specific prohibited, the submitter would be informed that the proposal is being rejected since it would not be consistent with the Land Use Plan, regardless of the design of the project.

In addition to consistency with program allocations, the Land Use Plan identifies a limit on the amount of disturbance that is allowed within a 'biological significant unit' (BSU). If current disturbance within the affected unit exceeds this threshold, the project should be deferred until such time as the amount of disturbance within the area has been reduced, through restoration or other management actions.

### **J.3.4 Step 3**

In reviewing a proposal, determine if the project will have a direct or indirect impact on population or habitat (PPH or PGH). This can be done by:

1. Reviewing Greater Sage-Grouse Habitat maps.
2. Reviewing the 'Base Line Environment Report' (USGS) which identifies the area of direct and indirect effects for various anthropogenic activities.
3. Consultation with agency, Fish and Wildlife Service, or State Agency wildlife biologist.
4. Reviewing the standard and guidelines in the plan amendments (such as buffer distances for the proposed activity).
5. Other methods

If the proposal will not have a direct or indirect impact on either the habitat or population, proceed with the appropriate process for review, decision, and implementation of the project.

### **J.3.5 Step 4**

If the project could have a direct or indirect impact of sage-grouse habitat or population, evaluate whether the proposal can be relocated so as to not have the indirect or direct impact and still achieve the intent of the proposal. This Step does not consider redesign of the project as a means of not having direct or indirect impacts but rather authorization of the project in a physical location that will not impact Greater Sage-grouse. If the project can be relocated so as to not have an impact on sage-grouse and still achieve objectives of the proposal, inform applicant and proceed with the appropriate process for review, decision, and implementation of the relocated project.

### **J.3.6 Step 5**

If the preliminary review of the proposal concludes that there may be impacts to sage-grouse habitat and/or population, and the project cannot be effectively relocated to eliminate these impacts; evaluate whether the agency has the authority to modify or deny the project. If the agency does NOT have the discretionary authority to modify or deny the proposal, proceed with the authorization process (NEPA) and include appropriate mitigation requirements that avoid, minimize, or compensate for impacts to sage-grouse habitat and/or populations. Mitigations could include a combination of actions such as timing of disturbance, design modifications of the proposal, site disturbance restoration, and compensatory mitigation actions.

### **J.3.7 Step 6**

If the agency has the discretionary authority to deny the project and after careful screening of the proposal (Steps 1-4) has determined that direct and indirect impacts cannot be eliminated, evaluate the proposal to determine if the adverse impacts can be reduced, minimized or compensated. If the impacts cannot be effectively reduced, minimized or compensated within the BSU, reject or defer the proposal. The criteria for determining this situation would include but not limited to:

- Natural disturbance within the BSU is significant and additional activities within the area would adversely impact the species.
- The current trend within the BSU is down and additional impacts, whether mitigated or not, could lead to further decline of the species or habitat.
- The proposed compensatory mitigation has proven to be ineffective or is unproven in terms of science based approach.
- The additional impacts, after applying effective compensatory mitigation, would exceed the disturbance threshold for the BSU.
- The project would impact habitat that has been determined, through monitoring, to be a limiting factor for species sustainability within the BSU.
- Other site specific criteria that determined the project would lead to a downward trend to the current species population or habitat with the BSU.

If compensatory mitigation can be applied to provide for a net conservation benefit to the species, proceed with the design of the compensatory mitigation plan and authorization (NEPA) of the Project. The authorization process could identify issues that may require additional mitigation or denial/deferring of the project based on site specific impacts to the Greater Sage-grouse.

