

## 2.0 INTERIM GUIDANCE

>>C. Humphrey: Now that Kerry Rodgers just laid out the legal framework, Jim Perry, tell us about our own interim guidance.

>> J. Perry: Thanks, Cathy. The BLM issued the draft Regional Mitigation Manual Section MS-1794 in June [2013]. The manual serves as interim policy and the BLM is to implement the policy as written during the draft review period.

The BLM's internal comments and edits and track changes are due back to the Washington office by January 17, 2014. And while we did not formally solicit comments from outside the BLM, we will absolutely consider comments offered by other agencies, nongovernmental organizations and the public.

If anyone is looking for a Microsoft Word version of the manual for making edits and comments in "Track Changes" format, I can provide that. Just send an e-mail to me at [Jperry@blm.gov](mailto:Jperry@blm.gov).

So, what is **regional mitigation**? Regional mitigation is a particular approach to implementing offsite mitigation on a landscape or regional basis. Because regional mitigation is a type of offsite mitigation, I'll first describe what **offsite mitigation** is. And then I'll explain the regional mitigation approach to implementing offsite mitigation.

I'll use the greater sage-grouse in my examples because it is an important species, identified by the U.S. Fish and Wildlife Service as "warranted for listing" under the Endangered Species Act. And many of our plans contain, or will soon contain, resource and value objectives for management and protection of the greater sage-grouse and its habitat.

As I will note later, the land use plan's resource objectives or value objectives are key elements when identifying the need for offsite mitigation. If any natural resource is identified in the land use plan with resource management objectives, well, that is an indicator of how important the management of that resource is. Offsite mitigation is a tool for managing important resources. Not just any old everyday resource.

So, what is **offsite mitigation**? We are defining offsite mitigation as performing mitigation outside the area of impact. That is pretty basic. We also frequently hear of offsite mitigation referred to as "offsets" or "compensatory mitigation" or "compensatory offsite mitigation". As far as we're concerned, they all mean exactly the same thing.

Please do not be fooled by the word "compensatory" as in **compensatory mitigation**. Compensatory, by definition, does not necessarily involve monetary contributions. Compensatory mitigation means compensating for an impact at one location by performing mitigation at another. For example, in its simplest form, offsite mitigation could be the "build a road, re-claim a road" concept.

In some areas, there are an excessive number of overlapping, poorly-placed and duplicative roads, pipelines, and power lines that the BLM has permitted one at a time without a long-term plan for development. Let's face it. Building and operating a road and other infrastructure has an impact. So does maintaining duplicative or unnecessary roads in the same area.

Therefore, to mitigate the impacts of a new road on an important habitat, we might condition the permit on the full reclamation of a nearby redundant road. Why have two roads fragmenting the same landscape and habitat when only one is necessary. Hence, the "build a road, re-claim a road". This basic concept should be common in many of the NEPA documents we write.

A more complex form of offsite mitigation, one we're pointing toward with regional mitigation is "build a road, re-claim a landscape". The price for building a new road in one area of important habitat might be in identifying and improving offsite habitat through projects such as vegetative treatments in another area or removing and re-claiming old roads, power lines or fences, and maybe even applying some form of future protection in the land use plan or through conservation easements on private lands.

>> C. Humphrey: So Jim, we've got a question from the field. I'm not sure which office it is from. It is asking if we can mitigate offsite instead of mitigating onsite.

>> J. Perry: Oh, boy. Yeah, our national policy is to first plan to mitigate to an acceptable level within the area of impact. This is known as **onsite mitigation**. Onsite mitigation generally entails one of two choices, or both. Our first consideration is avoiding the impact at the project site. Second choice is consideration of minimizing the impact at the project site, such as through the use of state-of-the-art mitigation measures, also known as best management practices or BMPs, which become permit or lease terms and conditions, stipulations, or conditions of approval. However, the BLM cannot always mitigate potential impacts from land use authorizations to an acceptable level onsite, at the location where construction and operation impacts will be occurring. Even with the use of best management practices, there may still be some remaining impacts.

The question is: Do the remaining impacts really need to be mitigated? Well, it's not necessary to mitigate all resource impacts. It is worth repeating. It is not necessary to mitigate all resource impacts.

Within resource types, some have been determined to be a higher priority than others for protection. For example, wildlife: *endangered* species are worthy of greater protection than *sensitive* species, which are worthy of greater protection than *game* species. We must take a reasoned approach when identifying what onsite and offsite mitigation is necessary. We make this approach through the NEPA process and the land use planning process.

>> C. Humphrey: So how would you identify which resources warrant offsite mitigation?

>> J. Perry: Well, first, you plan for mitigating *onsite* to the extent practical. For remaining impacts to important resources, there are legal, policy, and land use plan considerations. The first step is

generally the resource management plan. If the plan identifies specific objectives or values for a resource, it could indicate that the resource may warrant offsite mitigation. Everything we do or approve through a permit must be in conformance with a resource management plan, including meeting the resource objectives and values.

For example, the BLM may identify resource management plan objectives for managing a sensitive species such as the greater sage-grouse, including maintaining habitat and viable populations. Or the resource management plan may identify cultural, historic or visual resource values that we must manage for. In order for the BLM field office to achieve the resource objective and value objective identified in its resource management plan, it may be appropriate for the field office to condition the approval of a permit on the applicant's essentially required performance of offsite mitigation.

There may also be policy and legal considerations, such as the National Historic Preservation Act or the Endangered Species Act.

So the NEPA thought process is something like this:

- Will there be remaining, unmitigated impacts even if appropriate onsite mitigation is proposed by the applicant or conditioned by the BLM?
- Do those impacts, remaining resource impacts warrant offsite mitigation?
- If the BLM does not address those impacts, would it prevent the BLM from meeting its resource management plan objectives?
- If so, BLM could condition the authorization on the applicant's commitment to address those impacts either by performing offsite mitigation or contributing to an offsite mitigation fund.

For example, a transmission line is proposed in sage grouse priority habitat, designated as an "avoidance area" in the RMP. If this route cannot be avoided, the field office would require the applicant's use of environmental best management practices to minimize the impact onsite but there will still be unavoidable impacts. If the resource management plan established a disturbance threshold of "no net loss" of sage-grouse populations and habitat, any remaining impacts to the sage-grouse populations and habitat would need to be mitigated offsite.

>> C. Humphrey: Okay. So that all makes pretty good sense. How would a regional mitigation approach fit into all of this then?

>> J. Perry: Well, there are three key points to consider. **First** key point, a regional mitigation approach shifts the BLM mitigation focus from a permit-by-permit, project-by-project, offsite mitigation approach -- to a carefully planned, comprehensive mitigation approach. For example, designing mitigation for all potential oil and gas wells in an area, rather than one well at a time.

That's right. Where we're anticipating large-scale development, we're preplanning for large scale mitigation. No piece-mealing. The **second** key point, a regional approach involves strategically pre-identifying mitigation areas and mitigation measures.

For example, the BLM is working on a number of greater sage-grouse resource management plan amendments. In the amendments, the BLM is identifying priority and general habitat areas and areas where there's no habitat. The BLM may decide in those resource management plans to focus and preplan its offsite mitigation efforts where it will have the most benefit in those priority habitats, or even in the connectivity corridors between priority habitats.

As part of the preplanning process, the BLM field office will be working with its partners to develop regional mitigation strategies. The strategies would include establishing mitigation funding accounts and mitigation management teams in order to provide a place to hold mitigation funding and a team to manage the process.

The field office may prepare regional mitigation strategies outside the planning and NEPA process, such as in the Dry Lake Solar example you'll hear about later from Mike. Or regional mitigation strategies can be developed within the resource management plan to identify and protect the important habitats in mitigation areas.

**Third** and final key point, a regional mitigation approach focuses on attaining the highest mitigation benefit regardless of landownership. Even though the resource impacts may occur on BLM managed lands, it may be more beneficial to acquire a permanent conservation easement on private lands rather than performing offsite mitigation on BLM managed lands.

Case-in-point, what if all of the nearby BLM-managed land is already leased for oil and gas developments? Is that a good location to focus habitat improvement, time, and dollars? Any mitigation projects on a leased area would be at risk of harm from future oil and gas development, right? Maybe it is best to look further out to other private or federal lands where we know we can protect habitat mitigation projects. Think durability. Even if the impacts will occur on local BLM-managed lands, we may be able to protect them the best on private land.

In another example, the BLM may manage priority habitat but connectivity corridors to the BLM priority habitat may be located mostly on private lands and may be in poor shape. The highest long-term value may be to acquire conservation easements on the private lands from willing sellers. This will allow our partners to improve the connectivity corridor habitat on the private lands, connecting BLM priority habitats.

So, in summary, we encourage you to read through the Regional Mitigation Manual Section MS-1794, understand the nuances of what constitutes successful regional mitigation, and when and how to address mitigation requirements through the NEPA process. If you see new development headed your way, particularly renewable or non-renewable energy development or mining of non-locatable mineral materials, and important resource values may be impacted, now is a good time to begin working on a regional mitigation strategy. This would include identifying partners and cooperators, establishing mitigation management teams and setting up mitigation funding accounts.

Further detailed guidance is outlined in the Regional Mitigation Manual Section. I encourage you to

read it. I hope I have clarified onsite, offsite and regional mitigation for you. Thanks for attending today.

>> C. Humphrey: Thanks, Jim. That seems like an important piece for successful offsite mitigation. You got me interested in the manual again. I want to reread it. If any of you want to reread it, it is on our KRC website.

I especially like your concept of “build a road, re-claim a road” or “build a road, re-claim a landscape”. I thought that was great.

Now, you said you want comments on the regional mitigation section by January 17th. Is there anything specific that you want?

>> J. Perry: Good point. We would really like to see the comments come back in Track Changes format. Go ahead. Get into the document and type the edits, the exact way you would like to see them written in the manual and then just add a bubble comment to explain why you've changed the text. So that would be very helpful. Thanks.