

Memorandum of Understanding
between
Department of Interior, Bureau of Land Management, Oregon State Office
and
The Klamath Tribes
as a Cooperating Agency

FOR REVISION OF THE RESOURCE MANAGEMENT PLANS AND PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT FOR THE WESTERN OREGON BLM DISTRICTS

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the The Klamath Tribes (“Cooperator”) and the Department of the Interior, Bureau of Land Management (BLM), Oregon State Office for the purpose of preparing the Resource Management Plan and Environmental Impact Statement (RMP/EIS) for BLM managed lands within the Klamath Falls Resource Area of the Lakeview District. The BLM is the lead federal agency for development of the 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 The Klamath Tribes 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 affected Indian tribes 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 The Klamath Tribes and the BLM.

II. Purposes

The purposes of this MOU are:

- A. To designate The Klamath Tribes as a Cooperating Agency in the RMP/EIS process.
- B. To provide a framework for cooperation and coordination between the BLM and the 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. BLM 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.).
 - 3. The Oregon & California Lands Act of 1937 (43 U.S.C. 1181(a) 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.)

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 and incorporate 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 special expertise.
 - 3. To the fullest extent practicable and within BLM's ability, 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.
- B. Cooperating Agency Responsibilities:

1. The Klamath Tribes is a Cooperating Agency in this planning process and is recognized to have special expertise of “the custom and culture” of the Klamath Tribes and Klamath Tribes’ treaty rights and treaty resources, which includes, without limitation, special expertise in fisheries, wildlife, forestry, archaeology, and water quality within the lands identified in the Treaty of 1864.
2. The Cooperator may provide information, comments, recommendations, 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.
3. Within the areas of special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: suggesting management actions to resolve planning issues, providing input to the draft Analysis of the Management Situation, 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. Cooperator will use its own funds for activities in furtherance of this MOU, unless funding is otherwise provided for in separate agreements with the BLM. In no event is Cooperator obligated under this MOU to incur any expense, except as it may choose to do so in furtherance of its participation hereunder.

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. Where procedural or substantive disagreement may impede effective and timely completion of the RMP/EIS, the Parties agree to utilize the facilitation and conciliation procedures described below. In all instances involving questions regarding content or relevance of environmental data and analyses, evaluation and wording in preparing the RMP/EIS and Record of Decision, the BLM shall make the final determination on the inclusion, deletion or modification of such items in the document in full consideration of fulfilling the trust obligation to the Klamath Tribes. (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 RMP/EIS process, except that the BLM may contract with a Cooperator for technical

studies within its jurisdiction or special expertise, as provided for in Section IV.B.4.

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 Klamath Tribes 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. This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate documents that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.
- 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 RMP/EIS. Questions regarding potential conflicts of interest should be referred to BLM headquarters in Washington, D.C., or Field Ethics Counselors for resolution.

- F. Documenting disagreement or inconsistency. Where the BLM and Cooperator 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.
- 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 Cooperator agrees not to release materials prepared by the BLM to individuals or entities other than the Parties to this MOU. This does not limit the right of the Cooperator to release materials and documents prepared by the Cooperator. The BLM agrees to assert FOIA or Privacy Act exception when appropriate to prevent disclosure of documents prepared by the Cooperator that meet exemption or exception criteria under those Acts.
- 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 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, they will use their best, good-faith efforts to agree on mediation procedures to be employed to prepare a neutral assessment of the contested scientific issues.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, 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.

VII. Administration of the MOU

- A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and Cooperator.
- B. Amendment. This MOU may be amended through mutual written

agreement, signed by the parties hereto.

- C. Termination. If not terminated earlier, this MOU will end when the ROD for the 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.

BUREAU OF LAND MANAGEMENT



Jerome E. Perez
State Director, Oregon/Washington

March 29, 2013.
Date

THE KLAMATH TRIBES



GARY FROST
Chairman

2-14-2013
Date

Attachment A
Cooperating Agency Participation in the 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 BLM manager in developing alternatives. Suggest land allocations or management actions to resolve issues. [Decision to select alternatives for analysis is made by 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.
7	Select the preferred alternative; issue Draft RMP/EIS	Collaborate with BLM 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 made by 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.

Attachment B
Schedule

Task	Responsibility	Dates
Conduct scoping and identify issues	core team, cooperators	
Review scoping comments	core team, cooperators	
Review and comment on affected environment chapter (administrative draft)	cooperators	
Formulate alternatives	cooperators (advisory), core team	
Estimate effects of alternatives (for identified areas of cooperator expertise)	cooperators	
Review and comment on DEIS (administrative draft)	cooperators	
Review DEIS comments	core team, cooperators	
Review and comment on FEIS (administrative draft)	cooperators	

Attachment C

Agency Representatives

FOR REVISION OF THE RESOURCE MANAGEMENT PLANS AND PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT FOR THE WESTERN OREGON BLM DISTRICTS

Bureau of Land Management	Primary Representative	Alternate Representative
Name	E.Lynn Burkett	Donald Holmstrom
Title	Lakeview District Manager	Field Manager, Klamath Falls Resource Area
Address		
City, State, Zip		
Telephone		
Fax		
Email		

The Klamath Tribes	Primary Representative	Alternate Representative
Name	Don Gentry	Perry Chocktoot
Title	Vice-Chairman	Culture & Heritage Director
Address	P.O. Box 436	P.O. Box 436
City, State, Zip	Chiloquin, OR 97624	Chiloquin, OR 97624
Telephone	541-783-2219 x102	541-783-2219
Fax	541-783-3706	-
Email	Don.Gentry@KlamathTribes.com	Perry.Chocktoot@KlamathTribes.com