

Memorandum of Agreement
Implementation
Part 370 Departmental Personnel Program
Chapter 430: performance Management System

In accordance with those procedures set forth in Article 43 of the Master Labor Agreement, this Memorandum of Agreement (MOA) constitutes an agreement between the National Federation of Federal Employees (NFFE) Local 2152 and the Bureau of Land Management – California State Office (BLM-CASO), hereinafter collectively referred to as the Parties.

By E-mail dated September 17, 2004, NFFE Local 2152 was notified of BLM-CASO intent to change the current 2-Level Performance management System to a 5-Level Management System identified in 370 DM 430 dated 10/04/04. The change notified the Union of a 5-Level performance rating system of Exceptional, Superior, fully successful, Minimally Successful and Unsatisfactory, including Benchmark Employee Performance Standards for non-supervisors.

In response to the avoe cited Employer's notification of change in conditions of employment, NFFE Local 2152 (the Union) submitted 27 proposals and amendments to the Master Labor Agreement between the parties. In full resolution to the Union's submission of proposals and MLA amendments, the parties agree to the following to address the implementation of U.S. Department of the Interior, Performance Management System, 370 DM 430 as it affects NFFE Local 2152 bargaining unit employees.

1) Elements and Performance Standards for the 5-Level Performance Systm will be developed and applied in accordance with MLA, Article 9, Sections 9.2 & 9.4.

Therefore, it is understood by the parties to this agreement that:

- a. critical elements will be related to the work to be measured;
- b. pursuant to 5 U.S.C. 4302(b)(1), the Employer must establish performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee under the 5-Level Performance System; and
- c. supervisors should refer to the Performance Appraisal Handbook, Section 1 when developing Performance Plan elements and standards.

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2) All aspects of standards will be communicated to affected employees at the time the employees receive their elements and standards. The supervisor will define the level of performance at each level of performance, such as superior and exceptional. Performance standards must be written in such a way that they may be exceeded. If requested, the supervisor will explain the differences between these performance levels and provide examples on how to achieve these levels of performance.

3) The parties agree to amend MLA Article 9 to address the revised DOI, 370 DM 430 dated November 2004. It is agreed that only those changed words or phrasing identified in bold in the attached amended Article 9 are agreed to be changed from the June 17, 2002 version of the MLA. It is also understood that in accordance with MLA Section 44.1(a) the amended Article 9 language will be submitted to DOI for approval/disapproval. All other actions of this MOA will be effective on the date of signing of the MOA. It is understood by the parties to the MOA that through this agreement no other Article/Section of the MLA will be amended. (See amended Article 9 page 7 of this agreement).

4) The Union may designate one Union representative whose task is to review elements or standards which have been incorporated into a Performance Plan and it has been alleged by the incumbent bargaining unit employee for the affected position, an element or standard in their Performance plan is inconsistent with governing law, rule or regulations.

The employee will be granted 30 minutes Official Time to prepare the written allegation of inconsistency. The designed Union Representative will be granted 30 minutes for the review. Official Time for discussing with a supervisor "a recommendation" will be consistent with the length of time the Supervisor participates in the discussion. The employees and Union representative will be released on Official Time for this review process in accordance with MLA Article 40.

5) In the application of standards to individual employees, the supervisor will take into account mitigating factors such as availability of resource, lack of access to equipment or technology, lack of training or frequent, authorized interruptions of normal work duties.

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Union Int.

6) Officers and stewards of the Union will be rated solely on the basis of how well they perform the duties and responsibilities of their officially assigned positions consistent with MLA Article 9, Section 9.6(c), government regulations and case law of the Federal Labor Relations Authority.

This is understood by the parties to this agreement to mean: the time performing collateral duties not reference in the elements and standards of an Employee's performance plan will not be considered as a negative factor when evaluating any critical element. For example, if a Union representative has spent thirty (3) percent of a work period on official time, annual leave, or LWOP performing Union duties, this fact will be considered in the application of expected performance standards. Additionally, if an employee is performing collateral duties of Union representational functions that result in frequent interruptions of normal work, such factor will be taken into account when evaluating the employee. Based on frequent interruptions do to the nature of these "collateral duties" (e.g. union, eeo, etc.). Supervisors may be required to evaluate these employees in either partial day, whole day and/or consecutive day increments.

7) Elements and standards will, to the maximum extent feasible, permit the Supervisor to evaluate accurately the job performance of bargaining unit employees on a basis of objective criteria.

8) In accordance with applicable law and regulation, Supervisor's (Rating Officials) will encourage their employees to participate individually in identifying their performance elements and establishing performance standards through informal discussion both at the beginning or at any time during the appraisal period when changes in elements and/or standards are needed. However, the responsibility for determining the elements and establishing the standard will remain with the Supervisor.

9) Union Proposal 17 withdrawn as the intent of this proposal is covered by Master Labor Agreement Article 9, Section 9.2.

10) Union Proposal 18 is withdrawn as covered by the Labor Management Council agreement dates June 26, 2001.

11) Required or predetermined distributions of performance rating are prohibited.

12) When applicable, for temporary firefighters who are hired for more than 60 and do not exceed 120 days, management will, for reemployment purposes, provide the employee a provisional appraisal or termination of employment.

This provisional appraisal is not a summary record of performance under 370 DM 430 and is only for indicating the employee's level of work performance, (i.e. Exceptional, Superior, Fully Successful, Minimally Successful or Unsatisfactory) for a previous period of employment when being considered for reemployment. The rating provided will be based on the supervisor's determination of the employee's work performance and is not grievable.

13) Union proposal 21 is withdrawn as covered by Master Labor Agreement Article 9, Section 9.5.

14) Employees will not be held accountable for their elements and standards until they are received. All changes in working procedures must be communicated to employees before they can be charged with errors.

15) Due to the change in the performance system, the parties recognize the need for employees to receive sufficient training to gain an understanding of the purpose, process and procedures associated with the new 5-Level Non-SES performance system. At a minimum, the training will discuss how to develop critical element, the rating process and its relation to awards and Reduction in Force. The employees will be provided necessary information on the new 5-Level Performance Management System prior to their being placed on a performance plan under this performance management system. This information, at a minimum will include access to an electronic copy of 370 DM 430 and the Performance Appraisal Handbook, A Guide for Managers/Supervisors and Employees.

16) In accordance with 370 DM 430(7)(c) an employee may: A) submit written comment to their overall rating of record, the element ratings and/or the narrative comments if they desire; or B) File a grievance under the parties Negotiated Grievance Procedure (MLA Article 37), but not both:

The parties to this agreement understand the following applies to MLA Article 37.

Any employee who is dissatisfied with an aspect of the “employee performance program procedures” such as: a periodic review; annual rating; application of elements or standard; or, award (amount of or lack there of), may file a grievance in accordance with MLA Article 37. Also, in accord with the Negotiated Grievance Procedures: 1) an employee does not forfeit the opportunity to grieve their overall rating of record provided at the end of the appraisal cycle by signing a periodic review that may have affected that appraisal; and 2) management’s identification of critical elements and establishment of performance standards will not be a subject of arbitral review.

At the time an employee is issued their written Rating of Record/Summary Rating for the rating cycle, the employee will be informed that in accordance with 370 DM 430(7)(c) they have the right to submit written comments (if in agreement) or file a grievance (if not in agreement) with their Rating of Record by not both.

17) The process of monitoring performance is on going. Therefore, a supervisor should discuss with an employee their ongoing performance on an as-needed basis. Special emphasis should be given to those causes wherein the employee’s performance indicates a decrease in overall performance.

18) Employees will not be required to sign a blank DOI 3100 or be required to predate their performance plan.

19) The Employer and the Union agree that the performance awards program applicable to all bargaining unit employees shall be governed by the provisions of 370 DM 430, dated November 4, 2004, MLA, Article 18.

It is understood by the parties to this agreement that in accordance with the above the following applies:

- a. The Employer will determine how much of its budget will be allocated to employee performance awards, and how the budgeted amount will be allocated among the State Office, California Desert District, District Office and Field Offices.
- b. Awards are subject to Management approval. If granted, an award should be made as promptly as practicable.
- c. Performance awards will be granted in accordance with appropriate laws, rules, regulations, and Agency guidance, in a fair and objective manner based on employee achievement, so as to encourage all employees to share actively in improving BLM operations.
- d. The Employer agrees to consider all Employees who receive a performance rating above the Fully Successful level for a cash award.
- e. The Employer agrees to effect all cash awards as soon as practicable after the completion of all administrative and review requirements.

20) The Employer and the Union agree that Reduction-In-Force procedures for all bargaining unit employers shall be governed by the provisions of 370 DM 430, as in effect on November 4, 2004, MLA Article 35 and all appropriate law, rule and regulation such as 5 CFR 351.

It's understood by the parties to this agreement that in accordance with the above the following applies:

- a. Performance credit for Reduction In Force under 370 DM 430 effective November 4, 2004 will be provided to each employee upon completion of the 2005 rating cycle and for each following rating cycle as follows:

Exceptional – 20 years
Superior – 16 years
Fully Successful – 12 years
Minimally Successful – 0 years
Unsuccessful – 0 years

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Union Int.

b. In accordance with 5 CFR 351.504, for bargaining unit employees who received a summary performance rating under 370 DM 430 effective January 1, 1996, a performance credit for Reduction In force of 12 years performance credit for each summary performance rating of achieved; and 0 years for each summary performance rating of not-achieved will be provided.

ARTICLE 9

EMPLOYEE PERFORAMNCE PLAN REVIEW

SECTION 9.1 – GENERAL

- a. To maintain a quality workforce and encourage Employees to strive for top performance the Parties recognize the need and obligation to evaluate the performance of job related duties of all Employees in accordance with applicable law, regulation, and DOI policy. The performance plan is linked through performance indicators to the Employee's principle duties.
- b. If during the rating period the Employee is assigned duties outside their assigned Position Description (PD) and their performance of these duties is unacceptable Section 9.7 of this article will apply.

SECTION 9.2 – ESTABLISHING PERFORAMNCE ELEMENTS

- a. In accordance with 5 CFR 430, all performance elements will be consistent with the duties and responsibilities contained in the Employee's PD, and therefore, will be equitable, understandable, and permit accurate evaluation and assessment of job performance by appropriate official(s). The establishment of performance elements is a collaborative effort by the Employee and the rating official with final determination being the responsibility of the Employer.
- b. Prior to the end of the established appraisal period, the Employer will provide the Employee a reasonable opportunity to provide input to their supervisor regarding performance standards and performance elements. Input by the Employee regarding the standards and elements shall be given full and thorough consideration by their Supervisor.
- c. If the Employee's position classification, duties or responsibilities are changed and this change requires a change in the Employee's performance plan the following will apply:
 - 1) the change in the Employee's performance plan will be communicated to the Employee as soon as practical; and
 - 2) Section 9.3(b) will apply.

d. If there is a position classification change, or a change in the Employee's principle duties and responsibilities during the rating period and it is determined by the Employee's Supervisor that a new or revised individual training plan must be established, the Employee will be allowed to provide input to this process which will be given full and thorough consideration. The Employee's Supervisor will strive to implement any new or revised training plan as soon as reasonably possible after the change.

e. If the Employee believes a performance element is not consistent with his/her Position Description the Employee may request a modification, or file a grievance in accordance with the Negotiated Grievance Procedure (Article 37).

SECTION 9.3 – EVALUATION FACTORS

a. The rating official will be an individual with administrative authority, and is knowledgeable of the Employee's work performance; evaluations should consider factors beyond the Employee's control that may inhibit meeting performance elements. The rating official may solicit comments from other supervisors or Employees regarding specific work performance for special projects undertaken in conjunction with other organization units or team offices, however, confidentiality concerning the anticipated rating level will be maintained.

b. When an Employee has been given new duties which result in a change to the Employee's current performance plan, the training and experience of the Employee will be considered. The affected Employee and their Supervisor will jointly review the change to the Employee's performance plan. If as a result of the additional duties the Employee has concerns on their ability to meet any new performance requirements, the Employee may provide a written statement to their Supervisor identifying these concerns. The Supervisor will provide the Employee a receipted copy of these written concerns.

SECTION 9.4 – APPLICATION OF PERFORMANCE MANAGEMENT SYSTEM

A rating official will be consistent in the development and evaluation of performance elements for Employees having similar duties or responsibilities within the same office. It is the Employer's responsibility to administer an equitable performance appraisal system.

SECTION 9.5 – PERFORMANCE REVIEWS

a. Supervisor must conduct at least one (1) progress review with each Employee between the initial annual planning session and the end of the rating period. At the conclusion of each progress review, the rating official and Employee will initial and date Part B of the DI-3100 form. Such discussion will be confidential, and provide clear guidance to the Employee on the type of performance that will merit a rating of at least Fully Successful as each critical element of their performance plan. These reviews are not intended for disciplinary actions. With an acceptable rating, Part B of the DI-

3100 Form should be completed after the progress review. Any written feedback or recommended training can be noted on a separate sheet and attached to the employee performance appraisal plan.

b. Should the Employee's rating official change during the rating cycle, the leaving rating official will provide a close-out review of observed performance for the Employee covering the elapsed portion of the rating period the rater was responsible for. This close-out will be discussed with the Employee.

c. If the employee's performance is observed to be at the Minimally Successful rating level at anytime during the rating cycle, the supervisor should make efforts to help the employee raise their performance to a Fully Successful level.

SECTION 9.6 – PERFORAMNCE RATING

a. An Employee must work under a performance plan for a minimum of ninety (90) days prior to receiving a rating. At the discretion of the Employer the rating period will normally end on September 30th of each year. If this date is changed the Employer will appropriately negotiate this adjustment prior to implementation. The Rating Official will complete the summary rating within sixty (60) days of the close of the annual performance rating period.

b. The Rating Official is the individual responsible for working with an Employee to determine critical elements and identify performance indicators.

c. When determining performance rating, the Rating Officials must not penalize an Employee for their official Union activities, or other Employer approved activities, e.g. EEO, Special Emphasis, Combined Federal Campaign, or other Agency sponsored functions.

d. Each critical element will be rated as Exceptional, Superior, Fully Successful, Minimally Successful or Unsatisfactory. A Summary rating of Unsatisfactory indicates an Employee has not met the performance expectations for one or more critical elements.

e. Supervisors will give Employee fair and equitable consideration for awards commensurate with performance. When supervisor review Employee performance for possible recognition with an award, they will consider such related issues as the Employee's contribution towards increasing productivity, reducing costs, or simplifying procedures or operations. (5 CFR 430.204(B)(I)(iv))

f. In accordance with 5 CFR 335.104, no Employee shall receive a career ladder promotion unless his or her performance rating of record is Fully Successful or higher in all critical elements of his or her performance rating. In addition no Employee may receive a career ladder promotion who has a rating of Minimally Successful or

Unsatisfactory on any critical element that is also critical to performance at the next higher grade of the career ladder.

g. A performance rating of Fully Successful in all critical elements is necessary for an accretion of duties promotion.

h. A performance rating of Fully Successful in all critical elements will result in a Within Grade Increase (WGI) advancement to the next higher step, in accordance with law, rule and regulation.

In the event that an Employee does not receive a rating of a least Fully Successful in the latest rating of record or as a result of mid-term evaluation in which a performance improvement plan is in place, the Employer may delay or deny the WGI. After the improvement period the Employer may either advance the Employee to the next higher step or deny the increase in accordance with 5 CFR 531, Subpart D. A delay of a WGI is grievable under the Negotiated Grievance Procedure. A denial of a WGI is either grievable under the Negotiated Grievance Procedure or appeal able to the Merit System Protection Board, but not both.

i. In accordance with 5 CFR 430, Subpart B, an Employee who did not work under a performance plan for ninety (90) days during the rating period will have to the rating period extended to allow the Employee to work under a performance plan for ninety (90) days. The rating official will rate the Employee's performance at the end of the rating extension.

SECTION 9.7 – UNACCEPTABLE PERFORMANCE

Unacceptable performance means performance of an Employee that fails to meet established performance standards in one or more critical elements of the Employee's position (see 5 CFR 432.103(h)). It is understood by the parties to this agreement unacceptable performance for bargaining unit employee under 370 DM 430 dated November 4, 2004, is at the Unsatisfactory rating level.

Unacceptable performance may be due to a lack of knowledge or skills, a circumstance beyond an Employee's control, or to standards which were unrealistic. Appropriate action should be directed toward resolving the problem by providing training or developing realistic standards. Therefore, the supervisor when determining the type of action necessary to address an Employee's unacceptable performance must consider the following factors:

- 1) Employee's possible lack of knowledge, skills;
- 2) any circumstances contributing to the Employee's unacceptable performance;
- 3) possible unrealistic performance standards; or

- 4) physical or emotional problems which may have contributed to the Employee's unacceptable performance.

The Supervisor may also consider the training provided to the Employee, clarity of instruction given to the Employee concerning their workload and the clarity of the instructions from the Supervisor to the Employee defining the Employee's workload.

- a. After consideration of the above, at any time during the performance appraisal cycle the Employee's performance fails to meet established performance standards in one or more critical elements of the Employee's position, the Supervisor will initiate an opportunity period to give the Employee a reasonable amount of time to demonstrate acceptable performance. This means an amount of time commensurate with the duties of responsibilities of the Employee's position sufficient to allow the Employee to show whether he or she can perform acceptably to the standard(s). This amount of time should be discussed with the Employee, however, the final determination of the duration of the opportunity period will be made by the Supervisor. The Supervisor will document in writing the specific problem areas and describe how the Employee's performance must be improved in order to obtain an acceptable performance rating and the time provided for the improvement.

- b. The Supervisor will help the Employee improve performance during the opportunity period. This can include Supervisory instruction and counseling, personal demonstration, peer coaching, frequent reporting, special assignments, on-the-job training, etc.

- c. Supervisors will endeavor not to assign additional duties and responsibilities to an Employee who has been provided an opportunity to demonstrate acceptable performance during a performance improvement period. When circumstances require that a Supervisor assign additional duties and responsibilities to an Employee who is in a performance improvement period, the Supervisor will do so in consideration of the Employer's responsibility to provide the Employee's a reasonable opportunity to demonstrate acceptable performance in accordance with 5 CFR 432.104. If during a Performance Improvement Period the Employee is assigned: 1) additional duties and responsibilities not currently identified in the Employee's PD; or 2) additional workload, and this addition impacts the ability of the Employee to meet the condition of their performance improvement period, the supervisor will revise the conditions of the performance improvement period to meet these new conditions. The Supervisor will meet with the Employee to discuss the accomplishment of the additional duties, workload and the revision to the performance improvement period.

- d. At the end of the Employee's opportunity to demonstrate acceptable performance, if the Employee's performance improves to an acceptable level, he/she will be notified in writing that their performance was acceptable. A Form DI-3100 will be accomplished to indicate the Employee has reached an acceptable level of performance and a copy of this form will be provided to the Employee. The new Form DI-3100 will be provided to the Employee within thirty (30) days of the end of the Performance Improvement Period.

e. If the Employee's performance continues to be unacceptable in one or more critical elements after the opportunity to improve period has expired, the Supervisor may take one or more of the following actions in accordance with the appropriate regulation:

- (1) reassignment
- (2) denial of within grade increase;
- (3) reduction in grade; or
- (4) removal

If due to an Employee's unacceptable performance a Supervisor determines it necessary to take one of the above Management actions, the reasons for the action(s) will be provided to the Employee in writing. The Employee will be provided all rights as identified in Article 3, Employee Rights of this Agreement concerning the above actions; Weingarten Rights may apply.

f. The Employer will take all action in connection with an Employee's unacceptable performance in accordance with 5 CFR 432 and after consideration of Section 9.7 of this Article. The Supervisor will consider the potential for rehabilitation and the effectiveness and adequacy of lesser actions other than removal.

SECTION 9.8 – DOCUMENTATION

Copies of written documentation of discussions concerning work performance shall be provided to the Employee and shall be noted with both the Supervisor's and Employee's signature or initials. Supporting documentation will be made available to the Employee upon request. Other relevant information may be requested by a Union representative in accordance with 4 USC 7114(b)(4).

/S/ David Wheeler
For the Employer:

/S/ Michael Williams
For the Union:

Date: December 1, 2004

Date: December 1, 2004