MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
AND
UNITED STATES DEPARTMENT OF AGRICULTURE

IMPLEMENTATION OF SECTION 225 OF THE ENERGY POLICY ACT OF 2005 REGARDING GEOTHERMAL LEASING AND PERMITTING

Forest Service Agreement No. 06-SU-11132428-051

I. PARTIES AND PARTICIPATING AGENCIES

A. The parties to this Memorandum of Understanding (MOU) are the United States Department of the Interior (DOI) and the United States Department of Agriculture (USDA).

B. Participating agencies include:

1. Within DOI, the Bureau of Land Management (BLM); and

2. Within USDA, the Forest Service (FS).

II. PURPOSE

The purpose of this MOU is to facilitate interagency coordination and establish policies and procedures to implement Section 225 of the Energy Policy Act of 2005, Public Law 109-58 (hereinafter the "Act"). Section 225 requires the coordination of geothermal leasing and permitting on public lands and National Forest System (NFS) lands between the Secretary of the Interior and Secretary of Agriculture.

A. The Act requires that this MOU establish:

1. An administrative procedure for processing geothermal lease applications on lands managed by the FS, including specifying lines of authority, steps in application processing and time limits for the application process;

2. A 5-year program for geothermal leasing of lands in the National Forest System with a process for updating that program every 5 years;

3. A program to reduce the backlog of all geothermal lease applications pending on January 1, 2005, by 90 percent within the 5-year period beginning on the enactment of the Act, August 8, 2005; and

4. A data retrieval system for tracking lease and permit applications.

III. AUTHORITIES

A. The primary authority for this MOU is Section 225(a) of the Act of 2005 (Public Law 109-58).

B. Other authorities for entering into this MOU and the roles and responsibilities that each agency will undertake are under the provisions of the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001-1025), as amended and supplemented (P.L. 109-58, Title II, Subtitle B, §225, 119 Stat. 665 (Aug. 8, 2005), the Energy Security Act, 94 Stat. 611, 42 U.S.C. § 8001 note 8854-8855), the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 226-3), the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321-4347), the National Forest Management Act of 1974 (90 Stat. 2949), and the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701-1782.)

IV. PRINCIPLES AND GOALS

A. Principles for implementing this MOU include:

1. Participating agencies will seek improved information sharing and use, as well as an improved understanding of respective agency roles and responsibilities;

2. Development of geothermal energy is a priority for both agencies;

3. Geothermal exploration and production on Federal lands will support the Nation's increased need for energy resources; and

4. The financial resources made available through Section 234 of the Act. should be used to enhance the capability to process geothermal lease applications and permit authorizations

B. Goals for implementing this MOU include:

1. Identifying new or improved ways to increase the efficiency and minimize duplication of the geothermal leasing process;

2. Establishing interagency coordination mechanisms that can adapt to changing demands or circumstances;

3. Developing a more consistent approach among the agencies, and greater certainty in processing time requirements, to improve customer service;

4. Establishing interagency coordination mechanisms to allow for adequate flexibility to adapt to changing demands and technologies related to geothermal development;

5. Promoting responsible stewardship of Federal subsurface and surface resources through permitting actions; and

6. Developing a joint interagency data retrieval system to track application progress.

V. ROLES, RESPONSIBILITIES AND DELEGATION OF AUTHORITY

A. BLM.

1. General regulatory and management responsibilities. The BLM administers more than 261 million surface acres of public lands and 700 million acres of subsurface mineral estate (Federal land beneath surface lands owned or managed by other parties, such as the FS, National Park Service, Department of Defense and U.S. Fish and Wildlife Service).

2. Geothermal leasing. The BLM receives nominations from applicants, which may include proposed tract configurations for parcels. The BLM then forwards the proposal to the FS, which decides whether or not to consent to leasing and if so, what lease stipulations are necessary to minimize impacts to other resources and comply with regulations, policy and forest plan direction. With FS consent and once lease parcels are configured, the BLM is responsible for conducting geothermal lease sales and issuing competitive and noncompetitive leases. Although the BLM cannot issue a lease without the consent of the FS, the BLM can add any additional terms, conditions or stipulations that it deems necessary and appropriate, and must make an independent decision whether to issue the lease after review of the decision and documentation presented by the FS, and any other relevant factors.

3. Geothermal operations. If an operator proposes to conduct exploration operations on unleased FS lands, the application is submitted directly to the FS, which has the lead to conduct any necessary National Environmental Policy Act (NEPA) review and decide if the permit application should be approved and, if approved, what conditions of approval will be attached. If an operator proposes to conduct exploration operations on leased FS lands the permit application is submitted to the BLM, which is the lead agency for permit review. In this case, the BLM will coordinate the NEPA review with FS, which will propose permit conditions of approval involving surface issues. The BLM will determine if the permit application should be approved and, if approved, what conditions of approval will be attached to the permit.

   Subsequent to leasing, if an operator proposes to drill wells intended for production or injection or to utilize the geothermal resource (which are lease exclusive operations) on Federal lands, the BLM is responsible for review and final approval of these types of operational permit applications, after consultation with the FS. Under most circumstances, a single NEPA document will be prepared with the BLM as lead and the FS as a cooperating agency. There are situations where specific interagency agreements apply and the FS will take the lead in preparing the NEPA document.

B. FS.

1. General regulatory and management responsibilities. The FS is responsible for the surface management of 192 million acres of NFS lands. The Geothermal Steam Act, as amended, defines the role of the FS in the management of geothermal resources.

2. The FS is responsible for consenting (or not consenting) to the leasing of NFS lands, for conducting NEPA analysis for leasing, for developing appropriate terms and conditions under which the lease may be developed, and to ensure that doing so is consistent with the Land and Resource Management Plan developed under the National Forest Management Act.

3. Subsequent to leasing, the FS cooperates with the BLM to ensure that management goals and objectives for geothermal exploration and development activities are achieved, that operations are conducted to minimize effects on surface resources, and that the lands affected by operations are reclaimed. The BLM issues and administers geothermal leases on NFS lands only after the FS has consented to leasing under appropriate terms and conditions and has taken the actions necessary for the BLM to offer available lands for lease.

4. Administrative procedure for processing lease applications. The FS authorization to implement the leasing decision is to be forwarded to the BLM within 60 days of the initial receipt by FS of the leasing proposal, if it conforms to a Forest Land Management Plan and is covered by an existing leasing NEPA document. If this timeframe cannot be met, FS is to provide the BLM with an expected date of completion, along with an explanation for the delay by entering information into the joint tracking system.

VI. FIVE-YEAR PROGRAM PLAN

The FS will:

A. Coordinate with the BLM, U.S. Geological Survey (USGS), states and other interested parties to update potential geothermal areas through existing and new resource assessments;

B. Develop a process to delineate the boundaries of geothermal potential areas (including nominated lands) that will then be prioritized for leasing decisions and the associated NEPA process;

C. Coordinate with the BLM to establish the initial 5-year NEPA schedule needed for timely leasing decisions;

D. Review the schedule as new nominations are submitted or data from interested parties changes;

E. Address the existing backlog and newly nominated lands in the first 5-year plan; and

F. Coordinate with the BLM to find supplemental funding for the program such as that provided by Section 234 of the Act to ensure timely completion.

VII. PRE-LEASE ENVIRONMENTAL DOCUMENTATION

The FS, generally, will take the lead for completing the pre-lease NEPA documents and is responsible for providing the official FS consent or non-consent to leasing on FS lands. By this MOU, FS and the BLM agree to jointly prepare NEPA documents that will meet the requirements of both agencies in reaching their independent leasing decisions. The FS and the BLM will also identify, through the analysis, reasonable and justifiable stipulations needed to protect or minimize impacts to specific resources or land uses. The BLM will also provide a "reasonably foreseeable development (RFD) scenario" if requested by the FS, to facilitate the disclosure of potential environmental impacts. The FS will transmit the consent or non-consent decision on geothermal leasing to the BLM. Appropriate offices will be involved at appropriate levels of decision making. The following will apply, however, to the extent agreed upon by both agencies under sections VII. A. and B. below:

A. Subject to the terms of future, individualized MOUs regarding geothermal resources that may be developed between particular BLM and FS offices or for a particular NEPA process, as a general matter, the BLM will:

1. Appoint a specialist to participate as a member of the FS Interdisciplinary Team in the joint preparation, and completion of the NEPA document, as necessary;

2. Provide informal training on geothermal operations, their potential impacts on the environment, the effect of mitigation on operations, mitigation development, and stipulation policy, upon request and in cooperation with the FS;

3. Assist the FS in jointly scoping the issues and determining the level of NEPA document to be prepared;

4. Assist the FS in the formulation of mitigation measures and lease stipulations;

5. Ensure that the NEPA document is consistent with the BLM leasing policies and NEPA document preparation standards, so that the document can be used by both agencies to reach independent decisions, if needed;

6. Cooperate with the FS to ensure that the draft NEPA document is completed on schedule (set in Section VI. C. above);

7. Complete review and comment on the draft NEPA document within 30 working days of receipt;

8. Assist and coordinate with the FS in the review of public and agency comments, discuss and work towards agreement on proposed lease stipulations and mitigations, make necessary revisions to the draft NEPA documents and assist in preparing the draft Decision Notice (DN)/Record of Decision (ROD);

9. After an independent review, adopt the final EA/EIS and sign the DN/ROD or prepare and sign a separate BLM decision document and return the original signed documents to the FS; and

10. Issue leases with recommended special environmental stipulations or reject lease applications in accordance with the DN/ROD.

B. Subject to the terms of future, individualized MOUs regarding geothermal resources that may be developed between particular BLM and FS offices or for a particular NEPA process, as a general matter, the FS will:

1. Jointly scope the issues to be addressed in the NEPA document with the BLM, including determining the level of NEPA document to be prepared and developing a schedule for completion of the document. The goal is to complete each NEPA document within 1 to 2 years;

2. Work with the BLM to provide a RFD scenario, if needed, to be used as a basis for impact analysis in the NEPA document;

3. Request training from the BLM on post-lease geothermal operations, their potential impacts on the environment, the effect of mitigation on operations, mitigation development, and stipulation policy when determined to be necessary;

4. Prepare the NEPA document in cooperation with, and with the assistance of the BLM, and

    a. Include a specialist from the BLM staff on the FS Interdisciplinary (ID) Team, as necessary; and

    b. Coordinate with the BLM to ensure that the NEPA document is consistent with BLM leasing and analysis policies;

5. Discuss and work toward agreement on potential mitigation measures and lease stipulations as part of alternative development with the BLM;

6. Forward a copy of the preliminary NEPA document to the BLM for review and comment within 1 week of completion;

7. Jointly review with the BLM all comments on the draft NEPA document and incorporate comments and changes as agreed;

8. Prepare the final NEPA document for public comment and review, address all public comments, prepare a DN/ROD in cooperation with the BLM and forward the final copy to the deciding officer for the FS; and

9. Transmit the leasing consent or non-consent decision, the NEPA document, and the signed FS version of the DN/ROD to the BLM within 15 calendar days after any appeals are resolved.

VIII. COMPETITIVE LEASING

The BLM is responsible for conducting geothermal lease sales and issuing competitive leases (see attached Table).

A. BLM will:

1. Coordinate and schedule an annual BLM/FS meeting to develop a proposed competitive leasing schedule, considering each agency's budgets and other work priorities;

2. Send a written request to the FS for appropriate stipulations and special terms for lease issuance at least 180 days prior to the scheduled sale date; and

3. Coordinate with the FS (lead agency) to complete the pre-lease NEPA document according to the procedures outlined in this MOU.

B. FS will:

1. Coordinate with the BLM in scheduling and holding the proposed competitive sale meeting;

2. Utilize information in mineral resource assessment in future planning documents and decisions;

3. Provide appropriate stipulations for the NFS lands involved in a proposed lease sale and special terms for lease issuance at least 90 days prior to the scheduled sale date; and

4. Coordinate with the BLM to complete the pre-lease NEPA document according to the procedures in Section VII of this MOU.

IX. NONCOMPETITIVE LEASING

The BLM is responsible for conducting geothermal lease sales and issuing noncompetitive leases (see attached Table).

A. BLM will:

1. Transmit any noncompetitive lease application package involving NFS lands to the FS within 30 days of receipt; and

2. Upon receipt of the FS consent and stipulations, make an independent decision whether to issue each lease within 30 days of conveying terms and conditions to the applicant.

B. FS will:

1. Forward land parcel lease requests from the FS to the appropriate Forest Supervisor for environmental clearance within 15 days of receipt; and

2. Complete a review of the existing NEPA document and coordinate with the BLM during the environmental review process, as outlined in Part VII. A. above, and transmit a letter of consent or no consent to the BLM within 60 days from receipt of land parcel lease requests.

C. Direct Use:

Outside of the circumstances outlined in the Geothermal Steam Act of 1970, 30 U.S.C. 1003(c) as amended, by section 222 of the Act, the only lands available to be leased without a competitive sale are those in areas designated by the Secretary of the Interior for exclusive direct-use utilization of geothermal resources only pursuant to 30 U.S.C. 1003(f). Subject to forthcoming implementing regulations, such exclusive direct-use areas may have been identified and designated via attached stipulation in advance of the nomination to lease, or the designation may occur in response to the nomination to lease after appropriate reviews at the conclusion of the 90-day competitive interest notice period (30 U.S.C. 1003(f)).

X. JOINT DATA RETRIEVAL SYSTEM FOR BLM AND FS TO TRACK STATUS OF LEASE AND PERMIT APPLICATIONS

The joint data retrieval system will be completed in time to implement the forthcoming geothermal regulations being prepared to implement the geothermal provisions of the Act.

A. BLM will:

1. Provide designated FS staff with the appropriate level of access to BLM's Automated Fluid Minerals Support System (AFMSS), Legacy Rehost 2000 (LR 2000), and National Integrated Land System (NILS) transaction and reporting systems, as well as data systems used for the management of geothermal resources. Access to users will be provided within 2 weeks after submission of a request using Form 1260. Systems will be available for use 90 percent of the time within standard business operating hours using established industry metrics. The details and specifics of how the FS will access and use BLM systems will be documented in a Service Level Agreement consistent with BLM/DOI policies. FS will be able to view the status of and enter updates to transactions related to proposals on NFS lands, while those on the BLM lands will appear as read-only to FS users;

2. Determine infrastructure, protocols, and procedures necessary to provide secure access to joint data retrieval systems and joint geographic information system. Provide security requirements to Forest Service;

3. Assure adequate system performance and security to maintain data integrity for FS users which access the BLM's data systems used for the management of geothermal resources; and

4. Be responsible for the Information Technology Management, including Project Change Management, of the BLM's data systems used for the management of geothermal resources.

B. FS will:

1. Establish infrastructure, protocols, and procedures to meet the security requirements as determined by BLM for access to joint data retrieval systems and geographic information systems by designated FS staff;

2. Provide the BLM with a completed BLM Form-1260 for all FS users who need to access the BLM's data systems used for the management of geothermal resources; and

3. Use the BLM's Project Change Management Boards for requesting changes to the BLM's data systems used for the management of geothermal resources.

XI. MEASURES OF SUCCESS OR CHANGE FOR GEOTHERMAL LEASING AND PERMITTING PROGRAMS

A. Success Measures. Measures of success for the Geothermal Leasing and Permitting Programs include:

1. Streamlining and increasing interagency efficiency in processing geothermal leases, permits and associated agency approvals;

2. Increasing ability to more timely process and issue geothermal leases and approve permits that will withstand administrative and judicial challenge; and

3. Decreasing the lease application backlog by 90 percent in 5 years.

B. Data for Measuring Success. For Geothermal Leasing and Permitting, the following, at a minimum, will be tracked and measured:

1. The total number of nominations and permit applications received, processed, and issued;

2. The elapsed time from receipt to issuance or approval, including the time required for major steps or components; and

3. The number of applications backlogged.

C. The information identified in the preceding paragraph will be collected for 5 fiscal years after enactment of the Act and will be compared to the same parameters in each of the 3 fiscal years preceding passage of the Act.

XII. MUTUAL UNDERSTANDING AND AGREEMENT

A. Freedom of Information Act (FOIA). Any information furnished to the BLM and FS under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

B. Participation in similar activities. This instrument in no way restricts the BLM or FS from participating in similar activities with other public or private agencies, organizations, and individuals.

C. Responsibilities of Parties. The BLM and FS and their respective offices will handle their own activities and utilize their own resources, including expenditures of their own funds, in pursuing these objectives, except as previously outlined. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

D. Principal Contacts.

1. BLM.

Assistant Director, Minerals, Realty and Resource Protection
1849 C Street, N.W.
Washington, DC 20240
(202) 208-4201

2. FS.

Director, Minerals and Geology Management
1400 Independence Ave., S.W.
Washington, DC 20250
(703) 605-4791

XIII. FUNDING

A. Section 234 of the Act authorizes rentals, royalties and other payments required under leases under the Geothermal Steam Act of 1970, excluding funds required to be paid to state and county governments, to be deposited in a special fund available to "...the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 and this Act...."

B. Section 234(c) of the Act authorizes the Secretary of the Interior to expend or transfer funds as necessary to the FS for purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land.

C. The details of the levels of support to be furnished to FS by the BLM, with respect to funding and personnel, will be developed in specific future agreements on an annual or case-by-case basis, contingent on the availability of identified staffing needs and types of funding.

XIV. COMMENCEMENT/EXPIRATION/TERMINATION AND MODIFICATION

As described in Section XIII. A. B. C., the Act mandates the establishment of a fund for geothermal leasing through fiscal year 2010. The MOU will continue beyond that date for the purposes of coordinating geothermal leasing. The BLM and FS will review this MOU every 5 years for currency and applicability. This MOU may be revised and modified as necessary; terms herein are contingent upon regulations yet to be promulgated. All parties potentially affected by a modification must sign the modification for it to be effective.

XV. MEETINGS

The agencies will meet on an annual basis. Additional coordination meetings or conference calls may be held as needed.

XVI. DISPUTE RESOLUTION

If a dispute arises under this MOU that is not resolved informally between or among the parties, then any party may pursue the following dispute resolution procedure:

A. The party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other interested party. The parties will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.

B. If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the parties' respective headquarters-level officials. If consensus is not achieved by the headquarters-level officials within thirty (30) calendar days of their receipt of the statement of dispute, the parties will promptly elevate the matter to the respective Secretaries' Offices, who will resolve the matter.

C. The time limits in the preceding paragraph may be extended on the agreement of the parties to the dispute.

XVII. SUPPLEMENTAL AGREEMENTS

Subsequent to the signing of this MOU, additional Federal or state interagency agreements may be required for the purposes of outlining more specific interagency relationships.

XVIII. NO PRIVATE RIGHT OF ACTION AND LIMITED APPLICABILITY

This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a person against the United States, its agencies, its officers, or any person. This MOU does not direct or apply to any person outside of the signatory parties.

ACCORDINGLY, the parties have signed this MOU on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

DIRECTOR, BUREAU OF LAND MANAGEMENT	4/5/06 DATE
CHIEF, FOREST SERVICE	4/10/06 DATE

Geothermal Leasing on NFS Lands

The BLM and the Forest Service will coordinate geothermal resource leasing activities on NFS lands as follows:

J = joint responsibility S = sole responsibility

Action	Responsible Agency		Remarks
	BLM	FS	
Pre-Lease Environmental Documentation			
Serve as lead agency for geothermal leasing availability analyses and decisions and conduct analysis.		S	
Participate as co-lead agency or cooperating agency for geothermal leasing availability analyses and decisions for NFS lands.	S		
Analyze split estate lands (private surface/Federal minerals) within boundaries of NFS units.	J	J	Analysis and decision-making on all lands under Federal authority (both the BLM and the FS) within a defined leasing area will ensure consistency in geothermal resource management.
Provide expertise in the areas of geothermal engineering and geothermal geology on interdisciplinary teams performing environmental analyses for leasing on NFS lands.	S		The BLM must provide expertise in delegated program areas in geothermal operations, including ground water protection.
Provide Reasonably Foreseeable Development Scenario (RFD) for geothermal leasing on NFS lands.	S		Analysis must include information on geothermal reservoirs, resource distribution, and production characteristics, and must address downhole operations. The RFD will follow the Interagency Reference Guide "Reasonably Foreseeable Development Scenarios and Cumulative Effects Analysis". FS may need to provide information on surface use (roads, etc.) for inclusion or consideration in the RFD. RFD may be developed by other parties. If so, the BLM should provide final review.
Ensure consistency in lease stipulations across jurisdictional boundaries.	J	J	
Develop lease stipulations for NFS lands that are only as restrictive as necessary to protect the resources for which they are applied.		S	The FS should develop stipulations with the BLM input for consistency. (See above.)
Issue leasing decision.		S	The FS and the BLM should coordinate the signing and release of decision documents on leasing of NFS lands. NOTE: The BLM has sole decision authority for split estate lands (Federal minerals/private or State surface) within boundaries of Forest Service administrative units.)
Adopt FS leasing analysis.	S		

Action	Responsible Agency		Remarks
	BLM	FS	
to develop a proposed competitive leasing schedule.			
Send written request to the FS for appropriate stipulation and special terms for lease issuance at least 180 days prior to sale.	S		
Utilize information in mineral resource assessment in future planning documents and decisions.	S		
Provide appropriate stipulations for NFS land involved in proposed lease sale and special terms for lease issuance at least 90 days prior to scheduled sale date.		S	.
Noncompetitive Leasing			
Transmit any noncompetitive lease application package involving NFS land to the FS within 30 days of receipt.	S		
Forward land parcel lease requests from the FS to appropriate Forest Supervisor for environmental clearance within 15 days of receipt.		S	
Complete a review of the existing NEPA document and transmit letter of consent or no consent to the BLM within 60 days from receipt of land parcel lease requests.		S	Coordinate with the BLM during the environmental review process, as outlined in Part VII. A.
Upon receipt of the FS consent and stipulation, make an independent decision as to whether to issue each lease within 30 days of conveying terms and conditions to applicant.	S		

J = joint responsibility S = sole responsibility

Action	Responsible Agency		Remarks
	BLM	FS	
Joint Data Retrieval System for the BLM and the FS to Track Status of Lease and Permit Applications			
Determine infrastructure, protocols, and procedures necessary to provide secure access to joint data retrieval systems and joint geographic information system. Provide security requirements to Forest Service.	S		The BLM program and IT staff will work with corresponding staff in Forest Service to determine standards.
Establish infrastructure, protocols, and procedures to meet the security requirements as determined by BLM for access to joint data retrieval systems and geographic information systems by designated Forest Service staff.		S	Implement security requirements to meet BLM standards for those Forest Service staff requiring access to the joint data retrieval systems.
Provide designated FS staff with the appropriate level of access to the joint data retrieval system.	S		At the initiation of this MOU the joint data retrieval systems include AFMSS, LR 2000, and NILS. The details and specifics of how the FS will access and use BLM systems will be documented in a Service Level Agreement consistent with BLM/DOI policies.
Provide the BLM with a completed BLM Form- 1260 for all FS users who need to access the joint data retrieval system.		S	.
Assure adequate system performance and security to maintain data integrity for FS users who access the joint data retrieval system.	S		
Utilize the BLM's Project Change Management Boards for requesting changes to the joint data retrieval system.		S	
Be responsible for the Information Technology management, including Project Change Management, of the joint data retrieval system.	S		