

**DATA SHARING AGREEMENT BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT (BLM), NEVADA
AND
STATE OF NEVADA,
NEVADA DIVISION OF NATURAL HERITAGE (NDNH)**

1. Purpose

The purpose of this agreement is to provide the United States Department of the Interior, Bureau of Land Management, Nevada, including its state office, district offices, and field offices, (BLM Nevada) and Nevada Division of Natural Heritage (NDNH) the capability to share sensitive (restricted, limited, or open) reports, documents, tables, alphanumeric, and Geographic Information Systems (GIS) data. This agreement does not confer an exclusive right to either party's data, nor does it obligate either party to share specific data with the other party. The BLM and NDNH are free to negotiate similar arrangements to share their respective data with other parties.

2. Objectives

The objectives of this agreement are:

- To provide a vehicle for the sharing of information between BLM Nevada and NDNH.
- To cooperate in the sharing of information to realize maximum operating efficiency and cost savings.
- To avoid duplication of effort in the collection of information.
- To improve the accuracy of the information.

3. Authorities

- Section 307 of the Federal Land Policy and Management Act of 1975 (FLPMA) (43 U.S.C. 1737).
- The Paperwork Reduction Act, 44 U.S.C. 3501.
- OMB Circular A-130, Managing Federal Information as a Strategic Resource.
- OMB Circular A-16, Coordination of Geographic Information, and Related Spatial Data Activities.
- BLM Manual 1278, External Access to BLM Information.
- BLM Handbook 1283-1, Data Administration and Management Handbook.

4. Benefits

This agreement provides for the sharing of reports, documents, tables, GIS data, and alphanumeric data on a common need basis. Sharing reports, documents, tables, and data facilitates planning for projects; decreases the need for redundant collection of the same reports, documents, tables, and spatial data by the two cooperators; and increases the efficiency of multi-agency and organization data collection efforts. This provides a cost savings to the taxpayer and is consistent with the Paperwork Reduction Act of 1980, implemented by OMB Circular A-130, which mandates agencies to share available information to the extent practicable, and OMB

Circular A-16 which provides for development of a coordinated National Spatial Data Infrastructure.

5. Term of Agreement

This agreement shall be effective for five (5) years from the date of approval by the parties, at the end of which it expires unless earlier terminated or extended. This agreement may be revised as necessary by mutual written agreement of the parties. This agreement may be terminated by either party, provided 90 days written advanced notice is given. This agreement will be reviewed annually to verify maintaining the agreement in an active data status.

6. Information Types

BLM will provide the following information to NDNH annually after the field season and/or after any major updates as determined by BLM.

- Flora, Fauna, and Administrative Boundary data

NDNH will provide the BLM Nevada with the following information annually prior to the field season and/or after any major updates as determined by NDNH.

- Standard geodatabase of rare plants and animal occurrences on BLM land
- Geodatabase of data sensitive locations of rare plants and animals on BLM land

Any BLM Nevada reports, documents, tables, and spatial digital data resulting from this agreement will adhere to BLM policy, BLM Manual Section 1278 - External Access to BLM Information and BLM Manual 1264, Information Technology Security. This applies to processed data and/or data resulting from the combination of sensitive data with any other data. Processed data follows the same restrictions as the original data.

7. Data Exchange

Exchange of digital data covered under this agreement will occur via a secure FTP or HTTP site or other method agreed to by both parties. Each party will maintain a transmittal log to record the dates and datasets exchanged.

8. Metadata

BLM policy requires the development of Federal Geographic Data Committee (FGDC) compliant metadata for spatial and non-spatial data. [FGDC is in the process of adopting the International Standards Organization (ISO) standard, and when adopted, the BLM will follow that standard.] Consideration is to be given to National Archives and Records Administration (NARA) metadata requirements and Dublin Core Metadata Initiative (DCMI) should it be necessary for file transfer to NARA.

Preparation of their respective reports, documents, tables, or spatial/alphanumeric data is the responsibility of each party. Both parties agree to cite to the appropriate source of the data, maps, and other products derived or produced using the other party's data. Data shared must be documented with the following information contained in the FGDC compliant metadata:

1. Data source and type;
2. Data steward(s);
3. Source scale (if applicable);

4. Capture methodology;
5. Age of source data;
6. Identification of any sensitive data and data element pairing situations;
7. Access Constraints and Use Constraints. The data provided by the parties, pursuant to this agreement, may contain nonpublic agency information (i.e., information not administratively available for on-site review to the public, but available through a Freedom of Information Act (FOIA) or Nevada public records request). The method of access to the data and the BLM and/or NDNH access category must be specified when the data are shared, following the procedures in this agreement;
8. Quality control and assurance exercised in the data entry, compilation, capture, and data maintenance processes, including reliability and data verification as to authenticity and accuracy.

9. Confidentiality

Absent specific written authorization, the parties will only release information covered by this agreement in accordance with each party's law, regulation, and policy, including the FOIA and/or the Nevada Public Records Act (NPRa). When a request for information under FOIA or NPRa is received, the party who receives the request will provide written notice to the other party of the release.

10. Administration

Nothing in this agreement will be construed as affecting the respective legal authorities of the participants. Conflicts between the participants concerning procedures which cannot be resolved at the operational level will be referred to the next higher level.

11. Funding

This agreement does not obligate any funds from either party. Subject to the availability of funds, each party agrees to fund its own expenses associated with this agreement. Nothing in this agreement shall be construed as obligating any Federal agency to any expenditure or obligation of funds in excess or advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. §1341.

12. Standard Disclaimer Statements

NDNH acknowledges the following regarding the dataset to be provided

DATA SET INCOMPLETE: The data set is the result of ongoing analyses and quality controls performed by NDNH staff, using tools, concepts, and methods that are the property of NatureServe, Inc., and the Natural Heritage Network. These data are entrusted to us by various private and public organizations and individuals, obtained from published and unpublished literature, or in some cases derived from staff field surveys, and new data are constantly being received and incorporated.

SENSITIVE LOCATIONS OMITTED: NDNH generally withholds precise locational data for private property and for taxa considered highly vulnerable to collecting, poaching, harassment, or vandalism. Generalized data for such occurrences are provided in printed form. The more

precise data may be supplied on request if sufficient need can be demonstrated and confidentiality can be guaranteed to the satisfaction of NDNH.

TAXONOMIC COVERAGE INCOMPLETE: With few exceptions, NDNH attempts to maintain current data on all species and subspecies in the state listed as threatened, endangered, candidate or sensitive by any federal, state, or private organization, or otherwise considered at-risk by NDNH. The Nevada Department of Wildlife manages, protects, and restores Nevada's wildlife resources and associated habitat, and their GIS/Data Coordinator should be contacted (775-688-1580) to obtain further information regarding wildlife resources in your area of interest. The Nevada Division of Forestry, under N.R.S. 527.060-.120, protects and regulates the harvest of all cacti, yuccas, and evergreen trees, most taxa of which are not tracked by NDNH.

GEOGRAPHIC COVERAGE INCOMPLETE: NDNH data sets incorporate recent and historical occurrence reports from throughout the state of Nevada. In many cases NDNH has general information for areas outside the state, but we do not normally collect specific data for such areas. Except in rare cases where recent field surveys have been performed by NDNH, the data set only summarizes past reports received by us, is not a definitive representation of all species present or absent in a given place and cannot be substituted for comprehensive surveys of any site or area. Absence of evidence is not evidence of absence.

LAND STATUS ATTRIBUTES ADVISORY ONLY: When land ownership or management status attributes are supplied with the data set, they have been derived from the best available maps and other information at the time, but usually are not further verified or updated. NDNH does not assess the ownership status of associated mineral and water rights, or the presence or absence of easements or other encumbrances.

BLM Nevada agrees to the following provisions

OWNERSHIP NOT GRANTED: Ownership of the data set remains exclusively with NDNH, NatureServe Inc., and/or those who provided the data to NDNH or NatureServe ("owners").

DATA SET PROPRIETARY: The data set, and the analytic tools and processes from which it is derived, remains the proprietary property of the owners. The data set shall be treated as proprietary in all respects by BLM Nevada. BLM Nevada agrees that it will seek to protect the data set from release under all applicable federal law, including requests filed with the BLM pursuant to the Freedom of Information Act (FOIA; 5 U.S.C. §552 as amended), to the extent allowed under such laws, and otherwise shall implement all procedures otherwise reasonably necessary to protect owners' proprietary rights.

DATA LICENSE LIMITED: Unless expressly provided for within other sections of this Agreement, the data set shall not be duplicated for, sold to, provided to, or otherwise allowed to be available to any person or organization other than BLM Nevada, by any means electronic, written, verbal, or otherwise, without the consent of NDNH. NDNH will be informed of any and all requests for data access from third parties, including requests made pursuant to FOIA.

CONTRACTORS AND SUBCONTRACTORS MUST SIGN SEPARATE AGREEMENT:

Any internal BLM Nevada contractors or subcontractors who require access to the data set must adhere to the terms and conditions of this agreement. Access to the data set will occur through BLM Nevada's GIS coordinators in the state office after obtaining the approval of the BLM Nevada State Office GIS Manager. Any external BLM Nevada contractors or subcontractors who require access to the data set must contact NDNH directly and submit a data request through NDNH's standard data request process.

DATA ACCESS LIMITED: BLM Nevada shall ensure that access to the data set is limited to BLM staff, contractors, and subcontractors with a legitimate need to access the data consistent with this Agreement's stated purpose. BLM Nevada is responsible for informing said individuals of the terms of this Agreement.

PRODUCTS RESULTING FROM NDNH DATA: Copies of any products (such as new population data, models, theses, peer-reviewed journal articles, etc.) produced from BLM Nevada's use of the data set must be submitted to NDNH at the conclusion of the project, or else concurrent with NDNH's distribution of the data set to BLM Nevada.

ARCHIVE COPY PERMISSIBLE: BLM Nevada may retain archival copies of expired data sets for the purpose of maintaining a record of information sources used in support of its analyses and decisions. Archival data sets stored by BLM Nevada will be labeled in a manner that clearly identifies the data as out-of-date (expired). Archival data sets will not be used to generate new products, analyses, or decisions, and shall be subject to the terms of this Agreement in perpetuity.

SCOPE OF DATA USE LIMITED: Except by written consent from NDNH, BLM Nevada shall not use the data set for any purpose that is inconsistent with the purpose of this Agreement.

DERIVED DATA PRODUCTS FOR EXTERNAL OR PUBLIC USE: BLM Nevada and NDNH acknowledge that the release of sensitive data (including species locations) for external or public use has the potential to cause harm to sensitive species, sites, or other natural resources. BLM Nevada and NDNH also acknowledge that release of such sensitive data could be required in response to FOIA requests filed with the BLM and is often required in the course of the BLM's fulfillment of its other authorities and responsibilities. To the maximum extent possible, BLM Nevada will exercise due diligence to protect sensitive data and minimize the likelihood of any harmful data release of NDNH data for external and public use, including but not limited to FOIA requests. When NDNH data are used in maps intended to be made available to the public, BLM Nevada will seek to ensure that the mapped data are displayed at a coarse enough map scale that minimizes the potential for on-the-ground discovery of sensitive species information. Specifically, wherever feasible, BLM Nevada will adhere to these guidelines when producing maps for external or public use: (1) mapped data displayed at a fixed scale of 1:3,000,000 or smaller; (2) mapped data not identifiable to species or ecosystem and displayed at a fixed scale of 1:1,000,000 or smaller, and/or (3) display or description of known presence/absence of individual species, ecosystems, or groups thereof, at the scale and precision of U.S. counties, 8-digit hydrologic units, or grid cell units larger than or equal to 36 square miles. These limitations

do not apply to products that use publicly available species occurrence data (e.g., museum specimen data), or products supplied by BLM Nevada to NDNH. Nothing in this provision or Agreement is intended to restrict BLM Nevada from carrying out its responsibilities in an open, transparent, and deliberative manner.

DERIVED DATA PRODUCTS FOR INTERNAL USE: Includes any and all products not meeting the description of “external or public use” in the paragraph above. Products produced with data obtained under this Agreement will be conspicuously labeled “Sensitive and Potentially Proprietary Data – Do Not Distribute.”

COMMERCIAL USE LIMITED: Physical and electronic products derived in whole or in part from the data set shall not be sold for commercial gain.

BLM Nevada- These data are provided by BLM Nevada “as is” and might contain errors or omissions. NDNH assumes the entire risk associated with its use of these data and bears all responsibility in determining whether these data are fit for the intended use.

The information contained in these data is dynamic and may change over time. The data are not better than the sources from which they were derived, and both scale and accuracy may vary across the data set. These data might not have the accuracy, resolution, completeness, timeliness, or other characteristics appropriate for applications that potential end users of the data may contemplate. NDNH is encouraged to carefully consider the content of the metadata file associated with these data. These data are neither legal documents nor land surveys and must not be used as such. Official records may be referenced at most BLM Nevada offices. Please report any errors in the data to the BLM Nevada office from which it was obtained.

DATA SOURCE CITATION: BLM Nevada should be cited as the data source in any products NDNH derives from these data. Any Users wishing to modify the data should describe the types of modifications they have performed. The User should not misrepresent the data, nor imply that changes made were approved or endorsed by BLM. This data may be updated by the BLM without notification.

For any products derived from the NDNH data set, BLM Nevada must cite NDNH as a source, along with the month and year NDNH provided the data set. Suggested citation: Nevada Division of Natural Heritage. Month Year. Biotics 5 Source Feature Records GIS Dataset (or appropriate data type provided). Nevada Department of Conservation and Natural Resources, Carson City.

Both Parties Agree

LIMITED LIABILITY: The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

FORCE MAJEURE: Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, acts of terrorism, accidents, fires, explosions, or acts of nature, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

INDEPENDENT PUBLIC AGENCIES: The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or constructed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

WAIVER OF BREACH: Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

SEVERABILITY: If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

PROPER AUTHORITY: The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in Section 6, Incorporated Documents.

GOVERNING LAW – JURISDICTION: This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, first, federal law and regulation, second, the laws of the State of Nevada.

ENTIRE AGREEMENT AND MODIFICATION: This Contract and its integrated Attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated Attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such Attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this

Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

13. Assigned Roles and Descriptions

BLM:

Role	Name	Description
Project Manager	Quinn Young qyoung@blm.gov 775-861-6613	NVSO, Wildlife & Fisheries Program Lead
State Office GIS Staff	Don Harper dpharper@blm.gov 775-861-6565	NVSO, Geo-spatial Manager and Supervisory GIS Specialist Branch of Geographic Sciences, Mapping Section
GIS Staff	Jamie Lange jlange@blm.gov 775-861-6626	NVSO, GIS Specialist for Resources Division
NOC Management \Coordination Team	Anthony Titolo atitolo@blm.gov 303-236-0446	Core Data Management Team support with eGIS hardware and software on which data is to be centrally organized and managed. Ensures that the NOC provides adequate personnel resources to accomplish REA responsibilities.
Data Management Team (DMT)	Michael Schade mschade@blm.gov 775-861-6772	Provides the overall coordination, development, and management of the eGIS data management platform, under the guidance of the NOC Management/Coordination Team.
DIRM	Charles Osborn cosborn@blm.gov 775-861-6452	NVSO, Branch Chief - Information Services
Data Steward	Quinn Young qyoung@blm.gov 775-861-6475	NVSO, Wildlife & Fisheries Program Lead (interim) Mitigation Specialist

NDNH:

Role	Name	Description
Project Manager	Kristin Szabo kszabo@heritage.nv.gov 775-681-2901	Administrator
Data Manager	Eric Miskow emiskow@heritage.nv.gov 775-684-2905	

14. Signatures

Jon Raby
Nevada State Director, Bureau of Land Management

Date

Kristin Szabo
Administrator, Nevada Division of Natural Heritage

Date

Appendix A: Definitions

- 1) **Alphanumeric Data** - data represented by letters, numbers, and symbols, perhaps with special characteristics, and the space character. Data "read" versus data "seen" (spatial data). Alphanumeric data is often presented in "textual" or "tabular" format.
- 2) **Data Element Pairing** - the combination of two or more data elements, manual or automated, which in and of themselves have no sensitivity, but when combined could reveal sensitivity or other types of data not authorized for disclosure to the public.
- 3) **Data Steward** - the person(s) so designated by their agency/organization as having the source expertise for their area or resource of concern. The Data Steward will: 1) determine the appropriate data standards to be applied, enforced, and developed; 2) verify that the data are accurate, current, and properly reflect the resource or program area(s) in terms of authenticity; and 3) determine if data can/should be shared or exchanged.
- 4) **Digital Data** - data in a form that can be processed by a computer.
- 5) **Geographic Information System (GIS)** - a system of hardware, software, and procedures designed to support the capture, management, manipulation, analysis, modeling, and display of spatially referenced data for solving complex management and planning problems.
- 6) **Global Positioning System (GPS)** - satellite technology used to determine geodetic positions on the earth's surface.
- 7) **Metadata** - "data about data." Information which provides standards and other information about data; usually contained and shipped with each dataset.
- 8) **Public Data** - data which are not protected under FOIA or Privacy Act (PA) exemptions and for which release to the public is of a sound legal basis. In the Nevada BLM, these data have been validated by a data steward who has approved the dataset and indicated that the data are available for public use.
- 9) **Proprietary/Confidential Data** - data that are submitted by either party in expectation of confidentiality, the release of which could result in substantial competitive harm to the submitter or potential harm to the resource.
- 10) **Sensitive Data** - data that require protection due to the risk and magnitude of loss or harm which would result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes information or data protected by agreement, law, or policy of which the improper use or disclosure could adversely affect the ability of an agency to accomplish its mission (e.g., threatened and endangered species, bat hibernacula, raptor nests, cacti, etc.); privileged, copyrighted or trademarked data; records about individuals requiring protection under the PA and/or FOIA; documents being withheld under various exemptions; commercial or proprietary/confidential information; and draft, pre-decisional, or un-validated data.
- 11) **Spatial/Geospatial Data** - Spatial data include data derived from remote sensing, mapping, and surveying technologies or databases that might be mapped by spatial attribute, such as country, state, county, zip code, field office, address, alpha, numeric, "X"/"Y" coordinate data, or other spatial characteristic. It refers to geographically referenced features that are described by geographic positions and attributes in analog or digital form.