

NYE COUNTY AGENDA INFORMATION FORM

Action
 Presentation
 Presentation & Action

Department: Board of County Commissioners	Agenda Date:
Category: Regular Agenda Item	April 17, 2018

Contact: Lorinda Wichman	Phone: (775) 482-8191	Continued from meeting of:
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Return to:	Location:	Phone:
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Action requested: (Include what, with whom, when, where, why, how much (\$) and terms)

Discussion and deliberation regarding approval of the Memorandum of Understanding with the Bureau of Land Management (BLM) for the purpose of cooperating in conducting an environmental analysis and preparing the draft and final Environmental Impact Statement (EIS) for a potential amendment to the existing Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment.

Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)

Approval of this MOU will formally authorize the Nevada Association of Counties (NACO) to assist Nye County in the planning effort of the Resource Management Plan Amendment and Environmental Impact Statement (EIS) for the proposed Nevada and Norther California Greater Sage-Grouse Resource Management Plan Amendment. There is no cost related with this agreement.

The recommendation is to approve the MOU.

Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.

Expenditure Impact by FY(s): (Provide detail on Financial Form)

No financial impact

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date
5.	Date	10. County Manager	Date

RB 4/10/18
 [Signature]
 Place on Agenda
 ITEM # 32

MEMORANDUM OF UNDERSTANDING

BETWEEN

NYE COUNTY

AND

THE UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

BY AND THROUGH THE BLM NEVADA AND CALIFORNIA STATE DIRECTORS

REGARDING

DEVELOPMENT OF THE RESOURCE MANAGEMENT PLAN AMENDMENT AND

ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED

**NEVADA AND NORTHEASTERN CALIFORNIA GREATER
SAGE-GROUSE RESOURCE MANAGEMENT PLAN
AMENDMENT**

**Memorandum of Understanding
Between Nye County Board of County Commission and the Bureau of Land Management,
Nevada and California State Offices**

Parties to and Purpose for this Document: This Memorandum of Understanding (MOU) is entered into between Nye County and the United States Department of the Interior (DOI), Bureau of Land Management (BLM) by and through the Nevada and California State Directors (BLM), for the purpose of cooperating in conducting an environmental analysis and preparing the draft and final Environmental Impact Statement (EIS) for a potential amendment to the existing Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, which was completed in September 2015.

- 1. Cooperating Agency:** This MOU establishes Nye County as a Cooperating Agency in the environmental impact analysis and documentation process and establishes procedures through which Nye County will participate with the BLM to help develop the Nevada and Northeastern California Greater Sage-Grouse Land Use Plan Amendment and EIS. Nye County has been identified as a Cooperating Agency because it has special expertise through its statutory responsibility, agency mission and related program experience and concerning management information within the Nye County Master Plan or related plans as well as with the social and economic baseline information within Nye County that may be considered in the environmental impact statement relating to Greater Sage-Grouse habitat conservation (40 CFR 1508.5).
- 2. Authorities:** This MOU has been prepared under the authority of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., and federal regulations codified at 40 Code of Federal Regulations (CFR) Part 1500-1508, and 43 CFR Part 46; the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., and BLM's planning regulations (in particular 43 CFR 1601.0-5, 1610.3-1, and 1610.4).
- 3. Background:** In September 2015, the US DOI and the US Department of Agriculture adopted amendments and revisions to 98 BLM and US Forest Service (FS) land use plans (LUPs) across eleven western states. These LUPs addressed, in part, the Greater Sage-Grouse and its habitat. These plans govern the management of 67 million acres of Greater Sage-Grouse habitat on federal lands. FS and BLM administered lands account for more than half of the remaining Greater Sage-Grouse habitat.

In September 2015, the US Fish and Wildlife Service (USFWS) determined that the Greater Sage-Grouse did not warrant listing under the Endangered Species Act of 1973. It based its decision on the conservation commitments and progress reflected in the federal LUP amendments (LUPAs) and revisions, as well as on other private, state, and federal conservation efforts.

On March 31, 2017, the US District Court for the District of Nevada held that the BLM violated the NEPA of 1969, as amended, by failing to prepare a supplemental EIS for the Nevada portion of the Nevada and Northeastern California Greater Sage-Grouse Approved

Resource Management Plan Amendment, which was completed in September 2015.

In June 2017, the Secretary of the Interior issued Secretarial Order 3353, Greater Sage-Grouse Conservation and Cooperation with Western States. The purposes of the order are as follows:

- Enhance cooperation between the DOI and the 11 western states in managing and conserving the Greater Sage-Grouse and its habitat;
- Support a partnership with clearly defined objectives and roles for federal and state entities responsible for Greater Sage-Grouse management and conservation, in order to sustain healthy species populations;
- Establish a team to review the federal land management agencies' Greater Sage-Grouse plan amendments and revisions completed on or before September 2015.

The review team submitted a Report in Response to Secretarial Order 3353 to the Secretary of the Interior on August 4, 2017. The Secretary directed the BLM, in coordination with other DOI offices, to begin immediately implementing the short- and long-term recommendations in the report. The Secretary also directed the agency to continue collaborating with the states and stakeholders to improve compatibility between the 2015 federal Greater Sage-Grouse plans and other plans and programs at the state level.

Based on the Nevada District Court ruling and direction from Secretarial Order 3353, the BLM is considering the possibility of amending the Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment.

- 4. Land Use Planning Parameters:** The BLM will consider land use plan management actions/decisions through the land use planning processes of the respective agencies as follows:
- a. BLM Nevada, as lead agency will prepare an EIS to analyze a proposed amendment to the agency's existing Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment.
 - b. For plans already undergoing amendment or revision, the BLM will amend the current approved land use plan for the revision that is in progress and integrate conservation measures developed through the plan amendment process into the ongoing revision.
 - c. The EIS will consider amending conservation measures only for the Greater Sage-Grouse and its habitat.
 - d. The Nevada and Northeastern California EIS will consider the habitat of Greater Sage-Grouse on both federal and non-federal lands in its analysis.
 - e. Implementation of any decisions that amend the existing Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment would apply only to federal land and mineral estate administered by the BLM.

f. The California-Nevada “Bi-State” sage-grouse population is not included in this planning effort.

5. Term of MOU: This MOU will commence upon the date of the last signature made by the duly authorized representatives of the parties to this MOU, and will remain in full force and effect until terminated, as described in item 10i below.

6. Responsibilities of Nye County: Nye County agrees to formally authorize the Nevada Association of Counties (NACO) to assist Nye County in this planning effort, pursuant to the terms and conditions of this cooperating agency agreement and based upon the needs of Nye County. BLM attendance at general NACO meetings or events shall not substitute for direct engagement with Nye County.

Nye County will participate in the environmental analysis and documentation process where appropriate given the County’s special expertise such as local demographic, fiscal or economic data, land development trends, management, and use of public lands and resources for the local economy and consistency with the Nye County Master Plan, and other County plans, laws, policies, and controls (consistent to the maximum extent with Federal laws). The schedule and preliminary timeframe for the respective stages of the EIS development is included in Attachment A.

Nye County will have the opportunity to provide review and input on draft documents prepared during the EIS process prior to public release of those materials. The interdisciplinary team leader may, at any time during the effective term of this MOU, request records and/or information by contacting NACO and Nye County point of contact identified in Section 10k below.

7. Responsibilities of the BLM: In accordance with 40 CFR 1501.5, the BLM is the lead agency. The point of contact for the preparation of this EIS is as designated in Section 10k of this MOU. The BLM will keep the Nye County representative apprised of current events and timeframes in relation to this EIS. The BLM will consider and shall use Nye County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency as described in 40 CFR 1501.5. BLM may incorporate information provided by Nye County into the draft and final EIS, as appropriate and deemed relevant to the planning process, consistent with 43 U.S.C. §§ 1712(c)(9), 43 CFR 1610.3-1, 40 CFR 1502.16, and 40 CFR 1506.2, and shall achieve consistency with Nye County’s plans, laws, policies, and controls, to the maximum extent practicable and consistent with Federal law and policies. On the basis of information provided by Nye County, the BLM shall identify any such inconsistencies and describe the extent to which BLM would reconcile those inconsistencies, in accordance with 40 CFR 1502.16(c), 40 CFR 1506.2(d), and 43 CFR 1610.3-1(f). The BLM is solely responsible for any decisions made for the planning effort. Any BLM decisions made associated with the EIS apply only to BLM-administered lands and federal mineral estate.

8. Mutual Responsibilities of the Parties: Nye County and the BLM agree to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may

affect either party. The parties agree to cooperate in the development and review of any operating guidelines or agreements between Nye County or BLM and other agencies involved in the EIS that may affect the environmental analyses and writing of the EIS.

Responsible parties identified in 10k serve as the MOU primary points of contact. The purpose of these points of contact is to ensure that timely and coordinated communication and exchange of information between the parties to the MOU occurs throughout the planning process.

9. Payment: No payment will be made to either party by the other as a result of this MOU. Each party is responsible for the costs of their participation. During the term of this MOU, should it become necessary for one party to purchase from or make payment or reimbursement to the other party, such arrangements will be covered in a separate cooperative agreement.

10. General Provisions:

a. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU, that are mutually agreed upon by and between the parties to this MOU, will be incorporated by written instrument, executed and signed by both parties to this MOU, and are effective in accordance with the authorities defined herein.

b. Applicable Law. The construction, interpretation and enforcement of this MOU will be governed by the applicable laws of the United States.

c. Entirety of Agreement. This MOU, consisting of 9 pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements concerning the parties' environmental documents, whether written or oral on the development of the RMP amendments and EIS for the proposed Nevada and Northeastern California Greater Sage-Grouse Resources Management Plan Amendment.

d. Severability. Should any portion of this MOU be determined to be illegal or unenforceable, the remainder of the MOU will continue in full force and effect, and either party may renegotiate the terms affected by the severance.

e. Sovereign Immunity. Nye County and the BLM do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

f. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU must not be construed so as to create such status. The rights, duties and obligations contained in this MOU will operate only between the parties to this MOU, and will benefit only the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU will have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

g. Exchange of Information/Confidentiality. All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary and/or pre-decisional information agrees not to disclose, transmit, or otherwise divulge this information without prior approval from the releasing party. Any breach of this provision may result in termination of this MOU. The BLM and Nye County recognize that applicable public records laws will require release of non-exempt documents.

h. Administrative Considerations. Pursuant to 204(b) of the Unfunded Mandates Reform Act of 1995, responsible Federal Agency officials may meet or enter into project level MOUs with officials of State, Tribal and local Governments or their designees. During such meetings and development, implementation and monitoring of such MOUs, views, information and advice are exchanged, or input relative to the implementation of Federal programs is obtained. Such meetings and MOUs will further the administration of intergovernmental coordination.

The meetings or MOUs referred to include, but are not limited to, meetings called for the purpose of exchanging views, information, advice or recommendations, or for facilitating any other interaction relating to intergovernmental responsibilities or administration.

Nothing in this MOU will be construed as limiting or affecting in any way the authority or legal responsibility of Nye County or the BLM, or as binding either Nye County or the BLM to perform beyond the respective authority of each, or to require either to assume or expend any sum in excess of appropriations available. It is understood that all the provisions herein must be within financial, legal, and personnel limitations, as determined practical by Nye County and the BLM for their respective responsibilities. This MOU is neither a fiscal nor a funds obligation document.

Nothing in this MOU will be construed to extend jurisdiction or decision-making authority to BLM for planning and management of land and resource uses for any non-federally administered lands or resources in the planning area. Similarly, nothing in this MOU will be construed to extend any jurisdiction or decision-making authority to Nye County, for planning and management of land or resource uses on the Federal lands or mineral estates administered by the BLM. Both Nye County and BLM will work together cooperatively and will communicate about issues of mutual concern.

i. Termination: Either party may terminate this MOU upon 30 days written notice to the other party of their intention to do so. During the 30-day period, the parties will conduct negotiations to resolve any disagreement(s). If the disagreement(s), if any, have not been resolved and the party initiating the termination has not rescinded its termination in writing by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the party initiating the termination notice may request in writing that termination be postponed for an additional 30-day period or longer while the negotiations continue; upon such request, the termination shall be postponed for the specified period.

j. Dispute Resolution: In the event of any disagreement between the parties regarding their obligations under this MOU that cannot be resolved between the parties in a reasonable time, either party may refer the disagreement to the BLM State Director to timely resolve said issue. The decision of the BLM State Director will be the final decision for purposes of resolving the issue.

k. Contacts: The primary points of contact for carrying out the provisions of this MOU are:

COOPERATOR

NYE COUNTY

Lorinda Wichman
Nye County Commissioner, District 1
101 Radar Rd.
Tonopah, NV 89049

BLM

John F. Ruhs, State Director
Nevada State Office
Bureau of Land Management
1340 Financial Blvd.
Reno, NV 89502

Jerome E. Perez, State Director
California State Office
Bureau of Land Management
2800 Cottage Way # W1623,
Sacramento, CA 95825

11. Signature: The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

The effective date of this MOU is the latest signature date affixed to this page. This MOU may be executed in multiple originals or counterparts. A complete original of this MOU shall be maintained in the records of each of the parties.

Nye County by and through:

John Koenig
Chairman, Board of County Commissioners

Date

U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, by and through:

John F. Ruhs
Nevada State Director

Date

Jerome E. Perez
California State Director

Date

DRAFT

Attachment A

Current EIS and Planning schedule, as of MOU signature:

RMP/EIS Stage	Proposed Completion Date
Conduct scoping and identify issues	February 2018
Formulate alternatives	March 2018
Estimate effects of alternatives	April 2018
Issue Draft RMPA/EIS	May 2018
Draft Public Comment Period (90 days)	May – July 2018
Respond to comments and developed Proposed RMPA/FEIS	July – August 2018
Issue Proposed RMPA/FEIS	October 2018
Governor’s Consistency Review (60 days) and Public Protest Period (30 days)	October – November 2018
Resolve protests; modify Proposed RMP/FEIS if needed	November 2018
Sign ROD	December 2018