

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
OREGON STATE OFFICE
AND THE
CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON
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 Confederated Tribes of the Grande Ronde Community of Oregon (Cooperator) and the Department of the Interior, Bureau of Land Management (BLM), Oregon State Office, for the purpose of preparing the Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM-managed lands within the Salem, Eugene, Roseburg and Medford Districts. 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 Confederated Tribes of the Grand Ronde Community of Oregon 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 Confederated Tribes of the Grand Ronde Community of Oregon and the BLM.

II. Purposes

The purposes of this MOU are:

A. To designate the The Confederated Tribes of the Grand Ronde Community of Oregon 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 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 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, and in consideration of BLM's authorities and responsibilities to not disclose and/or protect certain non-public and/or sensitive data (e.g., Section 9 of the Archaeological Resources Protection Act and Section 304 of the National Historic Preservation Act), 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 RMPs/EISs.

B. Cooperating Agency Responsibilities:

1. The Confederated Tribes of the Grand Ronde Community of Oregon is a cooperating agency in this planning process and is recognized to have special expertise of "custom and culture" which includes, without limitation, special expertise in fisheries, wildlife, forestry, archaeology, and water quality.

2. The Cooperator may 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.

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 IV.C.4.)

4. The 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 the 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 or 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. (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 time frames 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 its respective jurisdiction. Nothing in this MOU shall require any Party to perform beyond its respective authority.

B. Records Management: The BLM owns the rights to all data/records produced 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, made available upon request, and, upon termination of the agreement, turned over to the BLM.

The Confederated Tribes of the Grand Ronde Community of Oregon shall not retain, use, sell, or disseminate copies of any data 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, DC, or Field Ethics Counselors for resolution.

F. Documenting Disagreement or Inconsistency: Where the BLM and the 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 these materials to individuals or entities other than the Parties to this MOU.

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 the BLM retains final responsibility for the decisions identified in the RMP/EIS and ROD.

1. Facilitation: If the Parties deem it 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 required, 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.



Jerome E. Perez
State Director, Oregon/Washington
Bureau of Land Management

January 6, 2014.

Date



Reyn Leno
Tribal Council Chairman
Confederated Tribes of the Grande Ronde Community of Oregon

1-21-14

Date

Cooperating Agency Participation in the RMP/EIS
(Attachment A)

	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 the 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 the BLM's responses.
8a	Issue Proposed RMP/FEIS	[Action reserved to the 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.

Schedule
(Attachment B)

Task	Responsibility	Dates
Review and comment on affected environment chapter (administrative draft)	cooperators	Spring/Summer 2013
Formulate alternatives	cooperators (advisory), core team	Summer 2013
Estimate effects of alternatives (for identified areas of cooperator expertise)	cooperators	Summer 2013 Winter 2014
Review and comment on DEIS (administrative draft)	cooperators	Summer 2014
Review DEIS comments	core team, cooperators	Spring/Summer 2014
Review and comment on FEIS (administrative draft)	cooperators	Winter/Spring 2015

Agency Representatives

(Attachment C)

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	Kim Titus	Virginia Grilley
Title	Salem District Manager	Eugene District Manager
Address	1717 Fabry Rd. SE	3106 Pierce Parkway, Suite E
City, State, Zip	Salem, OR 97306	Springfield, OR 97477
Telephone	503-375-5646	541-683-6600
Fax	503-375-5622	541-683-6981
Email	ktitus@blm.gov	vgrilley@blm.gov

Confederate Tribes of Grand Ronde	Primary Representative	Alternate Representative
Name	Michael Wilson	Eirik Thorsgard
Title	Natural Resources Director	Tribal Historic Preservation Officer
Address	9615 Grand Ronde Rd.	9615 Grand Ronde Rd.
City, State, Zip	Grand Ronde, OR 97347	Grand Ronde, OR 97347
Telephone	503-879-2380	503-879-1630
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Email	mike.wilson@grandronde.org	eirik.thorsgard@grandronde.org