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## MITIGATION AND GREATER SAGE-GROUSE

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A White Paper Summarizing State Efforts  
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### PURPOSE AND NEED

Greater sage-grouse occur in 11 western States and 2 Canadian provinces; although widely distributed, their numbers have been declining due to loss and fragmentation of sagebrush habitat. In 2010, the U.S. Fish and Wildlife Service (Service) determined that protection of the species under the Endangered Species Act (ESA) was warranted but precluded. A litigation settlement requires that a listing decision be made by September 2015.

There is great interest and a variety of efforts underway to preclude the need to list the species. Sagebrush habitat often intersects with lands ideal for rangeland agriculture and, more recently, energy development. With increasing pressure to develop both renewable and non-renewable energy sources in the western states, impacts to sage-grouse habitat will continue to occur. Mitigating for impacts in a way that demonstrates measureable net conservation benefits is of increasing interest. Combining landscape-level conservation planning with mitigation hierarchy principles (first *avoid*, then *minimize*, *restore*, and if impacts are still unavoidable, *offset*) is one way to balance conservation with development impacts. Such “pre-listing mitigation” could provide effective conservation and incentivize voluntary offset actions.

This white paper summarizes mitigation efforts to date (April 2012) for sage-grouse. It focuses primarily on energy development and the “offset” or “compensatory mitigation” portion of the mitigation hierarchy. The report is intended to provide baseline information about these issues as state and federal natural resource managers assess ways to proactively address concerns about the impacts to sage-grouse from energy and other development.

### INTRODUCTION

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### SUMMARY OF FINDINGS

Information in this document was summarized from reviewing state conservation plans, final and draft guidance document on sage-grouse conservation and mitigation, and development project documentation. Interviews of Service and state agency biologists involved in sage-grouse conservation and project review were also conducted. Drafts of this document were reviewed by interviewees for accuracy. The focus of the inquiry was on mitigation plans and actions for Greater sage-grouse, specifically, compensatory mitigation.

Results are presented in brief by state in table format (Appendix A) and in more detail in the “State Summaries” section. Several energy development projects have resulted in compensatory mitigation for

sage-grouse and some proposed projects have proposed mitigation for the species. Permitted and proposed projects are noted in each state summary and are explored in more detail in the “Projects” section.

Results can be summarized in to three main categories:

1. whether a state has a mitigation plan or framework and how that framework is implemented,
2. how (energy) projects are sited and permitted through existing state or local processes, and
3. to what extent wildlife agencies are involved in the project review process.

#### I. Mitigation Framework

A mitigation framework (or mitigation strategy) is a set of tools for the identification, planning and implementation of mitigation measures to avoid, minimize and, if necessary, offset impacts to species occurring from various development activities. The framework should include methodologies for quantifying impacts and offsets as well as a methodology for selecting the actions necessary to satisfy a project’s mitigation obligations (i.e. producing a net conservation benefit).

Over half of the states either have completed or are working through mitigation measures for sage-grouse on projects. While all 11 states within the range of the sage-grouse have a species-specific conservation plan and nearly all of those plans mention mitigation, none of them provide a mitigation framework. Two of the states (CA, WA) have general mitigation strategies through their state regulations that cover sage-grouse through species or habitat protections. Two other states (NV, OR) have created a separate mitigation framework for sage-grouse and four (ID, MT, UT, WY) are drafting a framework. Most of these documents are specific to energy development, rather than a general mitigation strategy for any potential impacts to the species.

#### II. Siting Process

The siting process for energy projects is an important consideration. Outside of voluntary consultation or a federal nexus (i.e. NEPA), it may be only chance for environmental review.

States vary widely in their approach to the siting and permitting process for energy development. The two most common approaches are through the state’s public utilities commission or the local communities/counties that may or may not have zoning requirements. All states but two (ID, NV) have some form of a state permit process for the majority of energy projects, though that process may vary by size and type of project. (For very large scale energy development in Idaho and Nevada, a state energy office would coordinate state comments). For most states, small projects do not have to go through a state permit but then may be subject to a county permit. Two states (ND, UT) do not have county siting permits. In many states, permitting varies by county.

Wind development is a relatively new issue and in many states there is no specific siting process. However, because of growing interest in renewable energy wind power siting processes are developing rapidly and legislative or regulatory changes are occurring regularly across the country. Typically, if a development exceeds a certain size it falls under the jurisdiction of the utilities commission; however the threshold for this varies widely. For example, in Nevada the threshold for a state permit is projects over 150 kW while in Oregon the threshold is a thousand times higher at 105 MW. Currently, four states (CO, OR, ND, SD) have specific wind siting authorities.

III. Environmental Review (Related to Appendix A data; I will update this information after individual state reviews)

For the purposes of this document, environmental review is defined as the opportunity for state or federal agencies to review and comment on projects with potential impacts to sage-grouse. These comments provide the means whereby impacts can be avoided, minimized, or offset. In all cases, state comments are never mandatory, though the range of weight they have on a permit process varies from compliance to completely voluntary.

Four states (CA, MT, SD, WA) have a state environmental policy law (similar to NEPA) that requires some form of environmental assessment for energy development projects either related to or independent of any state or county siting permits. The laws vary as to what types of projects trigger environmental impact analysis - some only require review for state agency or state funded projects, others also require review for any project that requires a state permit, license or certificate and some laws also impact local government projects. The latter two categories are the primary way that wind development would require an environmental assessment. The degree to which this review results in mitigation recommendations being implemented varies. In South Dakota, for example, it is made clear that recommendations by the wildlife agency are not mandatory and the state cannot require mitigation.

For five states (CO, MT, OR, UT, WA), the state siting process itself triggers an environmental review (though in Montana this only applies to transmission projects). In three states (MT, OR, WA), the opportunity for review may also come at a county's request, if they are the siting entity, though this varies by county.

For three of the states (ID, ND, NV), unless the project is occurring on state lands, review by the state agency responsible for sage-grouse is opportunistic, i.e. usually through a NEPA process (because of a federal land nexus) or by voluntary consultation of the county or project proponent. For very large energy developments, however, Idaho and Nevada do have a state agency that will collate state comments, which may include those from the wildlife agency. In Idaho, mitigation cannot be required. North Dakota has a state energy siting process but there is no requirement for review from the state wildlife agency and there is not a county siting process. However, the state wildlife agency is working with the state public utilities commission to develop a flagging method to identify when projects should be reviewed for wildlife impacts.

For the Service, half of the state's field offices reported that they had reviewed and provided comments on projects, though all were by opportunistic means (e.g. NEPA, working groups, voluntary request from the state or project proponent, or through review because of another trust resource). The other half of the states had not reviewed projects with potential impacts to sage-grouse either because there were no projects impacting sage-grouse, they were not aware of any projects, or they were aware but deferred to the state for review for sage-grouse.

IV. Projects with Mitigation

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## STATE SUMMARIES

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#### Montana

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##### Mitigation Plan

Montana Department of Fish, Wildlife and Parks (FWP)

The state's 2005 sage-grouse plan establishes a process to achieve sage grouse management objectives and provide a framework to guide local management efforts and coordinated management across jurisdictional boundaries. Off-site mitigation and the development of mitigation strategies are mentioned as potential conservation actions for unavoidable impacts from energy development. The state does not currently have a mitigation framework, though one is in development as part of an energy policy and expected to be released in 2012.

##### Siting Process and Environmental Review

Under the Montana Major Facility Siting Act (MFSA) a certificate of compliance may be required from the Montana Department of Environmental Quality (MDEQ) for certain major pipelines and electric transmission lines. Exploration for geothermal resources is also regulated. Associated facilities such as transportation links, pump stations and other facilities associated with the delivery of energy are included. Wind power development is unregulated at any level of government when occurring on private land. The exception is the authority of each County to control the zoning requirements for commercial or industrial development. Likewise, some components of the development may be regulated by MDEQ, for instance if it impacts wetlands, water quality, etc. In addition, if new transmission lines are greater than 69 kV a Certificate of Environmental Compatibility might be necessary. County siting and permitting processes vary by county.

FWP is a consulting agency by law when environmental reviews are required (such as through MDEQ). FWP does work to encourage the voluntary use of fish and wildlife information through utilization of the FWP Crucial Area Planning System (CAPS).

##### Projects

There have been no projects completed to date that involved sage-grouse [compensatory mitigation](#). However, one multi-state transmission project, the Mountain State Transmission Intertie (MSTI) has been proposed with a Draft EIS due out in 2012. A mitigation bank on private land has been discussed between a private conservation banker, MFWP, and the project proponent as one potential option for offsite compensatory mitigation of impacts to sage-grouse.

**Comment [UF&WS1]:** Many projects have incorporated mitigation in the avoidance / minimization categories...

## PROJECT SUMMARIES

The following information summarizes known projects that have been permitted or are in the process of being permitted and have impacts to sage-grouse where compensatory mitigation is being implemented or is being proposed.

Information was obtained from publicly available documents (such as Final EISs or RODs). For those projects still in the review process, information was obtained from Draft EISs or other draft documents. Therefore, the information on specific impacts to sage-grouse and proposed mitigation could change. This material is presented in order to show the variety of compensatory mitigation strategies that are being considered for impacts to sage-grouse.

Projects that had impacts to sage-grouse but were mitigated solely through avoidance and minimization measures (e.g., construction timing restrictions, buffers around leks) were not included here. However, it is important to note that this has been both the historic and current method of sage-grouse mitigation in most areas. Whether these measures are adequate in avoiding or minimizing impacts to the species is difficult to assess. The multi-state TransColorado Pipeline, presented first below, is a representative example of this form of impact assessment and mitigation. Also, the multitude of programmatic oil and gas projects in Colorado where research funding was used as compensatory mitigation are not discussed here (those plans are not publicly accessible).

#### PERMITTED PROJECTS

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#### PROPOSED PROJECTS

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MSTI (ID, MT)<sup>i,ii</sup>

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#### Background

NorthWestern Energy (NorthWestern), a regulated investor-owned utility serving 650,000 customers in Montana, Nebraska and South Dakota, proposes to construct, operate, and maintain a 500 kV, 1,500 MW electric line from a proposed new substation in Montana. The line would extend to a substation in Idaho and cross both BLM and USFS lands. Construction would also include modification of existing roads and the Idaho substation as well as developing new access roads. NorthWestern includes increasing demand for renewable energy and additional transfer capacity out of Montana are needs for the proposed project.

In 2010 a preliminary EIS was drafted to meet the needs of NEPA as well as the Montana Environmental Policy Act (MEPA) and the Major Facility Siting Act (MFSa), both Montana statutes. BLM and Montana Department of Environmental Quality (MDEQ) are lead agencies in preparation of the EIS. Montana Fish Wildlife and Parks is the only cooperating wildlife agency. Ongoing communications are occurring

between the lead agencies, stakeholders, and cooperating agencies that have comments and concerns. The Draft EIS is expected to be completed and released in the summer of 2012.

### **Impacts to Sage-grouse**

Note: this information is based on the 2010 preliminary Draft EIS and could change in the 2012 Draft EIS. It is provided to show an estimate of the potential extent of impacts to sage-grouse.

The proposed action alternative may impact 563,000 acres of sage-grouse habitat. Within a 3 mile buffer on either side of the transmission line, 83,000 acres of core habitat and 82 leks may be affected. The agency preferred alternative may impact 410,000 acres of sage-grouse habitat. Within 3 miles, 119,000 acres of core habitat and 50 leks could be impacted. Core areas represent the highest density of sage-grouse and/or are of high importance for distribution. The March 2010 BLM instruction memorandum No. 2010-71 (Gunnison and Greater Sage-grouse Management Considerations for Energy Development, supplement to the National Sage-grouse Conservation Strategy) states that BLM policy with regard to siting transmission lines is to re-route to avoid priority habitat for sage-grouse. Core areas in Montana and key habitat in Idaho were considered as priority by BLM during the development of route alternatives.

**Comment [UF&WS2]:** Do you want to also cite the 2011 BLM IM for GSG interim procedures?

Active lek locations provided by MFWP were used in Montana and active leks and leks with undetermined status as recommended by the Idaho Sage-grouse Conservation Plan were the basis for analysis in Idaho. To supplement existing data in the project area, ground and aerial surveys for leks and habitat were conducted by NorthWestern in 2006, resulting in the discovery of six new leks.

**Comment [UF&WS3]:** In ID, MT, or both?

NorthWestern also provided funding to MFWP to conduct surveys in Montana. No new leks were discovered. No new field surveys were conducted in Idaho.

**Comment [UF&WS4]:** So the 2006 NWE surveys were not in ID? Should probably clarify this a bit.

### **Mitigation**

Mitigation for impacts to sage-grouse on this project will be discussed when the Draft EIS is released (summer 2012). A mitigation bank on private land has been discussed between a private conservation banker, MFWP, and the project proponent as one potential option for offsite compensatory mitigation of impacts to sage-grouse.

### **DISCUSSION - THE ROLE OF MITIGATION BANKING**

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*Montana Version- WORKING DRAFT – Please Do Not Distribute*

Appendix A. State by state snapshot of mitigation for Greater sage-grouse (as of April 2012).

State	CA	CO	ID	MT	ND	NV	OR	SD	UT	WA	WY
<b>SAGR Mitigation Framework</b>				Draft							
<b>State Energy Siting</b>				Yes (Except Wind)							
<b>County or Local Siting Permit</b>				Variable							
<b>State Review of Projects (Wildlife Agency) <sup>1</sup></b>				Yes (Siting; SEPA)							
<b>USFWS Review</b>				None to Date							
<b>Interest in FWS reg. certainty<sup>2?</sup></b>											
<b>Projects with SAGR Comp.<sup>3</sup> Mitigation</b>				None							
<b>Form of Comp. Mitigation<sup>4</sup></b>				n/a							
<b>Proposed Projects with SAGR Mitigation</b>				1							
<b>Proposed Form of Mitigation</b>				Offsite “bank”							
<b>Future Projects with SAGR Impacts</b>				None							

<sup>1</sup> Opportunistic = review and comment on projects through the NEPA process, working groups, or by request of a county or project proponent.

<sup>2</sup> Reg. = regulatory. Regulatory certainty refers to the potential for the Service to provide some form of ESA compliance in the event the species is listed

<sup>3</sup> Comp. = compensatory. Compensatory refers to mitigation for unavoidable impacts required after avoidance and minimization measures have been employed.

<sup>4</sup> In Lieu Fund = refers generally to some form of payment “in lieu” of site specific mitigation. Funds may be used for acquisitions, habitat restoration, research, etc.

## END NOTES – LITERATURE CITED

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<sup>i</sup> [http://www.blm.gov/mt/st/en/prog/lands\\_realty/projects.html](http://www.blm.gov/mt/st/en/prog/lands_realty/projects.html)

<sup>ii</sup> <http://www.deq.mt.gov/MFS/MSTI/mstiapplication.mcp>

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