

MONTANA/DAKOTAS GUIDANCE

MEMORANDUM OF UNDERSTANDING

Reference: BLM Manual 1786 – Memorandums of Understanding

DESCRIPTION: An MOU is a written agreement between the BLM and another entity(ies) which confirms cooperative policies or procedures to promote mutual endeavors. An MOU can also be used for an employee serving as an officer in an outside organization.

APPLICATION: An MOU documents a “handshake” agreement by the entities to use cooperative management policies or procedures to provide mutual assistance or to exchange results for the promotion of common endeavors. An MOU cannot obligate or exchange private or Federal funds, supplies, equipment, or services; share or exchange data with non-Federal entities; or serve as a substitute for covenants or reservations in land or mineral patents. An MOU may be the appropriate way to document the BLM’s commitment to participate in an agreement that sets a working group consisting of Federal, State, Tribal, or local Governments, private citizens, and other interests to address impacts of human activities on specific resources and propose collaborative solutions to problems identified.

An MOU is not intended to be a detailed working document. It may be an “umbrella” agreement that provides a basis for more detailed sub-agreements, but it does not provide authority to enter into contracts or Financial Assistance Agreements (FAA). An MOU is not needed to authorize a FAA, cooperative agreements (CA), grant, or contract; these must be written to stand on their own. An MOU may **not** commit to future noncompetitive contracts with the MOU’s entities or subvert any of the procurement laws and regulations.

Many MOUs have been signed at the National level and may be adequate for the Montana/Dakotas purposes. National level MOUs can be found at the following website: <http://web.blm.gov/internal/wo-500/directives/mou/index.html>

Active MOUs for the Montana State Office can be found at the following website: http://web.mt.blm.gov/blm.share/records/scan_mou/MOU_Index/Index.htm

All offices are invited to provide their current MOUs to MT-934 for scanning and publishing on the intranet.

An MOU authorizing an employee to serve as an officer in an outside organization must follow the policy established by the Department of the Interior Ethics Office as explained in the Department Ethics Office Guide. Further information can also be obtained by contacting the Ethics Officer, Branch of Human Resources, Montana State Office.

AUTHORITY: See BLM Manual Section 1786 – Memorandums of Understanding (section 1786.03) for a list of common authorities which may apply. The MOU should also cite program specific authorities.

APPROVAL: An MOU must be reviewed (in this order) by the following: subject-matter specialist(s), Program leads (both Field and State Office level), State Records Administrator, authorized official for signature. The Solicitor Office review may be required in specific cases. Program Leads or the authorized official will make that determination on a case-by-case basis.

OFFICIAL RECORD COPY: Once signed, the MOU will be numbered in accordance with the official MOU number system outlined in the 1786 Memorandums of Understanding Manual (1786.5 – Recordkeeping).

An original signed copy of every MOU will be maintained in the central files of the office of record as a permanent record (pink file cover) under the subject code 1786. (See BLM Manual 1220, GRS/BLM Combined Records Schedule, Schedule 16, Item 16). An official file shall be maintained for each MOU with the MOU number and subject on the folder. Copies of MOUs can be maintained in project files.

NON-PUBLIC RECORD: An MOU is a non-public record. Requests for copies must be made through the Freedom of Information Act.

SIGNATORY AUTHORITY: An MOU is usually signed by the State Director. However, signatory authority for MOU's has been delegated to the Deputy State Directors and Field Managers in Montana. (See Montana Manual Supplement 1203 – Delegation of Authority, Appendix 2, Page 15, Cooperative Relations, 1786.) If an MOU is developed that involves more than one field office, the MOU will be signed by the State Director.

REFERENCE: BLM Manual Section 1786 – Memorandums of Understanding.

RECOMMENDED MOU ELEMENTS:

1. Heading:
 - Title (Memorandum of Understanding)
 - Identification of participants; and
 - Brief description of the subject
2. Statement of purpose or objective
3. List of statutory authorities for entering into the MOU (for an initial list of statutory authorities, see BLM Manual 1786)
4. Procedures to be followed (jointly or individually)
5. Administrative provisions for:
 - Recognition of limitations on agency authority or action because of law or appropriation
 - Reference of disputed or stalemated issues to higher levels for resolution

- Requirements for cooperative review by all participants at least every 5 years
- Right to renegotiation after reasonable notice
- Right to unilateral cancellation after reasonable notice
- Funding paragraph. This paragraph shall be used in all MOUs and shall not be edited.

“Nothing in this MOU shall obligate the BLM to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, services, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property shall be made in writing and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.”

- Description on how amendments will be handled
- Expiration date
- Renewal
- Identification of other MOUs, if any, to be supplemented, amended, or superseded by the proposed MOU
- Stipulations as to when the MOU will become effective (if no specific date, upon signature by all the participants)
- Approval signatures and dates
- Prepare one MOU original for each participant. Each participant signs all MOU originals. Each participant receives one approved MOU original bearing the signatures of all participants and the dates of signature.

All draft MOUs will be routed through the State Records Administrator for review prior to finalizing.