

**MASTER BUREAU-WIDE
MEMORANDUM OF UNDERSTANDING**

**BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
AND
THE WESTERN STATES LAND COMMISSIONERS ASSOCIATION
CONCERNING**

Management of public and state trust lands and resources in the western United States.

This Master Bureau-wide Memorandum of Understanding (MOU) is made and entered into by and between the United States Department of the Interior, Bureau of Land Management (the BLM), and the Western States Land Commissioners Association (the WSLCA).

Recitals

1. The BLM is the primary multiple use land management agency within the U.S. Department of the Interior. The BLM manages approximately 245 million acres of Federal public land and another 700 million acres of Federal mineral estate under other surface ownership throughout the nation.
2. The BLM's objectives in managing Federal public lands and minerals are governed by the multiple-use objectives set forth in the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* ("FLPMA"), and other applicable law.
3. The WSLCA is an organization representing 23 state land management agencies which together manage more than 440 million acres of surface and subsurface state lands throughout the central and western United States, including lands granted by Congress to the states in trust for the support of public education and other public institutions.
4. The objectives of the WSLCA's member states in the management of state trust lands are to ensure prudent and profitable management of state trust lands on behalf of the beneficiary institutions for whose benefit the lands were granted, while preserving state

trust assets for future generations. In connection with these goals, the WSLCA provides a forum through which member states may assess best practices for land, water, and resource management; develop prudent management policies for resources on state trust lands; and provide information, education, and assistance to member states and interested parties.

5. The WSLCA member states and the BLM manage adjoining or intermingled public and state trust lands throughout the west, and share a wide range of matters of mutual interest, concern, and responsibility. These matters include providing benefits to the citizens of the United States and the individual states, and promoting the health, diversity, and productivity of public and state trust lands for present and future generations.
6. The WSLCA and the BLM desire to foster an ongoing, cooperative relationship between the two organizations in connection with management of public lands of the United States managed by the BLM, and state trust lands managed by members of the WSLCA. A specific issue of mutual concern to the BLM and the WSLCA is the realignment and consolidation of land ownership between the BLM and the WSLCA member states through land exchanges, state indemnity selections and other realty actions.

I. SPECIFIC OBJECTIVES OF THIS MOU

The specific objectives of this MOU are to provide a general framework of cooperation between the WSLCA and the BLM concerning the following items:

- A. Advance the long-range management objectives of both the BLM and the WSLCA member states by resolving outstanding state indemnity (in-lieu) selections or other state land entitlement selections (collectively "state selection rights"), in accordance with existing legal authorities and court settlements.
- B. Meet the long-range management objectives of both the BLM and the WSLCA by identifying and prioritizing state-Federal land exchanges and other appropriate realty actions, and seeking ways to make such realty actions more efficient and less costly to the BLM and the WSLCA member states.
- C. Encourage expanded communication, information sharing, and cooperation between the WSLCA member agencies and BLM management at all levels of operation.

II. LEGAL AUTHORITIES FOR THIS MOU

Legal authorities for this MOU include, but are not limited to, the following:

- A. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.*, as amended by the Federal Land Exchange Facilitation Act, Pub. L. 100-49 (1986).
- B. 43 U.S.C. §§ 851, 852, for indemnity selections, as made applicable and as amended to apply to specific states, and Section 7 of the Taylor Grazing Act of 1934 (43 U.S.C. § 315f), coupled with the May 19, 1980, Supreme Court decision entitled “*Andrus v. Utah*,” No. 78-1522.
- C. Individual state enabling acts, constitutions and statutes for the WSLCA member states.

III. PROCESSING OF STATE SELECTION RIGHTS

In order to facilitate processing of outstanding state selection rights, the BLM and the WSLCA agree as follows:

- A. The BLM and the WSLCA hereby declare that they remain committed to accomplishing the task of transferring appropriate lands to the various States in fulfillment of state selection rights in a lawful, equitable, expeditious, and reasonable manner, and that they are further committed to working together in good faith and a timely and cooperative manner to identify, evaluate, and process selections of sufficient lands suitable for fulfillment of this obligation with reasonable and appropriate opportunities for public notice and involvement in all stages of the process.
- B. The BLM agrees that various WSLCA member states have existing base land entitlement rights for which state indemnity selections or quantity grants may be made. Additionally, certain legislative and/or judicial actions may occur which could increase the state selection rights of the WSLCA member states.
- C. After the Supreme Court’s decision in *Andrus v. Utah*, the Department of Interior conducted a study of existing departmental regulations and procedures and has amended certain provisions of 43 CFR subparts 2091 and 2621 to facilitate completion of the state indemnity selection program. By decision dated October 10, 1980, the Secretary determined that the applicable statutes, as discussed and interpreted in *Andrus*, permit the use of a concept of total acreage and roughly equivalent value of base lands as limitations in the aggregate rather than to only use tract-for-tract comparisons as had been the

practice of the BLM up to that time. The BLM incorporated this decision into BLM Manual 2621, Release 2-199, dated May 31, 1984, as well as setting forth: (i) a determination that satisfaction of state indemnity selection rights and disposal of public lands for that purpose are considered as "serving the national interest" in the context of Section 102(a)(1) of FLPMA; (ii) procedures for evaluation of base and selected lands; and (iii) policy governing the BLM's planning obligations and procedures for determining relative values for base and selected lands.

- D. The departmental and BLM actions referenced above in subsection II.C were consistent with a prior Memorandum of Understanding between the BLM and the WSLCA dated January 8, 1981 (the "1981 MOU") concerning state indemnity selection rights. The BLM and the WSLCA reaffirm the purposes, goals, commitments and policies set forth in the 1981 MOU. The WSLCA agrees that the plans and procedures set out in this MOU and existing BLM policy are equitable and reasonable; provided that if the WSLCA member states and BLM state-level officials determine that alternative or supplemental state-level procedures are more suitable to both parties, those revised or supplemental procedures may be used if the specific BLM State Office has notified the BLM Washington Office in writing of the revised procedures, and the revised or supplemental procedures are in accordance with applicable law. The BLM will review regulations governing the BLM planning process (43 CFR part 1600) and the classification regulations (43 CFR 2400) to identify opportunities for development of streamlined processes and procedures to facilitate the state indemnity selection program and satisfy the remaining states selection rights.
- E. The WSLCA will encourage those of its member states having outstanding state selection rights to:
1. Confirm to the respective BLM State Offices the specific outstanding acreage or value balance of outstanding state selection rights.
 2. Identify criteria and/or supplemental procedures for processing state selection rights that are expeditious and cost effective.
 3. Work with the appropriate BLM State Office to assemble and submit applications for remaining state selection rights in a timely manner.
- F. The BLM will encourage BLM State Offices for those states with outstanding state selection rights to:

Work with the WSLCA member states to confirm the specific outstanding acreage or value balance of outstanding state selection rights, complete all required actions, and

convey all remaining indemnity selections in a timely manner.

IV. STATE-FEDERAL LAND EXCHANGES

In Chapter 13 of the BLM Land Exchange Handbook (BLM Manual Part 2200), the BLM has acknowledged that resolving issues associated with the intermingled nature of Federal and state ownership is an important public purpose justifying giving priority to exchanges of state trust lands out of areas designated by the Federal government for special management. In order to further this public purpose, the BLM and the WSLCA agree:

- A. To continue to utilize Chapter 13 of the BLM Handbook in the processing of land exchanges between the WSLCA member states and the BLM.
- B. To emphasize realty transactions that resolve management conflicts involving state trust inholdings within Federally protected areas, including units of the National Park System (NPS), BLM units of the National Landscape Conservation System (NLCS), and other Federally designated units.
- C. To work together to identify specific administrative, regulatory and statutory changes that would facilitate the cost-effective and expeditious exchange of the BLM and state trust lands, as more fully set forth in Appendix 1.

V. COMMUNICATION BETWEEN THE BLM AND THE WSLCA

The WSLCA and the BLM recognize the need to maintain a continuing and cooperative relationship between their respective organizations on matters of mutual interest, concern, and responsibility.

A. The WSLCA will:

- 1. Make available to its membership information about BLM programs and proposals.
- 2. Whenever possible, inform the BLM of WSLCA perceptions including the needs and concerns of their members and/or proposed resolutions that might directly impact the BLM, prior to adoption. Copies of all adopted WSLCA resolutions will be forwarded to the BLM Director.
- 3. Invite the BLM to attend and participate in WSLCA meetings, and encourage its member agencies or commissions to invite the BLM to attend member meetings.

4. Communicate with BLM personnel at appropriate levels on issues of mutual importance.

B. The BLM will:

1. Share information with the WSLCA about its programs and proposals.
2. Whenever possible, advise the WSLCA of BLM activities, including those initiatives of the administration and/or the Department of the Interior that might directly impact the WSLCA or its members.
3. Strive to attend and actively participate in meetings of the WSLCA and its member agencies or commissions.
4. Encourage State Directors and District, Field, and unit Managers to meet annually with their respective state land commissioners, directors, and administrators and to communicate with WSLCA personnel at appropriate levels on issues of mutual importance, as needed.
5. Encourage BLM State Offices to give priority to realty actions with state trust lands management agencies that would further the objectives set forth in this MOU.

C. The WSLCA and the BLM mutually agree to:

1. Meet at least once annually to identify and discuss issues of mutual concern and interest, facilitate interagency cooperation, and explore mutual objectives. Additional meetings may be held as necessary or desirable. These meetings will provide the basis for an ongoing, cooperative relationship between the organizations.
2. Work to implement Appendix 1, titled "Work / Study Items of Interest," attached and made a part hereof. Appendix 1 has been created to capture and document specific work or study items identified by the parties during previous meetings that will serve as agenda topics for future discussion and resolution. Appendix 1 may be updated as needed or appropriate.
3. Work cooperatively to identify and promote further consistency and compatibility between state and Federal technology management standards and techniques, including computer systems, electronic mail, mapping, satellite imagery, geographic

information systems, land records, surveys, appraisals, library reference material, and related systems to share information on natural resource management issues.

4. Work cooperatively to fulfill outstanding state in-lieu land selections and other state land entitlements, as well as to consider land exchanges which will consolidate ownership patterns and otherwise address mutual benefits.
5. Establish, if desired, between each WSLCA member state and its respective BLM State Director, a supplemental MOU to this MOU containing specific objectives, details, implementation schedules, requirements, and review procedures for that individual state's situation. Where an existing Master or Overall MOU exists between the state and the BLM, other agreements or understandings that are developed for indemnity selections, other state land entitlements, or other land tenure activities will be considered as within and subservient to such Master or Overall MOU.
6. Direct to the attention of the BLM State Director state selections, exchanges or other land tenure proposals recommended by the various WSLCA members, unless otherwise specified by the terms of a separate MOU between the WSLCA member and the BLM State Director for that individual state. No specific timeframes for implementation will be identified or are required. Implementation timing and/or schedules for state indemnity selections, other state land entitlements or other land tenure activities will be developed on an individual state-by-state basis between the State Land Commissioner, Director, or Manager and the BLM State Director. Scheduling will be developed on a joint State-BLM basis as part of the operational procedures for the specific program implementation in the state involved.
7. Identify and explore additional opportunities for cooperation, beneficial relationships, and improved efficiency while reducing unnecessary duplication of services related to land management. These opportunities may include participation in Federal, WSLCA or State training (like the BLM/Forest Service National Lands Training for Line Managers and Program Supervisors, and other Agency or Department of the Interior Leadership Development courses on a space available basis), educational programs, environmental impact statements, wildfire management, trespass enforcement, land use planning, cooperative land and resource management, access management, and interagency staff assignments/exchanges.
8. Work cooperatively on land management projects and programs which encompass both state and Federal land. These may include archeological, paleontological,

cultural, and historic resources; projects to maintain and restore habitat for wildlife, including threatened and endangered species; road and recreational trail projects, including signage; and educational efforts. All cooperative projects will be in compliance with state and Federal rules, procedures, and policies.

9. Coordinate press releases that reference this MOU, or the relationship between the WSLCA and the BLM.

VI. ADMINISTRATION

- A. **AUTHORITIES NOT ALTERED:** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any party on any matter within its respective jurisdiction. Nothing in this MOU will require any of the parties to perform beyond its respective authority.
- B. **MANAGEMENT OF INFORMATION:** The parties acknowledge that all data and information provided will become part of the WSLCA's and the BLM's official records and may be available for public review subject to the Freedom of Information Act (5 U.S.C. § 552) and/or state public records laws.
- C. **MODIFICATION:** Modifications within the scope of this MOU will be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
- D. **NON-FUND OBLIGATING DOCUMENT:** This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate documents that will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.
- E. **PRIOR AGREEMENTS:** This agreement supersedes and replaces that MOU between the BLM and the WSLCA dated January 8, 1981, BLM Agreement No. WO-156, and that MOU between the BLM and the WSLCA dated December 2, 1994, BLM Agreement No. WO 760-9503.

F. **TERMINATION:** Any of the parties, in writing, may terminate the agreement in whole, or in part, (at any time) before the date of expiration (with 60 days prior written notice to the other party).

G. Should an individual state, as a member of the WSLCA, desire to withdraw from this MOU, and not be bound by its terms and conditions, such notification should be made to the WSLCA and to the BLM. Withdrawal of one or several states from the MOU will not affect the terms of this MOU with respect to the WSLCA.

VII. LIST OF PRINCIPAL CONTACTS

BLM PROGRAM CONTACT	WSLCA PROGRAM CONTACT
Name: Michael D. Nedd, Assistant Director, Minerals and Realty Management Address: Bureau of Land Management 1849 C Street NW Washington, DC 20240 Phone: (202) 208-4201 E-mail: mnedd@blm.gov	Name: Jarrod Johnson, President WSLCA Address: South Dakota School and Public Lands 500 East Capitol Ave. Pierre, SD 57501 Phone: (605)773-3303 E-mail: jarrod.johnson@state.sd.us


The BLM and the WSLCA will, from time-to-time as appropriate, update principal contacts by notice to the other party to reflect personnel changes among the respective organizations.

VIII. COMMENCEMENT/EXPIRATION DATE


This agreement is executed as of the date of last signature and is effective through 10 years, at which time it will expire unless extended.

IX. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date written below.


MIKE POOL, Acting Director
Bureau of Land Management

11-14-2012
Date


JARROD JOHNSON, President
Western States Land Commissioners Association

10-5-2012
Date

APPENDIX 1
Work / Study Items of Interest

1. Opportunities and limitations for use of assembled land exchanges
2. Modifications to the BLM Land Exchange Handbook regarding state exchanges
3. Development of Individual state-wide agreements for processing:
 - a. State Indemnity Selection applications
 - b. State Land Exchange Agreements
4. Opportunities and limitations on the conveyance of Federal mineral estate
5. Other Items (TBD)