

Memorandum of Understanding
BLM-MOU-ID-2012-0006-1610

Between

The Department of the Interior, Bureau of Land Management,
Owyhee Field Office,

The Idaho Department of Lands,

Idaho Department of Fish and Game,

and

U.S. Department of Agriculture, Natural Resources Conservation Service

As Cooperating Agencies

REGARDING

Preparing the Environmental Impact Statement
For the Proposed Jump Creek, Succor Creek, and Cow Creek
Watersheds Grazing Permit Renewals

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's Owyhee Field Office ("BLM") and the Idaho Department of Lands, Idaho Department of Fish and Game, and the U.S. Department of Agriculture's Natural Resources Conservation Service as Cooperating Agencies (Cooperators) for the purpose of preparing the Jump Creek, Succor Creek, and Cow Creek Watersheds Grazing Permit Renewal Environmental Impact Statement (EIS). The BLM is the lead federal agency for development of the EIS. The BLM acknowledges that the Cooperators may have jurisdiction by law and/or special expertise applicable to the EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the cooperators as Cooperating Agencies and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), and the Department of the Interior Manual (516 DM 2.5).

II. Purpose

The purposes of this MOU are:

- A. To designate the Idaho Department of Lands, Idaho Department of Fish and Game, and the Natural Resources Conservation Service as Cooperating Agencies in the EIS process.
- B. To provide a framework for cooperation and coordination between the BLM and the Cooperators that will ensure successful completion of the EIS in a timely, efficient, and thorough manner.
- C. To recognize that the BLM is the lead agency with responsibility for the completion of the EIS and the Record of Decision (ROD).
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the EIS process.

III. Authorities for the MOU

- A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
- B. Regulations implementing the above authorities:
 1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
 2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)
- C. The authorities of Idaho Department of Lands, Idaho Department of Fish and Game, and the Natural Resources Conservation Service to enter into this MOU include, but are not limited to:

Idaho Department of Fish and Game

1. *Idaho Code § 36-104, Fish and Game Commission, General Powers and Duties of Commission.*

Idaho Department of Lands

1. *Idaho Statutes*
 - i. *Title 58 Public lands*
 - ii. *Title 38 Forestry, Forest Products and Stumpage Districts*
 - iii. *Title 47 Mines and Mining*
2. *Regulations implementing the above authorities*
 - i. *IDAPA 20.02.02, Rules Pertaining to the Idaho Forest Practices Act*
 - ii. *IDAPA 20.03.02, Rules Governing Exploration/Surface Mining/Closure of Cyanidation Facilities*
 - iii. *IDAPA 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases*

Natural Resources Conservation Service

1. *Soil Conservation and Domestic Allotment Act of 1936, as amended, (16 U.S.C. 590 a-f); Food, Conservation, and Energy Act of 2008, (16 U.S.C. 3839); NRCS Regulations on Compliance with NEPA (7 CFR Part 650.9).*

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all NEPA documents, which include the Draft EIS, the Final EIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the proposal, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperators in the EIS process, giving particular consideration to those topics on which the Cooperators are acknowledged to possess jurisdiction by law and/or special expertise.
3. To the fullest extent practicable, upon request and after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperators with copies of documents underlying the EIS relevant to the Cooperators' responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final EISs.

B. Cooperating Agency Responsibilities:

1. The Idaho Department of Lands, Idaho Department of Fish and Game, and the Natural Resources Conservation Service are Cooperating Agencies in this NEPA process and are recognized to have jurisdiction by law and/or special expertise.
2. The Cooperators will provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which they have jurisdiction or special expertise or for which the BLM requests their assistance. In particular, the Cooperators will provide information on the following topics:
 - a. Information relative to State knowledge on approved programs, plans, and policies which could affect or be affected by the decisions resulting from this EIS
 - b. Technical expertise for Idaho wildlife and wildlife habitat
 - c. Wildlife habitat improvement projects being proposed
 - d. Information relative to water quality, quantity, or water resource developments in the analysis area
 - e. Livestock grazing leases on Idaho State endowment land parcels, and
 - f. Other such information that is relevant to resource issues or data needs.
3. Within the areas of their jurisdiction or special expertise, the Cooperators may participate in any of the activities including, but are not limited to: providing guidance on public involvement strategies, identifying data needs, and suggesting management actions to resolve resource issues.

During the EIS development process, Cooperators may also review and provide comments within a mutually agreed upon timeframe the following sections of the preliminary draft EIS.

- Preliminary range of alternatives to be considered in detail
- Relevant portions of the “Affected Environment” section
- Relevant portions of the “Environmental Consequences” section
- Relevant portion of the “Consultation and Coordination” section including information on consistency reviews

During public review periods, Cooperators may also provide a consolidated comprehensive review of the Draft EIS and supporting documents.

4. The Idaho Department of Lands, Idaho Department of Fish and Game, and the Natural Resources Conservation Service will provide any available technical studies [scientific literature, monitoring and/or surveys] in support of the Jump Creek, Succor Creek, and Cow Creek Watersheds Grazing Permit Renewal EIS, within the schedule identified in Attachment A.

C. Responsibilities of the Parties:

1. The Parties agree to participate in this EIS process in good faith and make all reasonable efforts to resolve disagreements.

2. The Parties agree to comply with the schedule provided as Attachment A, which includes dates for EIS milestones and timeframes for Cooperators' reviews and submissions.
3. Each Party agrees to fund its own expenses associated with the EIS process. No payment will be made to either party by the other as a result of this MOU. The BLM may contract with a Cooperator for technical studies within its jurisdiction or special expertise.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of environmental analysis or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.
- E. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperators' views in the Draft EIS and the Final EIS. The BLM will also describe substantial inconsistencies between its proposed actions and the objectives of state, local, or land use plans and policies.
- F. Management of information. The Cooperators acknowledge that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The BLM acknowledges that the Cooperators' handling of these materials may be impacted by the Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350). The Parties agree that the BLM at its discretion may withhold from the Cooperators those documents that would otherwise be available for public release under the Idaho Public Records Law.

G. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the EIS and ROD.

1. Facilitation. If the Parties disagree on matters of scientific information, data collection, or analysis, they may agree to retain an independent facilitator to foster clear and efficient communication and to prepare a neutral assessment of the contested scientific issues.
2. Procedures for retaining, directing, and compensating the facilitator, and a detailed list of duties, will be established if this need arises, and with full participation between the Parties.

H. Termination: Any party may terminate this MOU after 30 days written notice to the other parties of its intention to do so. During this period, the parties will enter negotiations to resolve any disagreement(s). If the disagreement(s), if any, have not been resolved 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 that termination be postponed for an additional 30-day period or longer while the negotiations continue.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, to ensure coordination between the Cooperators and the BLM during the EIS process. Each Party may change its representative at will by providing written notice to the other Parties.

VII. Administration of the MOU

- A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and at least one Cooperator.
- B. Amendment. This MOU may be amended through written agreement of all signatories (specify conditions, if any).
- C. Termination. If not terminated earlier, this MOU will terminate when the Record of Decision for the EIS is approved by the BLM State Director.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Idaho Department of Lands
Director's Office,
P O Box 83720
Boise ID 83720-0050


Kurt Houston, Operations Chief-South

5/17/12
Date

Idaho Department of Fish and Game, Southwest Region
3101 S. Powerline Rd.
Nampa, ID 83686

Scott Reinecker, Supervisor

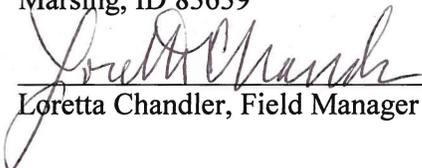
Date

Department of Agriculture
Natural Resources Conservation Service
9173 W. Barnes Dr., Suite C
Boise, ID 83709

Jeff Burwell, State Conservationist

Date

Bureau of Land Management
Owyhee Field Office
20 First Avenue West
Marsing, ID 83639


Loretta Chandler, Field Manager

5/11/12
Date

RECEIVED AT
OWYHEE FIELD OFFICE

2012 MAY 22 AM 7:35

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Idaho Department of Lands
Director's Office,
P O Box 83720
Boise ID 83720-0050

Kurt Houston, Operations Chief-South

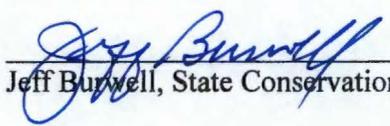
Date

Idaho Department of Fish and Game, Southwest Region
3101 S. Powerline Rd.
Nampa, ID 83686

Scott Reinecker, Supervisor

Date

Department of Agriculture
Natural Resources Conservation Service
9173 W. Barnes Dr., Suite C
Boise, ID 83709

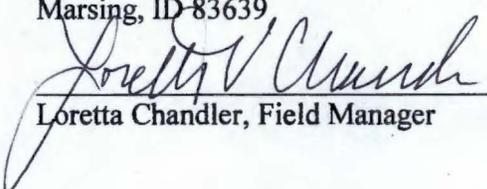


Jeff Burwell, State Conservationist

5/17/12

Date

Bureau of Land Management
Owyhee Field Office
20 First Avenue West
Marsing, ID-83639



Loretta Chandler, Field Manager

5/11/12

Date

VIII. Signatures

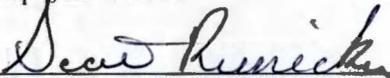
The Parties hereto have executed this MOU on the dates shown below.

Idaho Department of Lands
Director's Office,
P O Box 83720
Boise ID 83720-0050

Kurt Houston, Operations Chief-South

Date

Idaho Department of Fish and Game, Southwest Region
3101 S. Powerline Rd.
Nampa, ID 83686



Scott Reinecker, Supervisor

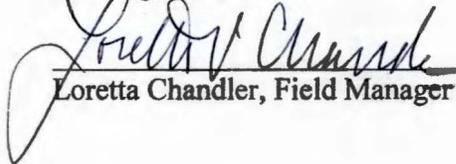
5/22/2012
Date

Department of Agriculture
Natural Resources Conservation Service
9173 W. Barnes Dr., Suite C
Boise, ID 83709

Jeff Burwell, State Conservationist

Date

Bureau of Land Management
Owyhee Field Office
20 First Avenue West
Marsing, ID 83639



Loretta Chandler, Field Manager

5/11/12
Date

Attachment A

Schedule of Milestones for the completion of the BLM/Owyhee Field Office Environmental Impact Statement for the Jump Creek, Succor Creek, and Cow Creek Watersheds Grazing Permit Renewals

Dates/Milestones ¹	Tasks
January 9 – March 9, 2012	Scoping period, ends on March 9.
May 10, 2012	Monthly Cooperating Agency Conference Call (10:00 am). Hereafter, Cooperating Agency calls will occur monthly as scheduled by the Project Manager.
May 10 – May 31, 2012	Cooperating Agencies submit additional technical studies (monitoring and/or surveys).
May 10 – June 15, 2012	<ul style="list-style-type: none"> • BLM - Begin Draft Scoping Report. • BLM – complete RHA/ERs and draft Determinations. • BLM - Begin writing DEIS Chapters 1 & 3.
August 13, 2012	BLM publishes Group 2 Scoping Report (30-days).
August 13 – September 12, 2012	BLM writes DEIS, all chapters.
September 13-28, 2012	BLM considers Scoping Report Comments and makes applicable changes to DEIS
October 1-30, 2012	BLM/Cooperating Agency DEIS review (30-days). Draft NOA.
November 1-16, 2012	BLM consider and incorporate comments from internal/cooperating agency review.
November 19 - December 20, 2012	BLM's final internal review of DEIS.
December 21, 2012, – January 30, 2013	<ul style="list-style-type: none"> • BLM Publishes DEIS (45 day comment period) • BLM begins addressing public comments as they are submitted
January 31 – February 28, 2013	BLM DEIS rewrite (begin writing FEIS).
March 4 – April 3, 2013	BLM review of FEIS (30-day review) <ul style="list-style-type: none"> • Cooperating Agency review (needed only if significant changes are made in response to DEIS comments)
April 4-26, 2013	BLM considers/incorporates internal review comments to FEIS.
April 29 – May 24, 2013	BLM internal review of FEIS. Draft FEIS NOA. BLM draft proposed decisions.
May 9, 2013	Monthly Cooperating Agency Conference Call (10:00-12:00).
May 27 – June 7, 2012	BLM addresses internal comments to FEIS. BLM internal review of draft NOA & proposed decisions.
June 10 - 21, 2013	BLM finalize FEIS. BLM finalize proposed decisions.
June 24 – July 12, 2013	BLM prepares FEIS and proposed decisions for issuance.
July 11, 2013	Monthly Cooperating Agency Conference Call (10:00-12:00).
July 15 – August 13, 2013	<ul style="list-style-type: none"> • BLM publish FEIS (30 day waiting period). • BLM issue Proposed Decisions (43 CFR 4160, 15 day protest period). • BLM begins drafting ROD – consider/begin addressing FEIS protests. • BLM begins drafting final decisions.
August 14 – September 6, 2013	BLM addresses protests and completes ROD rewrites.
September 9 – 20, 2013	BLM's final review of ROD and final decisions.
September 23 – October 3, 2013	BLM prepares ROD and final decisions for issuance (includes 508 compliance)
October 4 – November 4, 2013	BLM issues ROD and Final Decisions (30-day appeal)

¹ Dates/Milestones are projections, and are subject to change due to unplanned internal and external circumstances. As schedule modifications are made, BLM would be responsible to communicate any date/deadline modifications during the next monthly cooperating agency conference call.