Agreement Number AZ-2010-13

Subject Code: 1786, 2300 (P)

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ARIZONA STRIP DISTRICT OFFICE
AND
ARIZONA GAME AND FISH COMMISSION
AS A COOPERATING AGENCY

I. Introduction

A. This Memorandum of Understanding (MOU) establishes a Cooperating Agency relationship between the Bureau of Land Management's Arizona Strip District Office (BLM) and the Arizona Game and Fish Commission (the terms "Department" and "Director" in this Agreement shall mean the Arizona Game and Fish Commission and its Director, acting as administrative agent for the Commission) ("Cooperator") for the purpose of preparing the Environmental Impact Statement (EIS) for the proposed withdrawal of lands for up to 20 years from location and entry under the Mining Law of 1872 announced by the Secretary of the Interior on July 21, 2009 (74 FR 35887) (the "Proposed Mineral Withdrawal"). The BLM is the lead federal agency for development of the EIS. The BLM acknowledges that the Cooperator has special expertise, as defined at 40 Code of Federal Regulations (CFR) §§ 1508.15 and 1508.26, applicable to preparation of the EIS, and is eligible to become a Cooperating Agency, pursuant to 42 U.S.C. § 4332 and 40 C.F.R. §§ 1501.6 and 1508.5. This MOU describes responsibilities and procedures agreed to by the BLM and Cooperator (collectively "Parties" and singularly "Party").

B. 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 withdrawal regulations at 43 CFR part 2310, BLM's regulations implementing NEPA, 43 C.F.R. Part 46, and the Department of the Interior Manual (516 DM 2.5 and 603 DM 1).

II. Purposes

A. The purposes of this MOU are:

1. To designate the Cooperator as a Cooperating Agency in the EIS process.

2. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the EIS in a timely, efficient, and thorough manner.

3. To recognize that the BLM is the lead agency with responsibility for the completion of the EIS.

4. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties for preparation of the EIS.

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 (NEPA) (42 U.S.C. 4321 et seq.), and associated regulations, including 43 C.F.R. § Part 46.

2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and associated regulations.

3. Council on Environmental Quality regulations (40 CFR 1501 et seq.)

4. BLM withdrawal regulations (43 CFR part 2310)

B. The authorities of the Cooperator to enter into this MOU include, but are not limited to:

1. Arizona Revised Statutes (A.R.S.) 17-231 (A)(8), 17-231 (B)(3), and 17-231(B)(7)

2. A.R.S. 17-452 (C)

3. Master Memorandum of Understanding between State of Arizona, Arizona Game and Fish Commission, and Department of the Interior, Bureau of Land Management, Agreement No. AZ-930-0703, dated November 16, 2007.

4. Joint Policy Statement between Arizona Game and Fish Department and Bureau of Land Management dated August 25, 2008.

5. Memorandum of Agreement between Region 2 U.S. Fish and Wildlife Service and the Arizona Game and Fish Commission for State Wildlife Agency Participation in Implementing the Endangered Species Act: State of Arizona, dated June 26, 2002.

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of the NEPA documents, including the Draft and Final EIS. In meeting this responsibility, 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 to assist with preparation of the EIS, giving particular consideration to those topics on which the Cooperator possesses special expertise.

3. To the fullest extent permitted by applicable law, the BLM will provide the Cooperator with copies of documents underlying the EIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final EISs.

B. Cooperating Agency Responsibilities:

1. The Cooperator is a Cooperating Agency for preparation of the EIS and has special expertise in the following areas:

   a. Fish and wildlife conservation and management
   b. Public uses and recreation relating to fish and wildlife conservation and management

2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:

   a. Fish and wildlife range and population information
   b. Species health and survey information, including related habitat assessments
   c. Ongoing management activities including game harvest and management, conservation and enhancement of wildlife resources and wildlife-related recreation opportunities, releases of wildlife into currently unoccupied habitats, maintenance of existing wildlife water developments, construction of new wildlife water developments, and implementation of other wildlife and habitat improvement projects in

efforts to support existing, re-introduced, supplemented, or expanded populations of wildlife.

d. Other such information that may be of interest to the Parties and which is relevant to issues or data needs.

3. Within its area of special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve issues, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the EIS and supporting documents. (See also Section C.4.)

C. Responsibilities of the Parties:

1. The Parties agree to participate in this EIS process in good faith and make all reasonable efforts to resolve disagreements.

2. The Parties agree to comply with the EIS schedule provided as Attachment B, which includes dates for EIS milestones and timeframes for the Cooperator's reviews and submissions.

3. Each Party agrees to fund its own expenses associated with preparation of the EIS.

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. <u>Other Provisions</u>

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. 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.

C. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of environmental analysis or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS, ROD, or Proposed Mineral Withdrawal. Questions regarding potential conflicts of interest shall be referred to BLM for consultation with Ethics

Counselors for resolution. The Parties agree Cooperator may terminate this MOU if it is required to do so by A.R.S. § 38-511.

D. Documenting disagreement or inconsistency. The BLM will involve the Cooperator in the preparation of the EIS, including the formulation of alternatives and assessment of impacts. Where the Parties disagree on substantive elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM as lead agency, will determine the content of the EIS and provide the Cooperator with rationale for their determination.

E. Management of information and records:

1. Any records or documents generated as a result of this MOU shall become part of the official BLM record maintained in accordance with applicable BLM Records Management policies. Any request for release of records associated with the implementation of this MOU to anyone outside the Parties must be determined by the BLM based on applicable laws, including the FOIA and the Privacy Act.

2. The Cooperator acknowledges that all supporting materials and draft documents used in the Final EIS may become part of the BLM's case file for the Proposed Mineral Withdrawal and are subject to the requirements of the Freedom of Information Act (FOIA) and other applicable federal statutes. The decision to withhold or release any supporting documents that originated from the Cooperator will be made by BLM in consultation with the Cooperator. The BLM acknowledges that the Cooperator's handling of materials originating in their office may be impacted by A.R.S. § 27-112.

3. The Parties agree that the BLM may withhold from the Cooperator those documents that cannot be released under the FOIA, Privacy Act, or constitute protected proprietary/confidential information.

4. Press inquiries on the withdrawal action procedures and EIS preparation should be referred to the BLM. Press inquiries on Cooperator's role in the process would be answered by Cooperator's agency officials. The Cooperator agrees to advise the BLM of press inquiries either before or soon after contact with the press.

F. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts. The Parties acknowledge that BLM retains final responsibility for the content of the EIS. In the event any dispute or controversy arises under this MOU, the Parties shall first attempt voluntary resolution and then decide whether to use arbitration. If they decide to use arbitration, the parties agree to engage in any applicable alternative dispute resolution procedures authorized by their respective statutes, regulations and court rules, including, but not limited to, 5 U.S.C. § 575 and A.R.S. § 12-1518. The Parties further agree that by signing this MOU, the BLM does not waive the sovereign immunity of the United States.

G. This MOU does not create any substantive or procedural right that is enforceable at law or in equity against the United States or its officers, agents, or employees.

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 preparation of the EIS. Each Party may change its representative at will by providing written notice to the other Party.

VII. Funding

A. Subject to the availability of funds, each Party agrees to fund their own expenses associated with the implementation of this MOU.

B. Nothing contained herein shall be construed as obligating the BLM to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.

VIII. Tribal Consultation

The BLM shall engage in government to government consultation with affected Indian Tribe(s) during all phases of this process, in accordance with applicable Federal statutes, regulations, and other authorities, including Executive Order 13175 on consultation with Indian Tribes and Executive Order 13007 on Indian Sacred Sites. This MOU in no way affects the responsibility of the BLM and the authority of affected Tribe(s) to engage in these government to government consultations. To the extent the BLM receives any Indian Trust data as a function of the requirement to conduct government to government consultations with affected Indian Tribe(s), the BLM certifies it will accord such data all necessary protection and security pursuant to applicable statutes, regulations, and policies, including those set forth in the context of any applicable litigation.

IX. Term, Amendment, and Termination

A. Term of MOU**:**

1. This MOU becomes effective upon the last date signed and executed by the duly authorized representative of the Parties to this MOU.

2. This MOU shall remain in effect until the Record of Decision for the Proposed Mineral Withdrawal is signed.

B. Amendments:

1. The Parties may request changes to this MOU, which shall be effective only upon the written agreement of both Parties.

2. Any changes, modifications, revisions, or amendments to this MOU shall be incorporated by written instrument, executed and signed by both Parties, and will be effective in accordance with the terms and conditions contained herein.

C. Termination. Any Party may terminate this MOU by providing 30-days written notice of termination to the other Parties.

X. Signatures

A. All signatories have the appropriate delegation of authority to sign this MOU.

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

Arizona Game and Fish Commission

_____
Larry D. Voyles, Director

_____
Date

Bureau of Land Management
Arizona Strip District Office

_____
Scott R. Florence, District Manager

_____
Date

Attachment A

COOPERATING AGENCY PARTICIPATION IN THE PROPOSED WITHDRAWAL 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 EIS 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	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
3	Formulate alternatives	Collaborate with District Manager in developing alternatives. **[Decision to select alternatives for analysis is reserved to the BLM.]**
4	Issue Draft EIS	Collaborate with the District Manager in evaluating alternatives; provide input on Preliminary Draft EIS. The CAs may provide written, public comments on draft EIS.
5	Respond to comments	As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses.
6	Issue Final EIS	**[Action reserved to BLM.]**
7	Sign ROD	**[Action reserved to the Department of the Interior.]**

Attachment B

SCHEDULE

Task	Dates[1]
Conduct scoping and identify issues	9/19 – 11/18/2009
Review scoping report	1/20 – 2/26/2010
Review draft Baseline Socioeconomic Report	1/20 – 2/26/2010
Formulate alternatives	1/20 – 2/26/2010
Review preliminary draft DEIS	5/11 – 6/01/2010
Review preliminary draft FEIS	11/24 – 12/24/2010

[1] Dates subject to revision.

Attachment C

AGENCY REPRESENTATIVES

Proposed Withdrawal EIS and ROD

Bureau of Land Management

Primary Representative: Scott R. Florence, District Manager

Backup Representative: Lorraine M. Christian, Field Office Manager

Arizona Game and Fish Commission

Primary Representative: Andi Rogers, Habitat Specialist

Backup Representative: Ron Sieg, Region II Supervisor