Agreement Number BLM-OR-930-1205
Subject Function Codes: 1786, 1793, 1610

# MEMORANDUM OF UNDERSTANDING

BETWEEN

LAKE COUNTY

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 SUB-REGION

**Memorandum of Understanding**
**Between Lake County**
**and the Bureau of Land Management, Oregon/Washington State Office**

**Parties to and Purpose for this Document:** This Memorandum of Understanding (MOU) is entered into between Lake County and the United States Department of the Interior (DOI), Bureau of Land Management (BLM) by and through the Oregon/Washington State Director (BLM), 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, South Dakota, and portions of western Utah and western Montana. The Great Basin Region will also conduct multiple EISs which include land use plans in California, Idaho, Nevada, Oregon, and portions of eastern Utah and eastern Montana.

Within the Great Basin and Rocky Mountain Regions, sub-regional interdisciplinary teams (IDTs) will be developing the individual EISs. Based on the identified threats to the Greater sage-grouse and the US 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 Sub-regional effort, for which you requested to participate as a Cooperating Agency, will produce one state-wide programmatic EIS that will amend up to six BLM RMPs.

1. **Cooperating Agency:** This MOU establishes Lake County as a Cooperating Agency in the environmental impact analysis and documentation process and establishes procedures through which Lake County will participate with the BLM to help develop the Oregon Sub-region EIS. Lake County has been identified as a Cooperating Agency because it has special expertise concerning management and local land use information within Lake County Plan as well as with the social and economic baseline information within the County 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 Lake County.

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., and 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 indicating that listing was "Warranted but Precluded" due to higher listing priorities

under the ESA. The inadequacy of regulatory mechanisms to conserve the Greater sage-grouse and its habitat was identified as a significant threat in the FWS finding on the petition to list the Greater sage-grouse as a threatened or endangered species. In view of the identified threats to the Greater sage-grouse, and the FWS timeline for making a listing decision on this species, the BLM propose to incorporate consistent conservation measures for the protection of Greater sage-grouse and its habitat into relevant BLM RMPs by September 2014 in order to provide adequate regulatory mechanisms to conserve Greater 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 EISs 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 Greater sage-grouse conservation measures in existing BLM RMPs, and consider conservation measures, as appropriate, in proposed RMP amendments throughout the range of the Greater 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 its 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 item 9i below.

5. **Responsibilities of Lake County:** In agreement with the time frames identified in Attachment A for this planning effort, Lake County will participate in the environmental analysis and documentation process where appropriate given the County's special expertise. The schedule and preliminary timeframe for the respective stages of EIS development is included in Attachment A.

Lake County 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 Lake County 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 Lake County representative apprised of current events and timeframes in relation to this EIS. The BLM will consider and may use Lake County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency as described in 40 CFR 1501.5. BLM may incorporate information provided by Lake County 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. **Mutual Responsibilities of the Parties:** Lake County 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 Lake County or BLM and other agencies involved in the EIS that may affect the environmental analyses and writing of the EIS.

   Responsible parties identified in 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.

8. **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.

9. **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 eight pages, represents the entire and integrated agreement between the parties and supersedes all prior negations, 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.** Lake County and the BLM do not waive their sovereign immunity 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 Lake County 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 Lake County or the BLM, or as binding either Lake County 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 the provisions herein must be within financial, legal, and personnel limitations, as determined practical by Lake County 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 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 Lake County for planning and management of land or resource uses on the Federal lands or mineral estates administered by the BLM. Both Lake County and 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 their 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, have 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.

**j. Dispute Resolution:** In the event of any disagreement between the parties regarding their obligations under this MOU that cannot be resolved between the parties in a reasonable time, either party may refer the disagreement to the Oregon/Washington BLM State Director to timely resolve said issue. The decision of the Oregon/Washington BLM 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**

Lake County Commissioners
513 Center Street
Lakeview, Oregon 97630

**BLM**

Sally Sovey
333 SW 1st Ave. Portland OR, 97204

**10. Signature:** The parties hereto have executed this Memorandum of Understanding 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.

Lake County by and through:

Ken Kestner — 20 June '12

Ken Kestner
Lake County Commissioner

Date

U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, by and through:

Michael S. Mottice — 7-3-12

Michael S. Mottice
Acting State Director, Oregon/Washington

Date

**Attachment A**

**Current EIS and Planning schedule, as of MOU signature:**

| **RMP/EIS Stage** | **Proposed Completion Date** |
|---|---|
| Conduct scoping and identify issues | February 28, 2012 |
| Formulate alternatives | June 30, 2012 |
| Estimate effects of alternatives | September 30, 2012 |
| Select the preferred alternative; issue Draft RMP/EIS | December 31, 2012 |
| Respond to comments | May 31, 2013 |
| Issue Proposed RMP/FEIS | November 30, 2013 |
| Governor's Consistency Review | January 31, 2014 |
| Resolve protests; modify Proposed RMP/FEIS if needed; | May 30, 2014 |
| Sign ROD | September 30, 2014 (latest date acceptable) |