

MAR 03 2009

UNITED STATES DEPARTMENT OF THE INTERIOR

MEMORANDUM OF UNDERSTANDING

MOU-BLM-OR936-0903

Between the  
Bureau of Land Management, Oregon State Office  
and the  
U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office  
regarding  
Coordination on  
Energy Right-of-Way Projects  
In the State of Oregon

A. PURPOSE

This Memorandum of Understanding (MOU) provides procedures and guidance between the Bureau of Land Management's (BLM) Oregon State Office, and the U.S. Fish and Wildlife Service's (Service) Oregon Fish and Wildlife Office to promote an effective and cooperative process to provide technical assistance, including Endangered Species Act (ESA) consultation for energy right-of-way (ROW) projects over Federal lands within the State of Oregon. This MOU defines the objectives and expectations of the BLM and the Service while working together to complete necessary coordination, review, comment, and authorizations and will serve as a guiding document for the development of cost reimbursement agreements for individual energy ROW projects.

B. OBJECTIVE

The BLM has received numerous ROW applications for energy development and transmission projects within the State of Oregon (e.g., solar, wind, geothermal, natural gas, biomass, and hydropower). Some of these projects have the potential to affect Federal trust resources on Federal and non-Federal lands. A mutually beneficial strategy is needed to ensure efficient initiation and/or completion of Service activities associated with ROW applications as well as benefit the BLM's efforts to process current and future ROW applications.

This MOU and the associated cost reimbursement agreement(s) will provide a mutually agreeable process for Service coordination on individual energy ROW projects within the state. This MOU will allow for, when agreed to by a ROW applicant, the cost reimbursement for previous, ongoing, and/or future Service activities associated with energy projects.

#### C. AUTHORITIES

1. Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq.
2. Mineral Leasing Act, 30 U.S.C. 181 et seq.
3. Endangered Species Act, 16 U.S.C. 1531 et seq.
4. Fish and Wildlife Coordination Act, 16 U.S.C. 661

#### D. SCOPE OF COORDINATION ACTIONS

The actions being considered under this MOU are proposed energy development and transmission projects on Federal lands within the State of Oregon which require a right-of-way authorization from the BLM and may affect Federal trust resources (e.g., listed, proposed, sensitive species and their habitats, wetlands and other waterbodies, and other key resource issues). Where the energy projects may also affect Federal trust resources on non-Federal lands, Service coordination will apply to the entire project.

#### E. PROCEDURES

The Service will give priority status to a ROW project when funds are provided to the Service through a cost reimbursement agreement established between the BLM and a ROW applicant. The cost reimbursement agreement will include an estimated cost for the Service's project coordination activities and govern cost reimbursement procedures and the transfer of funds to the Service.

Time frames and commitments made by the Service and the BLM in this portion of the MOU are contingent on the specific details of each proposed ROW project. Proposed projects in more ecologically sensitive areas may result in modified timeframes and additional staffing requirements. This may result in a need for additional reimbursement funds to efficiently provide technical assistance for such applications.

The BLM and the Service will coordinate the development of a project-specific cost reimbursement agreement at the initiation of BLM processing of a ROW application covered under this MOU. As noted above, the BLM and Service may also establish a retroactive cost reimbursement agreement for any previous and/or ongoing Service activities associated with an individual ROW project in Oregon, when agreed to with the ROW applicant.

THE BLM WILL PROVIDE:

1. Notification to the Service of pending and future energy ROW applications received by the BLM.
2. Funding to the Service from the cost reimbursement agreement with the ROW applicant for the direct expenses in the completion of technical assistance, including ESA consultations for energy ROW projects covered under this MOU.

THE SERVICE WILL PROVIDE:

1. Notification to the BLM of Federal trust resource concerns associated with an individual ROW application or project.
2. An estimate of Service costs for ROW project coordination activities and the development of fund transfer arrangements when requested by the BLM.
3. Personnel who will assist in providing technical assistance, including ESA consultation, for individual energy ROW projects.
4. Personnel to review draft documents transmitted by the BLM or ROW applicant. Input from the Service may be written or verbal, as determined to be most efficient by the parties.
5. Notification to the BLM, at the earliest possible time, if the Service anticipates being unable to meet any agreed upon time frame.
6. When requested, updates on the status of any document or work product, including draft and final biological opinions.

F. THE BLM AND SERVICE MUTUALLY AGREE TO:

1. Cooperate as partners in the commitment each agency has made to the process and timelines included in each energy project's cost reimbursement agreement.
2. Discuss potential or new energy project ROW proposals and their effects on Federal trust resources, as soon as the BLM or Service receive a preliminary or formal contact from a prospective energy project ROW applicant.
3. Collaboratively strive to ensure the applicant avoids and/or minimizes project impacts to Federal trust resources. Collaborative efforts with the applicant should include guiding the applicant on habitat and species surveys and mapping needs, advice on project siting

4. and/or alignment location, specific measures and practices to avoid and minimize impacts to trust resources, mitigation actions to compensate for unavoidable project impacts, and monitoring actions to ensure restoration actions are successful and unanticipated effects are remediated.
5. Cooperate in developing and completing environmental documents associated with each ROW energy project covered under this MOU. This cooperation includes, but is not limited to, informal and open exchanges of information and data needs and expeditious responses to requests for information or clarification.

#### G. GENERAL PROVISIONS

1. This MOU can be amended at any time by mutual agreement of the Service and the BLM. Amendments will become effective upon signature by the BLM and the Service.
2. Nothing in this MOU will be construed as affecting the authorities of the BLM or the Service or as binding beyond their respective authorities.
3. Conflicts between the BLM and the Service concerning procedures under this MOU which cannot be resolved at the operational level will be referred to successively higher levels, as necessary, for resolution.
4. The need for this MOU is expected to continue for 5 years, at the end of which period it will expire, unless otherwise canceled, extended, or renewed.
5. This MOU will be reviewed at least every 5 years to determine its adequacy, effectiveness and continuing need and may be cancelled at any time by the BLM or the Service, following at least 30 days notice to the other party.
6. This MOU will become effective upon signature by the BLM and the Service.

#### H. CONTACTS

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This MOU is entered into by:

Michael S. Martin

2/26/09

for

Edward W. Shepard  
State Director, Oregon/Washington  
Bureau of Land Management

Date

Marty Kunder

3/3/09

for

Paul Henson  
State Supervisor  
Oregon Fish and Wildlife Office, USFWS

Date