

MEMORANDUM OF UNDERSTANDING

BETWEEN

FREMONT COUNTY

*BY AND THROUGH THE FREMONT COUNTY BOARD OF
COUNTY
COMMISSIONERS*

AND

THE UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

BY AND THROUGH THE WYOMING BLM STATE DIRECTOR

REGARDING

DEVELOPMENT OF THE ENVIRONMENTAL IMPACT
STATEMENT(S)

FOR THE

JACK MORROW HILLS COORDINATED ACTIVITY PLAN

**Memorandum of Understanding
Between Fremont County and Bureau of Land Management**

1. Parties to and Purpose for this Document: This Memorandum of Understanding (MOU) is entered into between Fremont County, Wyoming, by and through the Board of County Commissioners (Fremont County), and the United States Department of the Interior, Bureau of Land Management, by and through the Wyoming State Director (ELM), for the purpose of coordinating and cooperating in conducting an environmental analysis and preparing the supplemental draft and final Environmental Impact Statements (EIS) for the Jack Morrow Hills Coordinated Activity Plan (JMH CAP). This MOU establishes Fremont County as a "cooperating agency" in the environmental impact analysis and documentation process and establishes procedures through which Fremont County and BLM will participate on the BLM interdisciplinary team (IDT) to conduct the analyses and develop the EIS(s).

Fremont County has designated County Commissioner Douglas L. Thompson to represent Fremont County Government as the member on the IDT. One of the other Fremont County Commissioners may represent the County, if Mr. Thompson is unavailable.

2. Background: The area analyzed in the EIS for the Jack Morrow Hills Coordinated Activity Plan is 622,330 acres. Approximately 574,800 acres are federal land/mineral estate; the remaining approximately 47,530 acres are private or State of Wyoming land/mineral estate. About 107,000 acres lie within Fremont County, with about 94,000 acres of federal land/mineral estate, and the remaining approximately 13,000 acres are private or State of Wyoming land/mineral estate (about 7,000 acres private and 6,000 acres state). The area is located in southwestern Wyoming, to the north and east of the town of Rock Springs. The area includes unique wildlife habitat; important historic, cultural, wildlife, and mineral resources; important livestock grazing and recreation values, and geological features; and a variety of special management areas. The intent of the supplemental draft EIS and final EIS is to provide National Environmental Policy Act (NEP A) documentation and support for the record of decision (ROD) and the JMH CAP. The decisions regarding fluid mineral leasing and locatable minerals in the JMH CAP area will result in amending the Green River Resource Management Plan.

The BLM has determined that an EIS is necessary for the JMH CAP project because it is a major Federal action with the potential for significant impact to one or more resources. The Acting BLM Director directed the Wyoming BLM State Director to prepare a supplemental draft environmental impact statement for the JMH CAP and to proceed with completing the planning effort.

Consistent with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq., as amended, and pursuant to the Code of Federal Regulations (40 CFR 1501.6 and 1501.8.5), State or local governments may participate in the development of EISs for projects in which or where they have jurisdiction by law or special expertise. The BLM has offered and Fremont County has accepted cooperating agency status in the development of the supplemental draft EIS and the final EIS for the JMH CAP project.

3. Term of MOU: This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU,

and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail.

4. Responsibilities of Fremont County: Fremont County will participate in the environmental analysis and documentation process by providing information regarding environmental issues in which or where Fremont County has jurisdiction by law or special expertise. Fremont County will have 1 member appointed to the IDT, as identified in Paragraph 1 above. The Fremont County member will be present at IDT meetings, will provide supporting documentation, and will provide input as necessary, according to IDT protocol. Fremont County will provide information from its records to the IDT on matters including, but not limited to, the JMH CAP project impacts on domestic livestock grazing and social and economic impacts relating to Fremont County. Fremont County will submit information at its discretion, or upon request by any IDT members or the BLM project contractor, through the project leader, within the project leader's specified time frames. Through the Fremont County IDT member, Fremont County will have the opportunity for input to preliminary draft documents prepared during the EIS process. The IDT members may, at any time during the effective term of this MOU, request records by contacting the Fremont County point of contact identified in Section 8j. Fremont County will provide public records, and other records deemed appropriate by the County, consistent with the provisions specified in Section 8h. Any decisions resulting from the EIS for the JMH CAP, on Fremont County-administered or non-federal lands where Fremont County has jurisdiction, would be made by Fremont County.

5. Responsibilities of the BLM: In accordance with 40 CFR 1501.6, the BLM is the Project lead agency. The BLM Project IDT leader is Renee Dana, Rock Springs, Wyoming. The BLM will keep all IDT members apprised of current events in relation to the EIS and JMH CAP project. The BLM will utilize the Fremont County input and proposals to the maximum extent possible, consistent with legal requirements and its responsibility as lead agency. Beyond including Fremont County in all IDT meetings, the BLM will appropriately involve other Fremont County offices or departments, other County Commissions, Conservation Districts, and Wyoming State Government in other meetings and public meetings where involvement would be necessary or of benefit to the process. The BLM will ensure that input from Fremont County is appropriately incorporated into the supplemental draft EIS and final EIS. Any decisions resulting from the EIS for the JMH CAP, on BLM-administered lands and federal mineral estate under BLM jurisdiction, will be made by BLM.

6. Mutual Responsibilities of Fremont County and the BLM: Fremont County and the BLM will cooperate in apprising each other, as far in advance as possible, of any related actions or problems that might affect the environmental analysis and documentation process or that might affect either party. The parties will cooperate in the development and review of any operating guidelines or agreements between Fremont County or BLM and other entities involved in the EIS for the JMH CAP project which might affect the environmental analysis and writing of the EIS. BLM and Fremont County agree to meet on issues concerning the EIS at the request of either party.

The State of Wyoming representative, the Fremont County representative, the IDT leader, the Wyoming BLM State Office planning coordinator, and the BLM Contractor will serve as the MOO core team. The purpose of the MOO core team will be to coordinate communication among the parties to the MOO throughout

the JMH CAP project. MOO core team members will be responsible for relaying information to and from their constituents on a timely basis.

7. Payment: No payment shall be made to either party by the other as a result of this MOO, including but not limited to, payment for any cost incurred as a result of carrying out any responsibility identified above. Each party shall pay its own costs. During the course of the Project, 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. 8. General Provisions:

a. Amendments. Either party may request changes in this MOO. Any changes, modifications, revisions, or amendments to this MOU, which are mutually agreed upon by and between the parties to this MOO, shall be incorporated by written instrument, executed and signed by all parties to this MOU and are effective in accordance with the terms of paragraph 3 above.

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

c. Entirety of Agreement. This MOU, consisting of seven (7) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements concerning the JMH CAP Project, whether written or oral.

d. Prior Approval. This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Fremont County Attorney or his representative and by the Department of the Interior Office of the Solicitor.

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

f. Sovereign Immunity. Fremont 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.

g. 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 shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of 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 shall 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.

h. Exchange of Information. Parties to this MOU will have access to all information relevant to the fulfillment of their responsibilities under this agreement. Data provided pursuant to this agreement may contain propriety and/or pre-decisional BLM or Fremont County information. 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 memorandum of understanding.

i. 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 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 Fremont County or the BLM, or as binding either Fremont 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 limitation~, as determined practical by Fremont 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-Federal lands or resources in the Project area. Similarly, nothing in this MOU will be construed to extend jurisdiction or decision-making authority to Fremont County for planning and management of land or resource uses on the Federal lands or mineral estates administered by the BLM. Both Fremont County and BLM will work together cooperatively and will communicate about issues of mutual concern.

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

Fremont County

Douglas L. Thompson
Fremont County Commission
County Courthouse
450 North Second, Room 220
Lander, Wyoming 82520-2337
(307) 544-2373 (phone)
(307) 544-2216 (fax)

(307) 332-1130 (Commission phone)

(307) 332-1132 (Commission f~)

BLM
Renee Dana
Bureau of Land Management
280 Highway 191 North
Rock Springs, Wyoming 82901
(307) 352-0227 (phone)
(307) 352-0328 (fax)

THIS SPACE INTENTIONALLY LEFT BLANK

9. Signature: In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions, of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this agreement.

FREMONT COUNTY, by and through:

Scott Luther _____ 5-7-02 _____
Scott Luther Date
Fremont County Commissioner-Chair

Lanny Applegate _____ 5-7-02 _____
Lanny Applegate Date
Fremont County Commissioner

Thomas R. Satterfield _____ 5-7-02 _____
Thomas R. Satterfield Date
Fremont County Commissioner

T. Crosby Allen, II _____ 5-6-02 _____
T. Crosby Allen, II Date
Fremont County Commissioner

Douglas L. Thompson _____ 5-7-02 _____
Douglas L. Thompson Date
Fremont County Commissioner

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

Alan R. Pierson _____ 5-29-02 _____
Alan R. Pierson, Wyoming State Director Date

FREMONT COUNTY ATTORNEY'S OFFICE APPROVAL AS TO FORM

[undecipherable signature] _____ 6-11-02 _____

BLM REGIONAL SOLICITOR'S OFFICE APPROVAL AS TO FORM

[undecipherable signature] _____ 6-4-02 _____