**MEMORANDUM OF UNDERSTANDING**

**AMONG THE**

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,**

**WHITE RIVER FIELD OFFICE**

**AND**

**COOPERATING AGENCY NAME**

**FOR THE**

**WOLF CREEK RESERVOIR PROJECT**

# Introduction

The U.S. Department of the Interior, Bureau of Land Management, White River Field Office (herein referred to as “BLM”), and Cooperating Agency Name (Cooperator), collectively referred to herein as “the Parties,” enter this Memorandum of Understanding (MOU) establishing a cooperating agency relationship pursuant to the National Environmental Policy Act 42 U.S.C. 4321 *et seq.* (NEPA), providing a framework for cooperation and coordination, and documenting agreed upon procedures, roles and responsibilities associated with the preparation of an Environmental Impact Statement (EIS) and possible Resource Management Plan Amendment (RMPA) for the Wolf Creek Reservoir Project (Project).

The BLM is the lead agency with responsibility for the completion of the RMPA/EIS and the Record of Decision (ROD) for the Project. The BLM acknowledges that the Cooperator has special expertise applicable to the Project effort, as defined at 40 CFR 1508.1. Cooperating Agency Name is a Cooperating Agency due to special expertise or jurisdiction by law with XX within [insert agency’s geographic boundary].

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 NEPA regulations (in particular, 40 C.F.R. 1501.7-8), the BLM’s planning regulations (in particular, 43 C.F.R. 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 for the RMPA/EIS.

# Background

The BLM has received an application from the Rio Blanco Water Conservancy District for the proposed Wolf Creek Reservoir in northwestern Colorado near Rangely. Construction, and operation and maintenance of the Project requires a Right-of-Way for the use of public lands managed by the Bureau of Land Management’s White River Field Office in northwest Colorado. The reservoir is a multi-purpose reservoir that is proposed to meet several water supply needs for water users and the environment in the White River in Colorado. The proposed reservoir involves a 110-foot-tall, embankment dam that would be built across an ephemeral stream called Wolf Creek. The dam would generally be located north of the gap between Coal Ridge and Pinyon Ridge. Water would be diverted and pumped uphill from the White River to the reservoir, which would be located in Moffat and Rio Blanco counties north of Highway 64 and southeast of Highway 40. Water from the reservoir would be released from the outlet works of the dam through a discharge channel back to the White River. The proposed reservoir would hold up to 66,720 acre-feet of water. If approved, the Rio Blanco Water Conservancy District would build, operate, and maintain the reservoir.

The BLM’s consideration of the application would also include a potential Amendment to the White River Resource Management Plan (RMP).

# Purpose

## To recognize the BLM as the lead agency with responsibility for the completion of the RMPA/EIS and 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.

## To recognize Cooperating Agency Name as a Cooperating Agency in the RMPA/EIS process.

## To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure 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 Record of Decision) and that is less than 150 pages in length, excluding appendices. For proposals of unusual scope or complexity, the RMPA/EIS will be 300 pages or fewer, unless a senior agency official of the lead agency approves in a writing a statement to exceed 300 pages and establishes a new page limit in accordance with 40 CFR 1502.7.

## To formalize the commitment among the Parties regarding their respective responsibilities and expertise in the RMPA/EIS process.

# Authority

## 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.).

1. Department of the Interior Manual (516 DM 2.5).

## 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*)

## The authorities for Cooperator to enter into this MOU include, but are not limited to:

1. XX

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.

# Roles and Responsibilities

* 1. 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 Draft RMPA/EIS will be prepared in 150 pages or fewer (excluding appendices) and will be completed within two years of Notice of Intent publication (unless the BLM determines this proposal is of unusual scope or complexity and requires 300 pages in the RMPA/EIS or a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit 43 C.F.R. 1501.10(b)(2)).
     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.).
  2. 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 Analysis of the Management Situation[[1]](#footnote-2), Scoping Report, draft RMPA/EIS, proposed RMPA/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 RMPA/EIS relevant to the Cooperators’ responsibilities, including technical reports, data, analyses, comments received, and working drafts related to environmental reviews.
4. Ensure that Parties receive the internal Analysis of the Management Situation, internal draft RMPA/EIS, and internal proposed RMPA/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. 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. 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 C.F.R. 800.2(a)(2).
8. BLM shall assume the lead role for consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act related to effects of the Project on special status species.
   1. Cooperating Agency Responsibilities:
      1. Cooperating Agency Name participating as a Cooperating Agency in this RMPA/EIS process is recognized to have special expertise or jurisdiction by law in the following areas within [insert agency’s geographic boundary]: XXX.
      2. The Cooperator 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.

# Other Provisions

* 1. 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.
  2. 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.
  3. 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. Cooperating Agency Name has an existing funding, augmentation, or similar agreement related to this Project, as identified below. Cooperating Agency Name will continue to disclose any future potential conflicts of interest, funding agreements, or written agreements (or changes to existing ones) to the BLM as the project progresses. Additional questions regarding potential conflicts of interest should be referred to BLM Head or Field Ethics Counselors for resolution.

Disclosure of current potential conflicts of interest, funding, or other agreements:

* (Insert list or None)
  1. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the RMPA/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/EIS and the Proposed RMPA/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.
  2. Management of information. Any records or documents generated as a result of this MOU shall become part of the official BLM Decision File maintained in accordance with BLM record management policies. Cooperating Agency Name acknowledges that all supporting materials and draft documents may become part of the administrative 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 agreement. BLM will determine their suitability for public review or release under the provisions of the Freedom of Information Act (FOIA), Privacy Act, and in accordance with Department of the Interior or BLM regulations. The BLM acknowledges that Cooperating Agency Name’s handling of these materials may be impacted by state-specific open records laws. The Parties agree that the BLM at its discretion may withhold from the cooperator those documents that would otherwise be available for public release under (§ 24-72-201 to 206, C.R.S.).
  3. 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 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 RMPA/EIS and ROD.
  4. 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.
  5. 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 agreement.
  6. 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.

# 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.

# Administration of the MOU

* 1. Approval: This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.
  2. Amendment: This MOU may be amended through written agreement of all signatories.
  3. Termination: If not terminated earlier, this MOU will end when the Notice of Availability of the BLM’s Record of Decision for the Proposed RMPA/Final EIS is published in the Federal Register. Any Party may end its participation in this MOU by providing written notice to the other Party.
  4. Withdrawal:Any party may withdraw from the MOU with 30 days written notice.

# Signatures

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

BUREAU OF LAND MANAGEMENT (LEAD AGENCY)

By: Date:

Bill Mills, Field Manager

White River Field Office

COOPERATING AGENCY NAME

By: Date:

Name, Title

XX

**Attachment A**

**Cooperating Agency Participation in the Wolf Creek Reservoir RMPA/EIS**

| **RMPA/EIS Stage** | **Potential Activities of Cooperating Agencies within Acknowledged Areas of Expertise** |
| --- | --- |
| Share Data 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 Notice of Intent to Prepare an RMPA/EIS published in the *Federal Register*. |
| 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. |
| Analysis of the Management Situation | Provide information (such as local monitoring and baseline data) for the draft AMS and help interpret the AMS to constituents as appropriate. Identify management opportunities to respond to the gathered data and the planning issues. Review draft AMS. |
| Formulate Alternatives | May cooperate with the BLM 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 RMPA/EIS | Cooperate with the BLM 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/ EIS if desired. Decision to select a preferred alternative and to issue a Draft RMPA/EIS 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 RMPA/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. |
| Resolve Protests; Modify Proposed RMPA/FEIS (if needed) | 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. |
| Sign Record of Decision | Action reserved to the BLM. |

**Attachment B:**

**Schedule Overview**

**Preliminary Schedule:**

Please note that the dates are general, and the timeframes are approximate. The BLM’s intent is to complete an informed process in a timely manner. Concurrence between the BLM and other Federal agencies on the purpose and need and preliminary range of alternatives is a critical step (go/no-go) before submitting a Notice of Intent for higher level agency review.

|  |  |
| --- | --- |
| **Task** | **Approximate Timeframe** |
| Project Startup | Initiated |
| Cooperating Agency Onboarding | In process |
| Develop Federal Agency’s Purpose and Need and Identify Preliminary Range of Alternatives | May 5, 2023 |
| Complete Analysis of the Management Situation and Situation Assessment | May 5, 2023 |
| Submit Notice of Intent | June 20, 2023 |
| Notice of Intent and Public Scoping | September 2023 |
| Determine Issues and Range of Alternatives | November 2023 |
| Issue Draft RMPA/EIS & Public Comment Period | June 2024 |
| Issue Proposed RMPA/Final EIS | March 2025 |
| Record of Decision | September 2025 |

**Attachment C**

**Agency Representatives**

Bureau of Land Management

Primary Representative:

Heather Sauls

BLM NW Colorado District Office – Planning & Environmental Coordinator hsauls@blm.gov

970-878-3855

Backup Representative:

Pete Doan

BLM White River Field Office – Planning & Environmental Coordinator

pdoan@blm.gov

970-878-3813

Cooperating Agency Name

Primary Representative:

Name

Title

Email

Phone

Backup Representative:

Name

Title

Email

Phone

1. The Analysis of the Management Situation should describe the current conditions and trends of the resources and the uses/activities in the planning area to create framework to resolve BLM planning issues through the development of alternatives. See the BLM Land Use Planning Handbook H-1601-1. [↑](#footnote-ref-2)