



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT
DRAFT

3-201
(1/97)

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER
TE-*-0

4. RENEWABLE
[x] YES
[] NO

5. MAY COPY
[x] YES
[] NO

6. EFFECTIVE
</>/2014

7. EXPIRES
</>/2036

1. PERMITTEE

~
Add
City, State ZIP
Phone: area code/phone number
e-mail:

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)

9. TYPE OF PERMIT
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

11. CONDITIONS AND AUTHORIZATIONS:

- A. General conditions set out in subpart d of 50 CFR 13, and specific conditions contained in Federal regulations cited in block #2, above, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal, of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. The validity of this permit is also conditioned upon strict observance of all applicable foreign, state, local or other federal law. This permit does not waive the obligation to abide by other foreign, state, local or federal law in carrying out authorized activities.
- C. Valid for use by permittees named above.

12. REPORTING REQUIREMENTS

ISSUED BY:

TITLE
Assistant Regional Director

DATE

Industry Conservation Plan for ABB – Terms and Conditions TEXXXXXX

- D. The authorization granted by this Permit will be subject to full and complete compliance with, and implementation of, the Oil and Gas Industry Conservation Plan (ICP) for the American burying beetle (ABB), dated **May X, 2014**, and all specific conditions contained therein. These Permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the ICP or other program documents.
- E. Acceptance of the permit serves as evidence that the Permittee agrees to abide by all conditions stated. Terms and conditions of the permit are inclusive. Any activity that could result in take of the covered species that is not specifically permitted is prohibited. Please read through these conditions carefully as violations of permit terms and conditions could result in your permit being suspended or revoked. Violations of your permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) could also subject the Permittee to criminal or civil penalties.
- F. If, during the tenure of this permit, the project design and/or the extent of the habitat impacts is altered, such that there may be an increase in the anticipated take of the covered species, the Permittee is required to contact the Service’s Oklahoma Ecological Services Field Office (ESFO) and obtain an amendment to this permit before commencing any construction or other activities that might result in take beyond that authorized by this permit. If authorized take is exceeded, all activities that are shown to cause take must immediately cease and any take above that authorized shall be reported to the Oklahoma ESFO (918/581-7458) within 48 hours.
- G. If actions associated with implementation of the ICP for ABB are shown to result in incidental take of listed species not covered by the permit, those activities that are shown to cause take must immediately cease and any take that has occurred shall be reported to the Oklahoma ESFO (918/581-7458) within 48 hours.

INCIDENTAL TAKE

H. The permit only authorizes incidental take of the following species (covered species):

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
American burying beetle	<i>Nicrophorus americanus</i>	Endangered

1. The Permittee is authorized for incidental take of American burying beetle under the ICP, through impacts to and loss of habitat, not to exceed a cumulative total from all permits under the ICP of 32,234 acres (0.16 percent of the 19,612,333 acres of ABB habitat within the Plan Area) of ABB habitat. The following conditions apply:

- a. The Permittee shall submit Individual Project Plans (IPP) (located on the website at www.fws.gov/southwest/es/oklahoma/ABBICP) for projects that will be covered by this permit.
- b. Impacts related to a specific IPP may not occur until the Oklahoma ESFO has confirmed approval of the IPP and assigned take to this individual permit.

Industry Conservation Plan for ABB – Terms and Conditions TEXXXXXX

- c. The IPP shall provide all information required [in section 7.2.1 of the Oil and Gas Industry Conservation Plan (ICP)].
- d. The Oklahoma ESFO will confirm the portion of the cumulative take authorization that is attributed to this individual permit under the ICP.

COVERED AREA (PLAN AREA)

- I. The permit only authorizes incidental take of the covered species within the approximately 35,716-square mile (92,504 square kilometers) or 22,858,240-acre (9,250,402 hectares) Planning Area (Figure 1 of the ICP), which encompasses the known and potential range of the ABB and its habitat in 45 counties, including: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garvin, Haskell, Hughes, Johnson, Kay, Latimer, Le Flore, Lincoln, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa, Wagoner and Washington counties in Oklahoma. No more than 37,569 acres (15,204 hectares) of the Planning Area will be directly impacted by covered activities: including up to 2,030 miles (3,267 kilometers) of pipeline, 193 miles (311 kilometers) of roads (158 miles (254 kilometers) of permanent roads associated with wells, 30 miles (48 kilometers) of temporary roads associated with wells, and 5 miles (8 kilometers) associated with pipelines) and 3,319 well pads (approximately 4 acres (1.6 hectares) each), and 230 miles (370 kilometers) of electric distribution lines.

COVERED ACTIVITIES

- J. All Covered Activities associated with each project must be fully contained within the ICP Planning Area.
- K. Covered activities associated with upstream production are described in section 2.1 of the ICP and include:
 - Geophysical Exploration – also known as seismic exploration
 - Construction, operation, and maintenance of new and existing well field infrastructure and decommissioning of obsolete facilities, including:
 - Well pads
 - Drilling and hydraulic fracturing
 - Gas flaring
 - Work and access roads
 - Electrical distribution lines (voltage must be 34.5 kilovolts (kV) or less)
 - Off-site impoundments
 - Communication towers
 - Pipelines located within the boundaries of well pads
- L. Covered Activities associated with midstream development are described in section 2.2 of the ICP and include:

Construction of gathering, transmission, and distribution pipelines

Construction of associated surface facilities, including:

Access roads

Booster, compressor, and pump stations

Meter stations, mainline valves, pig launchers and receivers, regulator facilities, and other required facilities

Natural gas processing and treating facilities

Communication towers

Electric distribution lines

Electric substations

Operation and maintenance of pipeline and surface ancillary facilities

Decommissioning and reclamation of pipeline and surface ancillary facilities

MINIMIZATION MEASURES

M. Many of the industry standards described in Covered Activities (section 2.0 of the ICP) also serve to minimize impacts to the ABB. Permittees agree to implement the following minimization measures:

1. Reduce motor vehicle, machinery, or heavy equipment use

Permittees will minimize the number and use of motor vehicles and heavy equipment necessary in ABB habitat to meet the objectives of the project. If heavy equipment, machinery, or motor vehicle use is required in ABB habitat for a project, these vehicles will be allowed only in the areas that are necessary for the required activity. All motor vehicles, machinery, and heavy equipment shall be parked within areas already impacted, or areas where disturbance is planned, and where ABB habitat impacts, and mitigation as appropriate, have been assessed.

2. Reduce risk of motor vehicles sparking wildfire

Motor vehicles, machinery, and heavy equipment will not be parked where dry grass or vegetation could be ignited. All vehicles will be maintained according to the respective service manuals. In dry conditions, grass and debris will be cleaned away from machinery exhaust systems and bearings on a weekly basis. All bearings will be lubricated and all spark arrestors will be serviced as necessary to reduce risk of sparking a fire.

Fire safety equipment necessary at each project includes: a shovel, water, and working fire extinguisher in case of accidental ignition of a wildfire.

3. Increase safety during operation fluid use and storage

Permittees must be in compliance with all applicable state and Federal laws regarding fuel use and storage. All operational fluids (fuel and motor vehicle oil) will be stored and all equipment must be fueled within areas already impacted, or areas where disturbance is planned, and where ABB habitat impacts, and mitigation as appropriate, have been assessed.

4. Reduce erosion and increase soil stability

To prevent topsoil loss, gully formation, or other negative impacts to ABB habitat, Permittees will implement erosion control techniques to comply with prudent industry standards for sediment and erosion control. Examples of potential industry standards are described in the Independent Petroleum Association of America's Reasonable and Prudent Practices for Stabilization of Oil and Natural Gas Exploration and Production Sites found at: <http://www.ipaa.org/governmentrelations/reasonable-and-prudent-practices-for-stabilization-rapps-for-oil-and-natural-gas-exploration-and-production-sites/>. Permittees must comply with all state and Federal laws regarding erosion control and soil stabilization.

5. Provide educational program for construction personnel

All workers operating in the project area will be informed about ABB habitat, biology, reasons for ABB decline, and the responsibility of all workers to protect the ABB. Standardized ABB Educational Information is provided on the Service's website www.fws.gov/southwest/es/oklahoma/ABBICP. Each worker will be provided a full color Endangered Species Card with a picture of the ABB and a summary of information about the ABB and ICP before conducting soil disturbing activities.

Signs must be posted at all access points to the project area highlighting the areas as ABB habitat and reminding workers to follow special restrictions in the area. All workers are required to report any ABB sightings to the project manager or environmental inspector, remove all food wastes from the ROW each day, and prohibit dogs or cats on the ROW (workers may not bring animals on to the ROW). Additionally, all workers must park their vehicles within already impacted areas, or areas where disturbance is planned and where ABB habitat impacts, and mitigation as appropriate, have been assessed.

6. Limit use of artificial lighting

Construction activities occurring during the ABB active season within occupied ABB habitat will be limited to daylight hours, other than situations described below:

Necessary lighting associated with operations or in limited instances where it is necessary to extend construction activities beyond daylight hours (e.g., to maintain the integrity of a bore hole during horizontal directional drill activities when installing a pipeline) must be down-shielded to minimize the effect on ABBs.

Sodium vapor lights are required, rather than UV or mercury vapor lights. Drilling rigs used during production, communication towers, or emergency response situations that require lighting are not required use of sodium vapor lighting or down-shielded lighting.

7. Limit use of gas flares

Projects requiring small, constantly burning flares throughout the life of the project will cover the flame to eliminate the visibility of artificial light sources that are attractive to ABBs.

8. Limit disturbance from mechanical vegetation maintenance

Vegetation maintenance frequency and duration will be restricted to that necessary to allow for visual surveys and prevent hazards (e.g., fire). Vegetation must be maintained at a height of 8 inches or more to maintain soil moisture. Vegetation maintenance activities will be completed during the ABB inactive season (approximately late Sept – early May).

9. Limit Herbicide Use

Herbicides used for vegetation maintenance or removal in areas already restored to ABB habitat must be applied by licensed applicators in accordance with label directions. Herbicides must be applied using methods that minimize spray drift. If broadcast application of herbicides is necessary for effective ROW vegetation control (e.g., in areas with dense stands of target woody plants and/or invasive forbs or grasses), application equipment must be equipped with spray nozzles designed to produce an herbicide spray pattern of uniform water droplet size and apply herbicides at a calibrated rate and at a set pattern on the ROW, thus ensuring precise application. Aerial broadcast application of herbicides shall not be used.

Following complete restoration of ABB habitat (within 5 years of initial impact), herbicides used for vegetation maintenance following construction may only be applied if vegetation can be maintained at a height of 8 inches or more (to maintain soil moisture).

Large equipment and vehicles necessary for application of herbicides may only be used once during the ABB active season. Any additional use of herbicide during the ABB active season must be done by hand application instead of large equipment and vehicles.

10. Set aside topsoil for replacement following construction

Projects with temporary or permanent cover change impacts that require removal of top soil within occupied ABB habitat will set aside the top soil during construction activities for restoration following construction (see “Replacement of Top Soil” in Section 4.2.2.1).

MITIGATION MEASURES

N. Duration of Impacts

Temporary impacts are those that impact ABB habitat for 5 years or less (areas impacted by the project are restored to a condition suitable for ABB use within 5 years of the original impact).

Permanent cover change impacts are defined as impacts that change the successional stage of an area to a different stage (e.g., forest or shrubland to grassland), but do not eliminate ABB habitat.

Permanent impacts are those that eliminate ABB habitat (e.g., buildings, roads, quarries, strip mines), as well as any impact to habitat that takes more than 5 years to re-establish as suitable for ABB use.

O. Post-construction Restoration for Temporary and Permanent Cover Change Impacts

Project proponents will implement the following measures for temporary and permanent cover change project impacts:

1. Replacement of Top Soil

During restoration of project areas within ABB habitat, top soil removed before construction will be replaced at the original location.

2. Relief of Soil Compaction

Immediately following Covered Activities that removed vegetation and compacted soils, and prior to vegetation re-establishment, the impacted area will be ripped to a depth of 24 inches (or to rock if soil is less than 24 inches deep), to relieve soil compaction at sites impacted by the use of heavy equipment. This measure is not required for small project areas (such as maintenance work on a pipeline) where the use of tractors and ripping equipment would increase the impact.

3. Re-Establishment of Vegetation

Following Covered Activities where vegetation was removed from a project site, vegetation will be re-established with a native species composition similar to the surrounding area or, per landowner request, the same vegetation type that existed prior to impacts. If construction/soil disturbance ends during the dormant vegetation season, bare soil will be temporarily stabilized, if necessary to prevent erosion. At the beginning of the next growing season (prior to the start of the ABB active season in mid-late May), these areas will be re-established with vegetation.

Seeds used during vegetation re-establishment must be free of invasive species seeds. Invasive species to be avoided are listed at <http://ok-invasive-plant-council.org/images/OKinvasivespp.pdf>. Where native vegetation restoration is appropriate and feasible, species composition of re-established vegetation will be based on the native plant communities described within the United States Department of Agriculture's Ecological Site Descriptions Datasets (USDA 2011), according to the location of each project site.

For an impact to be considered temporary, vegetation must be re-established to the original density (based on visual comparison of before/after photographs of the project area and comparison to adjacent undisturbed areas) within 5 years of the initial impact. Vegetation re-established for permanent cover change impacts should be restored to the density of the grasslands or pastures nearest to the project area, preferably restored with native species.

4. Inspection for Invasive Plant Species

Because vegetation composition may change the carrion base (small mammal and bird composition) of an area, Permittees will monitor project sites following post-construction restoration and document any invasive species (as listed at <http://ok-invasive-plant-council.org/images/OKinvasivespp.pdf>) in their annual reports.

P. Habitat Mitigation through Mitigation Lands

Take of ABB through loss of habitat will be offset through conservation and management of ABB habitat in perpetuity. Permittees will mitigate for impacts likely to result in take of ABBs (within occupied ABB habitat) using one of the three following options (section 4.2.2.2 of the ICP):

Individual- or Permittee-responsible for mitigation lands: These consist of mitigation lands established by the Permittee. The Permittee is responsible for ensuring the success of and managing the mitigation land in perpetuity, even if the project is finite in duration (refer to Service guidelines).

Conservation Banks: Conservation banks are mitigation lands that are established by a Bank Sponsor. If a Permittee chooses this option, Permittee must purchase appropriate credits prior to any habitat impacts that could result in take of the ABB. The bank sponsor is responsible for ensuring the success of and managing the mitigation land in perpetuity upon sale of the credits.

Third party mitigation lands: These mitigation lands are usually established for a single project or project proponent rather than multiple projects or proponents as are conservation banks. The mitigation land sponsor (landowner or easement holder) is responsible for ensuring the success of and managing the approved mitigation land in perpetuity.

All mitigation lands must meet the minimum standards and other requirements described in *Southwest Region Guidance for Processing Conservation Bank/Proponent Responsible Mitigation Agreement Documents*.

Q. Location of Mitigation

All offsite mitigation provided for the ABB under the ICP must be within an ABB CPA (see Section 3.1.7 and Figure 2). The location of the impacts determines which CPA polygon the mitigation should occur in by Service Area.

Project impacts must be mitigated within the Service Area in which the impacts occur, unless the Permittee receives written approval from the Oklahoma ESFO to mitigate outside of the Service Area where impacts occur. If a Permittee chooses to provide mitigation through the conservation bank option, credits may be purchased at any conservation bank within the Service Area in which the impacts occur.

If project impacts occur in more than one Service Area, the Oklahoma ESFO may require split mitigation, based on the percentage of impacts to each area.

R. Mitigation Ratios

Mitigation ratios are established to provide appropriate mitigation for the type, duration, and location of project-related impacts and related take or effects of take.

	AREAS OF IMPACT		
IMPACT PERIOD	ABB RANGE (BUT NOT WITHIN CPA)	CONSERVATION PRIORITY AREA	MITIGATION LAND
TEMPORARY	1:0.25	1:0.5	1:1.5*
PERMANENT COVER CHANGE	1:0.5	1:1	1:2*
PERMANENT	1:1	1:2	1:3*
*MITIGATION LAND RATIO IS EQUAL TO THE CPA RATIO PLUS THE MITIGATION ACRE(S) LOST.			

MONITORING REQUIREMENTS

- S. The Permittee shall monitor the covered activities and ensure appropriate and relevant information (as specified below) on the covered activities is provided to the Service.
- T. The Permittee will monitor compliance with the ICP and provide an annual report as described below.

REPORTING REQUIREMENTS

- U. The Permittee will provide an annual report, due on January 31 of each year, to:

Oklahoma Ecological Services Field Office
 9014 East 21st Street
 Tulsa, Oklahoma 74129
 918/581-7458
ABB_ICP@fws.gov

U.S. Fish and Wildlife Service, Region 2
 Habitat Conservation Plans and Research Permits
 P.O. Box 1306, Room 6034
 Albuquerque, New Mexico 87103
FW2_TE_Permits@fws.gov

Electronic submission to the appropriate e-mail address is preferred.

V. Reporting Information

An annual report of Covered Activities as well as management activities undertaken under the terms of the ICP will be prepared by Permittees and submitted to the Service (addresses above) by January 31 of each year that the Permit is in effect. The report will summarize information on the monitoring and management activities, including:

- Description of activity occurring within ABB habitat
- Annual area (in acres) disturbed within ABB habitat
- Duration (temporary/permanent cover change/permanent) of all impacts in ABB habitat
- Location (County, Township/Range/Section) of impacts
- Habitat type impacted (CPA, non-CPA, or ABB Conservation Bank/mitigation lands)
- Minimization measures implemented within ABB habitat
- Techniques implemented to restore areas with temporary or permanent cover change impacts back to ABB habitat
- Evaluation of areas considered as temporary or permanent cover change impacts: status of restoration, potential for improvement, likelihood of restoration to ABB habitat by the 5th anniversary of impacts
- Amount (acres) of area with temporary or permanent cover change impacts fully restored to a condition suitable for ABB use.
- Photographs of Planning Area (taken prior to and following construction and as vegetation establishment progresses). Color digital images will be taken in the four cardinal directions at pre-established points at a frequency that adequately demonstrates vegetation establishment following construction.
- Amount (acres) of Mitigation Required based on Impacts
- Type (Conservation Bank, Permittee-responsible, 3rd Party Mitigation Land) of Mitigation Land Provided
- Date of Mitigation (mitigation provided but not yet used to offset impacts) Credit Purchase/Mitigation Land Approval
- Total Remaining Acres of Mitigation
- Summary of the above information by year and for entire duration of the Permit. The amount of mitigation provided must always be higher than the amount of impacts.

Refer to the Example Reporting Spreadsheet for the American Burying Beetle ICP on the Oklahoma ESFO website for an example of the Reporting Format required. The reporting form, including the amount and type of information required, is subject to change as data organization or data needs are determined by the Service. All Permittees will check with the Oklahoma ESFO by January 1 each year to ensure that they have the most up-to-date reporting forms.

1. The report will also document ICP Management activities, including:
 - a. Restoration activities.

- b. Proposed restoration activities for the next year.
 - c. Report on the status of implementation of minimization and mitigation measures and their effectiveness.
 - d. Any changes to the objectives for the monitoring program.
 - e. Effects on the Covered Species or Permit Area.
 - f. Any recommendations regarding actions to be taken.
2. Information provided in the annual report will be used to determine what, if any, adaptive management strategies should be implemented to most effectively implement the conservation program outlined in the ICP and to ensure that management changes in response to new, appropriate data are implemented in a timely fashion.

CHANGED CIRCUMSTANCES

The ICP provides measures for the following changed circumstances (section 5 of the ICP):

W. Assumptions Used to Develop the ICP are Invalid

Assumption 1: *ABB CPAs are the areas of higher ABB presence*

Permittee Response to Assumption 1: If research indicates that areas not selected as a CPA have high ABB numbers or if current CPAs are found to have low ABB numbers, the methods used to select CPAs will be re-evaluated during the process, potentially expanding, contracting, or shifting ABB CPAs. Following any Service re-evaluation of CPAs (generally every 3 years), Permittees will mitigate appropriately for new impacts based on the location of project impacts, according to the latest CPA delineation method (found in the current IPaC database).

Assumption 2: *ABB “Areas unfavorable for ABB use” are correct*

Permittee Response to Assumption 2: If research indicates that ABBs use areas described in “Areas unfavorable for ABB use,” in the *ABB Impact Assessment for Project Reviews* those habitat types would be removed from the list and Permittees would need to consider these areas as ABB habitat when evaluating impacts for new projects and mitigate appropriately in occupied areas. If research indicates that ABBs avoid areas that are not currently described in “Areas unfavorable for ABB use,” those areas would be added to the list and Permittees would no longer need to consider those areas as ABB habitat when evaluating impacts and mitigation in those areas would no longer be required.

Assumption 3: *Areas with “temporary impacts” become suitable for ABB use within 5 years of disturbance*

Permittee Response to Assumption 3: If research indicates that all or specific impacts to the ABB cannot be considered temporary because habitat does not become suitable for the ABB use within 5 years of disturbance, Permittees must increase mitigation ratios for all such impacts that would have previously been considered “temporary” to the ratio for “permanent.”

Assumption 4: *Vehicle use, tractor equipment, and implements used to maintain vegetation and inspect ROWs, when conducted during the ABB inactive season, and while maintaining vegetation at 8 inches or higher does not cause additional take of ABBs.*

Permittee Response to Assumption 4: If research indicates that tractor equipment in certain soil types with certain conditions would cause permanent removal of occupied ABB habitat, Permittees must use the mitigation ratio for “permanent” in areas with these soil types and/or conditions that require the use of tractor equipment for new or ongoing impacts.

Assumption 5: *Herbicides, if used as directed on the label and according to recommended minimization measures, would not cause additional take of the ABB.*

Potential Permittee Response to Assumption 5: If research indicates that a specific herbicide (or combination of herbicides) causes injury or mortality of ABBs, Permittees may no longer be allowed to use the herbicide (or specific combinations of them) within occupied ABB habitat.

Assumption 6: *Light sources that cannot be blocked, down-shielded, or use sodium vapor lights (examples include drilling rigs, some flares, and communication towers) do not attract and cause take of ABBs in habitat other than within the impacted, mitigated area.*

Potential Permittee Response to Assumption 6: If research indicates that light attracts and causes take of ABBs from outside of the area already impacted and mitigated, Permittees requiring light sources must appropriately mitigate (as based on research outcome) the area within the range of attraction to the ABB for new or ongoing activities requiring these light sources.

X. Fire, Flood, Drought, and Tornadoes

Restored ABB habitat (i.e., project areas with temporary impacts that have implemented restoration methods to restore ABB habitat as described in Section 4.2.2.1) may experience fire, flooding, or tornado impacts during the term of the ICP.

In the event that fire caused by a Permittee’s activities substantially decreases the success of restoration and vegetation re-establishment efforts within 5 years, additional restoration actions will be repeated as necessary to restore ABB habitat within these areas within 5 years from the initial impact. If ABB habitat cannot be restored within 5 years of the initial impact due to the fire, Permittees will increase mitigation ratios for these areas to be equivalent to ratios for permanent impacts.

If natural events, such as fire, flood, drought, or tornados substantially decrease the success of restoration and vegetation re-establishment efforts, restoration actions will be repeated as necessary to restore ABB habitat in these areas within 5 years of the natural event, or the

Permittee will increase mitigation ratios for these areas to be equivalent to ratios for permanent impacts.

If natural events impact project areas that had already been fully restored to ABB habitat (original density and distribution of vegetation based on visual comparison of before/after photographs of the project area and comparison to adjacent areas undisturbed by a Permittee's activities), no additional restoration or vegetation re-establishment efforts would be necessary. If emergency operation and maintenance repairs are necessary to address the impacts of these events, such activities will be addressed as described in the "Emergency Repairs requiring Habitat Clearing" section below.

Y. Delisting During Permit Term

If the ABB is delisted during the term of the Permit, the Permittee will not seek any mitigation funding refund, and operation and maintenance of any established mitigation lands would continue into perpetuity. The Permittee may choose to continue implementation of conservation measures to reduce threats to the species, especially during the Service's required 5-year post delisting monitoring of the species' status.

Z. Potential Effects to Newly Listed Species or Critical Habitat

In the event that a species becomes listed under the ESA and may be affected by Covered Activities, the Service will determine whether current conservation measures in the ICP are sufficient to avoid take of the newly listed species. If not, the Permittee will seek take authorization for the newly listed species under a separate permit.

AA. Emergency Repairs Requiring Habitat Clearing

Damage to existing and future facilities caused by weather, degradation or malfunction of equipment, or other factors (not including spills) may require emergency repairs. The Permittee may conduct any emergency repairs or emergency maintenance on existing and future facilities as needed without prior notification to the Oklahoma ESFO. In cases where these impacts are not covered by an approved IPP (see Section 7.0 below), the Permittee will notify (by e-mail to ***ABB_ICP@fws.gov***) the Service within 7 days of performance of the impacting activity that occurs in known or potential habitat for the ABB.

If the Service determines that a changed circumstance has occurred, the following measures will be implemented:

- The Service, in cooperation with the Permittee, will determine the amount of negative impacts that rise to the level of take of the ABB.
- The Service will determine whether, and how much, additional mitigation is needed.
- The Permittee will provide mitigation to adequately cover impacts to ABB habitat.

BB. Covered Species Adversely Affected by Invasive Species

If invasive species of plants or animals are adversely affecting the ABB to a degree not contemplated in the ICP within project areas that have been restored to ABB habitat as described in Section 4.2.2.1, Permittees will work with the Service to develop and implement an invasive species control plan for new projects and operation and maintenance activities, if appropriate (as determined by the Service). Such a plan might include modification of methods used for vegetation management (i.e., cleaning equipment to reduce spread of invasive species) or capture or destruction of the invasive species through mechanical, biological, and in carefully limited circumstances, chemical measures.

CC. ABB Range Expansion within the Planning Area

If ABBs are documented within the Planning Area, but outside of the ABBs range as defined in the ICP at the time of its approval, the Permittee will implement ABB avoidance, minimization, and mitigation measures described in the ICP in these areas. Permittees will revisit the Service’s Information, Planning, and Conservation (IPaC) website at <http://ecos.fws.gov/ipac/> within 90 days of beginning a project (as identified in Step 5 of the *Eligibility Determination for ABB ICP*) to ensure species information is correct. Results from IPaC are considered valid for 90 days.

DD. Permittee Unable to Implement Minimization or Post-Construction Restoration Measures

If the Permittee is unable to follow required Minimization Measures described in Section 4.2.1 and the post-construction restoration measures (for temporary or permanent cover change impacts) described in Section 4.2.2.1, additional measures must be implemented, as described below.

Minimization Measure: *Reduce erosion and increase soil stabilization*

If erosion control measures do not perform as intended and wash sediment into or disturb additional soil outside of the original project footprint, the project area must be expanded to include the additional ABB habitat that is impacted. Mitigation is required for these areas with impacts to occupied ABB habitat (temporary ratio if areas have become suitable for ABB use within 5 years, permanent ratio if area is not restored to ABB habitat within 5 years).

Minimization Measure: *Limit disturbance from vegetation maintenance*

If a Permittee is unable to implement the vegetation maintenance minimization measure (as described in #8 in Section 4.2.2.1) additional mitigation must be provided to adequately cover impacts (temporary ratio if areas are restored to ABB habitat within 5 years, permanent ratio if area has not become suitable for ABB use within 5 years).

Post-Construction Restoration Measures: *Replacement of top soil, relief of soil compaction, and re-establishment of vegetation*

If a Permittee is unable to successfully implement any or all of the applicable post-construction restoration measures described in Section 4.2.2.1 for “temporary” or “permanent cover change” impacts, these impacts must be considered a “permanent” impact. Additional mitigation must be

provided to adequately cover “permanent” impacts prior to the 5 year anniversary of the initial impacts.

EE. New Scientific or Commercial Data Related to Reference Documents

For all Covered Activities, the Permittee must use the most current reference documents found on the website at <http://www.fws.gov/southwest/es/oklahoma/ABBICP>.

FUNDING

FF. *Off-Site Mitigation*

The Permittee must, at a minimum, submit plans for mitigation (type, location, status, and any reservation agreements in place) with IPPs. Understanding that final purchase of Permittee-responsible mitigation lands, conservation bank credits, or third party mitigation lands may not be preferable prior to IPP approval, the Service will coordinate with the Permittee to ensure that mitigation funding and IPP approval are done concurrently. The Permittee may satisfy off-site mitigation by any of the following:

1. **Permittee Responsible Mitigation Lands:** If Permittee-responsible mitigation lands is the selected mitigation method, these lands must be acquired, have established endowments and completed management plans, and be approved by the Service prior to conducting any Covered Activity that may result in take of ABBs. All management responsibilities, including adaptive management procedures associated with those lands, must be fully funded and managed by the Permittee or an Service-acceptable designated entity. The Permittee is responsible for maintaining the mitigation lands as suitable habitat for ABBs in perpetuity.
2. **Conservation Bank Credits:** If a Service-approved conservation bank is the selected mitigation method, documentation of credit purchase or reservation agreements must be provided to the Service prior to IPP approval.
3. **Third Party Mitigation Lands:** If third-party mitigation lands is the selected mitigation method, these lands must be acquired, have established endowments and completed management plans, and be approved by the Service prior to any impacts that may result in take of ABBs.

GG. *Funding for Full Implementation of the ICP, Including Changed Circumstances and Post-Construction Restoration*

The Permittee must assure funding at least equal to the current *Estimate of ICP Implementation Costs* prior to approval of any IPP. Funding required under ESA § 10(a)(2)(B)(iii) must be assured through one of the following options, as described in the ICP:

1. Financial Test and Corporate Guarantee
2. Letter of Credit
3. Trust Fund

4. Surety Bond
5. Performance Bond
6. Insurance

GENERAL TERMS AND CONDITIONS

- HH. Activities that may affect migratory birds (50 CFR 10, Migratory Bird Treaty Act (16 USC 703 et seq.) and implementing Regulations at 50 CFR 21) or bald and golden eagles (Bald and Golden Eagle Protection Act (16 USC 668a) and implementing Regulations at 50 CFR 22), may require additional permits or authorizations. Please contact the Regional Migratory Bird Permit Office (<http://www.fws.gov/forms/3-200-71.pdf>) for additional information.
- II. Upon locating a dead, injured, or sick individual of the covered species, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office in Edmond, Oklahoma (405/715-0617) for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- JJ. Conditions of the permit shall be binding on, and for the benefit of, the Permittee and any successors and/or assignees. If the permit requires an amendment because of change of ownership, the Service will process it in accordance with regulations at 50 CFR 13.23. The new Permittee must meet issuance criteria per regulations at 50 CFR 13.25. The covered activities proposed or in progress under the original permit may not be interrupted provided the conditions of the permit are being followed.

***** End of Permit # TEXXXXXX *****