BLM

# A Desk Guide to Cooperating Agency Relationships

2005

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

# Acknowledgments

We thank Department of the Interior Assistant Secretary for Land and Minerals Management Rebecca Watson; Bureau of Land Management Director Kathleen Clarke; and BLM Assistant Director for Renewable Resources and Planning Ed Shepard for their guidance and support of this project.

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**Quotations.** Sandy Brooks (BLM, Billings Field Office, Montana), Susan Child (Wyoming Office of State Lands and Investments), Kirk Emerson (U.S. Institute for Environmental Conflict Resolution), Judge Steven Grasty (Harney County, Oregon), Renee Johnson (BLM, Dillon Field Office, Montana), Commissioner Art Kleinjan (Blaine County, Montana), Rory Lamp (Nevada Department of Wildlife), Evan Lowry (San Juan County, Utah), Commissioners Michael McKee and Jim Abegglen (Uintah County, Utah), Gene Piotrowski (Maryland Department of Natural Resources), Jake Rajala (BLM, Ely Field Office, Nevada), Clive Rooney (Montana Department of Natural Resources).

We thank Island Press for permission to reproduce a table from *Western Confluence: A Guide to Governing Natural Resource* by Matthew McKinney and William Harmon. Thanks to Rhey Solomon (Shipley Group) for suggestions regarding cooperating agency roles.

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# Director's Message

I am pleased to report that the Bureau of Land Management is the first federal agency to promulgate regulations that establish a consistent, permanent role for cooperating agencies. We believe that by working closely with our state, local, tribal, and federal government partners, we will improve communication and understanding, identify common goals and objectives, and enhance the quality of our management of the public lands.

These regulations demonstrate the strong commitment to the letter and spirit of President Bush's Executive Order on Cooperative Conservation, which recognizes that "local cooperation is critical to ensuring successful, effective, and long-lasting conservation results."

This Cooperating Agency Desk Guide is a "how to" publication that I am requiring all BLM managers and staff to review and put into practice. The guide will help us to work together and foster a commitment by local, tribal, and state governments and other federal agencies to recognize common goals and achieve balanced multiple use across the public lands.

For many years the Bureau of Land Management has sought the advice of its governmental partners in creating and implementing successful land use plans. Through this expansion of our cooperative efforts, it is my hope that we enter a new era of public land management that furthers our ultimate goal of managing public land resources for the greatest good for all Americans.

Kathleen Clarke

Kathleen Clarke, Director
Bureau of Land Management

# Section 1.

## Introduction: The BLM's Cooperating Agency Initiative

In the American political system, different spheres of government—federal, tribal, state, and local—have their respective areas of responsibility, authority, and expertise. Nowhere is the need for cooperation more critical than in the management of public lands and resources. This guide describes one tool for creating more effective governmental partnerships: the lead agency–cooperating agency relationship (referred to in this guide as the *cooperating agency relationship*) and its application to the planning and associated environmental assessment responsibilities of the Bureau of Land Management (BLM). While the guide is concerned with implementing formal cooperating agency relationships in preparing resource management plans, partnering with tribal, state, and local governments—as well as with other federal agencies—should be standard practice at the BLM before, during, and after plans are prepared.

Section 1 of this desk guide introduces the cooperating agency (CA) relationship and describes the opportunities and challenges it entails for the BLM and its governmental partners.

Section 2 describes the CA provisions of the BLM's planning regulations, reviewing eligibility criteria and the appropriate roles for CAs at each step of the BLM's planning process.

Section 3 provides answers to frequently asked questions regarding effective working relationships with CAs.

Section 4 describes key elements of an effective memorandum of understanding (MOU) establishing a CA relationship.

Section 5 describes sources of information and training to support effective cooperation between the BLM and its CA partners.

### The BLM's Cooperating Agency Initiative

The CA relationship is distinctive, moving beyond consultation to engage officials and staff of other agencies in a working partnership. The CAs share skills and resources to help shape BLM land use plans that better reflect the policies, needs, and conditions of their jurisdictions and the citizens they represent.

By providing a framework for intergovernmental efforts, the CA relationship can help the BLM achieve a number of objectives in its planning process:

- gain early and consistent involvement of CA partners;
- incorporate local knowledge of economic, social, and environmental conditions, as well as state and local land use requirements;

- address intergovernmental issues;
- avoid duplication of effort;
- enhance local credibility of the planning review process;
- encourage CA support for planning decisions; and
- build relationships of trust and cooperation.

The cooperating agency role derives from the National Environmental Policy Act (NEPA) of 1969, which calls on federal, state, and local governments to cooperate with the goal of achieving "productive harmony" between humans and their environment. The Council on Environmental Quality's regulations implementing NEPA allow federal agencies (as lead agencies) to invite tribal, state, and local governments, as well as other federal agencies, to serve as CAs in the preparation of environmental impact statements.

Since that time the BLM has established many CA relationships. In 2005, the BLM amended its planning regulations to ensure that it engages its governmental partners consistently and effectively through the CA relationship whenever land use plans are prepared or revised.

**THE NATIONAL ENVIRONMENTAL POLICY ACT**

**...it is the continuing policy of the Federal Government, *in cooperation with State and local governments*, and other concerned public and private organizations...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (Sec. 101 (a); emphasis added)**

## The Challenge of Federal Land Management

The BLM has a large and complex responsibility: managing more than 260 million acres of America's public lands and roughly 700 million acres of its subsurface mineral estate. More than 140 resource management plans (RMPs) authorize and guide every action and approved use of these lands and resources. The BLM's plans encompass the most varied terrain, from Alaska's North Slope and California's Mojave Desert to the open space surrounding many rapidly growing western cities. The agency's challenge is to manage this portfolio on behalf of all Americans, while recognizing the considerable local and regional consequences its decisions may have. The BLM must act in conformity with federal laws, regulations, and policies while seeking to accommodate local needs, laws, and values. The BLM's cooperating agency initiative represents a major step toward meeting these challenges by ensuring that the agency's decisions benefit from the varied skills and knowledge, including knowledge of local conditions and values, of its governmental partners.

In any federal undertaking, harmonizing national, regional, and local governance entails at least three key tasks. As Matthew McKinney and William Harmon have noted in their list of Common Characteristics of Western Resource Disputes (see inset box, page 3), these include (1) integrating the involvement of multiple parties with competing interests and values; (2) removing obstacles to sharing and validating relevant information; and (3) resolving conflicts among institutions and policies.

- **Multiple Parties.** Tribal, state, and local government officials are at times in a better position than are federal land managers to engage the communities and

interest groups most likely to be affected by a plan.

- **Complex Information.** Effective discussion between federal agencies and their publics is often blocked by deeply incompatible views of the "facts" regarding both current environmental and socioeconomic conditions and how these will be affected by a proposed plan. Resolution often requires the lead agency and cooperating agency partners to engage in joint fact-finding and to seek agreement on where to find valid information and how to interpret it.
- **Conflicting Policies and Institutions.** The challenge of managing public lands can reveal significant disagreements in jurisdictions and mandates, not only between federal, state, local, and tribal governments, but also among different federal or state agencies. The CA relationship offers a forum in which to discuss and, if possible, reconcile divergent policies and plans for the common good.

Although challenging, intergovernmental cooperation in the management of lands and resources can yield great benefits for the public. The cooperating agency relationship is one tool among many that can advance joint efforts among governmental partners. Each party may have some lessons to learn—and some past practices to unlearn.

Experience has shown three lessons important to success when working across governmental boundaries.

- Tribal, state, and local partners need to recognize that the CA relationship is a forum for sharing information and expertise, not for asserting or relinquishing authority. Engaging in a cooperating agency relationship neither augments nor diminishes an agency's jurisdiction and authority.

## Common Characteristics of Western Resource Disputes

**MULTIPLE PARTIES**
- **Clash of values**
- **Competing interests**
- **Complicated relationships**
- **Varying types and levels of power**

**COMPLEX INFORMATION**
- **Lack of information**
- **Misinformation**
- **Different views on what information is relevant**
- **Different procedures to collect and assess data**
- **Different interpretation of data**
- **Different levels of comfort with risk and uncertainty**

**A BRIAR PATCH OF POLICIES AND INSTITUTIONS**
- **Multiple jurisdictions**
- **Competing missions and mandates**
- **Lack of meaningful public participation**
- **Multiple opportunities for appeal**
- **A fundamental question of who should decide**

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- BLM managers and staff should acknowledge that the CA relationship requires new ways of doing business. Engaging with government partners as CAs is not another form of consultation or public involvement. Cooperating agencies expect and deserve to be given a significant role in shaping plans and environmental analyses—not merely commenting on them—commensurate with their available time and knowledge.
- All parties will find the CA relationship most productive when they emphasize mutual, rather than individual, gains and seek solutions that meet others' needs as well as their own.

**Seek Mutual Gains**
***"While many agencies have staff that are effective advocates for their mission, far fewer staff have effective negotiating skills for discovering mutual gains."***

**~Kirk Emerson, Director, U.S. Institute for Environmental Conflict Resolution**

**Note to the reader:** At the time this guide was prepared, the Department of the Interior (DOI) proposed to modify its Department Manual (516 DM 2.5) to add requirements regarding the cooperating agency relationship similar to those contained in the BLM's revised planning regulations. (See *Federal Register*, vol. 70, no. 52 (March 18, 2005), pages 13203–13206.) These changes, *if adopted*, would

- Require bureaus to invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an environmental impact statement;
- Require bureaus to consider any requests by governmental entities to participate as a cooperating agency with respect to a particular environmental impact statement;
- Establish uniform eligibility criteria for federal, tribal, state, and local governments; and
- Ensure that throughout the development of an environmental impact statement, the bureau will collaborate with all cooperating agencies, to the fullest extent practicable.

Proposed DOI changes would affect BLM staff by extending the requirements contained in BLM planning regulations (which apply only to resource management plans) to both plan- and project-level environmental impact statements. When preparing environmental impact statements other than in conjunction with resource management plans, BLM staff should consult the Department Manual, Part 516, to determine if new requirements regarding the CA relationship have been adopted.

# Section 2.
## Implementing the Cooperating Agency Relationship

This section of the desk guide explains the requirements regarding cooperating agency (CA) relationships established by the new Bureau of Land Management (BLM) planning regulations.

The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) govern the cooperating agency relationship for all federal agencies preparing environmental impact statements under NEPA. The BLM's regulations and policies on cooperating agencies supplement—rather than replace—CEQ regulations. Only those CEQ regulations specific to the CA relationship are cited here.

### The Role of Cooperating Agencies

The CEQ regulations call for early and significant involvement by cooperating agencies in the preparation of an environmental impact statement (EIS). Both lead and cooperating agencies assume significant obligations in offering and accepting the CA relationship.

- As the lead agency, the BLM is expected to use the analyses and proposals of a CA "to the maximum extent possible consistent with its responsibility."
- CAs accept obligations to contribute staff to the EIS team, develop analyses for which they have particular expertise, and fund their own participation.

The Bureau of Land Management has initiated a land use plan with Coconino County, Arizona, for the entire Arizona Strip, which includes the Vermilion Cliffs National Monument.

The BLM land use planning process yields a dual-function document: a resource management plan (RMP) and an EIS. The distinction is important. *Planning* (producing the RMP) selects the goals and identifies the management actions needed to achieve them. *Environmental analysis* (producing the EIS) identifies the consequences of achieving those goals.

The CEQ regulations make the CAs partners in environmental analysis. By adding provisions for the CAs to its planning regulations, the BLM has also included the CAs as formal partners in land use planning.

**➤ 40 CFR 1501.6 (CEQ)**
**Roles of lead and cooperating agencies.**

(a) The lead agency shall

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating

agencies with "jurisdiction by law" or "special expertise," to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall
(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process….

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has "special expertise."

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability. Normally use its own funds.

(5) The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

## Eligibility for Cooperating Agency Status

State agencies, local governments, tribal governments, and other federal agencies may serve as CAs. Other than its provision for tribes (see subsection Eligibility of Tribes), CEQ regulations recognize two criteria for CA status: *jurisdiction by law* and *special expertise*. The BLM regulations incorporate these criteria.

**➤ 40 CFR 1508.5 (CEQ)**
**Defining eligibility.**
"Cooperating agency" means any Federal agency other than a lead agency which has "jurisdiction by law" or "special expertise" with respect to any environmental impact….A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

*Jurisdiction by law* offers a very specific basis for CA status: authority to approve, deny, or finance all or part of a proposal.

- The U.S. Fish and Wildlife Service (FWS) could possess *jurisdiction by law* for a resource management plan through its consultation role under Section 7 of the Endangered Species Act. Note that the FWS would qualify as a CA not merely because the BLM is obliged to consult with that agency, but because in the Section 7 consultation process the FWS has the authority to impose binding terms and conditions on an agency's action.
- A state Department of Natural Resources could possess *jurisdiction by law* through its delegated authority under Section 402 of the Clean Water Act to issue National Pollutant Discharge Elimination System permits.

**➤ 40 CFR 1508.15 (CEQ)**
**Jurisdiction by law.**
"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

*Special expertise* provides a broader window for CA status, emphasizing the *relevant capabilities* or *knowledge* that a federal, state, tribal, or local governmental entity can contribute to an undertaking.

- State agencies responsible for policies or programs affecting the condition and use of public lands—for example by regulating water rights or sport hunting—would possess *special expertise* through relevant statutory responsibility.

- Cities and counties within an RMP planning area would possess *special expertise* regarding local land use plans and policies relevant to BLM requirements for land use plan coordination and consistency (43 CFR 1610.3-1, 3-2).

**➤ 40 CFR 1508.26 (CEQ)**
**Special expertise.**
"Special expertise" means statutory responsibility, agency mission, or related program experience.

The agreement or Memorandum of Understanding (MOU) establishing a CA relationship should identify the basis for eligibility, see Section 4 (Preparing Agreements and MOUs). For additional guidance on applying the CA eligibility criteria, see Section 3 (Cooperating Agency Issues).

**➤ 43 CFR 1601.0-5 (BLM)**
**Defining eligibility.**
(d) Eligible cooperating agency means

(1) A Federal agency other than a lead agency that is qualified to participate in the development of environmental impact statements as provided in 40 CFR 1501.6 and 1508.5 or, as necessary, other environmental documents that BLM prepares, by virtue of its "jurisdiction by law" as defined in 40 CFR 1508.15, or "special expertise" as defined in 40 CFR 1508.26; or

(2) A federally recognized Indian tribe, a state agency, or a local government agency with similar qualifications.

(e) Cooperating agency means an eligible governmental entity that has entered into a written agreement with the BLM establishing cooperating agency status in the planning and NEPA processes. BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of BLM's planning process as feasible, given the constraints of their resources and expertise.

## Eligibility of Tribes

The CEQ and BLM regulations differ regarding the eligibility of American Indian tribes for CA status. The CEQ regulations specify that a tribe is eligible "when the effects [of an undertaking] are on a reservation" (40 CFR 1508.5). In contrast, the BLM regulations apply the same criteria for federal, state, local, and tribal government entities: *jurisdiction by law* or *special expertise* (43 CFR 1601.0-5(d)(2)). The broader BLM criteria will apply in the preparation of all RMPs and EISs.

For more guidance on managing the CA relationship with tribes, see Section 3 (CA Issues).

A technician for the Seneca Nation of Indians' Utility Department and a petroleum engineer for the Bureau of Land Management–Eastern States Office check the location of gas wells on the Cattaraugus Reservation in western New York.

## Inviting Participation

The CEQ regulations permit a lead agency to invite other eligible agencies and governments to assume a cooperating agency role (40 CFR 1501.6 and 1508.5). The BLM planning regulations, in contrast, *require* managers to invite eligible agencies and governments to become CAs.

Cooperating agencies hold a quarterly River-front Commission Meeting during their annual intergovernmental float trip through public lands in Colorado.

Managers are expected to make a reasonable effort to identify federal, state, local, and tribal entities possessing *jurisdiction by law* or *special expertise* concerning a planning area. Conversely, when a government entity requests CA status for an RMP–EIS, the request must be evaluated against CA eligibility criteria. If either of the criteria—*jurisdiction by law* or *special expertise*—is met, CA status should be granted.

Note that the requirement to invite participation applies to all RMPs or plan changes prepared in conjunction with an EIS. This includes (a) new resource management plans; (b) RMP revisions; and (c) RMP amendments prepared through an EIS. The requirement does not apply to RMP amendments prepared through an environmental assessment (EA).

**➤ 43 CFR 1610.3-1 (BLM)**
**Inviting participation.**

(a)(5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

(b) When developing or revising resource management plans, BLM State Directors and Field Managers will invite eligible Federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies. The same requirement applies when BLM amends resource management plans through an environmental impact statement. State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field Managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate.

## Establishing Participation

Under the BLM planning regulations, CA status can only be established through a written agreement between the BLM and the eligible governmental entity (43 CFR 1601.0-5). An MOU is the recommended means of establishing the CA relationship, because it allows for a systematic description of the respective authority and responsibilities of the parties, and how

they propose to work together through the planning process, see Section 4 (Preparing Agreements and MOUs).

It is important that agreements establishing a CA relationship be completed in a timely manner, preferably before the Notice of Intent (which formally initiates the planning process) is published in the *Federal Register*. The CA relationship may be established later in the planning process, but it is then particularly important that the agreement or MOU clearly identify expectations and responsibilities within an already established schedule.

## Implementing the Cooperating Agency Relationship

The revised BLM land use planning regulations provide a role for cooperating agencies at most steps of the planning process. The regulations are summarized here, together with suggested roles for CAs. See also the Table on page 14 and the Figure on page 32.

**Preparation Planning.**

The RMP–EIS preparation plan should include a list of potential CAs and a preliminary assessment of the expertise each would contribute to the planning effort. The preparation plan establishes the planning schedule and budget within which the CAs must operate. Informal discussions with potential CAs should begin at this time, followed by formal invitations for CA status. The BLM works with the potential CA to prepare an agreement or an MOU to establish CA relationships.

***Suggested roles for CAs:***
Work with your appropriate BLM office to develop an agreement or MOU. Participate in developing a preparation plan.

Bureau of Land Management Director Kathleen Clarke discusses proposals for management of BLM-administered lands in the West with representatives of cooperating agencies.

**1. Conduct scoping and identify issues.**
This process provides a major opportunity for BLM and CA discussion. The issues selected will guide the RMP process. To the extent consistent with other BLM responsibilities, these issues should include matters significant for CAs.

***Suggested roles for CAs:***
Identify relevant local and regional organizations and interest groups, sponsor public forums with lead agency, collaborate in assessing scoping comments. Identify coordination requirements based on CA plans; identify significant issues; identify connected, similar, and cumulative actions; identify other relevant agencies.

**The Initial Approach to Agencies is Critical**
***"Local government cooperators commented that the first or second meeting with federal agencies and cooperators sets the initial trust level with the agencies."***
**~Wyoming State Planning Office, Cooperating Agency Status Report (2004)**

➤ **43 CFR 1610.4-1 (BLM)**
**Identification of issues.**
At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The Field Manager, *in collaboration with any cooperating agencies*, will analyze those suggestions and other available data, such as records of resource conditions, trends, needs, and problems, and select topics and determine the issues to be addressed during the planning process.* * * [Here and in other excerpts from 43 CFR 1610.4, emphasis added]

**2. Develop planning criteria.**
At the start of the planning process the field office planning team determines the parameters for land allocation decisions consistent with statutory and regulatory requirements. The BLM has an obligation to seek consistency with state, local, and tribal RMPs, but only to the degree that such plans are also consistent with applicable federal law and regulation.

***Suggested roles for CAs:***
Provide advice on proposed planning criteria, including local government comprehensive plan elements (such as growth and transportation) and environmental regulations. Identify legal requirements that shape tribal, state, and local CA policies and responsibilities.

➤ **43 CFR 1610.4-2 (BLM)**
**Development of planning criteria.**
The Field Manager will prepare criteria to guide development of the resource management plan or revision, to ensure… [i]t is tailored to the issues previously identified….Planning criteria will generally be based upon applicable law, Director and State Director guidance, the results of public participation, and *coordination with any cooperating agencies* and other Federal agencies, State and local governments, and federally recognized Indian tribes.

**3. Collect inventory data.**
The planning team

- identifies available data that can be used to characterize the physical, biological, social, and economic characteristics of the resource area;
- assesses the data; and
- identifies data gaps.

***Suggested roles for CAs:***
Identify data needs; provide data and technical analyses within CA's expertise.

➤ **43 CFR 1610.4-3 (BLM)**
**Inventory data and information collection.**
(a) The Field Manager, *in collaboration with any cooperating agencies*, will arrange for resource, environmental, social, economic, and institutional data and information to be collected, or assembled if already available. * * *

**4. Analyze baseline data and prepare Analysis of the Management Situation.**
The Analysis of the Management Situation (AMS) should describe current conditions and trends of resources, offer a framework for resolving planning issues, and provide a basis for analyzing the no-action alternative. Field office personnel are encouraged to make this document (or a summary) available to the public. A summary of current conditions and trends appears in the Affected Environment section of the RMP–EIS.

***Suggested roles for CAs:***
Provide information (such as local monitoring and baseline data) for the draft AMS and help interpret the AMS to constituents as appropriate.

➤ **43 CFR 1610.4-4 (BLM)**
Analysis of the management situation. The Field Manager, *in collaboration with any cooperating agencies*, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. * * *

**5. Formulate alternatives.**
Each planning alternative should represent a distinct set of land use allocations and management actions consistent with the overall goals of the land use plan. This is a key decision item that determines the range of management choices to be subsequently analyzed and considered for adoption.

***Suggested roles for CAs:***
Suggest themes for potential alternatives; suggest land allocations or management actions to resolve issues.

➤ **43 CFR 1610.4-5 (BLM)**
**Formulation of alternatives.**
At the direction of the Field Manager, *in collaboration with any cooperating agencies*, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. * * *

**6. Estimate effects of alternatives.**
The analysis should provide adequate information for evaluating the physical, biological, social, and economic effects of each proposed planning alternative. The analysis should include direct, indirect, and cumulative effects considered in both short- and long-term perspectives, at various geographic scales.

***Suggested roles for CAs:***
Suggest models and methods for impact analyses; provide effects analysis within CA's expertise; identify direct, indirect, and cumulative effects within CA's expertise; suggest mitigation measures for adverse effects.

➤ **43 CFR 1610.4-6 (BLM)**
**Estimating effects of alternatives.**
The Field Manager, *in collaboration with any cooperating agencies*, will estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. * * *

**7. Select preferred alternative and issue Draft RMP–Draft EIS for public comment.**
The various planning alternatives are evaluated in relation to planning issues and criteria and the analysis of effects. The field manager selects a preferred alternative and forwards the resulting Draft RMP–Draft EIS to the State Director for approval and publication. The Draft RMP–Draft EIS is available for public comment for a minimum of 90 days.

***Suggested roles for CAs:***
Collaborate with BLM field manager in evaluating alternatives; provide information for Preliminary (internal) Draft RMP–Draft EIS. Just as other agencies and members of the public do, CAs may also provide written public comments on the published Draft RMP–Draft EIS if desired.

➤ **43 CFR 1610.4-7 (BLM)**
**Selection of preferred alternative.**
The Field Manager, *in collaboration with any cooperating agencies*, will evaluate the alternatives, estimate their effects according to the planning criteria, and identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the

State Director for approval, publication, and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided for comment to the Governor of the State involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that the State Director has reason to believe would be concerned.

**8. Respond to comments and issue the Final RMP–Final EIS.**
The BLM is required to respond to substantive comments that reveal new information, missing information, or flawed analysis that could substantially change the conclusions. The field manager forwards the Final RMP–Final EIS, revised as needed to reflect comments received, to the State Director for publication. The document is also forwarded to the Governor for a 60-day review to identify any inconsistencies with state or local plans, policies, or programs.

***Suggested roles for CAs:***
Review comments within CA's expertise and assist in preparing responses. State CAs should contribute to Governor's Consistency Review.

**➤ See 43 CFR 1610.3-2(e) for requirements of the Governor's Consistency Review.**

**➤ Sec. 1610.4-8 (BLM) Selection of resource management plan.**
After publication of the draft resource management plan and draft environmental impact statement, the Field Manager shall evaluate the comments received and select and recommend to the State Director, for supervisory review and publication, a proposed resource management plan and final environmental impact statement. After supervisory review of the proposed resource management plan, the State Director shall publish the plan and file the related environmental impact statement.

**9. Protests and Record of Decision.**
The Final RMP–Final EIS is subject to a 30-day protest period. Any party (including a CA) that participated in the planning process and may be adversely affected by approval of the resource management plan may file a protest with the Director of the BLM. On approval of the Final RMP–Final EIS and subject to resolution of any protests, the State Director signs the Record of Decision (ROD).

***Suggested roles for CAs:***
The CA has a limited role. Reviewing protests and signing the ROD are actions reserved to the BLM. The protest procedure provides the Director with an administrative review of the State Director's proposed decision. Where a CA has provided information relevant to a protest, the BLM may ask the cooperator for clarification.

**➤ See 43 CFR 1610.5-2 for protest procedures for resource management plans.**

## Plan Implementation

When the ROD is signed, the RMP has been completed. While formal cooperating agency status for the RMP ends at this time, state, local, tribal, and federal entities are strongly encouraged to work with the BLM and private partners to implement the RMP through on-the-ground projects and other support. Such projects range from small actions, with few effects (improving campgrounds), to large actions with the potential for significant effects (establishing a right-of-way for the Trans-Alaska Pipeline). Actions approved by the BLM under the RMP will be conducted under the appropriate level

of environmental analysis under NEPA. For projects that have the potential for significant effects, an EIS would be required.

While BLM planning regulations provide requirements for working with CAs in preparing RMPs, they do not apply to projects. In preparing project-level EISs, the cooperating agency relationship is governed by CEQ regulations (40 CFR 1501.6). BLM staff should also consult the Department Manual, Part 516, to determine if additional requirements apply when working with CAs on project-level EISs.

The BLM welcomes the informal involvement of governmental partners in preparing project-level EAs. It is not necessary to establish a formal CA relationship to work productively with other governmental entities in the preparation of an EA.

## Monitoring

Monitoring is the process of collecting data and information to determine whether or not desired outcomes (expressed as goals and objectives in the land use plan) are being met as the allowable uses and management actions are being implemented. A monitoring strategy, developed as part of the land use plan, identifies indicators of change, acceptable thresholds, methods, protocols, and timeframes that will be used to evaluate and determine whether or not desired outcomes are being achieved. Tribal, federal, state, and local entities are strongly encouraged to work with the BLM and private partners to develop monitoring strategies and participate in assessing the effectiveness of plan implementation.

Bureau of Land Management and U.S. Forest Service employees in Wyoming review plans for prescribed burns being conducted cooperatively on BLM and Shoshone National Forest public lands.

## Table. Cooperating Agency Participation in Plans (RMP–EIS) and Projects (EIS)

① = primary cooperating agency role ② = secondary cooperating agency role

❸ = reserved to the BLM or IBLA ❹ = role for public and private partners

| | Actions | Plan EIS | Project EIS | Potential Roles for Cooperating Agencies |
|---|---|---|---|---|
| 1 | Conduct scoping and identify issues | ① | ① | Provide input on preparation plan; identify coordination requirements based on cooperating agency (CA) plans; identify significant issues; identify relevant local and regional organizations and interest groups; sponsor public forums with lead agency; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies. |
| 2 | Develop planning criteria | ② | | Provide advice on proposed planning criteria. |
| 3 | Collect inventory data | ① | ① | Identify data needs; provide data and technical analyses within the CA's expertise. |
| 4 | Analyze management situation (AMS) | ② | | Provide input on the Draft AMS and aid in interpreting the AMS to constituents as appropriate. |
| 4a | Describe affected environment | | ② | Provide input on draft description of baseline conditions. |
| 5 | Formulate alternatives | ① decision ❸ | ① | Suggest land allocations or management actions to resolve issues. Decision to select alternatives for analysis is reserved to the BLM. |
| 6 | Estimate effects of alternatives | ① | ① | Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest potential mitigation measures for adverse effects. |
| 7 | Select the preferred alternative; issue Draft RMP–DEIS | ① decision ❸ | ① | Collaborate with field manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP–DEIS. The CAs may provide written, public comments on draft if desired. Note: Decision to select a preferred alternative is reserved to the BLM. |
| 8 | Respond to comments | ② | ② | Review comments within the CA's expertise and assist in preparing responses, as appropriate. |
| 8a | Issue Proposed RMP–FEIS | ❸ | ❸ | Action reserved to the BLM. |
| 8b | Initiate Governor's Consistency Review | ① | | State CAs should contribute to the Governor's Consistency Review. |
| 9 | Sign Record of Decision (ROD) [or] | ❸ | ❸ | Action reserved to the BLM. |
| 9a | Resolve protests, modify RMP–EIS if needed, sign ROD | ❸ | | Action reserved to the BLM. A CA that has provided information relevant to a protest may be asked for clarification. |
| 9b | Resolve appeals of project-level decisions | | ❸ | Action reserved to the Interior Board of Land Appeals. |
| | | | | |
| | Prepare implementation work plan | ❹ | ❹ | [The role of cooperating agencies can continue under a partnership MOU throughout implementation and monitoring. This chart is meant to highlight the relationship between cooperating agencies and the BLM and does not include the roles of private or public partnerships.] Assist in developing implementation work plan, where applicable. Participate as appropriate in implementation (project-level) workgroups, including public–private partnerships. Implementation may be through EIS, EA, or CX (categorical exclusion). |
| | Monitor and evaluate RMP | ❹ | | Assist in developing monitoring strategy, where applicable. Participate as appropriate in monitoring workgroups, including public–private partnerships. |

# Section 3.
## Cooperating Agency Issues: Questions and Answers

### A. Building working relationships

#### A.1. Collaboration in the cooperating agency (CA) relationship

**Q1:** Does a cooperating agency relationship require the Bureau of Land Management (BLM) and the cooperators to make decisions by consensus?

**A1:** No. In describing the steps of the land use planning process, the BLM's revised planning regulations generally refer to collaboration between the field manager and cooperating agency representatives.

> ➤ **43 CFR 1610.4-3**
> The Field Manager, *in collaboration with any cooperating agencies*, will arrange for resource, environmental, social, economic, and institutional data and information to be collected, or assembled if already available. (emphasis added)

As used here, collaboration is "a cooperative process in which interested parties, often with widely varied interests, work together to seek solutions with broad support for managing public and other lands." (BLM Land Use Planning Handbook [H-1601-1, 2005 revision, Glossary])

Collaboration mandates methods, not outcomes. It brings diverse parties together to seek broadly acceptable solutions to what are usually complex problems. It does not imply that the parties will achieve consensus. The BLM remains the final decision maker on matters within its jurisdiction.

Representatives of the Bureau of Land Management Abandoned Mine Land program and the Colorado Division of Minerals and Geology—Inactive Reclamation Program inspect the stability of an old mine portal entry to determine the best method of physical closure.

**Q2:** How does the involvement of CAs affect the BLM field manager's role in the development of a plan?

**A2:** CA involvement makes the field manager's leadership of the land use planning process even more essential. In guiding planning efforts, field managers face the challenge of reconciling Bureau-wide policy objectives with the needs and values of local, regional, and national constituencies. This requires a serious commitment to collaborative problem solving. A common thread that runs through each step in the planning process is the role of the manager. The manager must establish a vision and lead the way, and must be committed to the planning effort for it to

**Informal Contacts are Essential**

***"As a Field Manager, I play a key role in developing and enhancing relationships with cooperating agencies. In Billings, Montana, we have established an informal interagency breakfast, where several local, federal, and state agency administrators gather every other month to share information. It provides an opportunity to build relationships outside of an office environment. Then, when there are issues, we have already established a higher level of cooperation and communication."***

**~Sandy Brooks, Field Manager, Billings Field Office, BLM-Montana**

succeed. (See BLM-WO Information Bulletin 2003-113.)

**Q3:** In working collaboratively with CAs on a plan, should the field manager limit the range of issues and solutions to be considered?

**A3:** Since a key reason to involve other units of government is to benefit from their distinctive perspectives and expertise, innovative approaches should be encouraged. Nonetheless, collaboration increases the need to establish practical parameters for the planning process. As the representative of the lead agency, the field manager is responsible for clarifying for cooperating agencies the general goals of the resource management plan. The goals would include, where appropriate, the range of potential land use allocations consistent with statutory and regulatory requirements. Such limits are best established through clear planning criteria and a well-developed statement of purpose and need.

**Managers Must Be Accessible**

***"Accessibility to the Field Manager and State Director has been a key factor in improving our relationship with BLM. We hope to be just as accessible to them as well."***

**~Commissioners Michael McKee and Jim Abegglen, Uintah County, Utah**

**Q4:** Does the potential CA partner also have a say in determining the objectives and ground rules of the lead agency-cooperating agency relationship?

**A4:** Yes, the agreement or MOU establishing the CA relationship should reflect the views of all signatories.

**Q5:** What if the parties cannot agree on the terms of an agreement or MOU?

**A5:** The field manager should make a good faith effort to negotiate the terms of an agreement or MOU with the potential CA partner, consistent with applicable statutes, regulations, and this guidance. If this effort is not successful, the CA relationship has not been established.

**Q6:** Is it appropriate to use a third-party facilitator to assist CAs and BLM staff on collaboration when preparing a land-use plan?

**A6:** Yes. CAs and BLM staff may differ significantly not only in their policy orientations, but also in their knowledge, skills, style of interaction, and experience with the National Environmental Policy Act (NEPA) and the BLM planning process. An effective facilitator may help the parties negotiate the agreement or MOU, focus effort productively, and resolve disagreements as they arise. CAs should participate in the selection of a facilitator. Using a facilitator does not alter the decision-making responsibilities of the BLM or CAs.

## A.2. Challenge of the BLM's planning schedule

**Q1:** Is it appropriate to extend a planning schedule to accommodate the needs of CAs?

**A1:** Normally, no. With the exception of other federal agencies having *jurisdiction by law*, no government entity is required to participate as a CA. The preferences of cooperating agencies regarding the pace and direction of collaborative planning efforts do not supersede the need to adhere to established schedules, which should be included in the agreements or MOUs establishing CA relationships. Nonetheless, whenever possible the field manager and CA representatives should develop a mutually agreeable planning schedule when negotiating their agreements or MOUs.

**Q2:** If effective collaboration with CAs would be compromised by adhering to an established planning schedule, what are some solutions?

**A2:** Field managers and their CA partners have a number of options.

- Vary the level of a CA's involvement. Both the Council on Environmental Quality (CEQ) and BLM regulations make it clear that the CAs may negotiate a level of involvement consistent with their available staffing and resources. The CAs may vary the time and resources they commit by determining which meetings to attend, whether to offer data or analyses, or both, and at what stage of document preparation to comment.
- Seek ways to reorganize the planning schedule for greater efficiency, without modifying the deadline for plan completion.
- Improve the efficiency of collaboration among the CAs and the BLM staff. The involvement of an effective facilitator may improve the speed and focus of CA and BLM staff interaction.
- Where none of these approaches is feasible, and the field manager considers that an extension of the Final RMP–Final EIS due date is essential to effective collaboration with the CAs, the State Director may request the Washington Office to consider a change in the planning schedule. Extensions may be granted in exceptional circumstances.

***"We are inundated from all the simultaneous planning that BLM is doing. They have made efforts to involve us but our time and resources are stretched to the limit. I think if we could have been involved even earlier in the process, when schedules were being set and timetables prepared, we would now be able to more effectively work on these RMPs."***

**~Evan Lowry, County Planner, San Juan County, Utah**

**➤ 40 CFR 1501.6(c) (CEQ)**
A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement . . . reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council [on Environmental Quality].

**➤ 43 CFR 1601.0-5(e) (BLM)**
Cooperating agencies will participate in the various steps of BLM's planning process as feasible, given the constraints of their resources and expertise.

**Focus on Practical Issues**
***"The cooperator must be focused on things within the scope of the plan that can make a difference."***
**~Renee Johnson, Dillon Field Office, BLM-Montana**

### A.3. The CA roles in the planning–NEPA process

**Q1:** May the CAs use their expertise to prepare (rather than merely reviewing and commenting on) sections of the RMP–EIS or the technical analyses on which it is based?

**A1:** Yes, at the request of the BLM when the CA possesses expertise and resources to complete the task in a timely manner.

> ➤ **40 CFR 1501.6(a) (CEQ)**
> The lead agency shall…[u]se the environmental analysis and proposals of cooperating agencies with "jurisdiction by law" or "special expertise," to the maximum extent possible consistent with its responsibility as lead agency.

**Q2:** May a CA participate in the review of protests to the RMP?

**Cooperating Agencies Can Provide Continuity**
***"Personnel at federal agencies turn over so quickly that they frequently don't have the local knowledge and history that Nevada Department of Wildlife biologists can bring to the table. We can bring a coherent record of what we have done together and knowledge of the history of other activities in the project area that BLM does not have."***
**~Rory Lamp, Nevada Department of Wildlife**

**A2:** Protest resolution is an internal review process conducted primarily by the BLM Washington Office, to determine if in preparing an RMP the State Director followed applicable laws, regulations, and policy, and considered all relevant resource information and public input. Therefore, the CAs should not participate in the BLM's review of protest letters or the formulation of responses. A CA that has provided information relevant to an issue raised in a protest may be asked for clarification.

### A.4. Criteria for CA eligibility

**Q1:** Within the interdisciplinary (ID) team, is a CA limited to participating only on the topics on which the BLM has acknowledged its *jurisdiction by law* or *special expertise*, as reflected in the agreement or MOU?

**A1:** A CA is entitled to collaborate as part of RMP–EIS core or ID teams in those areas for which *jurisdiction by law* or *special expertise* is acknowledged in the agreement or MOU. A CA's formal involvement on other issues is at the field manager's discretion. In practical terms the scope and nature of a CA's participation is a matter for negotiation, taking into account the CA's policy concerns, the staff and resources it can reasonably contribute to the planning effort, the plan schedule, and other constraints.

**Q2:** May a local government be granted CA status based on the *jurisdiction by law* criterion because of the BLM's obligation under the Federal Land Policy and Management Act (FLPMA) to seek consistency with local plans?

**A2:** No. The consistency requirement does not provide state, local, or tribal governments with the authority to "approve, veto, or finance" a land use plan, which are the only criteria for CA status on the basis of *jurisdiction by law* (40 CFR 1508.15).

➤ **40 CFR 1508.15 (CEQ)**

"Jurisdiction by law" means agency authority to approve, veto or finance all or part of the proposal.

**Q3:** What discretion does the BLM have to determine the scope of a CA's *special expertise*?

**A3:** The criterion of *special expertise* emphasizes the relevant capabilities or knowledge that a CA can contribute to the planning process and associated environmental analysis. Managers are required to offer CA status to potentially eligible government entities when preparing or revising an RMP–EIS. It is the field manager's responsibility, however, to determine which entities possess *special expertise* relative to a proposed RMP–EIS and the nature of their expertise, subject to review by the State Director.

➤ **40 CFR 1508.26 (CEQ)**

"Special expertise" means statutory responsibility, agency mission, or related program experience.

**Q4:** Is knowledge of local "custom and culture" a sufficient basis for including local governments as cooperating agencies under the *special expertise* criterion?

**A4:** Yes. Leaders of local governments are presumed to possess *special expertise* concerning the history, institutions, and social and economic conditions of their jurisdictions. This knowledge is often relevant to assessing baseline conditions and potential effects of planning alternatives.

**Q5:** How should the criterion of *special expertise* be applied to tribes?

**A5:** Because American Indian tribes have culturally distinctive uses and understandings of land and resources, a tribe's *special expertise* may be wide-ranging. Some of the topics on which tribes provide comment may be similar to those expressed by local governments, such as the effects of a proposed planning decision on tribal employment and income. Other information and advice may be grounded in culturally specific knowledge, such as the need for access to ceremonial places or the medicinal value of certain plant species. Sharing tribal knowledge of "custom and culture" through the cooperating agency role may create special challenges in managing information appropriately.

Bureau of Land Management and Natural Resource Conservation Service employees in Wyoming survey water surface discharge from a pilot coal bed natural gas well in the Powder River Basin area.

***"As a federal agency, BLM isn't familiar with how a county government operates. We feed into the process the economic needs of the county and the interests of the people who live here. That may not conform to what they are trying to do with this RMP, but it is information that needs to be incorporated and that they would not have otherwise."***

**~Art Kleinjan, County Commissioner, Blaine County, Montana**

Mohave County, Arizona, is a cooperating agency working with the Bureau of Land Management on the Arizona Strip land use plan. The Grand Canyon–Parashant National Monument is within the County and will be covered by the plan.

➤ **BLM Native American Consultation Handbook, H-8120-1, § IV.E**
Native Americans may be reluctant to share sensitive information regarding resource locations and values with agency officials. This is partly because agencies have been hindered, until recently, from effectively protecting Native American cultural information from public disclosure under the Freedom of Information Act.

## A.5. The role of joint lead agency

**Q1:** Under what circumstances should a state, local or tribal government entity be invited to serve as a joint lead agency rather than as a cooperating agency?

**A1:** The CEQ regulations (40 CFR 1506.2) encourage a state agency or local government (and by implication, a tribal government) to serve as a joint lead when the non-federal entity must complete an environmental review process comparable to NEPA. In practice, joint lead agency status is primarily applicable to project-level EISs where a state or local government partner must concurrently meet its own NEPA-like (or "little NEPA") requirements. For an example of a state's NEPA-like requirement, see the California Environmental Quality Act (California Pub. Res. Code §21000 et seq.).

## A.6. Supporting the CA relationship

**Q1:** Will the BLM compensate the CAs for their participation?

**A1:** The CAs normally cover the costs of their own participation, including salary, travel and other expenses. A field office should reimburse the costs of any studies it specifically requests from a CA within its expertise.

➤ **40 CFR 1501.6(b)(5) (CEQ)**
Each cooperating agency shall … [n]ormally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies.

## A.7. Terminating the CA relationship

**Q1:** Under what circumstances may the CA relationship be terminated?

**A1:** The CA relationship is not primarily a forum for advocacy. If the BLM and one or more of its CA partners find that they cannot work together toward a common goal, and efforts at dispute resolution have been unsuccessful, it is appropriate to terminate the CA relationship. Factors identified by the CEQ as suggesting the need to consider termination include a CA's unwillingness to accept the lead agency's key decisions;

deliberately violating key procedural agreements (such as the restriction of pre-decisional documents); and deliberately misrepresenting the planning and EIS process or its findings.

**➤ Factors Supporting Termination of the CA Relationship**

- The cooperating agency cannot accept the lead agency's final decision-making authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action.
- The cooperating agency is not able or willing to provide the data and rationale underlying its analyses or assessment of alternatives.
- The cooperating agency releases predecisional information (including working drafts) in a manner that undermines the agreement to work cooperatively before publishing draft or final analyses.
- The cooperating agency consistently misrepresents the process or the findings presented in the analysis and documentation.

This list of factors is not exhaustive. Adapted from: Council on Environmental Quality, Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, Attachment 1 (2002).

The agreement or MOU should include provisions for termination, as well as other ground rules, such as procedures for dispute resolution.

**Q2:** Is disagreement over substantive matters raised in the planning–EIS process a valid basis for terminating the CA relationship?

**A2:** No. While the BLM remains the decision maker for matters within its jurisdiction, the CAs are not required to concur in all findings (such as the effects anticipated from a particular planning alternative). Working through disagreements within the planning team often results in stronger, better justified findings and decisions. If such disagreements cannot be resolved, the dissenting agency's view may be documented in the RMP–EIS (or EIS).

## B. Qualifying organizations

### B.1. General

**Q1:** What types of organizations may serve as CAs?

**A1:** The CA relationship is limited to governmental entities: tribal governments, state agencies, local governments, and other federal agencies.

### B.2. Federal agencies

**Q1:** What discretion do federal agencies have when requested to serve as CAs?

**A1:** A federal agency eligible on the basis of *jurisdiction by law* must serve as a CA when so requested. A federal agency eligible on the basis of *special expertise*, and a tribal, state, or local entity eligible on either basis may choose whether or not to serve as a CA when so requested.

**➤ 40 CFR 1501.6 (CEQ)**

Upon request of the lead agency, any other Federal agency which has jurisdiction by law *shall* be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement *may* be a cooperating agency upon request

**Seek an Integrated State Response**

***"At the beginning of this process [for the Upper Missouri River Breaks National Monument] we established an MOU that assured when providing formal comment on the RMP that we would provide a single consistent state viewpoint, rather than submit separate comments from each of our agencies. That is a clear advantage for BLM, and I think they should encourage it."***

**~Clive Rooney, Montana Department of Natural Resources and Conservation**

of the lead agency. An agency may request the lead agency to designate it a cooperating agency. (emphasis added)

## B.3. State agencies

**Q1:** Can more than one state agency be granted CA status for a given land use plan?

**A1:** Yes. Because multiple state agencies may have *special expertise* or *jurisdiction by law*, there may be instances where more than one state agency assumes CA status. When working with multiple state agencies, it is desirable to have one entity (for example, the Governor's Office) coordinate all comments and analyses from state CAs to ensure the BLM benefits from a consistent perspective.

**➤ Jack Morrow Hills Final Coordinated Activity Plan–FEIS, Chapter 5, July 2004 (Green River RMP Amendment)**

The Wyoming Office of Federal Land Policy represents the State of Wyoming, with the following agencies designated as members: 1. Wyoming State Geological Survey, 2. Wyoming Game & Fish Commission, 3. Wyoming DEQ–Water, 4. Wyoming Oil and Gas Commission... (includes 15 agencies).

## B.4. Local governments

**Q1:** What is a "local government" for purposes of CA requirements?

**A1:** A local government is defined in BLM planning regulations as a general purpose unit of government with resource management authority or a political subdivision of a state. Counties (boroughs in Alaska) and incorporated cities clearly qualify. Special-purpose districts (such as conservation districts) will qualify if state law defines them as political subdivisions.

**➤ 43 CFR 1601.0-5(h) (BLM)**

Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

**➤ Wyoming Statutes 16-4-201(a)(iv) (2004):**

"Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state.

## B.5. Tribal governments

**Q1:** Does inviting a tribe's participation as a cooperating agency satisfy the BLM's obligation to consult on a government-to-government basis regarding land use planning or other actions?

**A1:** No. Consultation involves "a formal effort to obtain the advice or opinion of another agency…as required by statute or regulation." (BLM Land Use Planning Handbook, H-1601-1 (rev. 2005), Section I.C) This responsibility is particularly important in the BLM's government-to-government relationship with tribes. Once formal consultation has been initiated, tribal officials may decide to use the cooperating

agency role as a convenient way to communicate their views or contribute their expertise, but this is at the tribe's option, not the BLM's.

> ➤ **Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**
> Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. (E.O. 13175, Section 2(b), November 6, 2000).

**Q2:** Must a native group be federally recognized to be eligible to serve as a cooperating agency?

**A2:** Yes. Only governmental entities can be cooperating agencies. Under federal law, only federally recognized tribes qualify as governments (25 U.S.C. 479a).

While federal agencies must consider the interests of members of the public in general, the agenciesí official interactions with tribes, including consultation, are distinguished by unique legal relationships. The sovereign status of Indian tribes and special provisions of law set Native Americans apart from all other U.S. populations and define a special level of federal agency responsibilities.

**Q3:** Do reservation lands need to be affected for a tribe to serve as a cooperating agency?

**A3:** No. The CEQ's NEPA regulations allow tribes to serve as cooperating agencies "when the effects [of a proposed action] are on a reservation" (40 CFR 1508.5). (In its guidance, CEQ has supported extending CA status to federally recognized Alaska Native villages and tribes when the proposed action would affect tribal interests.) BLM revised planning regulations, in contrast, use the same eligibility criteria for tribes as for federal, state, and local government entities: *jurisdiction by law* or *special expertise*. Some areas with large native populations, notably Alaska, lack reservations almost entirely. In practice, tribes may have aboriginal or historical ties to lands at considerable distance from contemporary centers of tribal settlement.

> ➤ **BLM Native American Consultation Handbook, H-8120-1, § V.B**
> Tribes and groups with historical ties to the lands in question, including those that are no longer locally resident, should be given the same opportunity as resident tribes and groups to identify…their interests in the public lands.

## B.6. Intergovernmental organizations

**Q1:** May an intergovernmental organization serve as a cooperating agency?

**A1:** No. Many regional intergovernmental associations exist to provide technical assistance or other services to member governments. The terminology varies, including "council of governments" (Rogue Valley Council of Governments), "association of governments" (Uintah Basin Association of Governments), and "regional council" (Genesee–Finger Lakes Regional Planning Council). Such organizations are not themselves units of government. An

intergovernmental association may not, therefore, serve as a cooperating agency. (Some regional governmental bodies, such as regional planning authorities, are defined as political subdivisions in state law, and could therefore qualify as CAs.)

> ➤ **New Hampshire Revised Statutes, Title 3, 36:49-a**
> Regional planning commissions are political subdivisions of the state. However, regional planning commissions have only that power and authority expressly provided for in [New Hampshire Revised Statutes] 36.

**Q2:** May an intergovernmental organization represent a CA in the BLM's planning process?

**A2:** Yes. An intergovernmental organization may represent one or more CAs, provided that all agencies to be represented are members of that organization and all have formally authorized it to act on their behalf. Such authorizations should be identified in the agreement or MOU.

Firefighting and related programs require close cooperation among local, state, tribal, and federal governments and agencies to ensure efficiency and effectiveness when wildfires threaten.

## C. Other requirements

### C.1. Meeting consistency requirements

**Q1:** To what extent is the BLM obligated to follow local plans and policies when working with CAs?

**A1:** Under the FLPMA, the BLM has an obligation to seek consistency with state, local, and tribal resource management plans, but only to the degree that such plans are also consistent with applicable federal law and regulation. This obligation is not altered by the participation of a CA in the planning process.

> ➤ **Federal Land Policy and Management Act (FLPMA)**
> [T]o the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located … (43 U.S.C. 1712(c)(9))

> ➤ **43 CFR 1610.3-2(a) (BLM)**
> Guidance and resource management plans and amendments … shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments, and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands….

For example, in its land use planning the BLM is required to designate and protect areas of critical environmental concern (ACECs). The BLM could not honor a request from

a county government CA that only ACECs consistent with the county's general plan be designated in the RMP, if this would prevent the BLM from complying with a statutory obligation.

> ➤ **FLPMA, 43 USC 1712(c)(3): Protection of ACECs**
> In the development and revision of land use plans, the Secretary shall…(3) give priority to the designation and protection of areas of critical environmental concern….

**Q2:** When such inconsistencies cannot be resolved, should they be acknowledged in the RMP?

**A2:** Yes. The CEQ regulations require that inconsistencies between the proposed action and state, local, or tribal land use plans and policies be documented in the EIS. See 40 CFR 1502.16 and 1506.2(d).

> ➤ **40 CFR 1502.16 (CEQ)**
> [The environmental consequences section of the EIS] shall include discussions of . . . (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies, and controls for the area concerned.

## C.2. Sharing information

**Q1:** May the BLM share predecisional planning documents with the CAs?

**A1:** Yes. Unless constrained by other factors, such as a state public records requirement (see Q3) or the need to protect the confidentiality of proprietary or contractual information, predecisional documents should be freely shared with the CAs. If the field manager does not intend to make predecisional documents publicly available, the agreement or MOU establishing the CA relationship should specify that such documents will be kept confidential.

Representatives from the Bureau of Land Management and the Maryland Department of Natural Resources view the area at Maryland's Douglas Point while assessing resources for land use planning.

**Q2:** Are documents provided by the CAs (or to the CAs) subject to disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. 552)?

**A2:** In most cases, no. The FOIA exempts from release documents involving "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." (FOIA exemption 5, 5 U.S.C. 552(b)(5)). A lead federal agency could assert this exemption to protect from disclosure those documents prepared by cooperating

> **Openness is Crucial**
> ***"Keep cooperating agencies informed and engaged. Don't hide the BLM's dirty laundry – let the cooperating agencies see how sausages (and RMPs) are made."***
> **~Jake Rajala, Ely Field Office, BLM-Nevada**

or joint lead agencies that contributed to the development of a plan or EIS. Such documents satisfy both requirements of exemption 5: they are predecisional and they are part of the lead agency's deliberative process.

Note that communications from a CA may not qualify as exempt from release under FOIA exemption 5 where that agency is advancing a competitive position that would be detrimental to another party.

**➤ Limitations on FOIA Exemption 5**
In some circumstances, [FOIA exemption 5] may also apply to documents generated outside of an agency. Documents prepared by outside consultants at the request of the agency and recommendations or advice from Congress or the States can be protected if those documents played a role in the agency's deliberative process *and the outside parties are not advocating their own interests in seeking a Government benefit at the expense of others.* (Department of the Interior, Freedom of Information Act Handbook (383 DM 15), Section 5.7(A)(2), 2004, emphasis added.)

Field trips and on-site meetings are a useful way to foster common perspectives of complex issues among the Bureau of Land Management and its cooperating agencies.

Note also that the release of a document by a cooperating agency may be considered a waiver of the lead federal agency's deliberative process privilege, thus precluding withholding documents under FOIA exemption 5.

**Q3:** How should the BLM work with a CA whose actions are governed by a state open records ("sunshine") requirement?

**A3:** This must be decided jointly by the field manager and the CA, and described in the agreement or MOU establishing the CA relationship. In the planning process, the main reason to keep predecisional material from public view is to encourage candid discussion among all members of the planning team, including CA representatives.

## C.3. Ensuring Federal Advisory Committee Act (FACA) compliance

**Q1:** Are meetings between the BLM staff and CAs subject to the requirements of the Federal Advisory Committee Act (FACA, 5 U.S.C.A. App. 2)?

**A1:** Normally, no. The FACA applies whenever a federal agency official establishes, manages or controls a committee, board or similar group for the purpose of obtaining consensus advice or recommendations on issues or policies within the agency official's responsibility. Meetings among representatives of governmental entities, however, are exempt from the requirements of FACA when they involve intergovernmental activities associated with managing or implementing federal programs (2 U.S.C. 1534(b)). This is a broad exemption. Effectively, any meeting supporting BLM plan- or project-level activities would be exempt if the CAs or representatives of other government entities were providing information, guidance, or analysis related to their responsibilities or expertise.

**➤ The Intergovernmental Exemption to FACA**

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration. (2 U.S.C. 1534(b))

**Q2:** Who may represent a CA in meetings covered by the intergovernmental exemption?

**A2:** The intergovernmental exemption to FACA applies to meetings between federal officials and elected state, local, or tribal government officials "or their designated employees with authority to act on their behalf."

**Q3:** May a CA be represented by a contractor instead of an official or employee?

**A3:** The cooperating agency relationship is intended to facilitate the exchange of views and expertise among BLM managers and staff and other governmental officials and staff. For these reasons, the BLM discourages the use of contractors to represent the CAs. Because of limited staff and the potentially heavy time demands of the CA role, however, some CAs may find it necessary to retain contractors to participate in interdisciplinary team or work group meetings.

Meetings between the BLM and CAs in which a CA is represented by a contractor would not be subject to the requirements of FACA if the meeting is used solely for purposes of exchanging information, including an organization's views regarding a proposed federal action. In practice, however, the distinction between exchanging information and seeking recommendations may not be clear.

Contractors should not represent the CAs in meetings where advice or recommendations are sought. This means, for example, that contractors should not represent the CAs in meetings that discuss key decisions in the planning process, including:

- designation of alternatives for further development and analysis, and
- selection of a preferred alternative.

## C.4. Filing protests

**Q1:** Does participation as a CA prevent that agency from protesting the final decision?

**A1:** No. A cooperating agency may protest the final decision as long as it meets the requirements of BLM protest procedures. By becoming a cooperating agency, a government entity does not lose rights otherwise available to it, including the right to protest a land use plan.

**➤ 43 CFR 1610.5-2(a) (BLM)**

Protest procedures. Any person who participated in the planning process and has an interest that is, or may be, adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues that were submitted for the record during the planning process.

The Jack Morrow Hills area in western Wyoming is rich in geology, energy, scenery, recreational activities, and wildlife.

## Factors for Success in the Jack Morrow Hills Coordinated Activity Plan (Green River RMP Amendment)

1. **Communication was excellent. Cooperators were always kept 'in the loop' and informed, even though it was often informal. To keep all parties up to date, and to make them know they are being heard, BLM offices are encouraged to use all modes of communication.**

2. **Cooperators were allowed to talk directly to resource specialists. This facilitated access to direct knowledge and a sense of shared responsibility. To have access to on-the-ground experts meant that cooperators had a better understanding of specific situations and could better defend them to their constituents.**

3. **The BLM had good control of its contractors, which is not always the case. There are often times when a contractor has more experience than a BLM field manager or project manager, but contractors should not dictate the relationship between BLM and cooperators.**

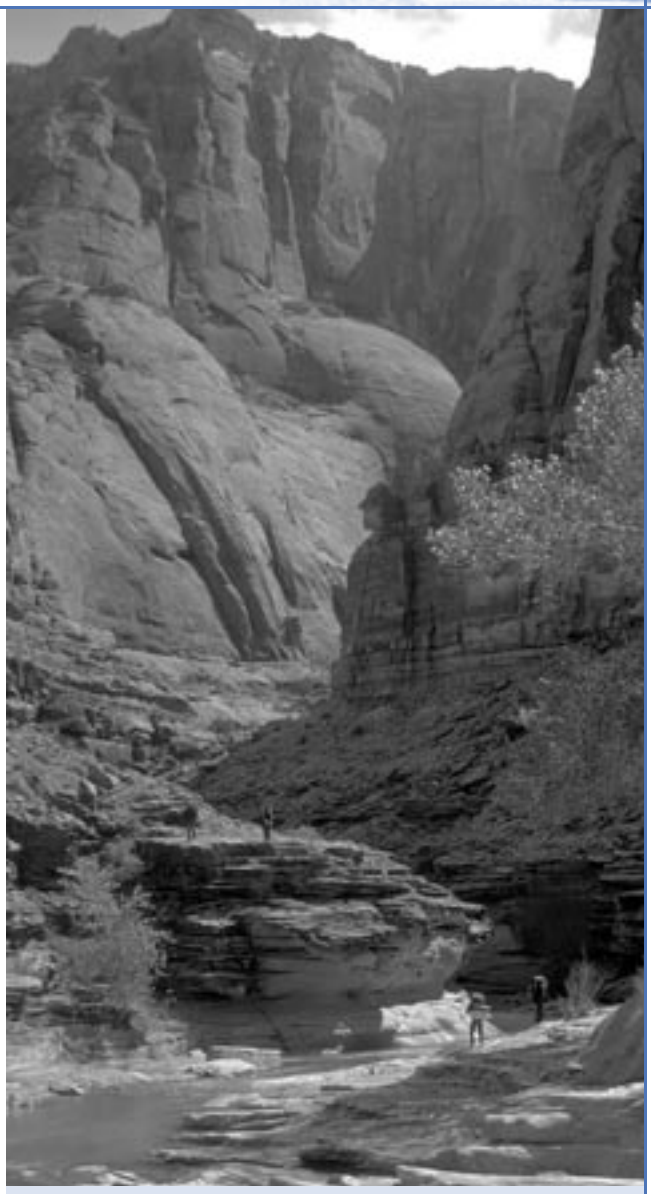
~Susan Child, Wyoming Office of State Lands and Investments

# Section 4.

## Preparing Agreements and Memorandums of Understanding

Key to the cooperating agency relationship is negotiation of an effective agreement or memorandum of understanding (MOU) that acknowledges the interests, expertise, and jurisdictional responsibilities of the Bureau of Land Management (BLM) and its cooperating agency (CA) partners and outlines their respective roles and responsibilities in the planning process. While the BLM's planning regulations simply require a written agreement to establish the CA relationship, field office personnel are strongly encouraged to formalize their relationships with cooperating agencies through an MOU. An MOU will provide for continuity despite changes in priorities and personnel within the BLM and its CA partners.

An MOU will provide the framework for a cooperating agency relationship, but its utility is limited if there is not open and honest communication among the parties. An MOU will not transform a difficult relationship into a productive one. It can, however, reduce the chance for friction and misunderstanding by describing each participant's goals and expectations and how they will work together. Positive results will come from the willingness of all parties to pursue sound land use planning on America's public lands.



The Paria Canyon Wilderness is a popular hiking destination in the Vermilion Cliffs National Monument. Cooperating agencies are working with the BLM to develop a land use plan for the Monument.

> ***"Our relationship with BLM is incredibly important to us, and the cooperating agency tool has benefited that relationship. If there is one area that needs to be improved, it's the need to spend more time defining our relationship as a cooperating agency with BLM and understanding the roles and responsibilities that each of us have."***
>
> **~Judge Steve E. Grasty, Harney County, Oregon**

## Essential Elements of a Cooperating Agency MOU

The BLM should ensure that all cooperators are engaged in drafting the document. There is no single formula for drafting an MOU that engages cooperating agencies, but there are certain essential elements that should be included in all agreements or MOUs as a basis for an effective CA relationship.

### I. Introduction

- Describe the planning–National Environmental Policy Act (NEPA) effort, and the major statutory and regulatory requirements it fulfills.
- Identify the government entities assuming cooperating agency status through the MOU and their qualifications as defined at 40 CFR 1508.15 and 1508.26: *jurisdiction by law*, *special expertise*, or both.

### II. Purpose

- Describe what will be accomplished by the MOU.

### III. Authorities

- Identify the principal statutory authorities that authorize the BLM to enter into the MOU.
  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.)
  3. Council on Environmental Quality regulations on implementing NEPA (40 CFR Part 1501)
  4. Other authorities
- Identify the principal statutory authorities that authorize the cooperating agencies to enter into the MOU.

### IV. Roles and Responsibilities

- Identify the roles of each party in the planning and NEPA processes.
- Describe particular interests and areas of expertise of the cooperating agencies relative to the plan and NEPA analysis.
- Outline the responsibilities each party will assume.
- Identify commitments of resources and time.
- Identify how and when the cooperating agencies' comments, analyses, recommendations, and data will be requested and provided.
- Describe procedures for treating confidential and predecisional information.
- Describe the anticipated schedule.
- Address any other expectations of the parties.

**V. Agency representatives**
(usually listed in an attachment)

**VI. Administration of the MOU**

- Include a mechanism for resolving disagreements and disputes.
- Describe how the MOU may be modified.
- Describe how and under what circumstances the MOU may be terminated.
- Acknowledge that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the MOU.
- If necessary, include provision for representation by a third-party contractor.

**VII. Approval**

- For the BLM, the MOU shall be signed by the authorized officer in accordance with BLM Manual 1203 and appropriate delegations of authority.
- For cooperating agencies, the MOU shall be signed by a similarly authorized official.

### Other Considerations

The BLM and its CA partners may disagree regarding the validity of data or the soundness of the analyses. The MOU provides an opportunity for identifying procedures through which the parties may jointly determine the relevant data and appropriate scientific methods to be used in the RMP–EIS. They may also establish a cost-sharing agreement (monetary or in-kind) to fund the provision of data and analysis.

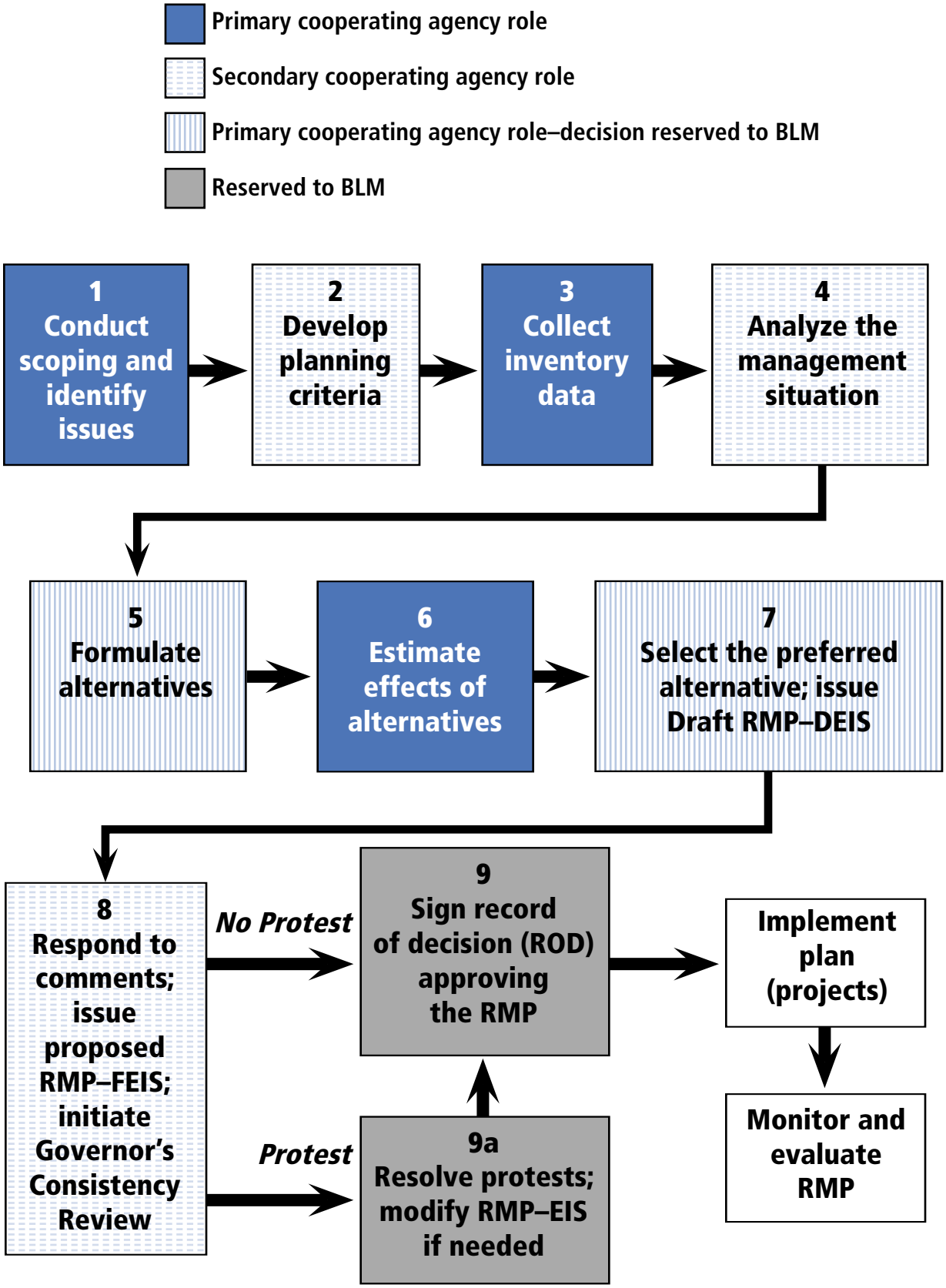
As the BLM and CAs begin the planning process, they should consider retaining an independent facilitator to foster clear communication among the parties. A facilitator may also transcribe input from all partners to ensure accuracy and build trust among the participants. The parties may stipulate in the MOU that a facilitator be used for a specific period and agree to review the need for such assistance at designated intervals. A cost-sharing agreement (monetary or in-kind) to pay for the facilitator should be explained in detail in the MOU.

### Termination

The goal of the CA relationship is to work collaboratively for the public interest. This process can be contentious, but every effort should be made to develop a workable solution when difficulties are encountered. There may be instances where conflict cannot be resolved and the CA relationship must be terminated. The MOU should describe the procedures to be followed for terminating the CA relationship, when necessary. Grounds for termination are discussed in Section 3 (A.7. Terminating the CA Relationship).

***"Cooperating agency status has been a positive experience for us…we went from an adversarial position to a good working relationship at the local level and even with the State Director."***
**~Commissioners Michael McKee and Jim Abegglen, Uintah County, Utah**

**Figure. Cooperating Agency Role in the BLM Planning Process**



# Section 5.
## Information and Training

**Ensure Mutual Learning**
***"We had constituents who were unfamiliar with BLM laws and participatory procedures, and BLM certainly needed to be educated about our stakeholders' interests as well. Our close relationship with BLM facilitated the mutual learning that led to an efficient planning process."***
**~Gene Piotrowski, Director, Resource Planning Program, Maryland Department of Natural Resources, speaking about the Lower Potomac River Coordinated Management Plan**

Working effectively in the cooperating agency (CA) relationship requires Bureau of Land Management (BLM) and CA staff to understand the relevant organization and policies of their partners. Each can benefit from the lessons learned in other CA relationships—for example, working within the constraints of tight planning schedules, or resolving a disagreement over methods of impact analysis. The CAs will be more effective participants when armed with a sound grasp of planning and National Environmental Policy Act (NEPA) concepts and procedures. Here are some sources of information and training that can help.

### Sources of Information

The BLM's Web site for cooperating agency status provides links to land use planning and NEPA regulations, BLM handbooks, sample agreements and memorandums of understanding (MOUs), and other information useful to BLM staff and their CA colleagues. Find the information at: ***http://www.blm.gov/planning/cadg/***.

For those without Internet access, key documents helpful for cooperators are available from any BLM state office or field office. These documents include:

- Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508)
- Forty Most Asked Questions Concerning CEQ's NEPA regulations (46 FR 18026, question 14a-14d)
- BLM planning regulations (43 CFR 1600)
- BLM Land Use Planning Handbook (Section I; part E).
- BLM NEPA Handbook (Chapter 9)

### Training

#### 1. BLM's National Training Center

The BLM's National Training Center provides in-person and online courses on planning and NEPA concepts and procedures,

collaboration, and alternative dispute resolution.

Many of these courses (such as Planning Concepts, Planning Nuts and Bolts, and NEPA Concepts) are open to federal, tribal, state, and local government officials and staff. Contact the BLM's National Training Center (***http://www.ntc.blm.gov***, 602-906-5500) for further information

## 2. BLM Cooperating Agency Training

Coordinated by the Intergovernmental Affairs Group, BLM Washington Office, these courses provide an introduction to NEPA and planning processes, and the cooperating agency role and responsibilities. The training is provided in two formats:

- One- to two-day training sessions, scheduled in various locations, primarily in the western states.
- An interactive CD-ROM is being prepared that will provide instruction and documents.

## 3. The Partnership Series

These are community-based courses offering collaborative approaches to natural resource management and community development. Courses include Community-Based Stewardship, Community Economic Assessment, and Place-based NEPA Training. Contact the Partnership Series (***http://www.ntc.blm.gov/partner/***, 602-906-5514) for further information.

## 4. Economic Profile System Workshops

Provided through the Sonoran Institute, these one-day workshops bring community leaders and BLM staff together to explore regional economic conditions, trends, and opportunities relevant to the BLM planning process. Contact the Sonoran Institute (***http://www.sonoran.org/programs/si_se_program_training.html***, 406-587-7331) for further information.

## 5. Alternative Dispute Resolution-Based Collaborative Training

Developed through the Alternative Dispute Resolution Advisory Council. Courses include:

- Manager's Symposium on Collaboration and Conflict Prevention: Advanced Strategies for Alternative Dispute Resolution,
- Collaboration and Conflict Prevention: Strategies for Alternative Dispute Resolution (Web-based), and
- Advanced Strategies for Collaboration and Conflict Prevention: A Clinic on Alternative Dispute Resolution.

Contact Paul Politzer, Bureau Dispute Resolution Manager (202-452-0349) or the National Training Center (***http://www.ntc.blm.gov***, 602-906-5500) for further information.

# The Bureau of Land Management Today

## Our Vision

To enhance the quality of life for all citizens through the balanced stewardship of America's public lands and resources.

## Our Mission

To sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

## Our Values

To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference.

## Our Priorities

To improve the health and productivity of the land to support the BLM multiple-use mission.

To cultivate community-based conservation, citizen-centered stewardship, and partnership through consultation, cooperation, and communication.

To respect, value, and support our employees, giving them resources and opportunities to succeed.

To pursue excellence in business practices, improve accountability to our stakeholders, and deliver better service to our customers.

**BLM/WO/AE-05/006+1780**

**Bureau of Land Management**
**Division of Planning and Science Support**
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**Editing, design, and production services provided by the**
**BLM National Science and Technology Center, Branch of Publishing Services.**

**Cover Photos:**

***Upper Left*** - A Bureau of Land Management land transfer planner discusses a land entitlement with village corporation members in Atka, a Native village on Alaska's Aleutian Islands.

***Upper Right*** - An intergovernmental group of cooperators take a break from rafting as they evaluate conditions along the Colorado River near Black Rocks in the McInnis Canyons National Conservation Area.

***Lower*** - With the advent of natural gas discoveries, the Bureau of Land Management welcomes the assistance of cooperating agencies to balance energy development with conservation of areas rich in resources, such as the Jack Morrow Hills area of western Wyoming.