

**MEMORANDUM OF UNDERSTANDING
AMONG THE
U.S. DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT,
COLORADO AND UTAH STATE OFFICE
AND
SAN JUAN COUNTY, UTAH
FOR
DEVELOPMENT OF THE
GUNNISON SAGE-GROUSE RESOURCE MANAGEMENT PLAN AMENDMENT
AND ENVIRONMENTAL IMPACT STATEMENT**

I. Introduction

The U.S. Department of the Interior, Bureau of Land Management, Colorado and Utah State Offices (herein referred to as “BLM”), and San Juan County, Utah collectively referred to herein as “the Parties,” enter this Memorandum of Understanding (MOU) establishing a cooperating agency relationship, providing a framework for cooperation and coordination, and documenting agreed upon procedures, roles and responsibilities associated with the preparation of the proposed Gunnison Sage-Grouse Resource Management Plan Amendment and Environmental Impact Statement (RMPA/EIS).

The BLM is the lead agency with responsibility for the completion of the RMPA/EIS and the Record of Decision. The BLM acknowledges that the Cooperator has special expertise applicable to the RMPA/EIS effort, as defined at 40 CFR §1508.1. San Juan County is a Cooperating Agency due to special expertise with County plans and resources within the County.

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality’s National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.7-8), the BLM’s planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5). This MOU will facilitate an environmental review process that will satisfy the purpose of the RMPA/EIS.

II. Background

The BLM intends to initiate a land-use planning effort for the preparation of a Resource Management Plan Amendment to incorporate management decisions and actions to preserve and enhance Gunnison sage-grouse habitat in all BLM land use plans with occupied and unoccupied habitat across the current eight populations in southwest Colorado and southeast Utah. This process would address management actions including, but not limited to, mineral leasing and development, recreation, livestock grazing management, realty actions, fuels

management, and restoration actions. Potential management actions on multiple-use activities like grazing, recreation, and energy development is something that the BLM will analyze when determining causal factors and completing the environmental analysis. The BLM must carefully consider the habitat needs for the Gunnison sage-grouse and balance other multiple-use activities.

The BLM had previously released a Gunnison Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement in August 2016 but paused the planning effort in 2018 following an announcement that the Fish and Wildlife Service would complete a recovery plan for the species. The Fish and Wildlife Service (FWS) released the Final Recovery Plan for the species in October 2020, prompting the BLM to reengage in this effort. The BLM intends to initiate Section 7 consultation under the Endangered Species Act with the FWS on management and conservation actions identified through the planning process.

III. Purpose

- A. To recognize the BLM as the lead agency with responsibility for the completion of the RMPA/EIS and Record of Decision (ROD). The BLM determined an EIS should be prepared to analyze the impacts of the proposed Project because the effects of the Proposed Action are likely to significantly affect the quality of the human environment.
- B. To recognize San Juan County as a Cooperating Agency in the RMPA/EIS process.
- C. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure the successful completion of the RMPA/EIS in a timely, efficient, and thorough manner that satisfies compliance requirements, including completion of a document in less than two years (Notice of Intent to Decision) and that is less than 150 pages in length, excluding appendices.
- D. To formalize the commitment among the Parties regarding their respective responsibilities and expertise in the RMPA/EIS process.

IV. Authority

- A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
 - 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).
- B. Regulations implementing the above authorities:
 - 1. Council on Environmental Quality regulations (40 CFR §1501.7 and 1501.8.)
 - 2. U.S. Department of the Interior's NEPA regulations, 43 CFR parts 46, *et seq.*, and its regulation regarding Cooperating Agencies, 43 CFR § 46.225(d)

3. Bureau of Land Management planning regulations (43 CFR 1601 *et seq*)

This MOU does not grant the signatories any additional rights or powers, nor does it excuse the signatories from fulfilling any other statutory obligation they might have. Each Party is responsible for its own actions/omissions. This MOU does not incur upon the signatories a shared statutory responsibility to fulfill the obligations of the other signatories.

V. Roles and Responsibilities

A. Responsibilities of all Parties:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.
2. Each party agrees the RMPA/EIS will be prepared in 150 pages or fewer (excluding appendices) and will be completed within two years of Notice of Intent publication.
3. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMPA/EIS milestones and timeframes for Cooperating Agency reviews and submissions.
4. Each Party agrees to fund its own expenses associated with the project. This MOU does not authorize funding from or to either party.
5. 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.).

B. Lead Agency (BLM) Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the draft EIS, final EIS and the Record of Decision. The BLM's responsibilities include determining the purpose of and need for the EIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, and selecting the preferred alternative. 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 RMPA/EIS process, giving particular consideration to those topics on which the Cooperators are 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 Cooperators with copies of documents underlying the EIS relevant to the Cooperators' responsibilities, including technical reports,

data, analyses, comments received, and working drafts related to environmental reviews.

4. Coordinate to develop the purpose and need and alternatives in consultation with cooperating agencies (§1501.7). Ensure that Parties receive the internal draft EIS and internal final EIS and have an opportunity to review and comment on the documents. Additionally, responsibilities include coordinating with cooperating agencies during opportunities outlined in Attachment A.
5. Develop the schedule (Attachment B) in consultation with cooperating agencies, setting milestones for all environmental reviews and authorizations required for implementation of the action. Provide the schedule to Cooperating Agencies as soon as it is available. The schedule may or may not be modified if a party cannot meet a milestone. If a milestone is anticipated to be missed, agency representatives will be notified as soon as practicable (40 CFR §1501.7). Overview of milestones are outlined in Attachment B.
6. Maintain records management and the decision file to provide for the official Project Record, protecting all proprietary information and data collected to the extent allowed by the Freedom of Information Act, the Privacy Act, and/or other Federal law.
7. BLM shall have the lead role for National Historic Preservation Act (NHPA) and Section 106 compliance as well as NEPA compliance. This lead agency designation includes fulfilling the collective responsibilities of the Cooperating Federal Agencies under Section 106 of the NHPA for this undertaking on federally owned or managed lands, including tribal consultation per 36 CFR 800.2(a)(2).
8. The BLM is responsible for obtaining contractor support for the RMPA/EIS. To facilitate timely and efficient completion of required environmental documents, the BLM intends to contract the EIS preparation with a consulting firm approved by the BLM. The contractor will conduct the environmental analysis process and prepare a Draft and Final EIS for BLM review at the BLM's expense. BLM shall assume the lead role for special status species Section 7 consultation of Endangered Species Act.

C. Cooperating Agency Responsibilities:

1. San Juan County participating as Cooperating Agency in this RMPA/EIS process is recognized to have special expertise in the following areas within the County: local land use information; resource management; recreation; socio-economics; soliciting public opinion; and engaging in matters relating to public land use and other county matters.
2. The Cooperators will provide information, comments, and technical expertise to the BLM regarding those elements of the RMPA/EIS, and the data and analyses supporting them, in which it has special expertise or for which the BLM requests

their assistance.

3. Within the areas of their special expertise, the Cooperator may participate in activities that include, but are not limited to providing guidance on public involvement strategies; identifying data needs; assisting with alternative development to resolve issues; identifying effects of alternatives; and providing written comments on administrative drafts of the RMPA/EIS and supporting documents (participation identified in Attachment A).
4. Provide comments within the timeframe identified in the schedule. Limit comments to those matters for which the Cooperating Agency has special expertise with respect to any environmental issue (40 CFR § 1501.8(7)).
5. If a milestone is anticipated to be missed, elevate any issue that may affect the ability to meet the schedule to BLM for timely resolution. Additional time may not be granted.

VI. 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. 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.
- C. 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 RMPA/EIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.
- D. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperators' views in the Draft RMPA/Draft EIS and the Proposed RMP/Final EIS. The BLM will also describe substantial inconsistencies between its preferred alternative and the objectives of state, local, or tribal land use plans and policies.
- E. Management of information. Any records or documents generated because of the project become part of the official BLM record maintained in accordance with BLM record management policies. The Cooperator acknowledges that all supporting materials and draft documents may become part of the project record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other

federal statutes. The cooperating agencies will keep confidential and protect from public disclosure any and all documents related to or generated by this MOU. The BLM will determine their suitability for public review or release under the provisions of FOIA, the Privacy Act, and in accordance with DOI or BLM regulations. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by §24-72-201 to 24-72-206, C.R.S. The Parties agree that the BLM at its discretion may withhold from the cooperators those documents that would otherwise be available for public release under 24-72-201 to 24-72-206, C.R.S.

- F. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts. In the event any disagreement between the parties cannot be resolved between the parties in a reasonable time, either party may refer the disagreement to the Colorado BLM State Director to timely resolve the issue. The decision of the Colorado BLM State Director will be the final decision for purposes of resolving the issue. The Parties acknowledge that BLM retains final responsibility for the analysis and decisions identified in the EIS and ROD.
- G. The BLM will retain a contractor to assist with portions of the RMPA/EIS preparation. Cooperators may communicate with the contractor only through BLM's representative. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the contract, and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of the contract.
- H. Contingent Upon Appropriations and Authorization. Where activities provided for in the agreement extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the MOU.
- I. Contingent on Apportionment or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.
- J. Confidentiality: All Parties agree to keep all documents, including drafts, provided during the NEPA and ESA, section 7 consultation process and pursuant to this MOU confidential to the extent allowable by law. Each party will provide notice to the other before disclosing any document required by law to be disclosed to outside parties that has been shared with Cooperators or BLM pursuant to this MOU. All Parties agree to keep all deliberations concerning the process, prior to the release of a public Draft RMPA/EIS confidential to the extent allowable by law.
- K. Media Inquiries: All Parties agree that all media inquiries will be coordinated such that any response is a single joint response agreed to by all Parties.

VII. Agency Representatives

Each Party will designate a representative as described in Attachment C to ensure coordination between the Cooperator and the BLM during the planning process. Each Party may change its representative by providing written notice to the other Parties.

VIII. 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.
- C. Termination: If not terminated earlier, this MOU will end when the Proposed RMPA/Final EIS is accepted by the BLM State Director. Any Party may end its participation in this MOU by providing written notice to the other Party.
- D. Withdrawal: Any party may withdraw from the MOU with 30 days written notice.

IX. Signatures

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

BUREAU OF LAND MANAGEMENT (LEAD AGENCY)

By: _____ Date: _____
Deputy State Director - Resources
BLM Utah

SAN JUAN COUNTY (COOPERATING AGENCY)

By: _____ Date: _____
Willie Grayeyes
Chairman, San Juan County Board of Commissioners

Attachment A
Cooperating Agency Participation in the Gunnison Sage-Grouse
RMPA/EIS

RMPA/EIS Stage	Potential Activities of Cooperating Agencies within acknowledged areas of expertise
Data share: Conduct scoping and identify issues	Identify data needs; provide data and technical analyses within the cooperator's expertise. Identify coordination or consultation requirements; 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 following the NOI.
Develop planning criteria	Provide any advice on proposed planning criteria. Identify pertinent elements of relevant plans and legal requirements that shape other policies and responsibilities.
Baseline Assessment	Provide input on the Affected Environment, such as information on local monitoring and baseline data related to expertise.
Formulate alternatives	May cooperate with the BLM Colorado State Office in developing alternatives. Suggest goals and objectives for potential alternatives. Suggest land allocations or management actions to resolve issues. Suggest management actions to resolve issues.
Estimate effects of alternatives	Review, and where appropriate, may develop effects analysis within area of expertise; suggest models and methods of impact analysis; suggest mitigation measures for adverse effects.
Select the preferred alternative; issue Draft RMP/EIS	Cooperate with the BLM Colorado State Office in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on internal-Draft RMPA/EIS. Cooperating agencies may provide written, public comments on Draft RMPA/Draft EIS if desired. Decision to select a preferred alternative and to issue a Draft is reserved to the BLM.
Respond to comments	As appropriate, review comments within expertise and provide assistance in preparing the BLM's responses.
Issue Proposed RMP/FEIS	Action reserved to the BLM.
Initiate Governor's Consistency Review	Once initiated by the BLM, State Cooperating Agencies may contribute to the Governor's Consistency Review.
Sign Record of Decision	Action reserved to the BLM.

<p>Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD</p>	<p>Action reserved to the BLM. A cooperator that has provided information relevant to a protest may be asked for clarification. Cooperating relationship does not negate an agency's or government's rights to comment or protest the decision.</p>
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**Attachment B:
Tentative* Schedule Overview**

Target Timeline	Key Milestones
Spring 2022	Invite cooperating agencies; begin data sharing for the RMPA/EIS and plan cooperating agency meetings
Summer 2022	Notice of Intent and 45-day scoping period, preliminary alternative development, identify issues, cooperating agency meeting
Winter 2022 - 2023	4-week review of internal draft RMPA/EIS
Late Spring – Early Summer 2023	Notice of Availability for the RMPA/DEIS and 90-day public comment period
October 2023	4-week review of internal proposed RMPA/EIS
Winter 2023 - 2024	Notice of Availability for the proposed RMPA/FEIS
Winter – Spring 2024	Public Protest Period (30 days) and Governor’s Consistency Review (60 days). If protests, BLM’s protest resolution is an internal review process
Late Spring – Early Summer 2024	Record of Decision/Approved Plan

*BLM will provide the detailed schedule to Cooperating Agency as soon as it is available.

Attachment C

Agency Representatives

Bureau of Land Management

Primary Representative:

Leah Waldner
BLM Colorado – Sage-Grouse Coordinator
lwaldner@blm.gov
970-244-3045

Backup Representative:

Gina Phillips
BLM Colorado – Southwest District NEPA Coordinator
gphillips@blm.gov
970-240-5381

San Juan County

Primary Representative:

Nick Sandberg
Public Lands Coordinator
nsandberg@sanjuancounty.org
435-587-3223 x 4146

Backup Representative:

Mack McDonald
County Administrator
mcdonald@sanjuancounty.org
435-459-1054