

Memorandum of Understanding
between
The Department of the Interior, Bureau of Land Management,
Oregon/Washington State Office
and
The Confederated Tribes of the Colville Reservation
as a
Cooperating Agency

PREPARATION OF THE EASTERN WASHINGTON RESOURCE MANAGEMENT PLAN
AND ENVIRONMENTAL IMPACT STATEMENT (RMP/EIS) FOR THE SPOKANE
DISTRICT OFFICE

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management, Oregon/Washington State Office, (“BLM”) and the Confederated Tribes of the Colville Reservation (“Cooperator”, also abbreviated “CCT”) for the purpose of preparing the Eastern Washington Resource Management Plan and Environmental Impact Statement (RMP/EIS) for BLM managed lands within the Spokane District. The BLM is the lead federal agency for development of the Eastern Washington RMP/EIS. The BLM acknowledges that the Cooperator has special expertise applicable to the RMP/EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the CCT as a Cooperating Agency and the BLM (“the Parties”).

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality’s National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM’s planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

The BLM shall engage in government-to-government consultation with the CCT during all phases of the planning process, in accordance with applicable federal statutes, regulations, and other authorities, including the National Historic Preservation Act, the American Indian Religious Freedom Act, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and Executive Order 13007 (Indian Sacred Sites). The cooperating agency relationship established here supplements and is subordinate to the government-to-government relationship between the CCT and the BLM.

II. Purpose

The purposes of this MOU are:

- A. To designate the CCT as a Cooperating Agency in the RMP/EIS process.

- B. To provide a framework for cooperation and coordination between the BLM and the CCT (Cooperator) that will ensure successful completion of the RMP/EIS in a timely, efficient, and thorough manner.
- C. To recognize that the BLM is the lead agency with responsibility for the completion of the RMP/EIS and the Record of Decision (ROD).
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

- A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
- B. Regulations implementing the above authorities:
 - 1. Council on Environmental Quality regulations (40 CFR 1501 et seq.).
 - 2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.).
- C. The authorities of the Cooperator to enter into this MOU include, but are not limited to:
 - 1. The Constitution of the Confederated Tribes of the Colville Reservation, Article I.
 - 2. Act of July 1, 1892 (27 Stat 62).

IV. Roles and Responsibilities

- A. BLM Responsibilities:
 - 1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft RMP/Draft EIS, the Proposed RMP/Final EIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the RMP, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
 - 2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the RMP/EIS planning process, giving particular consideration

to those topics on which the Cooperator is acknowledged to possess jurisdiction or special expertise.

3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the RMP/EIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final RMP/EISs.
4. To the fullest extent possible, the BLM will hold sensitive archeological and cultural information solely for its own use and will not share it with other cooperating agencies, or make it available for public release, without the agreement of the Cooperator. BLM acknowledges that the Cooperator may choose to withhold such specific information unless the information can be protected from disclosure.

B. Cooperating Agency Responsibilities:

1. The CCT is a Cooperating Agency in this planning process and is recognized to have special expertise in the following areas:
 - a. Traditional land uses and practices of Native peoples.
 - b. Management of cultural sites.
 - c. Management and use of wildlife habitat.
2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the RMP/EIS, and the data and analyses supporting them, in which it has special expertise for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
 - a. Land tenure adjustments that may further planning goals and/or improve the ability of land managers to manage the respective lands and land uses they are responsible for.
 - b. The impact of management actions and planning options, including but not limited to commercial uses, recreational uses, mineral development, and the granting of rights of way, that may impact traditional land uses or impact modern uses of adjacent or nearby Tribal lands.
 - c. Forestry and range management practices, mineral development, permitted, or recreational uses that may impact cultural sites and uses, affect Tribal hunting and fishing rights, or affect adjacent or nearby Tribal lands.
 - d. Other such information relevant to planning issues or data needs.
3. Within the areas of their special expertise, the Cooperator may participate in any of the activities identified in Attachment A. The Cooperator understands that it is

joining the planning process after some of the activities identified in Attachment A have already been completed, including all or some of the items 1-5. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the RMP/EIS and supporting documents. (See also Section C.4.)

4. The Cooperator, as time and funding allow, may prepare and submit technical analyses and/or data sets. Such preparation and analyses will be at the Cooperator's expense, without reimbursement or cost share from BLM.
5. The Cooperator may withhold from the BLM, and from other cooperating agencies, specific archeological and cultural data unless BLM and other cooperating agencies can hold such information as sensitive data that will not be publicly disclosed. If the Cooperator chooses to supply such information to BLM or to other cooperating agencies, such sensitive information will be clearly identified so that it can be protected from disclosure.

C. Responsibilities of the Parties:

1. The parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements. When procedural or substantive disagreement may impede effective and timely completion of the Eastern Washington RMP/EIS, the Parties agree to use the facilitation and conciliation procedures described below (see Section V.G.).
2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMP/EIS milestones and timeframes for Cooperator's reviews and submissions.
3. Each Party agrees to fund its own expenses associated with the Eastern Washington RMP/EIS process.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

- B. Records Management. The BLM owns the rights to all data/records it produces as part of this agreement. All records (in all media, paper, and electronic) created or produced in part or in whole are to be maintained for the duration of the agreement, and made available upon request. The CCT shall not retain, use, sell, or disseminate copies of any data it receives from the BLM that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.
- C. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- D. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- E. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Eastern Washington RMP/EIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution. Any contractors used by the CCT will sign a confidentiality agreement not to release draft, pre-decisional, or otherwise restricted information, except when needed in furtherance of their assignment and only to another employee or contractor also working to review, provide materials, and/or provide information to further the CCT's work on this project.
- F. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMP/Draft EIS and the Proposed RMP/Final EIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies.
- G. Management of Information. The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by State or local "open government" or "sunshine in government" laws and ordinances. The Parties agree that the BLM at its discretion may withhold from cooperators those documents that would otherwise be available for public release under such laws.
- H. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute

Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the Eastern Washington RMP/EIS and ROD.

1. Facilitation. If the Parties deem necessary, they agree to retain an independent facilitator to foster clear and efficient communication.
 2. Joint Fact-Finding. Where the Parties disagree on matters of scientific information, data collection, or analysis, the Parties may mutually agree on an impartial third party to review the matter(s) in dispute and make a recommendation to resolve the matter.
- I. BLM may retain one or more contractors for public involvement, data collection, environmental analysis, and RMP/EIS preparation. The Cooperator may communicate with the contractors only through BLM's representative. The Cooperator acknowledges that BLM retains the exclusive responsibility to authorize modifications of any contract, and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

VI. Agency Representatives

Each Party will designate a representative and alternate representative to ensure coordination between the Cooperator and the BLM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

The representative for the CCT is:

Name: Joseph Somday
Title: Chairman, Natural Resource Committee, Colville Business Council
E-Mail: joseph.somday@colvilletribes.com
Telephone: 509-634-2214

The alternate representative for the CCT is:

Name: Dan Brudevold
Title: Land & Property Management Director
E-Mail: dan.brudevold@colvilletribes.com
Telephone: 509-634-2249

The representative for the BLM is:

Name: Chris Carlton
Title: Planning and Environmental Coordinator
E-Mail: ccarlton@blm.gov
Telephone: 509-536-1252

The alternate representative for the BLM is:

Name: Daniel C. Picard
Title: District Manager
E-Mail: dpicard@blm.gov
Telephone: 509-536-1262

VII. Administration of the MOU

- A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.
- B. Amendment. This MOU may be amended through written agreement of all signatories.
- C. Termination. If not terminated earlier, this MOU will end when the ROD for the Eastern Washington RMP/EIS is approved by the BLM State Director. Any Party may end its participation in this MOU by providing written notice to the other Party. A 30-day wait period is provided, during which parties shall make good-faith efforts to resolve any disagreement.

VIII. Signatures

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

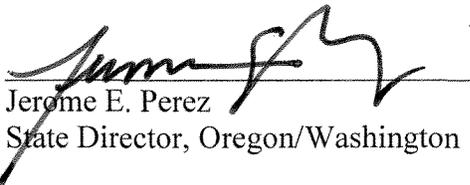
For the Confederated Tribes of the Colville Reservation
Post Office Box 150
Nespelem, Washington 99155



Jim Boyd
Chairperson, Colville Business Council

3/17/15
Date

For the Bureau of Land Management
Oregon-Washington State Office
1220 SW Third Avenue
Portland, Oregon 97204



Jerome E. Perez
State Director, Oregon/Washington

Mar 25, 2015
Date

Attachment A
Cooperating Agency Participation in the Eastern Washington RMP/EIS

RMP/EIS Stage	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	
1	Conduct scoping and identify issues	Provide input on preparation plan; identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Develop planning criteria	Provide advice on proposed planning criteria.
3	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
4	Analyze management situation	Provide input on the Draft Analysis of the Management Situation (AMS) and aid in interpreting the AMS to constituents.
5	Formulate alternatives	Collaborate with field manager in developing alternatives. Suggest land allocations or management actions to resolve issues. [Decision to select alternatives for analysis is reserved to the BLM.]
6	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.

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| 7 | Select the preferred alternative; issue Draft RMP/EIS | Collaborate with field manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP-DEIS. The CAs may provide written, public comments on draft if desired.
[Decision to select a preferred alternative and to issue a draft is reserved to the BLM.] |
| 8 | Respond to comments | As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses. |
| 8a | Issue Proposed RMP/FEIS | [Action reserved to BLM.] |
| 8b | Initiate Governor's Consistency Review | Once initiated by the BLM, state CAs should contribute to the Governor's Consistency Review. |
| 9 | Sign Record of Decision (ROD) [or] | [Action reserved to the BLM.] |
| 9a | Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD | [Action reserved to the BLM.] A CA that has provided information relevant to a protest may be asked for clarification. |