



## **STAFF REPORT**

To: Summit County Council  
From: Janna Young, Deputy County Manager  
Date of Meeting: September 26, 2018  
Type of Item: Consideration and possible approval of MOU with U.S. Forest Service regarding NEPA analyses for Sage-Grouse on Forest Service Lands in Utah  
Process: Regular Session

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### **Introduction**

On August 17, 2018, the U.S. Forest Service invited Summit County to participate as a cooperating agency in a Memorandum of Understanding (MOU) for Sage Grouse planning on Forest Service lands in Utah. They provided a draft MOU for review and requested the County respond by August 24<sup>th</sup>.

During Manager Comments at the August 22<sup>nd</sup> Council meeting, County Manager Tom Fisher mentioned this issue to the Summit County Council and asked if they were interested in participating in the MOU. In consideration of the Forest Service's August 24<sup>th</sup> deadline, the Council authorized the County Manager to confirm Summit County's participation as a cooperating agency and designated Janna Young, Deputy County Manager, as the point of contact on the project.

Presented at today's Council meeting is the final MOU provided by the Forest Service, which needs to be formally considered and approved by the Council.

### **Staff Recommendation/Requested Council Action**

Approve the agreement with the U.S. Forest Service, authorizing Council Chair, Kim Carson to sign the MOU and formally submit it to the U.S. Forest Service's intermountain regional office.

### **Background**

The Greater Sage-Grouse is a species of bird emblematic of the sagebrush steppe of the intermountain West, which is their only habitat. They are widespread across the sagebrush plains but are sensitive to disturbance. As such, the species is in decline across its range due to habitat loss. In 2010, the U.S. Fish and Wildlife Services designated the greater sage-grouse as a candidate species for protection under the Endangered Species Act (ESA).

Summit County's interest in the greater sage-grouse is due to the sagebrush areas, specifically on private land, within the County's borders that serve as critical habitat for these birds.

Since 2013, Summit County has participated in the Morgan/Summit Adaptive Resource Management (MSARM) Sage-Grouse local working group to study and increase on-the-ground knowledge of the sage-grouse, improve habitat, increase the sage-grouse population and coordinate projects with private landowners to protect sage-grouse.

The working group, established in 1996, is led by a collaboration between Utah State University Extension and the State of Utah with local participation of area residents and interested governmental representatives.

In 2013, the Conservation of Greater Sage-grouse in Utah was published as a plan for conserving sage-grouse habitat. In 2015, Governor Herbert signed an Executive order (EO) to implement the plan.

In 2014, the Summit County Council committed \$36,000 over three years to help fund a Utah State University Sage-Grouse Study. The purpose of the study was to provide the best science to guide sage-grouse management in Summit and Morgan counties. The study concluded in 2017 and was presented to the Council in February of that year.

Since 1996, the Utah partners have published over 40 scientific papers in peer-reviewed journals, evaluating Utah's sage-grouse conservation strategy. This research confirms that sage-grouse are positively responding to state management.

The Utah partners are now working to develop better maps of sage-grouse seasonal habitats in Utah. The maps will be updated in 2019 with location data obtained from over 300 global positioning satellite transmitters deployed on sage-grouse throughout Utah.

### **Summary of MOU**

The U.S. Forest Service Intermountain Region is now embarking on a National Environmental Policy Act (NEPA) process and analyses regarding amendments to the Greater Sage-Grouse plans that were created in 2015.

As part of the NEPA process, the U.S. Forest Service is required to cooperate with State and local governments and other agencies with "jurisdiction by law or special expertise." As a result, the U.S. Forest Service has invited counties across Utah that are home to sage-grouse habitat to participate as cooperating agencies in the NEPA process. An MOU has been offered as the mechanism for formalizing this

relationship, committing the U.S. Forest Service and signatories to work together on NEPA analyses for greater sage-grouse on National Forest System (NFS) lands in Utah.

The MOU (attached), outlines the purpose of the agreement, mutual benefits and interests between the parties, and the actions and commitments of each the cooperating agencies and the U.S. Forest Service.

## MEMORANDUM OF UNDERSTANDING

### Between

Beaver County  
Carbon County  
Daggett County  
Duchesne County  
Emery County  
Garfield County  
Iron County  
Juab County  
Kane County

Office of the Governor, Public Lands Policy Coordinating Office  
Summit County  
Uintah County

hereinafter referred to individually as AGENCY, and collectively as the "AGENCIES"

### And The

### USDA, FOREST SERVICE INTERMOUNTAIN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Agencies, and the USDA Forest Service Rocky Mountain and Intermountain Regions, hereinafter referred to as the "Forest Service".

Background: The Council on Environmental Quality regulations addressing cooperating agencies status (40 C.F.R. §§ 1501.6 & 1508.5) implement the (National Environmental Policy Act (NEPA) mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. §§ 4331 (a), 4332(2) and Memorandum: Cooperating Agencies, James C Connaughton, Chair, Council on Environmental Quality, January 30, 2002). Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decision making authority of any agency involved in the NEPA process. This MOU does not expand requirements or responsibilities beyond those found in current laws and regulations, nor does it require an agency to provide financial assistance to a cooperating agency.

Title: Memorandum Of Understanding Documenting A Cooperating Agency Agreement Between The Forest Service And Local Governments In Utah For Working Together On National Environmental Policy Act Analyses For Greater Sage-Grouse On National Forest System (NFS) Lands In Utah.

## **I. PURPOSE**

The purpose of this MOU is to document the cooperating agency relationship between the parties in the preparation of environmental documents for amendments to greater sage-grouse plans that were created in 2015.

## **II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS**

The creation of this MOU promotes efficiency, cooperation and disclosure of relevant information during the environmental analysis processes and helps to ensure successful completion of analyses in a timely, efficient and thorough manner.

The authority of the Forest Service to enter into and engage in the activities described within this MOU includes, but is not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and its implementing regulations published by the Council of Environmental Quality (40 CFR parts 1500).

The Agencies are recognized to have jurisdiction by law or special expertise in the analysis of subject matter within each Agency's statutory responsibility, especially regarding sage-grouse and land use in their respective counties, districts, and lands within the state of Utah.

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

## **III. AGENCIES SHALL:**

- A. Perform the duties of a Cooperating Agency as defined in 40 CFR 1501.6 for environmental analyses conducted in Utah for which the Forest Service is the lead federal agency and the Agencies have special expertise or jurisdiction.
- B. As mutually agreed, provide information, comments and technical expertise to the Forest Service regarding those elements of the environmental analyses for which it has jurisdiction or special expertise. This may include review and written comments on draft environmental analyses prior to public distribution to ensure technical accuracy of disclosures regarding state laws, regulations, plans, programs and policies; and recommendations for improvement of materials that are found to be incomplete or inaccurate.
- C. Share with the Forest Service, data and other information within its special expertise and jurisdiction that are or may be relevant to the development of the environmental impact statement and/or environmental assessment.
- D. Upon request, provide copies of and explain the relationship of existing and proposed laws, regulations, plans, programs, and policies within its special expertise and jurisdiction that are or may be relevant to the project.
- E. Upon request, participate in government-to-government coordination meetings with the Forest Service, if feasible.
- F. Participate when appropriate in the scoping process, including advice on public

involvement strategies, addressing environmental issues as identified in the NEPA process, identifying potential effects of alternatives, suggesting mitigation for environmental effects, and providing comments on drafts of the NEPA documents.

- G. Designate an official representative for the Agency who is an elected officer of the Agency or a designated Agency employee with authority to act on the Agency's behalf, acting in their official capacity.

#### **IV. THE U.S. FOREST SERVICE SHALL:**

- A. Retain final responsibility for the content of all environmental analysis documents. The Forest Service shall be responsible for determining the purpose and need for the project, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative and determining appropriate mitigation measures. In meeting these responsibilities, the Forest Service will follow all applicable statutory and regulatory requirements.
- B. 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.
- C. Provide the Agencies with copies of documents relevant to the Agencies' responsibilities, including technical reports, data, analyses, comments, working drafts and final environmental analysis documents. The Forest Service will use best efforts and agency discretion, given the rapid pace of sage-grouse planning, to provide Agencies with such documents to allow for review and comment.
- D. Provide notice of availability of electronic copies to the Agencies of all draft and final project EIS's and potentially controversial EA's, unique proposals, or other actions specifically requested by state agencies.

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

- A. The parties agree to participate in all NEPA processes in good faith and make all reasonable efforts to resolve disagreements. Where disagreements may impede effective and timely completion of a NEPA analysis, the parties agree that the Forest Service retains final responsibility for the NEPA analysis and subsequent decisions. The parties agree to comply with the schedule developed for greater sage-grouse NEPA analysis.
- B. Each party will fund its own expenses, unless an alternative arrangement is identified for a specific NEPA analysis in accordance with provision V. J below.
- C. Any additional provision regarding the responsibilities of either party will be identified in an amendment to this MOU through a written agreement of all signatories.
- D. As needed, when a NEPA analysis is initiated, each party will designate a

representative to ensure coordination between the Agencies and the Forest Service during the process. Any party may change its representative as needed.

E. This MOU applies to all NEPA analyses that all parties agree are appropriate for the cooperating agency process. Any party may opt out of the cooperating agency process at their discretion.

F. PRINCIPAL CONTACTS. Individuals listed below are the principal contact for the Agencies for matters related to this agreement.

**Principal Cooperator Contacts:**

**Beaver County**  
Keven Whicker  
Beaver County Public Lands Administrator  
105 E Center Street  
Beaver, UT 84713  
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**Carbon County**  
Todd Thorne  
Director of zoning and planning  
751 E 100 N  
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**Daggett County**  
Jack Lytle, Daggett County Commissioner, Chair  
PO BOX 219  
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**Duchesne County**  
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Duchesne County  
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**Emery County**  
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Emery County Public Lands Administrator  
PO BOX 1298  
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**Garfield County**

Brian Bremner  
Garfield County Engineer  
55 S. Main, P all box 77  
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**Iron County**

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Iron County NR Specialist  
82 N 100 E Ste. 102  
Cedar City, Utah 84720  
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**Juab County**

Byron Woodland  
Juab County Commission  
(435)660-0185  
[byronwoodland@gmail.com](mailto:byronwoodland@gmail.com)

**Kane County**

Mary Reynolds  
Kane County Resource Management Planner  
76 N Main Street  
Kanab, UT 84741  
435-644-4951  
[mreynolds@kane.utah.gov](mailto:mreynolds@kane.utah.gov)

**Office of the Governor**

**Public Lands Policy Coordinating Office**

Braden Sheppard  
[bsheppard@utah.gov](mailto:bsheppard@utah.gov)  
801-537-9293  
Capitol Complex  
5110 State Office Building  
Salt Lake City, UT 84114  
And

Sindy Smith  
RDCC Coordinator  
Public Lands Policy Coordinating Office  
Capitol Complex  
5110 State Office Building  
Salt Lake City, Utah 84114  
801-537-9193  
[sindysmith@utah.gov](mailto:sindysmith@utah.gov)

**Summit County**

Janna B. Young  
Deputy County Manager  
PO BOX 128  
Coalville, UT 84017  
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**Uintah County**  
 Public Lands Specialist  
 (435)781-5483  
[cmeier@uintah.utah.gov](mailto:cmeier@uintah.utah.gov)

**Principal U.S. Forest Service Contacts:**

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: John Shivik Address: 324 25th Street City, State, Zip: Ogden, UT 84401 Telephone: 801-625-5269 Email: <a href="mailto:johnashivik@fs.fed.us">johnashivik@fs.fed.us</a>	Name: Tim Wagoner Address: 324 25th Street City, State, Zip: Ogden, UT 84401 Telephone: 801-625-5796 FAX: 303-275-5396 Email: <a href="mailto:timothywagoner@fs.fed.us">timothywagoner@fs.fed.us</a>

G. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Agencies is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To Agency, at Agency's address shown in the MOU or such other address designated within the MOU.

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

H. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or Agencies from participating in similar activities with other public or private agencies, organizations, and individuals.

I. **ENDORSEMENT.** Any of Agencies' contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the State of Utah's products or activities.

J. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. 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. 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 agreements 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 agreement 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 agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

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

- K. USE OF U.S. FOREST SERVICE INSIGNIA. In order for Agencies to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- L. 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 agreement, or benefits that may arise therefrom, either directly or indirectly.
- M. 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).
- N. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- O. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The Agencies are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments.

The Agencies may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The Agencies are

requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

- P. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. Agencies shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- Q. NONDISCRIMINATION STATEMENT - PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. Cooperator shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.
1. *In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)*
  2. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.
- ii. If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:
- "This institution is an equal opportunity provider."*
- R. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- S. DEBARMENT AND SUSPENSION. Agencies shall immediately inform the U.S. Forest Service 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 Agencies or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- T. 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.

- U. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through December 31, 2020 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- V. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the signatories in this document are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.
- W. SOVERIGN IMMUNITY. The Agencies do not waive sovereign or governmental immunity by entering into this Agreement and specifically retain all immunities and defenses available to it pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of 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.

**Principal Cooperator Contacts:**

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Beaver County	Date
Keven Whicker	

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Carbon County	Date
Todd Thorne	

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Daggett County	Date
Jack Lytle	

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Duchesne County	Date
Mike Hyde	

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Emery County	Date
Ray D Petersen	

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Garfield County  
Brian Bremner

Date

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Iron County  
Mike Worthen

Date

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Juab County  
Byron Woodland

Date

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Kane County  
Mary Reynolds

Date

---

Office of the Governor, PLPCO  
Kathleen Clarke

Date

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Summit County  
Kim Carson

Date

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Uintah County  
William C. Stringer

Date

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Nora B. Rasure, R4 Regional Forester  
U.S. Forest Service

Date

The authority and format of this agreement have been reviewed and approved for signature.



8/29/18

TIM WAGONER, R4

Date

U.S. Forest Service Grants Management Specialist

**Burden Statement**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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