

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
HARNEY SOIL AND WATER CONSERVATION DISTRICT  
AND THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
BY AND THROUGH THE  
OREGON/WASHINGTON BLM STATE DIRECTOR  
REGARDING  
DEVELOPMENT OF THE RESOURCE MANAGEMENT PLAN AMENDMENTS  
AND  
ENVIRONMENTAL IMPACT STATEMENT FOR THE  
PROPOSED GREATER SAGE-GROUSE NATIONAL PLANNING STRATEGY  
OREGON SUBREGION**

**Parties to and Purpose for this Document:** This Memorandum of Understanding (MOU) is entered into between Harney Soil and Water Conservation District (SWCD) and the United States Department of the Interior (DOI), Bureau of Land Management (BLM), by and through the Oregon/Washington State Director, for the purpose of cooperating in conducting an environmental analysis and preparing the draft and final programmatic Environmental Impact Statement (EIS) for amendment of land use plans to incorporate conservation measures for the Greater Sage-Grouse. This unprecedented planning effort has been split into two regions: a Rocky Mountain Region and a Great Basin Region. The Rocky Mountain Region will conduct numerous EISs which include land use plans in the states of Colorado, Wyoming, North Dakota, and South Dakota and portions of eastern Utah and eastern Montana. The Great Basin Region will also conduct multiple EISs which include land use plans in California, Idaho, Nevada, and Oregon and portions of western Utah and southwestern Montana.

Within the Great Basin and Rocky Mountain Regions, subregional interdisciplinary teams (IDT) will be developing the individual EISs. Based on the identified threats to the Greater Sage-Grouse and the United States Fish and Wildlife Service (FWS) timeline for making a listing decision on this species, the BLM aims to incorporate objectives and conservation measures into land use plans by September 2014 in order to provide adequate regulatory mechanisms to conserve Greater Sage-Grouse and its habitat. These measures would be considered by FWS as it makes its final determination on whether to list the Greater Sage-Grouse under Section 4 of the Endangered Species Act (ESA). Therefore, these EISs will be prepared under expedited timeframes.

The Oregon Subregional effort, for which you requested to participate as a Cooperating Agency, will produce one, statewide, programmatic EIS that will amend up to eight BLM RMPs.

- 1. Cooperating Agency:** This MOU establishes the Harney SWCD as a Cooperating Agency in the environmental impact analysis and documentation process and establishes procedures through which the Harney SWCD will participate with the BLM to help develop the Oregon Subregion EIS. The Harney SWCD has been identified as a Cooperating Agency because it has special expertise concerning management and local land use information within the

Harney SWCD, as well as with livestock and grazing baseline information within the District that may be used in the environmental impact statement relating to the Greater Sage-Grouse habitat conservation strategy (40 CFR 1508.5). This MOU applies specifically to the Harney SWCD.

- 2. Authorities:** This MOU has been prepared under the authority of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.; Federal regulations codified at 40 Code of Federal Regulations (CFR) Part 1500-1508 and 43 CFR Part 46; the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq.; and BLM's planning regulations (in particular 43 CFR 1601.0-5, 1610.3-1, and 1610.4).
- 3. Background:** In March 2010, the FWS published its listing decision for the Greater Sage-Grouse (sage-grouse) indicating that listing was "Warranted but Precluded" due to higher listing priorities under the ESA. The inadequacy of regulatory mechanisms to conserve the sage-grouse and its habitat was identified as a significant threat in the FWS finding on the petition to list the sage-grouse as a threatened or endangered species. In view of the identified threats to the sage-grouse, and the FWS timeline for making a listing decision on this species, the BLM proposes to incorporate consistent conservation measures for the protection of sage-grouse and its habitat into relevant BLM RMPs by September 2014 in order to provide adequate regulatory mechanisms to conserve sage-grouse and its habitat. The BLM will consider and analyze these conservation measures through the plan amendment processes of the respective agencies. The BLM expects to prepare an EIS to analyze proposed amendments to land use plans that are not currently undergoing amendment or revision. For plans already undergoing amendment or revision, the BLM will consider incorporating conservation measures through the ongoing amendment or revision processes.

The BLM intends to evaluate the adequacy of sage-grouse conservation measures in existing BLM RMPs and consider conservation measures, as appropriate, in proposed RMP amendments throughout the range of the sage-grouse, with the exception of the bi-state population in California and Nevada and the Washington State distinct population segment, which will be addressed through other planning efforts.

The BLM will seek public and agency input to identify issues to address in the EISs, and the BLM will coordinate, as appropriate, with other Federal, State, and local government agencies in preparing the EISs. The BLM will conduct detailed environmental studies of proposed conservation measures to be incorporated into RMPs and alternative conservation measures and analyze how incorporation of these conservation measures into RMPs may affect the quality of the environment.

The BLM will serve as the lead agency and the FWS and the Forest Service (FS) are Cooperating Agencies for these EISs. Cooperating Agency status may be offered to other Federal agencies, tribes, and local government agencies as the BLM deems appropriate.

All EISs will consider both Federal and non-Federal lands in their analyses. However, implementation of any decisions that amend RMPs would apply ONLY to Federal land and minerals.



4. **Term of MOU:** This MOU will commence upon the date of the last signature made by the duly authorized representatives of the parties to this MOU and will remain in full force and effect until terminated as described in Section 9i below.
5. **Responsibilities of the Harney SWCD:** In agreement with the time frames identified in Attachment A for this planning effort, the Harney SWCD will participate in the environmental analysis and documentation process where appropriate given the Harney SWCD's special expertise. The schedule and preliminary time frame for the respective stages of EIS development are included in Attachment A.

The Harney SWCD will have the opportunity to provide review and input on draft documents prepared during the EIS process prior to public release of those materials. The IDT leader may, at any time during the effective term of this MOU, request records and/or information by contacting the Harney SWCD point of contact identified in Section 9k below.

6. **Responsibilities of the BLM:** In accordance with 40 CFR 1501.5, the BLM is the lead agency. The point of contact for the preparation of this EIS is as designated in Section 9k of this MOU. The BLM will keep the Harney SWCD representative apprised of current events and time frames in relation to this EIS. The BLM will consider and may use Harney SWCD input and proposals to the maximum extent possible and consistent with responsibilities as lead agency as described in 40 CFR 1501.5. The BLM may incorporate information provided by the Harney SWCD into the draft and final EIS, as appropriate and deemed relevant to the planning process. The BLM is solely responsible for any decisions made for the planning effort. Any BLM decisions made associated with the EIS apply only to BLM-administered lands and Federal mineral estate.
7. **Records Management:** The BLM owns the rights to all data/records produced as part of this MOU. All records (in all media, paper and electronic) created or produced in part or in whole are to be maintained for the duration of the MOU and made available upon request and, upon termination of the MOU, will be turned over to the BLM.

Harney SWCD shall not retain, use, sell, or disseminate copies of any data that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.

8. **Mutual Responsibilities of the Parties:** Harney SWCD and the BLM agree to cooperate by informing each other, as far in advance as possible, of any related actions, issues, or procedural problems that may affect the environmental analysis and documentation process or that may affect either party. The parties agree to cooperate in the development and review of any operating guidelines or agreements between Harney SWCD or the BLM and other agencies involved in the EIS that may affect the environmental analyses and writing of the EIS.

Responsible parties identified in Section 9k serve as the MOU primary points of contact. The purpose of these points of contact is to ensure that timely and coordinated communication and exchange of information between the parties to the MOU occurs throughout the planning process.

**9. Payment:** No payment will be made to either party by the other as a result of this MOU. Each party is responsible for the costs of their participation. During the term of this MOU, should it become necessary for one party to purchase from or make payment or reimbursement to the other party, such arrangements will be covered in a separate cooperative agreement.

**10. General Provisions:**

- a. Amendments.** Either party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU, that are mutually agreed upon by and between the parties to this MOU, will be incorporated by written instrument, executed and signed by both parties to this MOU, and are effective in accordance with the authorities defined herein.
- b. Applicable Law.** The construction, interpretation, and enforcement of this MOU will be governed by the applicable laws of the United States.
- c. Entirety of Agreement.** This MOU, consisting of seven pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements concerning the parties' environmental documents, whether written or oral.
- d. Severability.** Should any portion of this MOU be determined to be illegal or unenforceable, the remainder of the MOU will continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- e. Sovereign Immunity.** Harney SWCD and the BLM do not waive their sovereign immunities by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- f. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this MOU must not be construed so as to create such status. The rights, duties, and obligations contained in this MOU will operate only between the parties to this MOU and will benefit only the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU will have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.
- g. Exchange of Information/Confidentiality.** All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary and/or pre-decisional information agrees not to disclose, transmit, or otherwise divulge this information without prior approval from the releasing party. Any breach of this provision may result

in termination of this MOU. The BLM and Harney SWCD recognize that applicable public records laws will require release of non-exempt documents.

- h. Administrative Considerations.** Pursuant to 204(b) of the Unfunded Mandates Reform Act of 1995, responsible Federal agency officials may meet or enter into project-level MOUs with officials of State, Tribal, and local governments or their designees. During such meetings and development, implementation, and monitoring of such MOUs, views, information, and advice are exchanged or input relative to the implementation of Federal programs is obtained. Such meetings and MOUs will further the administration of intergovernmental coordination.

The meetings or MOUs referred to include, but are not limited to, meetings called for the purpose of exchanging views, information, advice, or recommendations or for facilitating any other interaction relating to intergovernmental responsibilities or administration.

Nothing in this MOU will be construed as limiting or affecting in any way the authority or legal responsibility of the Harney SWCD or the BLM or as binding either the Harney SWCD or the BLM to perform beyond the respective authority of each or to require either to assume or expend any sum in excess of appropriations available. It is understood that all of the provisions herein must be within financial, legal, and personnel limitations as determined practical by the Harney SWCD and the BLM for their respective responsibilities. This MOU is neither a fiscal nor a funds obligation document.

Nothing in this MOU will be construed to extend jurisdiction or decision-making authority to the BLM for planning and management of land and resource uses for any non-Federal lands or resources in the planning area. Similarly, nothing in this MOU will be construed to extend jurisdiction or decision-making authority to the Harney SWCD for planning and management of land or resource uses on the Federal lands or mineral estates administered by the BLM. Both the Harney SWCD and the BLM will work together cooperatively and will communicate about issues of mutual concern.

Nothing in this MOU may be construed to obligate the Department of the Interior, the BLM, or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress.

No member of or delegate to Congress shall be entitled to any share or part of this MOU or to any benefit that may arise from it.

- i. Termination:** Either party may terminate this MOU upon 30-days written notice to the other party of its intention to do so. During the 30-day period, the parties will conduct negotiations to resolve any disagreement(s). If the disagreement(s), if any, has not been resolved and the party initiating the termination has not rescinded its termination in writing by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the party initiating the termination notice may request in writing that termination be postponed for an additional 30-day period or longer while the negotiations continue; upon such request, the termination shall be postponed for the specified period.

reasonable time, either party may refer the disagreement to the BLM Oregon/Washington State Director to resolve said issue in a timely manner. The decision of the BLM Oregon/Washington State Director will be the final decision for purposes of resolving the issue.

- k. **Contacts:** The primary points of contact for carrying out the provisions of this MOU are:

COOPERATOR

Marty K. Goold  
Harney Soil and Water Conservation District  
P. O. Box 848  
Hines, OR 97738  
541-573-5010

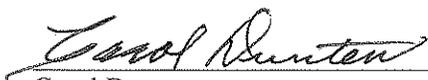
BLM

Joan Suther  
Bureau of Land Management  
28910 Highway 20 West  
Hines, OR 97738  
541-573-4445

11. **Signature:** The parties hereto have executed this MOU as of the dates shown below.

The effective date of this MOU is the latest signature date affixed to this page. This MOU may be executed in multiple originals or counterparts. A complete original of this MOU shall be maintained in the records of each of the parties.

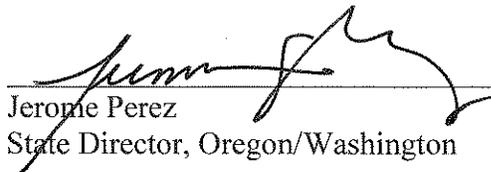
Harney Soil and Water Conservation District by and through:



Carol Dunten  
District Chairman

June 20, 2013  
Date

US Department of the Interior, Bureau of Land Management, by and through:



Jerome Perez  
State Director, Oregon/Washington

June 14, 2013  
Date

**Attachment A**  
**Current EIS and Planning Schedule, as of Memorandum of Understanding Execution**

<b>RMP/EIS Stage</b>	<b>Proposed Completion Date</b>
Conduct scoping and identify issues	February 28, 2012
Formulate alternatives	June 30, 2012
Estimate effects of alternatives	June 2013
Select the preferred alternative; issue Draft RMP/EIS	Fall 2013
Respond to comments	February 2014
Issue Proposed RMP/FEIS	May 2014
Governor's Consistency Review	June 2014
Resolve protests; modify Proposed RMP/FEIS if needed	July 2014
Sign ROD	September 30, 2014 (latest date acceptable)