United States Department of the Interior

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In Reply Refer To:
6300 (NV-930) P

December 16, 2003

Instruction Memorandum No. NV-2004- 012
Expires: 9/30/05

To: Field Managers, Winnemucca, Ely, and Las Vegas, Nevada
Field Manager, Surprise Field Office, California

From: State Director, Nevada

Subject: Memorandum of Understanding with the Nevada Department of Wildlife Concerning Wildlife Management in Nevada Bureau of Land Management Wilderness Areas

Attached for immediate implementation is a copy of a memorandum of understanding (MOU) between the Nevada Bureau of Land Management (BLM) and the Nevada Department of Wildlife (NDOW) concerning wildlife management in Nevada BLM Wilderness Areas. The MOU was signed by the State Director on December 1, 2003, and became effective on December 9, 2003.

The MOU culminates almost a year of negotiations with the NDOW and satisfies a Congressional mandate in Title II, Section 208(f) of the *Clark County Conservation of Public Land and Natural Resources Act of 2002,* which required the Nevada BLM to "enter into a cooperative agreement with the State of Nevada" specifying the terms and conditions under which the NDOW may conduct wildlife management activities in BLM wilderness areas in Clark County. While the legislative mandate pertained only to Clark County, the MOU has been developed to cover additional wilderness areas as they are designated throughout the state. At present, the MOU pertains to designated wilderness areas in the Winnemucca, Ely, and Las Vegas Field Office jurisdictions only, but as new wilderness bills are passed into law, other field offices will automatically be covered by this MOU.

The MOU has four significant sections. Section V describes the policy and criteria for approval of wildlife management activities within BLM wilderness areas in Nevada. It closely resembles the policy in Chapter III of BLM Handbook H-8560-1 entitled, "Management of Designated Wilderness Areas." Section VI provides a mechanism for the NDOW to identify all proposed wildlife projects at one time on an annual basis. Field offices are encouraged to address all anticipated projects through the annual operations and maintenance schedule. Section VII stipulates a process for actions requiring immediate attention due to unanticipated natural or human-caused circumstances that directly and immediately jeopardize the survival of fish and

wildlife. Section VIII defines roles and responsibilities of both BLM and NDOW and prescribes a procedure for BLM analysis and authorization of wildlife management projects, activities, and developments within designated wilderness areas.

If you have questions or concerns about the MOU or this instruction memorandum, please contact Steve Smith in the State Office at 775-861-6477.

Meg Jensen
Acting

1 Attachment
1. MOU between BLM and NDOW (11 pp)

Distribution
Director (170)
Director (172) (Attn: Geoff Middaugh, Jeff Jarvis, Gary Pavek)
SD, Colorado (Attn: David Porter)
NV-930 (Attn: Erick Campbell)
Field Managers, Elko, Carson City, Battle Mountain, Nevada
Field Manager, Eagle Lake, California

MEMORANDUM OF UNDERSTANDING

Between

THE BUREAU OF LAND MANAGEMENT

And

THE NEVADA DEPARTMENT OF WILDLIFE

Supplement No. 9

Wildlife Management in Nevada BLM Wilderness Areas

I. Purpose.

The purpose of this Memorandum of Understanding (MOU) is to provide guidance and procedures for coordination and cooperation between the Bureau of Land Management (BLM) and the Nevada Division of Wildlife (NDOW) regarding the management of wildlife in designated BLM Wilderness Areas within the State of Nevada.

II. Objective.

The BLM and the NDOW are committed to the maintenance and restoration of fish and wildlife populations and habitats in Nevada within the jurisdictions of their respective agencies. Coordination and cooperation between the BLM and the NDOW, where jurisdictions involve designated Wilderness, is essential in order that BLM and NDOW may accomplish their respective missions relating to management of fish and wildlife and their habitats as well as the Congressional mandate to manage Wilderness Areas under the Wilderness Act of 1964.

III. Authorities.

A. Section 307(b) of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1737.

B. Nevada Revised Statutes 501.181.

C. *The Wilderness Act of 1964* (P.L. 88-577), 16 U.S.C. 1131-1136.

D. *Nevada Wilderness Protection Act of 1989* (P.L. 101-195).

E. *Black Rock Desert – High Rock Canyon Emigrant Trails National Conservation Act of 2000* (P.L. 106-554) as amended by P.L. 107-63 of 2001.

F. *Clark County Conservation of Public Land and Natural Resources Act of 2002* (P.L. 107-282).

G. *Sikes Act of 1960*, as amended, (P.L. 86-797), 16 U.S.C. 670g-6701, 670o.

H. Congressional Wildlife Management Guidelines agreed to by the International Association of Fish and Wildlife Agencies, the Wildlife Management Institute, the BLM, and the USFS, approved by the House Committee on Interior and Insular Affairs, and adopted as policy by the BLM on August 25, 1986 in Instruction Memorandum 86-665 and by the USFS in Forest Service Manual 2323.32.

I. Resolution of the Nevada Board of Wildlife Commissioners concerning Wilderness Designations in Nevada adopted February 7, 2003.

IV. Definitions.

A. *Exotic Species*: For purposes of this MOU, all species of mammals, birds, fish, reptiles or their progeny or eggs, not naturally occurring either presently or historically in any ecosystem of the United States.

B. *Endemic or Indigenous Species*: For purposes of this MOU, those species presently or historically occurring naturally within a specific geographical area.

C. *Native Species*: For purposes of this MOU, all species of animals naturally occurring, either presently or historically, in any ecosystem of the United States.

D. *Naturalized Species*: For purposes of this MOU, those exotic species which were already occurring in a self-sustaining wild state before the date of Wilderness designation.

V. The BLM and NDOW Agree to the Following.

Fish and wildlife are recognized as an important wilderness value. Fish and wildlife management activities in Nevada's BLM Wilderness Areas will be planned and carried out in conformance with the Wilderness Act's purpose of securing an "enduring resource of wilderness" for the American people. BLM Wilderness Areas in Nevada will be managed in such a manner that ecosystems are unaffected by human manipulation, and human influence does not impede the free play of natural forces or interfere with natural ecological succession.

Site-specific, time-sensitive, on-the-ground conditions will dictate slightly different applications and perhaps even dissimilar decisions in BLM Wilderness Areas in Nevada. These different applications and decisions are both appropriate and proper, if we are to allow nature to play the dominant role in wilderness management. The emphasis is on management of BLM Wilderness Areas and wilderness values as opposed to the management of a particular resource. Where there are competing resource alternatives, wilderness values take precedence and priority.

Italicized paragraphs in this section of the MOU contain language and guidance that is exclusive to the *Clark County Conservation of Public Land and Natural Resources Act of 2002*.

A. Use of Motorized Equipment

The language in the Wilderness Act is viewed as direction that all management activities within BLM Wilderness in Nevada be done without motor vehicles, landing of aircraft, motorized equipment, or mechanical transport, unless truly necessary to administer the area as Wilderness. With regard to landing of aircraft, it is also against BLM regulation to drop or pick up materials, supplies, or persons from aircraft. Where the use of aircraft and motorboats have already become established prior to wilderness designation, they may be permitted to continue subject to such restrictions as the BLM deems desirable. The language in the Wilderness Act means that any such use should be rare and temporary, that no roads can be built, and that wilderness managers must determine such use is the minimum necessary to accomplish the task. Any on-the-ground use of motorized equipment or mechanical transport requires advance approval by the BLM.

In Clark County, the BLM, in consultation with the NDOW, must determine if the use of motor vehicles, motorized equipment, or mechanical transport in the development and /or implementation of a project would promote healthy, viable, and more naturally distributed wildlife populations that

would enhance wilderness values and accomplish those purposes with the minimum impact to wilderness values necessary to reasonably accomplish the task.

B. Fish and Wildlife Research and Management Surveys

Research on fish and wildlife, their habitats and the recreational users of these resources is a legitimate activity in Nevada BLM Wilderness Areas when conducted in a manner compatible with the preservation of the wilderness environment. Methods that temporarily infringe on the wilderness environment may be approved by the BLM if alternative methods or locations outside wilderness are not available. Methods that involve dropping or picking up of any materials, supplies, or persons by means of aircraft require BLM approval. Methods that involve the use of aircraft that fly over but do not touch down in Wilderness, such as aerial surveillance and aerial wildlife population counts, do not require BLM approval. Aircraft must be used in a manner that minimizes disturbance of other users, including humans and wildlife. Consider time of day, season of the year, route, appropriate maximum altitude of flight, and location of landing areas outside BLM Wilderness Areas.

All fish and wildlife studies within and over Nevada BLM Wilderness Areas must be conducted so as to preserve the natural character of the Wilderness. Capturing and marking of animals, radio telemetry, and occasional temporary installations may be permitted, if they are essential to studies that cannot be accomplished elsewhere. Installation of permanent base stations within BLM Wilderness is not permitted for monitoring of radio-instrumented animals.

The NDOW must obtain specific written approval or permits from the BLM before erecting any temporary installation. The BLM should only approve capture methods that minimize the impact on the wilderness environment.

C. Facility Development and Habitat Alteration

In rare instances, facility development and habitat alteration may be necessary to alleviate adverse impacts caused by human activities on fish and wildlife. Give first priority to locating facilities or habitat alterations outside BLM Wilderness Areas.

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management, which were in existence before wilderness designation, may be permitted to remain in operation. These developments may be maintained, repaired, or replaced as long as the designed capacity and/or dimensions of the existing development

are not exceeded. The BLM and the NDOW will jointly make decisions to remove existing water-related developments.

Clearing of debris that impedes the migratory movements of fish on primary spawning streams may be permitted, but only in a manner compatible with the wilderness resource. Use only non-motorized equipment to clear debris and use explosives only when the use of hand tools is not practical. Limit clearing of debris from spawning streams to those identified as being critical to the propagation of fish. If it is necessary to restore essential food plants after human disturbance, use only indigenous plant species.

Development of new or additional water supplies may be permitted, but only when essential to preserve the wilderness resource and to correct unnatural conditions resulting from human influence. Proposals for new structures or habitat alterations must be submitted to the BLM for approval.

In Clark County, the BLM shall authorize structures and facilities if: (1) the structures and facilities will, as determined by the BLM, enhance wilderness values by promoting healthy, viable and more naturally distributed wildlife populations; and (2) the visual impacts of the structures and facilities on the BLM Wilderness Areas can reasonably be minimized.

D. Threatened and Endangered Species

Actions necessary to protect or recover Federally listed threatened or endangered species, including habitat manipulation and special protection measures as identified in threatened and endangered species recovery plans or other management agreements, may be implemented in Nevada BLM Wilderness Areas in previously occupied habitat, provided it is demonstrated that the actions cannot be done more effectively outside Wilderness. To prevent Federal listing, protect indigenous species that could become threatened or endangered or are listed as such by the State of Nevada. All transplants or habitat improvement projects require approval by the BLM.

E. Angling, Hunting, and Trapping

Angling, hunting, and trapping are legitimate wilderness activities subject to applicable State and Federal laws and regulations.

In Clark County, the BLM may, in coordination and consultation with the NDOW, designate by regulation, areas and periods during which no hunting, fishing, or trapping will be permitted in BLM Wilderness Areas for reasons of public safety, administration, or compliance with applicable laws.

F. Population Sampling

Scientific sampling of fish and wildlife populations is an essential procedure in the protection of natural populations in Nevada's BLM Wilderness Areas. Gill netting, battery-operated electrofishing, and other standard techniques of population sampling may be used. Closely coordinate sampling activities with the BLM and schedule them to avoid heavy public-use periods.

G. Chemical Treatment

Chemical treatment may be necessary to prepare waters for reestablishment of indigenous fish species, to protect or recover Federally listed threatened or endangered species, or to correct undesirable conditions resulting from the influence of man. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Use only registered piscicides, in consultation with the BLM, and according to label directions. Give preference to those piscicides that will have the least impact on non-target species and on the wilderness environment. NDOW will comply with Environmental Protection Agency processes delegated to the Nevada Division of Environmental Protection in attainment of permits and certifications of personnel applying chemicals to Nevada's waters within BLM Wilderness Areas. Schedule chemical treatments during periods of low human use and immediately dispose of fish in a manner agreed to by the BLM and the NDOW.

H. Spawn-Taking

The collection of fish spawn shall be permitted in Nevada BLM Wilderness Areas when alternative sources outside Wilderness Areas are unavailable or unreliable, or where spawn-taking was an established practice before wilderness designation. Use of techniques and facilities necessary to take and remove spawn, which were in existence before wilderness designation, may continue, except that motorized equipment will not be used. Facilities for spawn-taking stations approved by the BLM after wilderness designation must be removed after the termination of each season's operation. Decisions to prohibit spawn-taking, where it was an established practice before wilderness designation, will be made jointly by the BLM and the NDOW.

Fish Stocking

Fish stocking may be conducted by the NDOW in coordination with the BLM, using means appropriate for wilderness, when either of the following criteria is met: (1) to reestablish or maintain an indigenous species adversely affected by human influence; or (2) to perpetuate or recover a threatened or endangered species. NDOW, in consultation with the BLM, will select the indigenous or naturalized fish species for stocking. Species of fish traditionally stocked before wilderness designation may be considered

indigenous if the species is likely to survive. Exotic species of fish shall not be stocked. Numbers and size of fish and time of stocking will be determined by the NDOW. Barren lakes and streams may be considered for stocking, if there is mutual agreement that no appreciable loss of scientific values or adverse effects on wilderness resources will occur. The BLM and NDOW will inventory barren lakes, streams and other suitable waters prior to proposing such stocking projects.

J. Aerial Fish Stocking

Aerial stocking of fish shall be allowed for those waters in Nevada BLM Wilderness Areas where this was an established practice before wilderness designation or where other practical means are not available. Aerial stocking requires consultation with the BLM. The NDOW will supply the BLM a list of those waters where stocking with aircraft was an established practice before wilderness designation. To stock waters that had not been aerially stocked before wilderness designation, the NDOW will demonstrate to the BLM the need for using aircraft.

K. Transplanting Wildlife

Transplants (i.e., removal or reintroduction of terrestrial wildlife species in Nevada BLM Wilderness Areas) may be permitted if necessary: (1) to perpetuate or recover a threatened or endangered species; or (2) to restore the population of indigenous species eliminated or reduced by human influence. Investigate the possibility of utilizing sites and locations outside BLM Wilderness Areas first. If sites and locations outside BLM Wilderness Areas are not available, transplants shall be made in a manner compatible with the wilderness character of the area. Transplant projects, including follow-up monitoring, require advance written approval from the BLM, if the action requires ground disturbing activities, motorized methods, and/or temporary holding and handling facilities.

L. Wildlife Damage Control

Wildlife damage control in Nevada BLM Wilderness Areas may be necessary to protect Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, for the benefit of reintroduced indigenous wildlife species, or to prevent serious losses of domestic livestock. Control of nonindigenous species also may be necessary to reduce conflicts with indigenous species. Acceptable control measures include lethal and nonlethal methods, depending upon need, justification, location, conditions, efficiency and applicability of State and Federal laws. Measures will be consistent with Section 4(c) of the Wilderness Act of 1964 to insure that prohibited uses are avoided. Use only the minimum amount of control necessary to resolve wildlife damage problems. The Animal and Plant Health Inspection

Service, the BLM, the NDOW, or other approved State agency will implement control measures pursuant to cooperative agreements or memoranda of understanding. Wildlife damage control measures involving the use of motorized vehicles, motorized equipment, and/or mechanical transport must be approved by the BLM on a case-by-case basis.

M. Visitor Management to Protect Wilderness Wildlife Resources

When necessary to reduce human disturbance to wildlife populations or habitat, the BLM, in coordination and consultation with the NDOW, may take direct or indirect management actions to control visitor use. If and when it becomes apparent that public use is significantly degrading the wilderness wildlife resources, limitations on visitor use may be imposed and enforced by the appropriate agency.

VI. Annual Operations and Maintenance Schedule.

By January 15th of each year, the NDOW will submit to the appropriate BLM Field Office Manager(s) an annual Operations and Maintenance Schedule of proposed fish and wildlife management activities, projects and developments planned within BLM Wilderness Areas for the subsequent twelve-month period beginning July 1st and ending on June 30th of the following year. Activities, projects and developments must be submitted, with the exception of specifically identified actions in this MOU, if they: (1) involve one or more of the prohibited uses identified in Section 4(c) of the Wilderness Act (i.e., commercial uses, permanent roads, temporary roads, use of motor vehicles, use of motorized equipment, use of motorboats, landing of aircraft, mechanical transportation, structures, installations); (2) may be potentially surface-disturbing (i.e., any new disruption of the soil or vegetation); (3) involve the use of pesticides or other chemical or toxic substances; (4) involve manipulation of fish and wildlife habitat; and/or (5) involve mechanical and/or motorized control measures for predators or problem fish or wildlife species.

Annual Operations and Maintenance Schedules must be site-specific, time-sensitive, and be as definitive as reasonably possible. The Schedules will: (1) specify when proposed activities, projects and developments are planned for accomplishment, (2) describe the proposed activities, projects and developments in sufficient detail to allow for the assessment of the environmental consequences of such actions, (3) estimate the number of people involved, the amount of time for completion, the number of vehicles (if any) to be used, the equipment to be utilized, and (4) identify planned camping sites, material and equipment repositories, landing areas, and associated locations for support services and facilities. The BLM may request clarification of proposals and additional information.

The NDOW agrees to notify the BLM of any changes, additions or deletions to proposed activities, projects and developments. The notification will allow sufficient time for the BLM to complete necessary administrative requirements, such as public notification and

environmental review. The BLM recognizes that accomplishment of the proposed fish and wildlife management activities, projects, and developments depends on factors which the NDOW may not control or that are uncertain and subject to change. Among these are the weather, availability of volunteers and agents, funding, etc., which may not permit the NDOW to complete activities, projects and developments according to the annual Operations and Maintenance Schedule.

VII. Immediate Actions and Procedures.

Actions requiring immediate attention due to unanticipated natural or human-caused circumstances (e.g., flood, vandalism, sick animal), that directly and immediately jeopardize the survival of fish and wildlife under the NDOW's jurisdiction, may be permitted if the following procedure is adhered to: (1) The NDOW agrees to notify the appropriate BLM Field Office Manager as soon as practicable after the problem is known; (2) The NDOW agrees to use no more than the "minimum tool" level of motorized vehicle, mechanical transport and/or motorized equipment necessary and practical to rectify the situation; and (3) The NDOW agrees to submit to the wilderness management agency a written assessment of the action requiring immediate attention within two weeks after resolution of the situation.

To the extent feasible, the NDOW will submit as part of their annual Operations and Maintenance Schedule, immediate action scenarios that may be possible or probable in connection with a given proposed activity, project or development. In doing so, the BLM will then be in a position to analyze potential impacts to wilderness resources in advance of occurrence.

VIII. Process for Analyzing Proposed Projects/Activities and Approval Authorities.

Proposed fish and wildlife management activities, projects and developments submitted in the annual Operations and Maintenance Plan require permissions, approvals, and/or permits from the BLM and will be processed and approved in accordance with the following procedure:

A. NDOW Annual Operations and Maintenance Schedule

Site-specific, time-sensitive, written proposals for wildlife management projects, developments and activities within BLM Wilderness Areas shall be developed in consultation with Field Managers and their staffs before they are proposed in the Annual Operations and Maintenance Schedule.

2. The NDOW Regional Habitat Supervisors are responsible for the development, coordination and submission of the Annual Operations and Maintenance Schedules to the BLM.

B. BLM Analysis of Projects and Approval Authorities

1 Site-specific, time-sensitive, written proposals for wildlife management projects, developments and activities within BLM Wilderness Areas shall be submitted in the annual Operations and Maintenance Plan to the appropriate Field Office Manager for consideration.

2. The BLM will provide written notification of proposals to interested and affected publics and allow these publics at least 30 days to offer comments, questions, concerns and alternatives. Public responses will be sent to the Field Office Manager.

3. Field Office Managers and their staffs will then complete and document "minimum requirement decision" and "minimum tool" analyses and appropriate National Environmental Policy Act compliance, before making a final decision.

4. Once the Field Office Area Manager makes a final decision, copies of the decision are mailed to all interested and affected parties. Decisions to allow a wildlife management project, development, or activity within a BLM Wilderness Area require permissions, approvals, and/or permits from the Field Office Manager. If the NDOW disagrees with a decision of the Field Office Manager, the decision may be reviewed by the Nevada State Director. All decisions can be appealed to the Interior Board of Land Appeals.

IX. Administration.

A. Nothing in this MOU will be construed as affecting the authorities of the BLM or the NDOW or as binding beyond their respective authorities, or to require the BLM or the NDOW to obligate or expend funds in excess of available funds.

B. Conflicts among the BLM and the NDOW concerning processes or procedures under this MOU that cannot be resolved at the operational level will be referred to successively higher levels, as necessary, for resolution.

C. The BLM and the NDOW will review this MOU at least every five years to determine its adequacy, effectiveness and appropriateness.

D. The terms of this MOU may be renegotiated at any time at the initiative of the BLM or the NDOW, following at least 30 days notice to the other agency.

E. The BLM or the NDOW may cancel this MOU at any time, following at least 30 days notice to the other agency.

F. The BLM or NDOW may propose changes to this MOU during its term. Such changes will be in the form of an amendment and will become effective upon signature by both agencies.

G. Before this MOU is due to expire, if the BLM and NDOW agree that there is a continuing need, it may be extended or renewed.

H. This MOU will become effective upon signature of both agencies.

APPROVED:

Robert V. Abbey, Nevada State Director
Bureau of Land Management

On 12-1-03
Date

Terry R. Crawforth, Director
Nevada Department of Wildlife

On 11-25-03
Date

APPROVED BY BOARD OF EXAMINERS

Signature – Nevada State Board of Examiners

On 12-9-03
Date

Approved as to form by:

Senior Deputy Attorney General
for Attorney General, State of Nevada

On 2 DEC 03
Date