BLM-MOU-WY-930-1501

Memorandum of Understanding

Between

The Department of the Interior
Bureau of Land Management
Wyoming State Office

and

The State of Wyoming, by and through the
Office of the Governor

as a Cooperating Agency

for all

Planning and National Environmental Policy Act Analyses

For which the BLM is the Lead Federal Agency

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management, Wyoming State Office (BLM) and the State of Wyoming, by and through the Office of the Governor ("Cooperator" or "Cooperating Agency"), for the purpose of preparing all Resource Management Plans (RMP) and associated Environmental Impact Statements (EIS) or Environmental Assessments (EA) under the National Environmental Policy Act (NEPA). Additionally, this MOU establishes a Cooperating Agency relationship between BLM and Cooperator for all NEPA analyses in which the BLM is the lead federal agency. The BLM acknowledges that the Cooperator has jurisdiction by law and special expertise applicable to the NEPA analyses conducted by BLM, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the State of Wyoming as a Cooperating Agency and the BLM ("the Parties").

The Cooperating Agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's NEPA regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (BLM Planning Handbook, 43 CFR 1601.0-5, 1610.3-1, and 1610.4) and BLM NEPA Handbook (H-1790-1), and the Department of the Interior NEPA regulations (43 CFR 46) and Manual (516 DM 2.5).

II. Purpose

The purposes of this MOU are:

A. To designate the State of Wyoming as a Cooperating Agency in all NEPA and planning processes for which the BLM is the Lead Federal Agency.
B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the NEPA analyses in a timely, efficient, and thorough manner.
C. To recognize that the BLM is the lead agency with responsibility for the completion of the NEPA analyses and the Record of Decision (ROD) or Decision Record (DR).
D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
   1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
   2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
B. Regulations implementing the above authorities:
   1. Council on Environmental Quality regulations (40 CFR parts 1500 through 1508)
   2. Bureau of Land Management planning regulations (43 CFR Part 1600)
   3. Department of the Interior NEPA regulations (43 CFR Part 46)
C. The authorities of the State of Wyoming to enter into this MOU include, but are not

limited to:

1. Wyoming Statute 9-1-207 State Planning Coordinator
2. Wyoming Statute 9-1-209 Coordinator of state-federal relations

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft RMP/Draft EIS or EA, the Proposed RMP/Final EIS or EA, and the ROD or DR. The BLM's responsibilities include determining the purpose of and need for the EIS or EA and/or RMP, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.

2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the RMP and/or NEPA process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.

3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the RMP and/or NEPA document relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final RMPs and/or NEPA documents.

B. Cooperating Agency Responsibilities:

1. The State of Wyoming is a Cooperating Agency as defined in 43 CFR 1501.6 for all planning and NEPA processes conducted in Wyoming for which the BLM is the lead federal agency.

2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the planning or NEPA analyses and the data and analyses supporting them in which it has jurisdiction or special expertise or for which the BLM requests its assistance.

3. Within the areas of their jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, providing input to the draft Analysis of the Management Situation, identifying

effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the RMP and/or NEPA documents and supporting documents. (See also Section C.4.)

C. Responsibilities of the Parties:

1. The Parties agree to participate in all planning and NEPA processes in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of an RMP or NEPA analysis, the Parties agree to utilize the facilitation and conciliation procedures described below (see Section V.G).

2. The Parties agree to comply with the schedule developed for each individual planning and/or NEPA analysis, which includes dates for RMP/EIS milestones and timeframes for Cooperator's reviews and submissions. Timeframes for reviews will be developed consistent with applicable BLM Instruction Memoranda.

3. Each Party agrees to fund its own expenses associated with the planning and/or NEPA process, except that the BLM may contract with the Cooperator for technical studies within its jurisdiction by law or special expertise. Should this occur, the terms of the contract may be captured in an amendment to this MOU as provided for in Section VII.B.

4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

5. Any additional provisions regarding responsibilities of either or both parties to the planning and/or NEPA process being developed for a specific project shall be incorporated into an amendment to this MOU as provided for in Section VII.B.

V. Other Provisions

A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.

C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the planning and/or NEPA process. Questions regarding potential conflicts of interest should be referred to BLM Wyoming State Office or Field Ethics Counselors for resolution.

E. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the planning and/or NEPA analysis (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved consistent with 40 CFR 1503.3, the BLM will include a summary of the Cooperator's views in the Draft and Final NEPA documents. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies consistent with 43 CFR 1610.

F. Management of information. The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The Cooperator agrees to commit to maintaining the confidentiality of documents and deliberations during the period prior to the public release of any NEPA documents including drafts. Public records in Wyoming are governed by Wyo. Stat. Ann. 16-4-201.

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

1. Facilitation. If the Parties deem necessary, they agree to retain an independent facilitator to foster clear and efficient communication. The facilitator's responsibilities will be identified for the specific planning and/or NEPA process being undertaken. Procedures for retaining, directing, and compensating the facilitator, and a more detailed list of duties, will be determined on a case by case basis.

2. Conflict resolution will be initiated between the BLM and Cooperator at the level of the Authorizing Officer for the planning and/or NEPA process in question.

H. Coordination with BLM contractors. BLM retains the services of 3rd party NEPA contractors to assist with: public involvement, data collection, environmental analysis, and planning or NEPA document preparation. Unless otherwise specified in a project specific MOU amendment, the Cooperator will communicate with the contractor only through BLM's representative. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the 3rd party NEPA contract, and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, upon initiation of a planning and/or NEPA analysis, to ensure coordination between the Cooperator and the BLM during the process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.

B. Amendment. This MOU may be amended through written agreement of all signatories to identify provisions relevant to a specific project.

C. Periods of Review. This MOU will be reviewed every 5 years to determine applicability and whether a revision or amendment is necessary.

C. Termination. The BLM or Cooperator may terminate this MOU by providing 90 days notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination.

VIII. Signatures

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

State of Wyoming, by and through:

Kari Jo Gray
Chief of Staff, Governor Mead

Date 9/7/14

Bureau of Land Management, by and through:

Donald Simpson,
State Director, Wyoming Bureau of Land Management

Date 10/3/14

State of Wyoming Attorney General's Office
Approval as to Form

S. Jane Caton #118460

S. Jane Caton

Date 8-20-14

Attachment A

Types of Cooperating Agency Participation in the Planning and/or NEPA Process for which BLM is the Lead Federal Agency

	RMP and/or NEPA Stage	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of jurisdiction by law or special expertise
1	Conduct scoping and identify issues	Provide input on preparation plan; identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Develop planning criteria*	Provide advice on proposed planning criteria.
3	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's jurisdiction by law or special expertise.
4	Analyze management situation*	Provide input on the Draft Analysis of the Management Situation (AMS) and aid in interpreting the AMS to constituents.
5	Formulate alternatives	Collaborate with authorized officer in developing alternatives. Suggest land allocations or management actions to resolve issues. **[Final decision to select alternatives for analysis is reserved to the BLM.]**
6	Estimate effects of alternatives	Provide effects analysis within the CA's jurisdiction by law or special expertise; identify direct, indirect, and cumulative effects within the CA's jurisdiction by law or special expertise; suggest mitigation measures for adverse effects.
7	Select the preferred alternative; issue Draft Planning and/or NEPA document	Collaborate with authorized officer in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP and/or NEPA analysis. The CAs may provide written, public comments on draft if desired. **[Final decision to select a preferred alternative and to issue a draft is reserved to the BLM.]**
8	Respond to comments	As appropriate, review comments within the CA's jurisdiction by law or special expertise and provide assistance in preparing BLM's
8a	Issue Proposed RMP/FEIS	**[Action reserved to BLM.]**
8b	Initiate Governor's Consistency Review*	Once initiated by the BLM, state CAs should contribute to the Governor's Consistency Review.
9	Sign Record of Decision (ROD)	**[Action reserved to the BLM.]**
9a	Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD*	**[Action reserved to the BLM.]** A CA that has provided information relevant to a protest may be asked for clarification.

* These activities would only be applicable in cases of Resource Management Plan development.