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Instruction Memorandum: No. NV-2011-044
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To: District and Field Office Managers, Nevada

From: State Director, Nevada

Subject: Issuance of Authorizations to the Nevada Department of Wildlife (NDOW) for Wildlife Water Development Inspection, Maintenance, and Repair within Bureau of Land Management (BLM) Wilderness Areas in Nevada

DD: 11/01/2011

Purpose: To provide guidance on issuance of authorizations to NDOW relating to requests for the annual inspection, maintenance, and repair of big game, small game and bird guzzlers (hereinafter referred to as “wildlife water developments”) within designated BLM wilderness areas in Nevada.

Outcome: Identification and establishment of approved methods of inspection, maintenance, and repair of wildlife water developments in designated wilderness on a multiple-water development, multiple-year basis.

Background: With the designation of wilderness in Nevada under several legislative acts, the NDOW has annually requested permission to inspect, maintain, and repair wildlife water developments within BLM Districts affected by the legislation (i.e., Ely, Southern Nevada, and Winnemucca). While big game, small game and bird water developments are located within designated wilderness in Nevada, NDOW’s requests are primarily directed toward big game wildlife water developments. Each year, after completing public notifications, minimum requirement decision guide (MRDG) analyses and National Environmental Policy Act (NEPA) examinations such as environmental assessments (EAs), based on the NDOW requests, BLM Districts have granted such permission with appropriate terms and conditions attached.

Since the approval of a memorandum of understanding (MOU) with NDOW in 2003 (i.e., Supplement No. 9, BLM MOU 6300-NV930-0402 dated December, 2003), requests for inspection, maintenance and repair of wildlife water developments have been processed annually. These requests usually include an appeal for helicopter access. Helicopter access has been approved on a case-by-case basis after careful analysis of each request. Permission for use of a helicopter has been granted in cases where the terrain is too steep, hazardous, or difficult for foot or horseback access or where the distance to the wildlife water development site is too far from a boundary or recognized cherry-stem road.

The Nevada BLM has never denied NDOW permission to inspect, maintain, or repair a wildlife water development but has specified the method by which the work would be accomplished through the process outlined above.

Policy: ***Individual Wildlife Water Development Inspection, Maintenance, and Repair Authorization*** –

Under the current policy, the Nevada BLM cooperates with NDOW through the MOU mentioned in the previous “Background” section for management of wildlife within designated wilderness, including individual water development inspection, maintenance and repair. Per the terms of the MOU, NDOW submits an annual “operations and maintenance schedule” to the BLM by January 15th of each year. The “schedule” outlines NDOW’s request to inspect, maintain, and repair wildlife water developments within designated wilderness. Each request is subject to a public notification of a 30-day comment period, a MRDG analysis, and an EA, before a “Decision Record” (DR) and “Finding of No Significant Impact” (FONSI) is issued by the BLM to authorize activities associated with each wildlife water development identified in the “schedule.”

Multiple-Water Development, Multiple-Year Inspection, Maintenance and Repair Authorization –

The Nevada BLM has the discretion to authorize the inspection, maintenance and repair requests for wildlife water developments on a multiple-water development, multiple-year basis if conditions at each water development site remain relatively constant. It is anticipated that a single NEPA examination should be sufficient for a period of five years, with annual authorizations supported by a determination of NEPA adequacy (DNA). Where appropriate, this type of authorization will result in a substantial yearly savings in cost, time, and staff workload to both the BLM and NDOW and reduce the repetitive workload of preparing individual public notifications, MRDG analyses, NEPA examinations, DRs and FONSI on an annual basis.

Action: The option to issue multiple-water development, multiple-year inspection, maintenance, and repair authorizations will be added to the existing MOU with

NDOW as a modification of Section VIII.A. and B. relating to “**Process for Analyzing Proposed Projects/Activities and Approval Authorities.**” The modification will describe the roles and responsibilities of each agency under this new policy direction.

For BLM Districts with designated wilderness, the District must prepare a public notification, a MRDG analysis, a NEPA examination sufficient to encompass anticipated levels of activity outlined in the annual “operations and maintenance schedule” and make a determination of the appropriate minimum requirement/minimum tool to employ for NDOW access to conduct inspection, maintenance, and repair for each wildlife water development within the established boundaries of a designated wilderness. **The NEPA examination together with the requisite DR and FONSI is required to be completed by November 1, 2011.** An analytical approach to accomplishing this task is provided in the following sections.

NEPA Compliance –

In order to support the inspection, maintenance, and repair of wildlife water developments under a multiple-water development, multiple-year inspection, maintenance and repair authorization, at a minimum, an EA covering this activity and method of access must be prepared. The EA must consist of deliberate, well-reasoned, site-specific analyses of each wildlife water development within each designated wilderness; therefore, the BLM will also need to identify all wildlife water developments within a designated wilderness. The requirements of the MRDG may be blended with the requirements of the EA process to fully assess the range of wildlife water developments within a designated wilderness that may be subject to inspection, maintenance, and repair in any given year.

The wildlife water development EAs must thoroughly assess the short and long-term impacts that alternative access methods will have on wilderness characteristics (e.g., “untrammeled,” “undeveloped,” “primeval character and influence,” “without permanent improvements,” “natural condition,” “affected primarily by the forces of nature,” “outstanding opportunities for solitude,” “outstanding opportunities for a primitive and unconfined type of recreation,” “supplemental values,”). The EA must assess the cumulative effects of impacts, and the human health and safety concerns associated with each wildlife water development under each access alternative. Economic and timing considerations at each site such as cost of the proposed action and the time of day and the season of the year when the proposed action would take place should be taken into account under each alternative. The EA should also provide appropriate mitigation measures, special stipulations, terms and conditions that should be applied to each wildlife water development decision within each wilderness.

At the end of the EA process, the District will have a well-reasoned master list that outlines the methods of access for inspection, maintenance and repair of all wildlife water developments within designated wilderness areas. It is important to note that different methods of access may be associated with a particular inspection, maintenance or repair task. For example, inspection may be accomplished by a helicopter over-flight without touching down or by foot or horseback, while maintenance or repair may require a different level of access depending on the circumstances, equipment, and tools required to accomplish a task.

Analysis Questions –

- ✓ Is helicopter, foot, horseback, motorized or mechanized vehicle access the “minimum tool” for wildlife water development inspection, maintenance and repair?
- ✓ Are there other alternatives to these methods of access to accomplish inspection, maintenance and repair of wildlife water developments?

Data Questions –

In order to provide a comprehensive and site specific analysis for each wildlife water development, it will be important to understand basic data about each water development that will influence the decisions to be made relative to inspection, maintenance and repair. The location and type of water development and the technology used to construct it will provide information on the level of potentially recurring maintenance and repair needs. An older water development with older technology may be subject to more maintenance and repair than a development with newer technology. Also, the length of time the water development has been in place is germane to the level of associated impacts that may have accrued to a specific water development over time. For example, a water development that has been in place for 25 years may have more well-worn game trails or access associated with it than a development installed in the last several years. Likewise, if a helicopter had been used for access, the landing zone may be more established and noticeable than a more recent development.

In order to assess these impacts, the following data questions should be answered for each wildlife water development under consideration. Development of this data should be coordinated with and through the NDOW.

- ✓ What is the location of the wildlife water development within the designated wilderness?
- ✓ When was the water development installed?

- ✓ What type of wildlife water development is it – big game, small game, or bird?
- ✓ What technology was used for construction of the water development (e.g., what type of catchment and drinker is being utilized)?
- ✓ What is the current method of access to the water development? Have helicopters been previously authorized to access the development either prior to or after wilderness designation?

Range of Alternatives –

The EA should examine a reasonable range of alternatives for conducting wildlife water development inspection, maintenance and repair activities. The EA must contain a “no action” alternative which is framed as “continuation of present management.” The “no action” alternative, in this instance, should reflect how authorizations are currently processed and approved under the District’s land use and wilderness management plans and the policies contained in the MOU with NDOW. The “no action” alternative would continue to allow NDOW to inspect, maintain, and repair wildlife water developments annually, and on a case by case basis, **provided** those activities do not violate federal laws, BLM wilderness management regulations or the MOU with NDOW.

It is also suggested that a “no wildlife water inspection, maintenance, repair authorization” alternative be examined to fully understand and compare the effects of not maintaining or repairing water developments within designated wilderness. Other alternatives to consider could be framed around the type and technology of the wildlife water developments.

Some level of programmatic analysis could be undertaken to group similar situations depending on the circumstances, e.g., bird water developments located in certain terrain may be assessed as a group, if it makes sense to do so. Regardless of the manner a wildlife water development is assessed (individually or as a group), the analysis must result in a defensible determination of the type of access and activity for each component of the inspection, maintenance and repair activity for each specific water development.

EA Development Process –

For Districts that have deployed e-Planning, it is suggested that the EA be developed through the e-Planning system to facilitate internal and external review and distribution of the document.

Public Notification –

A public notification announcing the proposed action for multiple-water development, multiple-year authorization for inspection, maintenance and repair of wildlife water developments must be distributed to all interested and affected parties on each District's wilderness public notification mailing list, including such diverse groups as the Fraternity of the Desert Bighorn and Wilderness Watch. It is recommended to follow the guidance in Instruction Memorandum No. NV-2004-043, dated April 1, 2004, entitled, "*Public Notification of Proposed Actions and Unauthorized Activities within Wilderness and Wilderness Study Areas in Nevada.*"

Internal District Review of Working Draft EA –

Selected District resource specialists and managers should review and comment on the internal working draft of the EA. Once the EA has been reviewed and revised by the District, the EA should be transmitted to the State Office for review.

State Office Review of Revised Working Draft EA –

Appropriate State Office resource specialists shall review and comment on the revised working draft of the EA within three weeks of receipt from the District. Once comments are made, they will be provided to the District for incorporation by the District in a preliminary draft EA.

Public Review of Preliminary Draft EA –

Once the District incorporates State Office comments into the preliminary draft EA, the District should distribute the EA to the public and NDOW for a 30-day public comment period. When the public and cooperating agency review of the preliminary draft EA is completed, a final EA should be developed responding to all comments with appropriate revisions to the analysis as needed. A second State Office review by the Wilderness Coordinator and Environmental Planner should be allowed prior to release of the final EA and issuing a DR and FONSI.

Decision Record and FONSI Published –

The DR and FONSI may be prepared once the final EA is completed. The DR must provide the decision and rationale for each and every wildlife water development within each designated wilderness. The minimum 30-day appeal period to the Interior Board of Land Appeals begins with publication of the DR and FONSI.

New Wilderness Designations and Wilderness Management Plans –

As new wilderness areas are designated in Nevada, wilderness management plans and associated EAs prepared for such areas will incorporate the guidance in this instruction memorandum for inspection, maintenance and repair of wildlife water developments within the boundaries of these new areas.

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