



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 7, 2019

Staff Contact: Lyndsey Boyer, lboyer@carson.org

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed Memorandum of Understanding (MOU) between the Bureau of Land Management (BLM) and Carson City to designate the City as a cooperating agency for the preparation of an Environmental Assessment (EA) titled Targeted and Prescriptive Grazing of Annual Grasses in Great Basin Ecosystems in Nevada. (Lyndsey Boyer, lboyer@carson.org)

Staff Summary: The MOU, if approved, will authorize City staff to join other agencies in assisting the BLM as a cooperating agency with the preparation of an EA related to grazing in the Great Basin ecosystem. Carson City's responsibilities are outlined in the draft MOU and would include review and input of draft documents prepared during the EA process prior to public release of those materials. Participation in the EA process would not impose any additional costs on the City. The City Manager or her designee will become the point of contact for this effort, which is expected to last several months.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the MOU and authorize the City Manager to execute the memorandum as presented.

Board's Strategic Goal

Quality of Life

Previous Action

N/A

Background/Issues & Analysis

Staff is of the opinion that Carson City will be able to become aware and exercise more effective participation in the preparation of the BLM Environmental Assessment by joining as a cooperative agency. Carson City's responsibilities are enumerated in the attached memorandum. The City Manager or her designee should become the point of contact. The preparation of this EA is important to Carson City due to the implementation of the Federal Lands Bill and the large amount of lands under the jurisdiction of the BLM within Carson City.

Due to the short timing between receipt of the letter and the next available meeting of the Board of Supervisors, staff attended the first Cooperating Agency meeting on November 1, 2019. Staff will present an update and provide further information at the Board of Supervisors meeting on November 7, 2019.

Applicable Statute, Code, Policy, Rule or Regulation

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted? No

Explanation of Fiscal Impact: To be absorbed as part of routine staff operations and activities (Open Space Division salary account). The participating agencies are responsible for standard operation costs such as their staff time, reproduction of documents, and transportation to meetings, and similar expenditures.

Alternatives

Decline to authorize Carson City's participation as a cooperating agency or provide alternative direction to staff.

Attachments:

[Final_TPGEA_Agency_MOU_Carson_City \(edited\).docx](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

MEMORANDUM OF UNDERSTANDING

BETWEEN

Carson City

AND

THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

BY AND THROUGH THE BLM NEVADA

REGARDING

DEVELOPMENT OF THE

ENVIRONMENTAL ASSESSMENT (EA) FOR THE PROPOSED

**EA titled Targeted and Prescriptive Grazing of Annual Grasses in
Great Basin Ecosystems in Nevada**

Memorandum of Understanding
Between Carson City and the Bureau of Land Management, Nevada State Office

Parties to and Purpose for this Document: This Memorandum of Understanding (MOU) is entered into between Carson City and the United States Department of the Interior (DOI), Bureau of Land Management by and through the Nevada and California State Directors (BLM), for the purpose of cooperating in conducting an environmental analysis and preparing the draft and final Environmental Assessment (EA) for an EA titled Targeted and Prescriptive Grazing of Annual Grasses in Great Basin Ecosystems in Nevada

- 1. Cooperating Agency:** This MOU establishes Carson City as a Cooperating Agency in the environmental impact analysis and documentation process and establishes procedures through which Carson City will participate with the BLM to help develop the Targeted and Prescriptive Grazing of Annual Grasses in Great Basin Ecosystems in Nevada EA. Carson City has been identified as a Cooperating Agency because it has special expertise concerning management information within Carson City and its respective mandate and policy framework, plans or related plans as well as with the social and economic, natural resource management, baseline information that may be considered in the environmental analysis relating to targeted and prescriptive grazing of annual grasses in Great Basin Ecosystems in Nevada.
- 2. Authorities:** This MOU has been prepared under the authority of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., and federal regulations codified at 40 Code of Federal Regulations (CFR) Part 1500-1508, 43 CFR Part 4190, and 43 CFR Part 46; the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., and USFWS's authorities under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.), and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668 et seq.).
- 3. Background:** The purpose of this action is to implement multi-scale activities throughout the Great Basin ecosystems of Nevada to remove cheatgrass and other invasive annual grasses through application of targeted grazing treatments. The need for this action is based on the contribution of annual invasive grasses, eg cheatgrass, to altered fire regime conditions that exacerbate wild land fire frequency, duration, size and intensity. Recent studies have indicated that altering livestock management practices in response to annual invasive grass fuel loading can be an effective tool for managing the risk of wild land fire.
- 4. Term of MOU:** This MOU will commence upon the date of the last signature made by the duly authorized representatives of the parties to this MOU, and will remain in full force and effect until terminated, as described in Section 9i below.
- 5. Responsibilities of Carson City:** In agreement with the time frames identified in Attachment A for this planning effort, Carson City will participate in the environmental analysis and documentation process where appropriate given Carson City special expertise. The schedule and preliminary timeframe for the respective stages of the EA development is included in Attachment A.

Carson City will have the opportunity to provide review and input on draft documents prepared during the EA process prior to public release of those materials. The interdisciplinary team leader may, at any time during the effective term of this MOU, request records and/or information by contacting the Carson City point of contact identified in Section 9k below.

- 6. Responsibilities of the BLM:** In accordance with 40 CFR 1501.5, the BLM is the lead agency. The point of contact for the preparation of this EA is as designated in Section 9k of this MOU. The BLM will keep the Carson City representative apprised of current events and timeframes in relation to this EA. The BLM will consider and may use Carson City input and proposals to the maximum extent possible and consistent with responsibilities as lead agency as described in 40 CFR 1501.5. BLM may incorporate information provided by Carson City into the draft and final EA, as appropriate and deemed relevant to the planning process. The BLM is solely responsible for any decisions made for the planning effort. Any BLM decisions made associated with the EA apply only to BLM-administered lands.
- 7. Mutual Responsibilities of the Parties:** Carson City and the BLM agree to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party. The parties agree to cooperate in the development and review of any operating guidelines or agreements between Carson City or BLM and other agencies involved in the EA that may affect the environmental analyses and writing of the EA.

Responsible parties identified in Section 9k of this MOU serve as the MOU primary points of contact. The purpose of these points of contact is to ensure that timely and coordinated communication and exchange of information between the parties to the MOU occurs throughout the planning process.

- 8. Payment:** No payment will be made to either party by the other as a result of this MOU. Each party is responsible for the costs of their participation. During the term of this MOU, 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.

9. General Provisions:

a. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU, that are mutually agreed upon by and between the parties to this MOU, will be incorporated by written instrument, executed and signed by both parties to this MOU, and are effective in accordance with the authorities defined herein.

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

c. Entirety of Agreement. This MOU represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements concerning the parties' environmental documents, whether written or oral.

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

e. Sovereign Immunity. Carson City 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.

f. 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 must not be construed so as to create such status. The rights, duties and obligations contained in this MOU will operate only between the parties to this MOU, and will benefit only 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 will 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.

g. Exchange of Information/Confidentiality. 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 MOU. The BLM and Carson City recognize that applicable public records laws will require release of non-exempt documents.

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

i. Termination: Either party may terminate this MOU upon 30 days written notice to the other party of their intention to do so. During the 30-day period, the parties will conduct negotiations to resolve any disagreement(s). If the disagreement(s), if any, have not been resolved and the party initiating the termination has not rescinded its termination in writing by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the party initiating the termination notice may request in writing that termination be postponed for an additional 30-day period or longer while the negotiations continue; upon such request, the termination shall be postponed for the specified period.

j. Dispute Resolution: In the event of any disagreement between the parties regarding their obligations under this MOU that cannot be resolved between the parties in a reasonable time, either party may refer the disagreement to the BLM State Director and the Carson City Manager to timely resolve said issue. The decision of the BLM State Director and the Carson City Manager will be the final decision for purposes of resolving the issue.

k. Contacts: The primary point(s) of contact for carrying out the provisions of this MOU are:

COOPERATOR

Nancy Paulson, City Manager
201 North Carson Street, Suite 2
Carson City, Nevada 89701

BLM

Jon K. Raby, State Director
Nevada State Office
Bureau of Land Management
1340 Financial Blvd.
Reno, NV 89502

10. Signature: The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

The effective date of this MOU is the latest signature date affixed to this page. This MOU may be executed in multiple originals or counterparts. A complete original of this MOU shall be maintained in the records of each of the parties.

Carson City by and through:

Nancy Paulson
Carson City Manager

Date

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

Jon K. Raby
Nevada State Director

Date

Attachment A

Current EA and Planning schedule, as of MOU signature:

EA Stage	Proposed Completion Date
Initial scoping meetings	July 2019
Cooperating agency meeting	November 2019
Develop Administrative Draft EA/FONSI for internal review	December 2019
Cooperator Review	January 2020
Address Internal and Cooperator comments and prepare Preliminary Draft EA/FONSI	January 2020
ESA Section 7 (Develop BA) and NHPA Section 106 Consultation	January 2020
Publish EA	February 2020
Public Comment Period (Ends)	February 2020
Develop Response to comments matrix	March 2020
Review responses to comments matrix and provide comments/revisions	March 2020
Cooperating agency meeting #2 (focus: discuss comments from cooperators on draft and address changes that are planned to be made in the Final EA)	March 2020
Prepare Final EA/FONSI	April 2020
Review Administrative Draft EA and provide comments to contractor	April 2020
Publish Final EA and Sign FONSI (Note, this may be pushed back dependent upon USFWS formal consultation timeframe)	April 2020