

BLM MOU WY 920-08-07-192

between the

**BUREAU OF LAND MANAGEMENT
THE FEDERAL HIGHWAY ADMINISTRATION
THE WYOMING DEPARTMENT OF
TRANSPORTATION**

August 24, 2007

DEFINITIONS

- I. BACKGROUND
- II. PURPOSE/OBJECTIVES
- III. AUTHORITY
- IV. AREAS OF COOPERATION
- V. RESPONSIBILITIES
- VI. OPERATIONAL PROCEDURES
 - A. Scoping Process
 - B. Application and Appropriation Process
 - 1. Pre-application Process
 - 2. Application Process
 - 3. Appropriation Process
 - C. Conditions of Appropriation
 - 1. Terms and Conditions to Letters of Consent
 - 2. Third Party Occupancy
 - 3. Compliance
 - D. Project Design/Resource - Management/Mitigation
 - E. Construction Materials
- VII. UNPATENTED MINING CLAIMS
- VIII. FENCING
- IX. JUNKYARD CONTROL
- X. CONTROL OF OUTDOOR ADVERTISING
- XI. BLM ACCESS
 - A. BLM Access Roads
 - B. BLM Approved Access Roads
- XII. ABANDONMENT OF WYDOT FACILITIES
- XIII. FEDERAL-AID VS. NON-FEDERAL HIGHWAYS
- XIV. SPECIAL PROCESSING PROCEDURES FOR MINERAL MATERIAL SITES
 - A. Duration of Appropriation for Mineral Material Sites
 - B. Utilization of Mineral Material Sites
 - C. Split Estate Lands
 - D. Termination of Appropriation for Mineral Material Sites
- XV. FREE USE PERMITS
- XVI. CADASTRAL SURVEY MONUMENTS
- XVII. SIGNS
 - A. General
 - B. Sign Standards and Review of Sign Requests
- XVIII. CONSTRUCTION
 - A. General
 - B. Handling of Emergencies/Problems
- XIX. OIL AND HAZARDOUS MATERIAL SPILLS
- XX. MAINTENANCE
- XXI. ADMINISTRATION
- XXII. APPROVALS

Appendix 1

State Map of BLM Offices

State Map of WYDOT Districts

DEFINITIONS

LR2000 - Legacy Rehost System - 2000 (BLM automated record system).

Appropriation - Rights-of-way for Federal-aid highway purposes issued to FHWA under Title 23 U.S.C.

Authorized Officer - The Field Manager or his/her delegate is authorized to approve Federal-aid highway appropriations. The Field Manager and State Director or his/her delegate are also authorized to approve appropriations. See Wyoming Manual 1203 for further details on delegations.

BLM - Bureau of Land Management.

FHWA - Federal Highway Administration.

FLPMA - Federal Land Policy and Management Act of 1976.

Federal-aid Highway - Federal-aid highway facilities are on the Federal-aid highway system and involve Federal-aid funds.

Letter of Consent - Authorization document issued under Memorandum of Understanding (MOU) WY 920-08-07-192, Interagency Agreement WY-910-A5-0001 and WY-K910-A980006, and Programmatic Agreement among the FHWA, BLM, WYDOT, Wyoming SHPO, and the Advisory Council on Historic Preservation, originally dated October 19, 1992, as amended, to the FHWA, by BLM, to appropriate public land for Federal-aid highway purpose. Highways, snow fences, and rest areas may all be authorized under a Letter of Consent.

Maintenance activities include but are not limited to grading, resurfacing, cleaning culverts, clearing of roadside brush, pruning vegetation, surveying, and striping. Maintenance activities Free Use Permit - FUP. Issued under Title 30 (43 CFR 3600).

MUTCD – Manual on Uniform Traffic Control Devices

Non-Federal-aid Highway – Non-federal-aid State highways are roads designated as public roads. These highways are not eligible for Federal-aid and are financially the responsibility of the State.

Permanent Highway Easement Deed - This is a deed document issued by the FHWA to the Wyoming Department of Transportation (WYDOT) for the permanent right-of-way area and is recorded by the WYDOT in the appropriate County Clerk's Office. This deed is issued pursuant to the terms and conditions included in the Letter of Consent.

Right-of-Way Grant - The authorization issued under Title V of FLPMA permitting the use over, upon, under or through public lands. Grants are used to construct, maintain, and operate non-Federal-aid highways for the WYDOT.

Right-of-Way Reservation - Rights-of-way to Federal agencies which "reserve" public land for the use of any agency. The term "reservation" rather than "grant" describes right-of-way authorizations under Title V, Section 507 of FLPMA to a Federal agency. These authorizations are granted through a different process from the Letters of Consent to authorize Federal-aid highways.

R.S. 2477 - The Act of July 26, 1866, R.S. 2477 (formerly codified at 43 U.S.C. 932) provided: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976, for an R.S. 2477 grant to have taken place. Construction after this date is appropriately authorized under FLPMA.

Scoping – The NEPA process where agencies and the public are given an opportunity to express concerns and identify issues.

SHPO - State Historic Preservation Office.

SRP - Serial Register Page.

Temporary Construction Easement Deed - This is a deed document issued by the FHWA to the WYDOT for the temporary construction areas identified in the Letter of Consent and is not recorded in the county records.

WYDOT - Wyoming Department of Transportation.

MEMORANDUM OF UNDERSTANDING

Concerning: Operating Procedures for Processing Federal-aid Highway Rights-of-Way

I. BACKGROUND

On October 28, 1975, the Bureau of Land Management (BLM), entered into a Memorandum of Understanding (MOU) with the State of Wyoming concerning highway rights-of-way. Additionally, on July 27, 1982, BLM entered into an Interagency Agreement, Number AA-851-IA2-40, with the Federal Highway Administration (FHWA) regarding Federal-aid highway rights-of-way. As a result of these two general agreements, BLM entered into MOU WY-29, in June of 1984, with the FHWA and the Wyoming Department of Transportation (WYDOT) to define specific policies and guidelines for processing Federal-aid Highway rights-of-way. A cultural Interagency Agreement WY-K910-A98006, and a Programmatic Agreement among the FHWA, BLM, WYDOT, Wyoming SHPO, and the Advisory Council on Historic Preservation, dated October 19, 1992, as amended, as well as an environmental Interagency Agreement, WY-910-A5-0001, dated November 3, 1994, as amended, between the FHWA, the BLM, the WYDOT, necessitated an updated MOU.

II. PURPOSE/OBJECTIVES

The purpose of this MOU is to establish updated operating procedures between the BLM, FHWA, and the WYDOT for processing of Federal-aid Highway rights-of-way. Specific items covered in this agreement include planning, design, and environmental assessment; appropriation, material sites; and construction and maintenance of Federal-aid highway right-of-way projects.

III. AUTHORITY

Authority for this MOU is Title IV of the Inter-Governmental Cooperative Act of 1968; the Taylor Grazing Act of June 28, 1934, (48 Stat. 1259, 43 USC 315), as amended; the Economy Act of June 30, 1932 (PL 95-224, 41 USC 501-509); the Federal Land Policy and Management Act of 1976 (90 Stat. 2743); Interstate and Defense Highways Act and the Federal-aid Highway Act (23 USC 107(d) and 317); Interagency Agreement No. AA 851-IA2-40, between BLM and FHWA; and all amendments, memoranda, and other supplements thereto; and such other State of Wyoming and/or Federal legislation and regulations as may apply.

IV. AREAS OF COOPERATION

The WYDOT, FHWA, and BLM recognize the need to work together to develop coordinated action plans; to provide a basis for timely disposition of material issues or problems connected with the planning, design, construction and maintenance of public road systems in the State of Wyoming; and to achieve maximum efficiency from their respective agency funds and personnel.

V. RESPONSIBILITIES

- A. The WYDOT is responsible for the development, maintenance and operation of the Wyoming State Highway System which is an integrated system of public highways.
- B. The FHWA is responsible for administration and management of the Federal-aid highway program and application for right-of-way appropriation consistent with 23 CFR 710.601, Subpart F.
- C. The BLM is responsible for the administration and management of the public lands and interests in public lands.

D. ENVIRONMENTAL COMPLIANCE. As the FHWA's agent, WYDOT, is responsible for compliance with the National Environmental Policy Act, the Endangered Species Act, Section 106 of the National Historic Preservation Act, and all other pertinent environmental protection laws for Federal-aid Highway Projects. WYDOT Environmental Services will coordinate in the scoping process with BLM Field Offices where the lands proposed for appropriation are located. BLM Field Offices will make existing baseline information available, as appropriate, during the scoping process. The U.S. Fish and Wildlife Service will be the final authority for issues/actions regarding T & E species and migratory birds on lands requested for appropriations.

Therefore, the parties agree to the following operational procedures:

VI. OPERATIONAL PROCEDURES

A. Scoping Process:

This section establishes procedures for compliance with the National Environmental Policy Act, the Endangered Species Act, Section 106 of the National Historic Preservation Act, and all other pertinent environmental protection laws for Federal-aid Highway Projects.

1. Early in the planning stages of Federal-aid Highway projects, WYDOT Environmental Services will consult with the appropriate BLM field office(s) to identify all issues and concerns relative to compliance with NEPA and all other environmental protection laws and to identify whether proposed projects on public lands are consistent with BLM land use plans.
2. BLM will provide information to WYDOT Environmental Services in a timely manner - 30 days after receipt of the request for scoping comments (or earlier if practicable). At a minimum, this information should include general information on wildlife, wildlife habitat, current listings of threatened and endangered species, fencing, grazing, and cultural resources; BLM recommendations for the evaluation and treatment of any of these concerns, and special conditions/stipulations which may be required for final appropriation.
3. If the proposed project covers land in more than one Field Office, WYDOT will notify both BLM Field Offices. The BLM Field Offices involved will jointly decide which office will take the lead for approval of the appropriation and the lead BLM Field Office will notify the WYDOT Environmental Services. The lead BLM Field Office will ordinarily be the office where the majority of the project land is contained. The lead BLM Field Office will coordinate with any other Field Office involved in the project and will provide a consolidated BLM response and data to the WYDOT Environmental Services for use in the preparation of the environmental analysis.

B. Application and Appropriation Process:

This section establishes procedures for Federal-aid highway right-of-way appropriations as per Title 23.

1. Pre-application Process:

- a. WYDOT's Project Development Engineer's Office will send written notification of proposed Federal-aid highway projects to BLM Field Office(s) requesting review and comments. The submissions will include Preliminary Plans showing the proposed highway project crossing public lands and the Right-of-Way and Engineering Inspection Plans showing the proposed highway project crossing public lands, rights-of-way widths, section ties found, and preliminary engineering data. The dimensions of these plans will be 11 x 17 inches.
- b. On the ground meetings may also be scheduled by WYDOT or BLM. BLM

personnel involved in the appropriation request should attend these meetings. Review of the project submissions and participation in any scheduled meetings are the best opportunities for the BLM to identify concerns on resource issues.

c. WYDOT Environmental Services/FHWA shall complete all phases of Section 106 compliance related to Federal-aid Highway Projects on BLM administered lands or lands appropriated through BLM consent according to the current Programmatic Agreement between FHWA, BLM, WYDOT, Wyoming SHPO, and Advisory Council on Historic Preservation and shall supply copies of all reports and 106 documentation to BLM as specified in that agreement.

d. WYDOT Environmental Services/FHWA will complete all other technical reports and studies required for compliance with NEPA and other environmental protection laws and submit those to BLM as they are completed.

2. Application Process:

WYDOT Right of Way shall submit, with FHWA concurrence indicated, applications for right-of-way appropriations consistent with 23 CFR 710.601.

a. WYDOT Environmental Services and Right of Way/FHWA shall:

1) Complete all phases of required NEPA documentation for Federal-aid highway projects on BLM administered lands under FHWA NEPA guidelines. WYDOT Right of Way/FHWA will include a copy of an environmental statement for the proposed project or program category (EA, EIS, or Cat Ex) and a statement that the procedures in Interagency Agreements WY910-A5-0001, as amended, and Interagency Agreement WY910-A98-0006, as amended, and Programmatic Agreement dated October 19, 1992, as amended, have been implemented. In some instances, in order to allow for more review time, WYDOT Right of Way may send the application before the environmental document is complete. The environmental document would be sent when it is complete, however, the official four month time frame will not start until the complete application is received by BLM.

2) WYDOT Environmental Services shall provide reclamation plans as specified by the WYDOT in the project plans and as specified in the current edition of the WYDOT Standard Specifications for Road and Bridge Construction.

3) WYDOT Environmental Services shall provide a proposed seed mixture for any disturbed areas within the appropriation. Deviations in seed mixtures will be coordinated between WYDOT and the BLM Field Manager. Seed mixtures for disturbed areas other than highway rights-of-way will be coordinated in accordance with the section on Termination of Appropriation for Mineral Material Sites.

4) WYDOT Project Development shall provide a statement addressing fence standards to be used on the project.

5) WYDOT Project Development shall provide a final Right-of-Way Plan.

*CAN THIS BE
ELIMINATED NEXT
TIME MOLL IS
UP DATED*

3. Appropriation Process:

a. BLM shall:

1) Acknowledge receipt of the Appropriations Request by having the assigned lead realty specialist respond through e-mail to the designated person named in the application package. The response will include the assigned serialized case number which shall be used on all future

correspondence. The realty lead responding to the Appropriation Request shall remain the primary point of contact for processing of the appropriation.

2) Review the final appropriation request to insure that all required NEPA documentation has been received and the project is consistent with existing BLM land use plans.

3) Issue its Letter of Consent for appropriation within four months to WYDOT. If, within a period of four months, the BLM has not responded in writing to the Request for Appropriation for good cause, such land may be considered appropriated by FHWA and transferred to the State for the purposes requested. Before exercising this authority, FHWA shall notify BLM of its intent to appropriate the public land involved.

b. WYDOT shall prepare a Highway Easement Deed or Temporary Construction Easement Deed and forward to the FHWA for execution.

c. WYDOT Right of Way will provide BLM a copy of the recorded deeds for record keeping purposes.

C. Conditions of Appropriation:

All appropriations will have the ten (10) standard conditions of approval. These conditions are contained in Appendix 1 of this agreement. BLM, in their "Letter of Consent", will clearly state the special conditions under which agreement to the appropriation is given. All special conditions are to be discussed with WYDOT Right of Way and FHWA prior to inclusion in the "Letter of Consent." The initial discussions should take place during the scoping stage discussed above. The easement which is granted through the appropriation is for the purpose of construction, operation, and maintenance of the highway as described on the approved right-of-way plans. The appropriation does not include the grant of any rights for non-highway purposes or facilities. The BLM reserves the right to use or authorize others to use the right-of-way subject to consultation with FHWA/WYDOT. Coordination shall occur between WYDOT, BLM, FHWA and the entity/applicant prior to issuance of a WYDOT utility permit and BLM's right-of-way grant. Other rights for non-highway purposes shall not be granted when the use would be inconsistent with the provisions of Title 23 USC and of the FHWA regulations and/or would interfere with the free flow of traffic or impair the full use, maintenance and safety of the highway.

1. Terms and Conditions to Letters of Consent:

The 10 Standard Conditions contained in Appendix 1 of this Memorandum of Understanding are made a part of each Letter of Consent and any subsequent amendments. Any unusual or site-specific terms and conditions identified by the BLM Field Offices will be documented and negotiated with the FHWA and the WYDOT Field Offices. The FHWA will be informed by the BLM of these terms and conditions prior to inclusion in the Letter of Consent.

2. Third Party Occupancy:

a. The grant of an easement to the WYDOT by the FHWA does not include the grant of any rights for non-highway purposes, facilities, or occupancy by third parties. In the case of a public utility wishing to locate on highway right-of-way over BLM lands, the WYDOT will advise the utility that it must apply to the BLM for a right-of-way for occupancy. The WYDOT will also issue a permit to the utility to control highway related activities as required by State law and FHWA rules of accommodation.

b. The WYDOT, FHWA and BLM will consult before any third party occupancy permits or other encumbrances are acted upon to determine if such occupancy may impact highway safety, maintenance and efficiency. The BLM will request WYDOT's review and concurrence prior to approving occupancy.

3. Compliance:

FHWA will administer compliance within the permanent appropriation and within any temporary construction area. Also, FHWA will administer compliance on those previously granted rights-of-way that are to be rehabilitated and returned to BLM.

D. Project Design/Resource - Management/Mitigation:

Proper highway design including safety is the responsibility of WYDOT and FHWA. Where conflicts arise in selection of project features, highway safety must be the overriding factor.

WYDOT and FHWA will mitigate highway construction impacts to public land resources in a practical and reasonable manner. Mitigation measures must be effective, economically justified in terms of impacts that are mitigated, and must not conflict with safety and effective design.

E. Construction Materials:

The BLM will cooperate with the WYDOT in providing construction materials for public purposes. Procedures outlined in the Material Sites Section XIII, will be followed in authorizing construction material sites.

VII. UNPATENTED MINING CLAIMS

The BLM will cooperate with the WYDOT and the FHWA in requests for assistance to investigate and determine the status and/or validity of unpatented mining claims located on lands needed for highway purposes. This assistance will be financed by the WYDOT on a reimbursable basis and will be provided by BLM consistent with available manpower and workload commitments. Special agreement documents to carry out this work shall be prepared as needed by WYDOT and BLM subject to concurrence by the Director of WYDOT and the Wyoming State Director of BLM.

VIII. FENCING

The WYDOT is responsible for the safety of the public in relation to highway rights-of-way and will be the final authority for determining fencing and fence standards used or installed on highway rights-of-way across BLM lands. This determination will be made considering highway safety, BLM recommendations, State law, and design factors. WYDOT will obtain the BLM's initial recommendations on fencing during the scoping process.

Wyoming BLM's policy is to authorize snow fences for Federal-aid highways by amending the existing Letter of Consent or by amending the existing right-of-way grant (pre-1982). Snow fences are considered a part of the Federal-aid highway facilities in Wyoming.

IX. JUNKYARD CONTROL

The BLM will cooperate fully with the WYDOT in implementation of 1977 Wyoming Statute 33-19-101, and amendments thereto. The Junkyard Control Act refers to junkyards existing or placed within 1,000 feet of the right-of-way of the Interstate or Primary Highway Systems. Licensing, screening and/or removal of junkyards are a requirement of the State Statute. BLM cooperation may include, but not be limited to, elimination of trespass situations and screening of applications for use authorization as appropriate.

X. CONTROL OF OUTDOOR ADVERTISING

The agencies will cooperate in controlling outdoor advertising signs on public lands. Rules and regulations promulgated by the Secretary of Transportation and the WYDOT in carrying out Section 131 of Title 23, United States Code (Highway Beautification Act of 1965 and amendments thereto), will be followed. Where differences occur between State and Federal Statutes, the more stringent requirement shall apply. Cooperation with respect to control of outdoor advertising will be conducted in accordance with the Section on Sign Standards. BLM shall refer any Outdoor Advertising requests to WYDOT's Traffic Office.

XI. BLM ACCESS

A State "Permit for Access" is required for all roads to be constructed which connect to WYDOT facilities on State Highways. Contacts for obtaining the permit are appropriate BLM Field Offices and WYDOT District Offices. There will be situations where BLM will request the permit for access for a BLM road and where a right-of-way applicant of BLM's will be requesting the permit.

A. BLM Access Roads:

If BLM constructs a road which will connect to WYDOT facilities on State Highways, BLM will contact the WYDOT District Office for a Permit to Access. Construction of new approaches to State and U.S. Highways from public land will be at the expense of BLM.

Future maintenance, except snow and ice removal, of approved approaches within the right-of-way shall be by and at the expense of the WYDOT.

B. BLM Approved Access Roads:

If BLM has an application for an access road across public lands and the road connects to WYDOT facilities on State and/or U.S. Highways, BLM will stipulate in the right-of-way grant that approval of the right-of-way is contingent upon receipt of an access permit from the WYDOT. The applicant is responsible for acquiring this access permit by contacting the WYDOT District Office. Construction of new approaches to State highways from public land in these instances, will be at the expense of applicant. Future maintenance, except snow and ice removal, of approved approaches within the State highway right-of-way shall be by and at the expense of the WYDOT.

Any revisions of use from the original "Permit for Access" will be reviewed and approved by the appropriate WYDOT District Engineer.

The WYDOT will coordinate right-of-way fencing (also see Fencing Section) and installation of gates and cattle guards on existing rights-of-way with the BLM to facilitate access for BLM and other roads whenever highway operation and safety permit.

When BLM constructs new access approaches, the BLM will furnish and install cattle guards and/or gates in accordance with the requirements of the permit for access.

Temporary approaches required by the BLM during fire containment, suppression or other emergencies, may be constructed without approval of the WYDOT. Obliteration of temporary approaches and restoration measures necessary will be at the expense of the BLM. Appropriate traffic control will be utilized in all temporary approaches. The WYDOT District Engineer shall be notified when such temporary approaches are installed and when they are removed.

XII. ABANDONMENT OF WYDOT FACILITIES

Unless unique environmental conditions warrant otherwise, obliteration in conjunction with abandonment shall be accomplished in accordance with Section 208, of the WYDOT's Standard Specifications for Road and Bridge Construction, latest edition.

Prior to abandonment of a highway project that exists on public lands by WYDOT, a joint inspection of the facility will be made by the appropriate BLM Field Manager and the WYDOT District Engineer. The purpose of the inspection will be joint development of an abandonment and rehabilitation plan, including the removal of drainage structures, removal of surfacing, recontouring, reseeding, etc. The BLM will not approve abandonment or disposal of, nor accept jurisdiction over, the highway project until adequate measures have been taken to eliminate any hazards existing on that portion of the appropriation on public lands and satisfactory rehabilitation has been completed, if required. FHWA will be responsible for ensuring that the final record-clearing actions are accomplished.

XIII. FEDERAL-AID VS. NON-FEDERAL HIGHWAYS

Except when there is expenditure of Federal funds in accordance with Title 23, USC, Chapter 2, on public roads which are not part of Chapter 2 or part of the Federal-aid Highway System, the WYDOT will process the applications directly with the BLM Field Office and BLM will issue a right-of-way grant as a substitute for the Letter of Consent and Deed Easement. Assuring compliance in this procedure will be the responsibility of BLM.

XIV. SPECIAL PROCESSING PROCEDURES FOR MINERAL MATERIAL SITES

A. Duration of Appropriation for Mineral Material Sites:

The duration of mineral material site appropriations is based on use and need. Mineral material site appropriations under Title 23 USC, may be issued in perpetuity when the surface and mineral estates are both under the BLM's jurisdiction. Also refer to C. (this section) for split-estate lands.

B. Utilization of Mineral Material Sites:

1. Mineral material sites can be appropriated for a number of uses which are not restricted to the selection, removal, and use of mineral materials. Uses include plant sites, stockpile sites, maintenance sites, storage sites for equipment, and other incidental activities normally related to the extraction of material. The use of each site will be specifically identified in the WYDOT's appropriation request.
2. Requests for reject material or minor amounts of other materials from Title 23 mineral material sites from various County Highway Departments, municipalities, and nonprofit organizations, should be referred to the local WYDOT office. The requester shall specify the pit location and the amount required. The local WYDOT office shall forward the request to the FHWA who will make the final determination as to the availability of material in the specified pit. The FHWA will contact the local WYDOT office with the decision. The BLM has no responsibility, jurisdiction, nor involvement in allowing for the disposal of reject materials from any Title 23 appropriation. The BLM's only involvement in material site rights-of-way is prosecution of mineral material trespass.

C. Split Estate Lands:

Administration of mineral estates under Stock-Raising Homestead Act (SRHA) lands, Section 8 of the Taylor Grazing Act (TGA) lands, 1890 Enabling Act, and re-conveyances.

1. In Watt v. Western Nuclear, Inc., 81-1683 (1983), the U.S. Supreme Court held that gravel is a mineral reserved to the United States in lands patented under the Stock-Raising Homestead Act of 1916. Those materials considered part of the surface estate which includes common fill dirt, sub-base, or ballast, are covered under the Letter of Consent process.
2. In situations involving state-owned or privately-owned minerals and Federally managed surface, the BLM will issue a Letter of Consent authorizing only surface occupancy. The term of the Letter of Consent will correspond to the State of Wyoming's permit for mineral material extraction or the mineral owner's agreement.
3. WYDOT will follow the scoping process outlined in Section VI.A.1. of this MOU with BLM on split estate mineral material sites. BLM will respond to such scoping as described in Section VI.A.2. of this MOU, including the identification and recommendation of special conditions/stipulations that may be needed to address resource concerns on the site. BLM will not attach special conditions/stipulations to the Letter of Consent issued for the minerals material site. WYDOT, as the agent of FHWA (the federally responsible Agency), will be responsible for evaluating concerns, special conditions, and recommendations brought forth in BLM's response to scoping; coordinating with the surface owner(s) and resource/regulatory agencies appropriate to the resource concern raised; and adjusting the timing/operation of surface disturbances/mining operations appropriately to mitigate resource concerns.

D. Termination of Appropriation for Mineral Material Sites:

1. The FHWA and the WYDOT will periodically review mineral material site appropriations to determine continued need.
2. If further use or need is not anticipated for a Federal-aid highway project, the FHWA and the WYDOT will consider relinquishing these sites.
3. If the BLM is aware of any mineral materials sites not being utilized, the BLM will request the FHWA to relinquish these sites.
4. The FHWA will notify the BLM in writing when the appropriation is ready for termination.
5. Prior to abandonment of a highway or material site right-of-way, a joint inspection of the facility may be made by the appropriate BLM and WYDOT representatives.
6. The BLM will assist the WYDOT, if requested and within its capability, in finalizing abandonment and reclamation including: Removal of drainage and other structures, removal of surfacing, re-contouring, reseeding, etc. This reclamation will be completed in accordance with the WYDOT's current edition of Standard Specifications for Road and Bridge Construction and any special terms and conditions in the Letter of Consent.
7. The BLM will not accept the abandonment of the appropriation nor accept jurisdiction, until adequate measures are taken to eliminate any hazard and until satisfactory reclamation has been completed.
8. Acceptance of reclamation is accomplished by issuing a decision document accepting the termination. This decision document is issued to the FHWA by the BLM.
9. If the WYDOT has not used a proposed material site within a 10-year period, the FHWA will notify the BLM of termination of the appropriation. FHWA is legally responsible for monitoring timely construction; there is no action required by the BLM.

XV. FREE USE PERMITS

Free Use Permits (FUP) are authorized directly to the WYDOT by the BLM under regulations at 43 CFR 3621. The FUP's are issued to the WYDOT for use of mineral materials on non-Federal-aid highways.

XVI. CADASTRAL SURVEY MONUMENTS

The WYDOT will follow the standard procedures of the 1973 Department of the Interior "Manual of Survey Instruction," in removing, resetting, referencing and otherwise perpetuating the position of the cadastral survey monuments which may be subject to disturbance during construction or maintenance activities.

XVII. SIGNS

A. General:

The WYDOT will furnish, erect, and maintain BLM requested signs on the highway right-of-way and will be reimbursed by the BLM in accordance with the following procedures:

1. An Authority Render Service (ARS) number (ARS-2275) has been established for the BLM to be used statewide for signs and sign maintenance only.
2. The BLM will issue a purchase order to the WYDOT establishing a fund balance in the ARS account. Subsequent purchase orders will be issued as needed to maintain the fund balance.
3. BLM requests for signing on WYDOT rights-of-way will be transmitted on BLM Form 9130-3 Sign Requisition. The following information will be included on the requisition:
 - a. A complete description of the sign being requested.
 - b. A sketch of the proposed sign location in relation to the highway right-of-way.
 - c. The State Highway System road number.
 - d. The mile post (kilometer post) location (if known).
 - e. If the mile post (kilometer post) location is not known, a map of sufficient detail to clearly identify the proposed sign location.
4. The BLM will reimburse the WYDOT, through the ARS number, for fabrication, erection and maintenance of those signs requested by the BLM. In addition, the following items apply:
 - a. Reimbursement will be for actual cost of material, fabrication, erection, and maintenance, plus an appropriate administrative cost for the service provided.
 - b. The WYDOT will only accept sign requests transmitted through the BLM Wyoming State Office and signed in the approval block labeled "State" (for State Office, BLM). BLM sign requests that are inadvertently sent to the WYDOT District or State Offices without proper approval should be forwarded to the BLM Wyoming State Office, Division of Support Services, for review and approval.
 - c. All signs erected within WYDOT rights-of-way will be furnished, erected, and maintained by the WYDOT. Signs placed outside rights-of-way will be furnished, erected, and maintained by the BLM.

B. Sign Standards and Review of Sign Requests:

1. Sign standards shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) and WYDOT policies and procedures. Messages will normally include only the road or facility name and a directional arrow. No special logos, symbols, or emblems are to be used except for international symbols essential to the sign message. Requests for signs with symbols will be approved only if both agencies agree that the symbol is essential.
2. The WYDOT will be responsible for location and support structures of signs placed on the right-of-way consistent with the MUTCD and Commission policy.
3. The BLM will determine signing needs based on public demand, percentage of foreign (non-local) travel, sites or facilities served, etc. The BLM and WYDOT will review sign

requests from a safety standpoint considering sight distance, obstructions, safety of ingress and egress, relationship to regulatory signs and clarity of the signs message and location. In addition, the WYDOT review will include the sign's consistency with current highway policy and procedures.

4. When either agency identifies inconsistencies through the review process, they will notify the other agency of the sign request's suspension until the problem is resolved.
5. All billing under the ARS account should be sent to:

Bureau of Land Management (921)
P.O. Box 1828
Cheyenne WY 82003-1828

XVIII. CONSTRUCTION

A. General:

1. The WYDOT Resident Engineer will invite the BLM to attend the preconstruction conferences. Minutes of the conference will be sent to the BLM Field Offices.
2. The WYDOT will monitor and implement commitments provided in the roadway design plans and the environmental documents.
3. The WYDOT Resident Engineer will notify the BLM about any construction changes that alter the current land use as described in the approved plans.
4. The BLM will consult with the WYDOT District Engineer or representative on matters pertaining to project construction.

B. Handling of Emergencies/Problems:

1. If the BLM identifies a problem area created as a result of current active construction, (i.e., erosion resulting in impacts outside the appropriation area), the BLM Field Manager will immediately notify the WYDOT District Engineer or the WYDOT representative of the problem for his appropriate action.
2. All post-grant coordination will be between the appropriate BLM Field Manager and WYDOT District Engineer. Impasse situations will be properly documented by both agencies and resolved according to Section XXI.L.
3. If an emergency situation exists, requiring work beyond the appropriation limits (snow control and removal, snow fence, washouts, landslides, etc.), the BLM Field Manager may verbally authorize the WYDOT to proceed with necessary work to restore the facility to a safe, serviceable condition. Contact for coordination shall be between the WYDOT District Engineer and BLM Field Manager. All verbal agreements will be properly documented and terms of verbal authorizations will be included in the appropriate use authorization (if necessary) issued for permanent repair work at the site.

XIX. OIL AND HAZARDOUS MATERIAL SPILLS

The WYDOT and BLM will cooperate in keeping each other informed of oil and hazardous material spills of mutual concern. Contact for coordination shall be between the WYDOT District Maintenance Engineer, BLM Field Manager and Wyoming Department of Environmental Quality. Specific contingency plans shall be discussed annually at District Coordination meetings or as needed to facilitate full cooperation. The WYDOT will respond to emergency response/cleanup for oil and gas or hazardous material spills in accordance with operating policy and will immediately notify BLM of any such incidents.

XX. MAINTENANCE

The goals and objective of all highway maintenance operations are to provide beneficial highway maintenance as well as preserve and enhance the aesthetic and safety characteristics of highway

facilities. Also, efforts must be made to minimize or eliminate any environmental effects on BLM lands caused by highway maintenance operations. Maintenance activities include but are not limited to grading, resurfacing, cleaning culverts, clearing of roadside brush, pruning vegetation, surveying, and striping. BLM will allow minor amounts of solid plant mix material to be buried within the highway easement as part of normal highway construction maintenance operations. In order to achieve these goals, the following procedures should be followed:

- A. The WYDOT will notify the BLM Field Offices of any BLM facilities impacted by the WYDOT maintenance activities. BLM facilities would include such items as fences, cattle guards, and signing.
- B. The BLM will assist the WYDOT maintenance forces with maintenance related activities such as equipment parking, materials storage, emergency communication systems, material sources, material disposal and road drainage alterations.
- C. When maintenance activities are to occur outside the right-of-way easement, WYDOT will notify the BLM Field Office.

XXI. ADMINISTRATION

- A. This agreement in no way restricts the parties from participating with other public and private agencies, organizations, and individuals or from accepting contributions and gifts for operation and maintenance activities.
- B. Nothing in this agreement shall be construed as obligating any of the participants to expend, or as involving these entities in any obligation for future payment of money in excess of appropriations authorized by law and administratively allocated for these purposes, except as specifically set forth herein.
- C. The Federal Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S. C. 2671-80). The State of Wyoming's liability shall be governed by WY State Stat.1-39-101.
- D. No member of, or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.
- E. This MOU may be amended as necessary by the mutual consent of all parties by the issuance of a written modification, signed and dated by all parties.
- F. The WYDOT, FHWA, and the BLM will meet annually on a mutually agreed date to review and evaluate current conditions and trends concerning the intent and functioning of this Memorandum of Understanding. This meeting may also serve as a coordination session to determine immediate and future programming of cooperative actions requiring coinciding appropriations.
- G. This MOU shall become effective upon signature by all participants and shall be in effect for five years from the date of signature.
- H. The participants shall comply with all Federal Statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, handicap, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex.
- I. Each and every provision herein is subject to the applicable laws and regulations of Wyoming, the laws of the United States, the regulations of the Secretary of the Interior, and the regulations of the Secretary of Transportation.
- J. Each agency will fund its own activities while assisting the other agencies. However, if assistance involves a substantial commitment of personnel or other resources, the agencies may enter into a separate agreement.
- K. The Memorandum of Understanding WY920-02-09-108, dated September 16, 2002, is replaced by this Memorandum of Understanding.

L. If disagreements emerge which cannot be resolved, they shall be elevated as follows:

| BLM | WYDOT | FHWA |
|--|--|--|
| Field Manager | Resident Engineer/District Constr. Engineer | Operations Engineer |
| Field Manager | District Engineer | Operations Engineer or Right-of-Way Manager |
| Deputy State Director Division of Lands & Minerals | Engineering & Planning Engineer | Assistant Division Administrator |
| State Director | Director/Chief Engineer | Division Administrator |

XXII. APPROVALS

FOR THE STATE OF WYOMING

By: *Delbert A. McOmie*
Delbert A. McOmie
Chief Engineer
Wyoming Department of Transportation

8-8-07
Date

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

By: *for Robert A. Bennett*
Robert A. Bennett
State Director
Bureau of Land Management, Wyoming

8.24.07
Date

FOR THE UNITED STATES DEPARTMENT OF TRANSPORTATION

By: *for Norman E. Sneed*
Philip E. Miller
Division of Administration
Federal Highway Administration
Wyoming Division

8/13/07
Date

Appendix 1
Standard Conditions of Approval

Additionally, all appropriations are subject to the 10 Standard Conditions of Appropriation agreed to in November, 1982, by the BLM and FHWA, to implement the BLM/FHWA Interagency Agreement AA 851-IA2-40.

The 10 Standard Conditions are as follows:

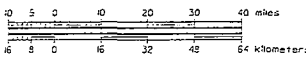
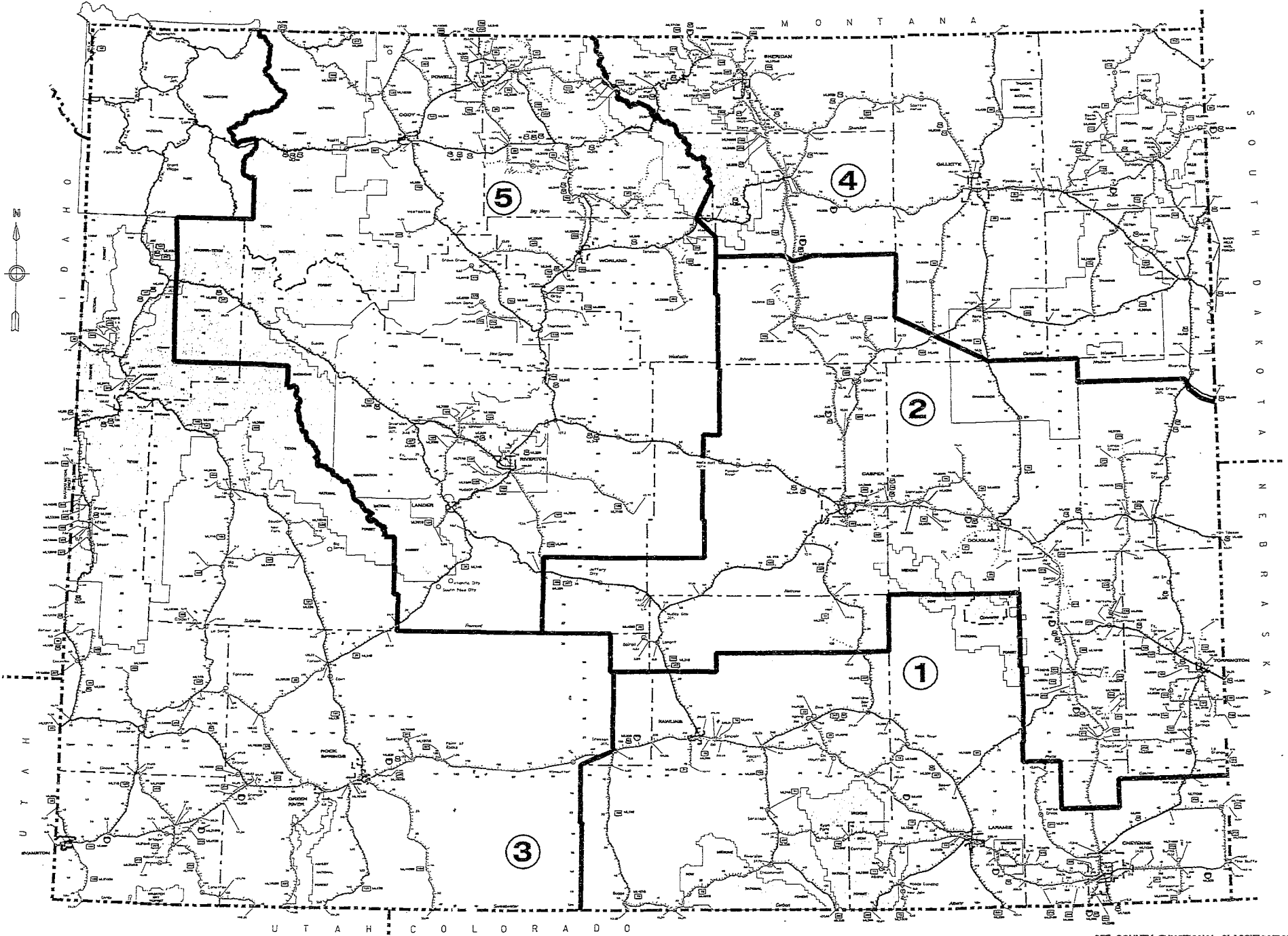
10 STANDARD CONDITIONS OF APPROPRIATION
PURSUANT TO
BLM/FHWA INTERAGENCY AGREEMENT
AA 851-IA2-40

1. Outstanding valid claims, if any, existing on the date of this grant, and the Grantee shall obtain such permission as may be necessary on account of any such claims.
2. Construction of the highway facility is to be undertaken by the Grantee in compliance with the Act entitled "An Act for the Preservation of American Antiquities" approved June 8, 1906, (34 Stat. 225, 16 USC 432-433), and State laws where applicable.
3. The easement herein granted shall terminate 10 years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period.
4. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance of a highway in accordance with the approved plans described in the following condition numbered (5) and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the BLM to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23, of the USC and of the FHWA regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case, the FHWA shall be consulted prior to the exercise of such rights: and Provided, further that nothing herein shall preclude the BLM from locating DOI information signs on the portions of the appropriation outside of construction clearing limits.
5. The design and construction of highway projects situated on this right-of-way will be in accord with the provisions of Title 23, U.S.C. Highways, 23 CFR, and Amendments; the provisions of the Federal-aid Highway Program Manual issued by the FHWA; the construction specifications and approved plans of the WYDOT as approved by the FHWA for use on Federal-aid projects; and the following terms and conditions specified by the BLM in an attachment hereto, marked Exhibit B and by this reference made part hereof.
6. Consistent with highway safety standards, the Grantee shall: (a) Protect and preserve soil and vegetative cover and scenic and aesthetic values on the appropriation outside of construction limits, and (b) Provide for the prevention and control of soil erosion within the appropriation and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species, according to the construction specifications in Condition No. (5) above, all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall maintain all terracing, waterbars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.

7. The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depot or disposal areas within the appropriation unless shown on approved construction plans without first obtaining approval from the Department of Interior - Bureau of Land Management.
8. The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety.
9. The Grantee shall maintain the right-of-way clearing by means of chemicals only after specific written approval has been given by the Department after consultation with the BLM. Application for such approval must be in writing and specify the time, methods, chemicals, and the exact portion of the right-of-way to be chemically treated.
10. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the Grantee shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and land shall immediately revert to the full control of the Secretary of the Department of the Interior or his assigns.

** These Standard Conditions are made a part of all appropriation deeds. Condition 5 provides for special conditions specific to a particular project. These are to be discussed with WYDOT prior to inclusion in the "Letter of Consent". The initial discussions are to take place between the BLM Field manager and the WYDOT Resident Engineer, with documentation provided by BLM to WYDOT.

WYOMING ON - SYSTEM AND PUBLIC ROAD FUNCTIONAL CLASSIFICATION MAP



LEGEND

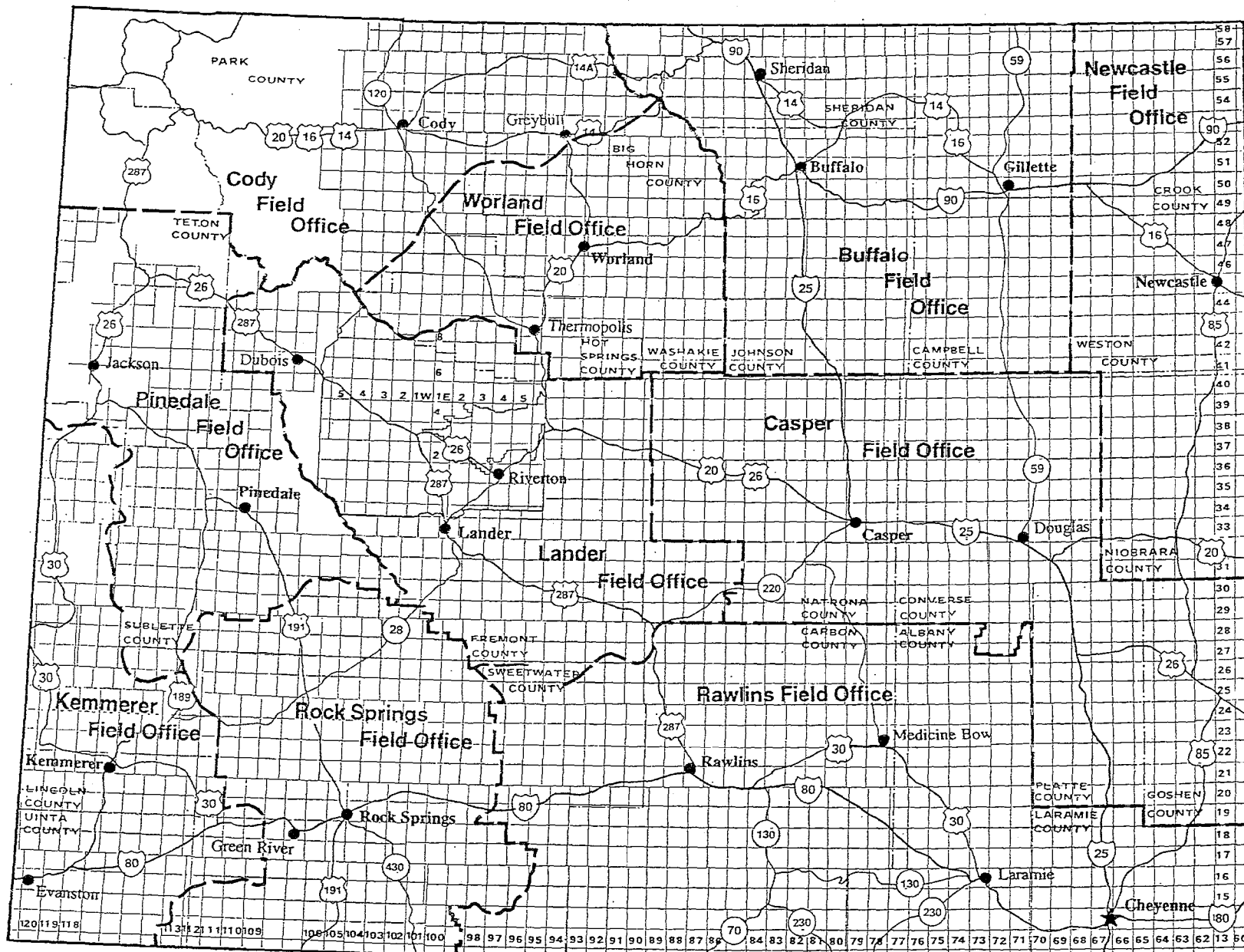
- PRINCIPAL ARTERIALS
- INTERSTATE
- OTHER
- MINOR ARTERIAL ROADS
- MAJOR COLLECTOR ROADS
- MINOR COLLECTOR ROADS
- LOCAL ROADS
- URBAN BOUNDARIES
- M.L. ROUTE IDENTIFICATION
- DISTRICT BOUNDARIES
- DISTRICT NUMBERS

SEE COUNTY FUNCTIONAL CLASSIFICATION MAPS
AND CITY FUNCTIONAL CLASSIFICATION MAPS
FOR MORE DETAIL

This map is not intended for official
reference. It should be used as a
guide only.
For more complete information see the
UNIFORM MAPS AND CHARTS BOOK
REFERENCE NUMBER BOOK OF STANDARD PLANS
200

WYOMING

Bureau of Land Management Administrative Boundaries



BLM Offices in Wyoming



U.S. Department of the Interior

Bureau of Land Management

Wyoming State Office

P.O. Box 1828
Cheyenne, WY 82003-1828
5353 Yellowstone Road
Cheyenne, WY 82009-4178

Telephone: (307) 775-6256
Fax: (307) 775-6129
Office Hours: 7:45 – 4:30
Public Room Hours: 9:00 – 4:00
Website: www.wy.blm.gov

**Buffalo
Field Office**
1425 Fort Street
Buffalo, WY
82834-2436
(307) 684-1100
Fax: (307) 684-1122

**Kemmerer
Field Office**
312 Highway 189 N.
Kemmerer, WY
83101-9711
(307) 828-4500
Fax: (307) 828-4539

**Pinedale
Field Office**
432 E. Mill Street
P.O. Box 768
Pinedale, WY
82941-0768
(307) 367-5300
Fax: (307) 367-5329

**Rock Springs
Field Office**
280 Highway 191 N.
Rock Springs, WY
82901-3447
(307) 352-0256
Fax: (307) 352-0329

**Casper
Field Office**
2987 Prospector Drive
Casper, WY
82604-2968
(307) 261-7600
Fax: (307) 261-7587

**Lander
Field Office**
1335 Main
P.O. Box 589
Lander, WY
82520-0589
(307) 332-8400
Fax: (307) 332-8447

**Rawlins
Field Office**
1300 N. Third
P.O. Box 2407
Rawlins, WY
82301-2407
(307) 328-4200
or (307) 328-4256
Fax: (307) 328-4224

**Worland
Field Office**
101 South 23rd
P.O. Box 119
Worland, WY
82401-0119
(307) 347-5100
Fax: (307) 347-5228

**Cody
Field Office**
1002 Blackburn
Cody, WY 82414-8464
(307) 578-5900
Fax: (307) 578-5939

**Newcastle
Field Office**
1101 Washington Blvd.
Newcastle, WY
82701-2968
(307) 746-6600
Fax: (307) 746-6639

National Historic Trail
Interpretive Center
1501 North Poplar Street
Casper, WY 82601
307-261-7700

**WYOMING STATE
Reservoir Management Group**
2987 Prospector Drive
Casper, WY 82604-2968
(307) 261-7600
Fax: (307) 261-7539



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828



In Reply Refer To:
2800 (921Gertsch) I

November 29, 2007

Instruction Memorandum No. WY-2007-038, Change 1
Expires 09/30/2009

To: Field Managers
Attn: Realty Staff

From: State Director

Subject: Memorandum of Understanding on Title 23, Federal-aid Highway Rights-of-Way

We recently finalized Memorandum of Understanding (MOU) WY920-08-07-192, which replaced an earlier version of the MOU, WY920-02-09-108, between the Wyoming Department of Transportation, the Federal Highway Administration, and BLM. In accordance with Section XXI.E. of this MOU, the document may be amended by the mutual consent of all parties through the issuance of a written modification, signed and dated by all parties.

This process was utilized to amend BLM MOU WY920-08-07-192, to include Appendix 2, Management of Cultural Resources on Federal-aid Highway Projects, copy attached.

If you have questions concerning Appendix 2, please contact Ranel Capron at 307-775-6108, or Tamara Gertsch at 307-775-6115.

1 Attachment:

1 – Appendix 2 package to MOU WY920-02-08-192 (7 pp.)

Distribution

Director (350), Room 1000, LS
CF

1 (w/atch)
2 (2 /atch)

cc:

FO, Realty Leads w/atch.

922 – Geologist w/atch.

930 – Archeologist w/atch.

930 – Wildlife Biologist (Jeff Carroll) w/atch.

930 – Wildlife Biologist (Dave Robert) w/atch.

Delbert A. OcOmie, Wyoming Department of Transportation, 5300 Bishop Boulevard, Cheyenne, WY 82009 w/atch.

Tony Warburton, Wyoming department of Transportation , 5300 Bishop Boulevard, Cheyenne, WY 82009 w.atch.

√Julie Francis, Wyoming Department of Transportation, 5300 Bishop Boulevard, Cheyenne, WY 82009 w/atch.

Barb Chancellor, Wyoming Department of Transportation, 5300 Bishop Boulevard, Cheyenne, WY 82009 w/atch.

Philip E. Miller, Federal Highway Administration, 2617 East Lincolnway, Suite D, Cheyenne, WY 82001-5671 w/atch.

Norman Snead, Division of Administration, Federal Highway Administration, 2617 East Lincolnway, Suite D, Cheyenne, WY 82001-5671 w/atch.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. box 1828

Cheyenne, Wyoming 82003-1828



In Reply Refer To:
2800 (921Gertsch)

OCT 31 2007

Mr. Delbert A. McOmie
Chief Engineer
Wyoming Department of Transportation
5300 Bishop Blvd.
Cheyenne, WY 82009

Mr. Philip E. Miller
Division of Administration
Federal Highway Administration
2617 E. Lincolnway, Suite D
Cheyenne, WY 82001-5671

Re: Amendment to BLM
MOU WY 920-08-07-192

Gentlemen:

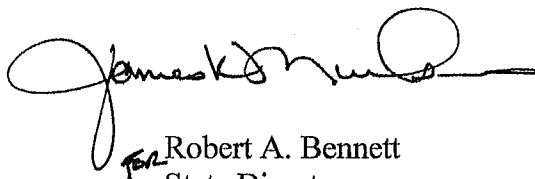
Recently your offices worked with BLM and the State Historical Preservation Office to develop guidance on the working relationship and process for completing cultural work under BLM MOU WY 920-08-07-192. As you know, this MOU describes the process for issuing rights-of-way for Federal-aid highway purposes to The Federal Highway Administration under Title 23 U.S.C.

Through this written amendment we are proposing to include this cultural guidance as Appendix 2, (Management of Cultural Resources on Federal-aid Highway Projects), to BLM MOU WY 920-08-07-192. In accordance with Section XXII.E. of BLM MOU WY 920-08-07-192, the MOU may be amended by the mutual consent of all parties through the issuance of a written modification, signed and dated by all parties.

We request your concurrence to amend BLM MOU WY 920-08-07-192, by adding Appendix 2, (Management of Cultural Resources on Federal-aid Highway Projects). Please indicate your concurrence by signing below and dating and returning to Tamara Gertsch at BLM (921), 5353 Yellowstone Road, Cheyenne, WY 82009. A completely executed copy will be returned for your records.

If you have questions, please contact Tamara at 307-775-6115.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bennett". The signature is fluid and cursive, with a large initial "R" and "B".

for Robert A. Bennett
State Director

1 Attachment

1 - Appendix 2

Delbert A. McOmie

Delbert A. McOmie
Chief Engineer
Wyoming Department of Transportation

11-5-07

Date

for *Philip E. Miller*

Philip E. Miller
Division of Administration
Federal Highway Administration

11/7/07

Date

for *Robert A. Bennett*

Robert A. Bennett
State Director
Bureau of Land Management

10/31/07

Date

Appendix 2

Management of Cultural Resources on Federal-aid Highway Projects

1. Background

a. The Federal Highway Administration (FHWA) is responsible for taking into account the effect of Federal-aid Highway projects on cultural resources under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 f) (NHPA). When issuing its consent for appropriation of public lands for Federal-aid Highway projects, the Bureau of Land Management (BLM) is also required to comply with Section 106 of the NHPA.

b. In addition, BLM ensures that other Federal statutes pertaining to cultural resources on Federal-aid Highway projects on the public lands are met. To avoid unnecessary duplication of effort, the FHWA will be the lead Federal Agency responsible for compliance with Section 106 and ensure that the land manager's additional responsibilities for cultural resources on BLM administered lands are met in the planning and implementation of Federal-aid Highway projects.

c. Remaining in full force and effect is a letter, dated August 7, 2003, issued to the Wyoming State Historic Preservation Officer, which stated:

“Pursuant to regulations at 36 CFR, Part 800.2 (2), the BLM and the FHWA with this letter are providing notification that FHWA Wyoming division shall serve as the lead Federal agency to all Federal-aid Highway projects involving BLM-administered lands in Wyoming. Furthermore, pursuant to 36 CFR, Part 800.2 (3) FHWA has designated Wyoming Department of Transportation (WYDOT) to prepare all information, analysis, and recommendations required for compliance with Section 106 of the National Historic Preservation Act (NHPA)”

2. Purpose and Objective

The purpose of this document is to establish a cooperative working relationship between the FHWA and the BLM for assuring compliance with Federal statutes and regulations and agency policies regarding the management of cultural resources on Federal-aid Highway projects in Wyoming pursuant to Title 23 U.S.C.

3. Statement of Work

a. Procedures: The procedures outlined herein will be followed by the FHWA and BLM for specific Title 23 Federal-aid Highway appropriation requests from FHWA. These procedures apply to all phases of planning and implementation of Federal-aid Highways projects on BLM administered lands or BLM administered lands appropriated by FHWA under Title 23 U.S.C.

b. Areas of Cooperation

(1) The FHWA agrees to:

(a) Complete all phases of Section 106 compliance related to Federal-aid Highway projects on BLM administered lands, or lands appropriated through BLM consent.

(b) Early in the planning of Federal-aid Highway projects, consult with the appropriate BLM field office(s) to insure that proposed projects on the public lands are consistent with BLM land use plans and obtain the following from BLM:

Appendix 2

Management of Cultural Resources on Federal-aid Highway Projects

- i. Existing cultural resource data pertaining to proposed project areas on BLM administered land or land appropriated through BLM consent;
- ii. BLM recommendations regarding the evaluation and treatment of known cultural resources within proposed project areas on BLM administered land or land appropriated through BLM consent; and
- iii. BLM recommendations regarding what should be done to further identify cultural resources within proposed project areas on BLM land or land appropriated through BLM consent.

(c) As they are completed, submit copies of all cultural resource inventory, testing, and mitigation reports; copies of correspondence pertaining to Section 106 compliance; proof of curation; and, when appropriate, evidence of consultation with Native Americans to the appropriate BLM Field Office(s) for inclusion in BLM's records.

(d) Insure that responsibilities of the BLM, under the Archaeological Resources Protection Act, are met for all archaeological resources located on BLM administered lands (or BLM administered lands appropriated by FHWA under Title 23) involved in the planning and implementation of Federal-aid Highway projects. To meet these responsibilities FHWA shall insure the following:

- i. That archaeological investigations are limited to inventory, testing, and data recovery necessary to complete Federal Section 106 compliance responsibilities related to the planning and implementation of Federal-aid Highway projects;
- ii. That all cultural resource inventory, site documentation, and reporting standards will be in accordance with the Secretary of Interior's Standards and Guidelines (48 CFR 44720-44737, September 29, 1983) and pertinent, current Wyoming SHPO standards;
- iii. That archaeological investigations are conducted by firms and/or individuals who meet the qualifications at 43 CFR 7.8(a)(1) and that approval of archaeological investigations are subject to the considerations for a cultural resource use permit in BLM Manual 8150. Firms and/or individuals authorized by FHWA to conduct archaeological investigations on BLM administered lands (or lands appropriated by FHWA through BLM consent) will be required to hold the appropriate BLM cultural resource use permit;
- iv. That all collected materials resulting from archaeological work conducted on BLM administered lands (or lands appropriated by FHWA through BLM consent) are deposited, as BLM property, with the University of Wyoming Archaeological Repository within 60 days following FHWA approval of the final report of archaeological investigations. Proof of curation shall be maintained in FHWA records with copies submitted to the appropriate BLM field office(s).

Appendix 2

Management of Cultural Resources on Federal-aid Highway Projects

v. That Indian tribes are notified regarding cultural resource work proposed on Federal-aid Highway projects which could harm or destroy sites having religious or cultural importance to the tribes by following the regulations at 43CFR 7.7; and

vi. That archaeological resource information acquired from BLM administered lands (or lands appropriated by FHWA through BLM consent) is held confidential per 43 CFR 7.18.

(e) Insure that oversight and administration is conducted by a specialist meeting the qualifications in 36 CFR 61, Professional Qualification Standards (with BLM approval, the qualifications in BLM Manual 8150.12 B.2.b may be used). This specialist is currently Dr. Julie Francis, Archaeologist. Successors to this position shall be identified within 60 days of the selection, through amendment to this document.

(f) Insure that Federal agency responsibilities related to implementation of the Native American Graves Protection and Repatriation Act (and its implementing regulations at 43 CFR 10) are fulfilled, on all Federal-aid Highway projects. Decisions regarding the disposition of human remains and other cultural items from lands administered by BLM or land appropriated through BLM consent shall be made by the BLM.

(g) Respond to BLM monitoring of Federal-aid Highway projects.

(h) Prepare an annual report for the BLM State Office listing activities under this document.

(2) The BLM agrees to:

(a) Review proposed Federal-aid Highway projects to insure that proposals are consistent with existing BLM land use plans regarding the management of cultural resources.

(b) Supply FHWA with existing cultural resource data, give recommendations regarding the evaluation and treatment of known cultural resources, and recommend additional measures needed to identify cultural resources on proposed Federal-aid Highway project areas.

(c) When requested, instruct FHWA personnel charged with implementing this document regarding the responsibilities of land management agencies under the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. BLM cultural resource staff will be made available for this purpose.

(d) Monitor operations under this document.

(e) Issue consent for appropriation to FHWA for Federal-aid Highway projects when a statement is presented in the appropriation request that the procedures in this document are being implemented.

Appendix 2

Management of Cultural Resources on Federal-aid Highway Projects

4. Terms

This document shall become effective upon signature by all parties and shall remain in effect until September 30, 2012. This document may be terminated within 30 days by either party upon written notice to the other party of such intention. The parties agree to discuss issues prior to termination.

5. Administration

a. Compliance, Review and Reports: Monitoring of Federal-aid Highway projects for compliance will be conducted in the following manner:

(1) BLM Field Offices may annually monitor a sample of Federal-aid Highway projects in their jurisdiction. Monitoring may include field visits during inventory, testing, or mitigation; review of reports; review of compliance documentation; and field inspection to verify compliance with proposed mitigation and protection measures. BLM reviews will be confined to operations on BLM administered lands (or lands appropriated under BLM consent) and to cultural resources located wholly or in part on BLM administered land (or lands appropriated under BLM consent). If the BLM Field Office chooses to monitor Federal-aid Highway projects, they will prepare documentation on the monitoring activities for the BLM State Office. This documentation will be due to the BLM State Office by November 30 of each year. Using the reports from the Field Offices, the BLM State Office will prepare a report of statewide monitoring activities conducted under this document. BLM will transmit this report to FHWA by the end of each calendar year.

(2) BLM and FHWA staff from the Cheyenne Offices will meet annually between January and June to review operations under the terms of this document. The performance of both parties will be discussed through joint review of the annual monitoring report prepared by BLM and the annual report prepared by FHWA. Both parties will work to resolve issues identified in the annual review.

b. Each provision contained herein is subject to the applicable laws and regulations of Wyoming, the laws of the United States, the regulations of the Department of the Interior, and the regulations of the Secretary of Transportation.

c. Nothing herein will be construed as limiting or affecting in anyway the authority or legal responsibility of the Division Administrator, FHWA, or the State Director, BLM, or as binding on the FHWA or BLM to perform beyond the respective authority of each, or to require any party 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 the Division Administrator and the State Director for their respective responsibilities. Funds or property cannot be transferred between agencies under this document. Further, nothing herein will be construed to limit BLM authority or legal responsibility for the management of cultural resources under its jurisdiction for purposes other than those described in this document.

d. Amendments to this document and written guidelines or procedures attached hereto may be proposed by either party and shall become effective upon written approval by both parties.