

**AMENDMENT TO  
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), Supplement No. 9, is to provide guidance and procedures for coordination and cooperation between the Bureau of Land Management (BLM) and the Nevada Department 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 (NRS) 501.105 and 501.331 whereby the NDOW is responsible for administering the policies and regulations necessary for the preservation, protection, management and restoration of wildlife within the State of Nevada.
- C. NRS 501.351 and NRS 277.045 provide NDOW the authority to enter into cooperative and reciprocal agreements.
- D. NRS 503.584 – 503.589 directs NDOW to cooperate with other states and legal entities to the maximum extent practicable for the conservation, protection, restoration and propagation of species of native fish, wildlife and other fauna that are threatened with extinction.
- E. *Fish and Wildlife Coordination Act*, 16 U.S.C. 661.
- F. *The Wilderness Act of 1964* (P.L. 88-577), 16 U.S.C. 1131-1136 as amended.
- G. *Nevada Wilderness Protection Act of 1989* (P.L. 101-195).
- H. *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.
- I. *Clark County Conservation of Public Land and Natural Resources Act of 2002* (P.L. 107-282).
- J. *Sikes Act of 1960*, as amended, (P.L. 86-797), 16 U.S.C. 670g-6701, 670o.
- K. 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.

- L. Resolution of the Nevada Board of Wildlife Commissioners concerning Wilderness Designations in Nevada adopted February 7, 2003.
- M. *Lincoln County Conservation, Recreation, and Development Act of 2004* (P.L. 108-424).
- N. *Tax Relief and Health Care Act of 2006* (P.L. 109-432), Title III - White Pine County Conservation, Recreation and Development, Subtitle B – Wilderness Areas.
- O. Bureau of Land Management Environmental Assessment “DOI-BLM-NVL030-2012-0003-EA” and Decision Record dated January 13, 2012.

#### 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 from the *Clark County Conservation of Public Land and Natural Resources Act of 2002*, the *Lincoln County Conservation, Recreation, and Development Act of 2004*, and the *Tax Relief and Health Care Act of 2006*.

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 has 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.

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.

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, indigenous species that could become threatened or endangered or are listed as such by the State of Nevada will be protected. 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.

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. Sampling activities will be closely coordinated with the BLM and scheduled 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.

I. 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. The possibility of utilizing sites and locations outside BLM Wilderness Areas will be investigated 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. These control measures must 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.**

### **A. All Wildlife Projects and Activities Other Than Water Development Inspection, Maintenance, Repair, and Replacement**

By January 15<sup>th</sup> of each year, the NDOW will submit to the appropriate BLM District 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 1<sup>st</sup> and ending on June 30<sup>th</sup> of the following calendar year. Activities, projects and developments must be submitted 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 mechanized 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 as definitive as reasonably possible. The Schedules will: (1) specify when proposed activities, projects and developments are planned, (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, including a public notification with 30-day public comment period, minimum requirement decision analysis, environmental review, Decision Record (DR) and Finding of No Significant Impact (FONSI). Once the District Manager makes a final decision, copies of the decision are mailed to all interested and affected parties. If the NDOW disagrees with a decision of the District Manager, the decision may be reviewed and modified by the BLM Nevada State Director. All decisions can be appealed to the Interior Board of Land Appeals.

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.

B. Wildlife Water Development Inspection, Maintenance, Repair, and Replacement

By the authority of BLM environmental assessment “DOI-BLM-NVL030-2012-0003-EA” and the Decision Record (DR) dated January 13, 2012, Nevada BLM District Managers have issued a five-year authorization to the NDOW for inspection, maintenance, repair and replacement of 35 big game and small game water developments within seven wilderness areas in the Ely and Southern Nevada Districts. The authorization becomes effective on the date this amendment is approved. The first year of the authorization has been sanctioned by the environmental assessment and DR previously cited.

Under these authorities, helicopter access will be permitted to the 20 big game water developments but not to the 15 small game water developments, unless the conditions under Section VII of this MOU, “Immediate Actions and Procedures,” apply. Small game water developments will be accessed by foot or horseback only. If helicopter access is needed for a small game water development repair or replacement, and the conditions described in Section VII do not apply, the request will be treated as a new proposal, subject to full BLM administrative review (i.e., public notification with 30-day public comment period, minimum requirement decision analysis, environmental review, DR and FONSI).

For subsequent years (years 2-5), the NDOW will submit by January 15<sup>th</sup> of each year, to the appropriate BLM District Managers, an annual Operations and Maintenance Schedule for the succeeding twelve-month period beginning July 1<sup>st</sup> and ending June 30<sup>th</sup> of the following calendar year. The schedule will include a request for use of a helicopter for inspection, maintenance, repair, and replacement of big game water developments. The schedule will also call for the use of motorized and mechanized equipment (e.g. power drill, generator, hand cart) in order to effect maintenance, repair, and replacement of big game water developments. Further, the schedule must identify the anticipated dates for use of a helicopter, and name the expected water developments to be visited.

When received by the appropriate BLM District Managers, the BLM will conduct a determination of National Environmental Policy Act (NEPA) adequacy (DNA) and then, by April 15<sup>th</sup> of each year, issue an authorization

letter to NDOW citing BLM environmental assessment “DOI-BLM-NVL030-2012-0003-EA” and the DR dated January 13, 2012, as the mandate for authorizing the proposal. No further public notification with 30-day public comment period, minimum requirement decision analysis, environmental review, DR and FONSI will be necessary for each annual authorization.

If conditions remain relatively stable and do not change significantly, the five-year authorization will be renewed without further amendment to this MOU and without a full BLM administrative review (i.e., public notification with 30-day public comment period, minimum requirement decision analysis, environmental review, DR and FONSI). If conditions do not remain relatively stable and do change significantly, the BLM will conduct a full administrative review of the five-year authorization. If this review concludes the five-year authorization should not be renewed by the BLM District Managers, and NDOW disagrees with this decision, the decision may be reviewed and modified by the Nevada BLM State Director. All decisions can be appealed to the Interior Board of Land Appeals.

If inspection, maintenance, repair, and replacement activities extend beyond the boundary of the “footprint” of disturbance (i.e., the edge of disturbance created by previous construction or installation), a new authorization requiring the full range of BLM administrative review requirements (i.e., public notification with 30-day public comment period, minimum requirement decision analysis, environmental review, DR and FONSI) will be initiated. The same rule will apply for all additional proposals for construction of new wildlife water developments.

NDOW will prepare an annual report summarizing its big and small game water development activities. This report will be referred to as the “Annual Water Development Activities Report” and will be submitted to the District Managers by December 1<sup>st</sup> of each year for the previous State of Nevada fiscal year (i.e., July 1<sup>st</sup> through June 30<sup>th</sup>). The report will include the following information:

- the name of each water development inspected, maintained, repaired or replaced; the date(s) of the visit(s); and the name of the encompassing wilderness;
- the types of motorized and mechanized equipment utilized at each water development on each date;
- the number of landings and the number of sling-load trips conducted at each water development.

This information is required by the BLM Washington Office for the BLM's National Wilderness Character Monitoring Program.

The terms and conditions contained in this MOU will apply to any new wilderness areas designated within the State of Nevada unless the language in the new designation legislation contradicts the terms and conditions contained in this MOU.

## **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 proper BLM District Manager as soon as practicable after the problem is known; (2) The NDOW would be permitted to select and agrees to use the appropriate "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 proper BLM District Manager, a written assessment of the action requiring immediate attention within two weeks after resolution of the situation.

If a wildlife water development is involved, the written assessment should include:

- the name of the wilderness area;
- the name of the water development;
- identification of the problem and the repairs performed;
- type of motorized and mechanized equipment utilized;
- number of persons involved;
- number of landings and the number of sling-load trips conducted;
- date(s) of the immediate action.

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

APPROVED:

  
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Amy Lueders, Nevada State Director  
Bureau of Land Management

11/29/12  
Date

  
\_\_\_\_\_  
Kenneth E. Mayer, Director  
Nevada Department of Wildlife

11/29/12  
Date