

MEMORANDUM OF UNDERSTANDING

Between The

STATE OF WYOMING STATE ENGINEER'S OFFICE

And The

USDI, BUREAU OF LAND MANAGEMENT, WYOMING STATE OFFICE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming State Engineer's Office, hereinafter referred to as "SEO," and the United States Department of the Interior, Bureau of Land Management, Wyoming State Office, hereinafter referred to as the "BLM."

Title: Wyoming State Engineer's Office/Bureau of Land Management MOU

- I. **PURPOSE:** The purpose of this MOU is to document and strengthen the existing cooperative working relationship between the SEO and the BLM with respect to permits under state law for water rights and uses on or derived from Bureau of Land Management Administered Public Land in Wyoming. Further, it will provide additional clarification regarding the agencies' relative roles and responsibilities and water rights permitting procedures.
- II. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** Approval of this MOU will strengthen the partnership and recognize the cooperative working relationship and benefits between the State of Wyoming and the BLM as it relates to water rights and uses on BLM Administered Public Lands in Wyoming.

In consideration of the above premises, the parties agree as follows:

III. THE SEO SHALL:

- A. Recognize and respect the authority of the BLM, under the constitution and laws of the United States, to manage BLM Administered Public Lands throughout the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
- B. Use reasonable efforts to inform applicants proposing to divert, convey, use, or store water on BLM Administered Public Lands of the potential need to obtain a land use authorization from the BLM concurrent with securing a water right from the SEO.

- C. When appropriate as referenced in III (D) or III (E), use reasonable efforts to notify the BLM State Office contact and allow 30 days, upon receipt of notification, for BLM to comment on water rights applications and petitions for new uses and changes to existing uses by others that propose to abandon, divert, convey, use, or store water on BLM Administered Public Lands. The SEO will consider and respond to BLM comments. Said efforts shall include use of email or written letter notification.
- D. When proper under state law, approve applications and issue permits according to state law, for water rights and facilities proposed to be located on BLM Administered Public Lands as follows:
 - a. When the BLM is the sole applicant for a water right to use water on BLM Administered Public Lands, a permit will be issued solely to the BLM.
 - b. When an application for new development proposes to divert water from BLM Administered Public Lands and the proposed use is for oil, gas or mineral development, the SEO will issue the permit solely in the applicant's name. Examples include coal bed natural gas (CBNG) wells, reservoirs that will contain CBNG produced water, and water supply wells or surface water diversions for oil and gas well drilling and production operations. Once a permit is issued the SEO will notify the BLM by providing a copy of the approved permit. This does not preclude the BLM filing a new application in the future for a new use.
 - c. When an application for new non-oil, gas or mineral development proposes to divert water on BLM Administered Public Lands and the use is proposed on BLM Administered Public Lands, the SEO will notify the BLM as described in III (C). Permits issued under this scenario will generally be issued in the name of the applicant and the SEO will add the BLM as a co-applicant.
 - d. When an application proposes to use water on a combination of BLM land and non-BLM land, the SEO will notify the BLM as described in III (C). Permits issued under this scenario will be determined on a case by case basis and may list the BLM as a co-applicant.
 - e. When an application for a time limited use is made, such as temporary water use for road construction and pipelines, , a permit will be issued solely to the applicant and a notice will be provided to the BLM of the water right issued to ensure that appropriate Federal land use authorizations are in place.
 - f. The SEO agrees to use a concerted effort to conform to the requirement of this Section III. Failure to conform to this section does not invalidate any permit, adjudication, or other action taken by the SEO or Wyoming Board of Control.

- E. Upon receipt of notice from the owner of a valid Wyoming water right permit located on BLM land of intent to abandon the water right permit, the SEO shall notify the BLM as described in III (C).
- F. Provide a primary contact in the SEO to address water rights policy and procedural issues that are relevant to both the BLM and the SEO.

IV. THE BLM SHALL:

- A. Recognize and respect the authority of the SEO under the constitution and laws of the State of Wyoming.
- B. Manage land, water, and other natural resources located on BLM Administered Public Lands within the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies
- C. Apply for permits and acquire water rights under state law as sole applicant for water used directly by the BLM for administrative purposes on BLM Administered Public Lands.
- D. Inform and require applicants seeking to acquire water rights to carry out activities related to multiple use objectives where points of diversion and use are on BLM Administered Public Lands of the requirement to obtain water rights under state law. The BLM may elect to file said applications as co-applicant.
- E. Inform applicants seeking to divert, convey and/or store water on BLM Administered Public Lands of the need to obtain valid water rights from the SEO while concurrently pursuing authorization to occupy BLM Administered Public Lands.
- F. Seek the consent of an affected grazing lease holder when the BLM petitions the SEO or Wyoming Board of Control to change or abandon an un-adjudicated or adjudicated water right on a grazing allotment. An affected grazing lease holder is an individual or entity holding a grazing permit for a BLM managed allotment on which a point of use for the subject water right is located.
- G. Provide the SEO three copies of BLM 1:100,000 scale Surface Management Status Maps for all BLM managed lands in Wyoming and the most recent land status maps as available to assist SEO staff in ascertaining legal descriptions of water rights applications that may involve the use of BLM Administered Public Lands.
- H. Provide a primary contact in the State Office to collaboratively address water rights policy and procedural issues that are relevant to both the BLM and SEO.
- I. Provide a Hydrologist contact list for each BLM office within Wyoming to address any questions related to an individual water right on a specific parcel of land.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Cooperator Contacts

SEO Program Contacts	SEO Administrative Contact
Name: John Barnes SEO Surface Water Division Surface Water Administrator Address: 122 West 25 th Herschler Building , 4 th East City, State, Zip: Cheyenne, WY 82002 Telephone: (307) 777-6475 FAX: (307) 777-5451 Email: john.barnes@wyo.gov	Name: Harry LaBonde Deputy State Engineer Address: 122 West 25 th Herschler Building, 4 th east City, State, Zip: Cheyenne, WY 82002 Telephone: (307) 777-6150 FAX: (307) 777-5898 Email: harry.labonde@wyo.gov
Name: Lisa Lindemann SEO Ground Water Division Ground Water Administrator Address: 122 West 25 th Herschler Building, 4 th East City, State, Zip: Cheyenne, WY 82002 Telephone: (307)777-5063 FAX: (307) 777-5451	

Email: lisa.lindemann@wyo.gov	
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BLM Contacts

BLM Program Contact	BLM Administrative Contact
Name: Jim Honn State Engineer, BLM Wyoming Address: 5353 Yellowstone Rd, PO Box 1828 City, State, Zip: Cheyenne, WY 82003 Telephone: 307-775-6233 FAX: Email: jhonn@blm.gov	Name: Buddy W. Green Deputy State Director, Resources Address: 5353 Yellowstone Rd, PO Box 1828 City, State, Zip: Cheyenne, WY 82003 Telephone: 307-775-6123 FAX: Email: bwgreen@blm.gov
Name: Joe Cantrell ADMSS High Desert District Address: 230 Highway 191 North City, State, Zip: Rock Springs, WY 82901-3447 Telephone: 307-352-0389 FAX: Email: jcantrel@blm.gov	
Name: J. Bunderson District Engineer High Plains District Address: 2987 Prospector Drive	

City, State, Zip: Casper, WY 82604-2968 Telephone: 307-261-7589 FAX: Email: jbunders@blm.gov Name: Monica Goepferd District Engineer Wind River/Big Horn Basin Address: 101 South 23rd Street City, State, Zip: Worland, WY 82401 Telephone: 307-347-5239 FAX: Email: mgoepfer@blm.gov	
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B. NON-LIABILITY. The BLM does not assume liability for any third party claims for damages arising out of this instrument.

C. NOTICES. Any communications affecting the operations covered by this agreement given by the BLM or SEO is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the BLM Administrative Contact, at the address specified in the MOU.

To the SEO Administrative Contact, at the address specified in the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

D. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the BLM or SEO from participating in similar activities with other public or private agencies, organizations, and individuals.

E. ENDORSEMENT. Any of SEO's contributions made under this MOU do not by direct reference or implication convey BLM endorsement of work products or activities.

- F. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity for either of the parties or for any third party. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. This MOU neither obligates funds nor requires either party to obligate funds at any time in the future. Further, nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any BLM obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. § 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise there from, either directly or indirectly.
- H. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. § 552).
- I. PUBLIC NOTICES. It is the BLM's policy to inform the public as fully as possible of its programs and activities. SEO is encouraged to give public notice of the receipt of this instrument and, from time to time, to announce progress and accomplishments.
- J. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

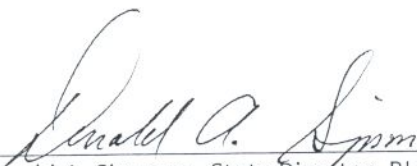
- K. DISBARRMENT AND SUSPENSION. SEO shall immediately inform the BLM if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should SEO or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the BLM without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- L. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- M. SOVEREIGN IMMUNITY. The State of Wyoming and SEO do not waive sovereign immunity by entering into this agreement and specifically retains immunity and all defenses available to it as a sovereign pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- N. PRIOR APPROVAL. This MOU shall be reduced to writing and approved as to form by the Office of the Wyoming Attorney General.
- O. ENTIRETY OF AGREEMENT. This MOU, consisting of nine (9) pages, represents the entire and integrated MOU between the parties and supersedes all prior negotiating, representations, and agreements, whether written or oral.
- P. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 2017 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

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Q. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties here to have executed this MOU as of the last date written below.

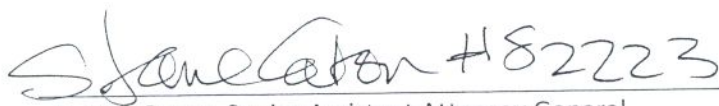

Patrick Tyrrell, Wyoming State Engineer, Officer

1/9/12
Date


Donald A. Simpson, State Director, BLM Wyoming

1/12/12
Date

Wyoming Attorney General's Office Approved As To Form

 #82223
S. Jane Caton, Senior Assistant Attorney General

1-9-12
Date