

MEMORANDUM OF UNDERSTANDING

Between

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
UNITED STATES DEPARTMENT OF THE INTERIOR

AND THE

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

This Memorandum of Understanding (MOU) is entered into by and between the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the U.S. Fish and Wildlife Service (USFWS), collectively referred to as the Parties.

I. PURPOSE AND SCOPE

The purpose of this MOU is to strengthen migratory bird conservation through enhanced collaboration between OSMRE and the USFWS. This MOU focuses on identifying areas of cooperation and avoiding or minimizing avian stressors on migratory birds with an emphasis on species of concern and their habitats.. This MOU neither creates nor waives any legal requirements under the Surface Mining Control and Reclamation Act (SMCRA), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (Eagle Act), the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), or any other statutes and does not authorize the take of migratory birds.

This MOU establishes how the OSMRE and the USFWS will continue to jointly promote the conservation of migratory birds by incorporating bird conservation measures into agency actions and planning processes.

II. AUTHORITIES

This MOU is entered into primarily under the authorities granted to OSMRE and the USFWS under the following laws:

- Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); and
- Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, as amended (U.S.C 1234-1328).

Other legal authorities related to migratory bird conservation and considered by the Parties when drafting this MOU include:

- Bald and Golden Eagle Protection Act, as amended (16 U.S.C. 668 et seq.);
- Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);

- Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, 2001 (66 FR 3853);
- Executive Order 11990, Protection of Wetlands, 1977 (42 FR 26961);
- Executive Order 11988, Floodplain Management, 1977 (42 FR 26951);
- Executive Order 13112, Invasive Species, 1999 (64 FR 6183);
- Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. 1251 et seq.);
- Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901–2911);
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742 et seq.);
- Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–667);
- Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715–715r);
- National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); and
- 1996 Biological Opinion as authored by USFWS and OSMRE.

III. MISSIONS OF BOTH PARTIES

The provisions of this MOU apply to each agency only to the extent permitted by law and subject to the availability of appropriations and within each Party's budgetary limits, and in harmony with agency missions.

Office of Surface Mining Reclamation and Enforcement

OSMRE is responsible for carrying out the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), in cooperation with states and tribes. One of the primary objectives of the agency is to ensure that coal mines are restored to beneficial post-mining land uses, such as healthy, productive forestland. OSMRE is actively promoting native reforestation and reclamation. OSMRE encourages regional initiatives that facilitate partnerships with states, conservation groups, major universities, industry, public interest groups, and other Federal agencies in a concerted effort to promote native ecosystem reclamation of coal-mined lands.

Under Title V of SMCRA, states and tribes are encouraged to assume primary responsibility (i.e., "primacy") for the regulation of surface coal mining and reclamation operations on non-Federal and, in the case of states, non-Tribal lands within their borders. In primacy states and tribes, the state or tribal law and regulations become operative and the state or tribal officials administer the program; OSMRE's role at that point becomes limited to one of oversight over the effectiveness of the state or tribal program. Through its oversight, OSMRE currently encourages state regulatory authorities and tribes to work with mine operators and private landowners to: 1) identify, protect, restore, and enhance habitat of all migratory bird species, 2) collaborate on developing, researching and implementing best management practices that avoid or minimize negative impacts on migratory bird populations and/or their migration, nesting, foraging, staging, and wintering habitats, and 3) prevent, minimize, or abate pollution detrimental to migratory birds and their habitats. These objectives are met through OSMRE's required Directive REG-8 (REG-8), governing oversight responsibilities, commitment to the Forestry Reclamation Approach (FRA), and re-mining permits.

OSMRE directly administers Title V of SMCRA in states and tribes that have not assumed primacy and on Federal lands that are not covered by a cooperative agreement with a state with primacy. OSMRE does not directly carry out actions in primacy states and tribes. As of the date of this MOU, the Secretary of the Interior has delegated primacy to 24 states. In addition, 14 of those states have entered into a cooperative agreement with the Secretary that delegates to them the authority to regulate surface coal mining and reclamation operations on Federal lands. Currently, OSMRE is only the primary regulatory authority in the states of Tennessee and Washington, and on Navajo, Hopi, and Crow Tribal Lands.

Title IV of SMCRA authorizes OSMRE, states, and tribes to reclaim certain abandoned mine lands (AML) with Federal assistance. As under Title V, states and tribes are encouraged to assume primary responsibility for the reclamation of AML sites. OSMRE is responsible for reviewing proposed AML projects completed with Federal funds for compliance with NEPA regardless of whether those projects are to be carried out by OSMRE or the states and tribes. As of the date of this MOU, OSMRE provides Federal funding to 28 states and tribes for AML reclamation and other purposes as allowable under SMCRA.

Therefore, this MOU is only applicable to OSMRE's actions: (1) in states and tribes where it is the primary regulatory authority (i.e., states of Tennessee and Washington, and Navajo, Hopi, and Crow Tribes), (2) as part of its project approval responsibilities under Title IV, and (3) when it performs direct reclamation under Title IV. This MOU does not apply to actions taken directly by states and tribes with primacy.

Fish and Wildlife Service

The mission of the USFWS is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The USFWS Migratory Bird Program serves as a focal point in the United States for policy development and strategic planning, program implementation, and evaluation of actions designed to conserve migratory birds and their habitats.

The USFWS implements the conservation provisions of the MBTA and the Eagle Act, which includes responsibilities for managing migratory bird populations, domestic and international coordination, and the development and enforcement of regulations that govern the take of migratory birds. The Migratory Bird Conservation Act established the Migratory Bird Conservation Commission to approve land to be acquired with Migratory Bird Conservation Funds. The Fish and Wildlife Coordination Act (FWCA) applies to federal actions that affect or modify waters of the U.S., requires consultation under certain circumstances, and has provisions that recognize the important contribution of wildlife resources to the Nation. On all Federal actions that include habitat protection through acquisition, enhancement, and/or management, and avoidance and minimization of adverse impacts related to Federal actions, the FWCA requires equal consideration and coordination of wildlife conservation with other water resource development programs.

Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews involving migratory bird issues, including endangered

species. The Field Offices, in coordination as necessary with Regional Migratory Bird Offices, review Federal actions related to migratory bird conservation coordination.

IV. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

Both Parties have interests and responsibilities in the conservation and management of America's natural resources. Both Parties agree that migratory birds are important components of biological diversity. The conservation of migratory birds will help sustain ecological integrity and ecosystem services, including insect control, pollination, and seed dispersal, and helps meet the growing public demand for outdoor education. Migratory birds are also important economically, and recreational activities associated with migratory birds contribute economic resources to many communities.

Specifically, the Parties mutually agree that it is important to: 1) conserve migratory bird populations, 2) conserve and restore migratory bird habitats, and 3) recognize that actions that may provide long-term benefits to migratory bird populations may have short-term impacts on individual birds.

V. OBLIGATIONS OF BOTH PARTIES

The Parties agree that this MOU must be implemented to the extent permitted by law, in harmony with agency missions and in compliance with its terms, subject to the availability of appropriations. Both Parties will:

- A. Support the conservation intent contained within Executive Order (E.O.) 13186 and the migratory bird conventions by integrating migratory bird conservation principles, measures, and practices into agency actions to: 1) avoid and minimize take of migratory birds, and 2) avoid and minimize the creation of stressors on birds or their habitats.
- B. Encourage State and local wildlife agencies to work with mine operators and private landowners to identify, protect, restore, enhance, monitor, and manage habitat of migratory bird species, with an emphasis on species of concern.
- C. Integrate migratory bird resource information into existing outreach and education activities, including the ecological and recreational value of migratory birds.
- D. Work collaboratively during the permit application and review process with Federal and non-federal partners to identify, protect, restore, and enhance Important Bird Areas (IBA), Western Hemisphere Shorebird Reserve Network sites, Ramsar Wetlands of International Importance Sites, and priority areas identified by USFWS-led migratory bird habitat joint ventures (<http://mbjv.org/>).
- E. Meet at the mutual discretion of both parties as necessary to discuss implementation of this MOU, relevant issues, accomplishments (e.g., the annual Report on the Conservation of Migratory Birds), and any recommendations concerning strategies for the conservation of migratory birds and/or mitigation.

- F. Provide training opportunities for appropriate OSMRE and USFWS employees regarding:
1. Responsibilities under MBTA, the Eagle Act, and other relevant legal authorities,
 2. Methods for identifying avian stressors,
 3. Techniques for population monitoring and assessing habitat conditions,
 4. Conservation measures for avoiding or minimizing the creation of avian stressors on bird populations and their habitat, including procedures to monitor the effectiveness of those measures, and;
 5. Current practices for migratory bird habitat restoration and/or enhancement.
- G. Participate annually in the interagency Council for the Conservation of Migratory Birds to evaluate the implementation of this MOU. The Council's duties include:
1. Sharing the latest resource information to assist in the conservation and management of migratory birds,
 2. Developing an annual report of accomplishments and recommendations related to E.O. 13186,
 3. Fostering partnerships to accomplish the goals of E.O. 13186, and;
 4. Selecting an annual nominee for the Presidential Migratory Bird Federal Stewardship Award, which recognizes a project or action conducted by or in partnership with a federal agency and contributions to the protection of migratory birds.
- H. Each agency shall advise the public of the availability of this MOU through a notice published in the *Federal Register*.

VI. OBLIGATIONS OF OSMRE

OSMRE agrees that the commitments made in this MOU will be implemented as appropriate. OSMRE will:

- A. Under Title V, where states and tribes have assumed primacy, continue to provide oversight over the effectiveness of the state or tribal program and ensure that the applicable state or tribal agency consults with the USFWS when appropriate as set forth in the state or tribal reclamation plan. OSMRE oversight will occur through the implementation of OSMRE's Directive REG-8 that governs oversight responsibilities, and a commitment to the FRA;

- B. Ensure that best management practices for minimizing and mitigating the impacts of mining operations on migratory birds are included in any cooperative agreements that govern mining and reclamation operations on federal lands (i.e., those between any states or tribes which that have assumed primacy and OSMRE). OSMRE will consult with USFWS during development of such cooperative agreements, when appropriate.
- C. Under Title V, where states and tribes have not assumed primacy, continue to coordinate review of coal mine permit applications, permit renewals, and significant permit revisions with the USFWS to ensure that surface coal mining and reclamation operations on lands for which OSMRE has direct regulatory responsibility meet the requirements of the MBTA and Eagle Act, consistent with 30 CFR §§ 780.16, 784.21, 816.97, and 817.97, and implement best management practices that reduce avian stressors during the building, operation, and reclamation of a mine;

The following offices represent the appropriate initial USFWS contacts for notifications and permit reviews in the associated geographic locations:

- Cookeville Ecological Services Field Office – Tennessee;
- Spokane Upper Columbia Ecological Services Field Office – Eastern Washington; and
- Olympia Ecological Services Field Office – Western Washington

In other locations, consult the USFWS homepage (www.fws.gov) or the Information, Planning, and Conservation system (<http://ecos.fws.gov/ipac/>) to find the appropriate office contact;

- D. Under Title IV, authorize states and tribes to reclaim AML. During the review of proposed AML projects, OSMRE will ensure appropriate NEPA analyses are completed and require mitigation of impacts to migratory birds where possible;
- E. To the extent that NEPA requires OSMRE to evaluate the expected impact, if any, on migratory birds, ensure that NEPA will be used to evaluate applicable OSMRE action, including: rulemaking, federal permitting action, or action on a proposed AML project. The primary focus of NEPA evaluations will be to identify project-related impacts to species of concern, identify appropriate best practices to reduce impacts to migratory birds, ensure all avoidance and minimization measures are implemented, and ensure that enhancement protocols consistent with post-mining land use will be incorporated;
- F. Continue to evaluate compliance with approved wildlife enhancement and protection plans as part of routine mine-site inspections and as required by OSMRE's REG-8, which serves as a surrogate for reporting measures of habitat. OSMRE's commitment to bird conservation has been demonstrated in the past through the receipt of the 2011 Presidential Migratory Bird Award;

- G. Continue to implement, at any decision points, the integration of migratory bird conservation principles, measures, and practices in a manner that is consistent with SMCRA and NEPA regulations and in a manner that provides an opportunity to, as practicable, restore and enhance habitat and prevent and abate pollution;
- H. To the extent practicable, incorporate migratory bird conservation plan objectives and USFWS recommendations on migratory birds with an emphasis on species of concern or endangered and threatened bird species into Title V permits and Federal AML reclamation project designs and encourage states and other non-Federal partners to do likewise;
- I. Regularly consult with the local and/or regional USFWS tasked with the responsibilities outlined in the provisions of this MOU. This includes OSMRE's implementation of USFWS' current policy on the take of migratory birds;
- J. Continue to promote FRA principles by training state regulatory authorities through the Appalachian Regional Reforestation Initiative (ARRI) training conferences, FRA advisories, and including ARRI principles in reclamation activities; and
- K. Encourage regional initiatives that facilitate partnerships with states, tribes, conservation groups, major universities, industry, public interest groups, and other federal agencies in a concerted effort to promote native species restoration of coal-mined lands and joint training opportunities with OSMRE and USFWS specifically related to migratory bird conservation.

VII. OBLIGATIONS OF USFWS

The USFWS agrees that the commitments made in this MOU will be implemented as appropriate. The USFWS will:

- A. Cooperate and coordinate with other federal agencies, state agencies, tribal agencies, universities, and independent non-governmental organizations to develop and conduct surveys that provide reliable information on the status and trends of migratory bird populations on national or regional scales. Make existing information available in a timely manner to aid the OSMRE in assessing impacts to migratory birds;
- B. Maintain and provide OSMRE access to current lists of migratory birds, birds of conservation concern, and their habitats that may be located in the coal mining regions covered by this MOU, and any other information that will help carry out this MOU;
- C. After notification from OSMRE that a new coal mine permit application, a permit renewal, or a significant permit revision is pending, notify OSMRE as to whether the USFWS desires a copy of the fish and wildlife resource information and protection and enhancement plan under 30 CFR 780.16(c) or 784.21(c). If so, USFWS will provide OSMRE with written comments and suggestions about concerns the USFWS may have

regarding migratory birds with emphasis on species of concern;

- D. Consult with OSMRE, when requested, to provide technical assistance and guidance for developing and incorporating best management practices for minimizing and mitigating avian stressors into state and tribal programs that regulate mining and reclamation operations on non-federal lands and state and tribal cooperative agreements that govern mining and reclamation activities on federal lands;
- E. Provide technical and scientific recommendations and support to OSMRE's regional initiatives that facilitate partnerships in a concerted effort to promote native species restoration of coal-mined lands; and
- F. Periodically evaluate the efforts taken under this MOU to avoid or minimize adverse impacts to migratory birds and, if necessary, suggest revisions to OSMRE that ensure the most effective conservation measures are employed. This should be coordinated through the Division of Migratory Bird Management.

VIII. DEFINITIONS

Birds of Conservation Concern – a list, published and periodically updated by the USFWS Division of Migratory Bird Management, that identifies migratory and non-migratory birds of the United States and its Territories that are of conservation concern. The most current version of the list, Birds of Conservation Concern 2008, is available at <http://www.USFWS.gov/migratorybirds>.

Migratory Bird – an individual of any species protected by the MBTA. A list of migratory birds can be found in 50 CFR § 10.13.

Mitigation – (a) avoiding an impact altogether by not taking a certain action or parts of an action, (b) minimizing the impact by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or (e) compensating for the impact by replacing or providing substitute resources or environments (from 40 CFR § 1508.20, Council for Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act).

North American Waterbird Conservation Plan (NAWCP) – an international partnership of federal, state, provincial, and tribal government agencies, non-governmental organizations, and private interests focusing on the conservation of waterbirds, including marshbirds and inland, coastal, and pelagic waterbirds (<http://www.waterbirdconservation.org>).

North American Waterfowl Management Plan (NAWMP) – an international partnership of federal, state, and provincial and tribal government agencies, non-governmental organizations, and private interests that encourages the recovery of waterfowl populations through habitat

restoration, protection, and enhancement
(<http://www.USFWS.gov/birdhabitat/NAWMP/index.shtm>).

National Environmental Policy Act (NEPA) – the law that requires federal agencies to prepare a detailed analysis of the environmental impacts of their proposed action with alternatives and to include public involvement for major federal actions significantly affecting the quality of the human environment, found at 42 U.S.C. §§ 4321-4345.

Partners in Flight (PIF) – a collaborative effort of more than 300 partners, including OSMRE, the USFWS and other federal and state government agencies, non-governmental organizations, conservation groups, foundations, universities, and industry, focusing on the conservation of land birds (<http://www.partnersinflight.org>).

Partners in Flight North American Landbird Conservation Plan – a collaborative effort to provide a continental synthesis of priorities and objectives that will guide landbird conservation actions at national and international levels. The Plan covers the 448 species of native landbirds that regularly breed in the U.S. and Canada. One hundred of these species warrant inclusion on the Partners in Flight (PIF) Watch List, because of a combination of threats to their habitats, declining populations, small population sizes, or limited distributions. Of these, 28 species require immediate action to protect critically low populations, and 44 more are in need of management to reverse long-term declines. This Plan also highlights the need for stewardship of the species and landscapes characteristic of each portion of the continent, identifying 158 species (including 66 on the Watch List) that are particularly representative of large avifaunal biomes, and whose needs should be considered in conservation planning. Taken together, the pool of Watch List and Stewardship Species represent the landbirds of greatest continental importance for conservation action. Although the recommended actions may vary from region to region, no area in North America is without a conservation need for landbirds.
(http://www.partnersinflight.org/cont_plan/).

Species of Concern – several categories of birds including: (1) species listed in the periodic report, Birds of Conservation Concern (see above); (2) priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, United States Shorebird Conservation Plan, Partners in Flight Bird Conservation Plan); (3) species or populations of waterfowl identified as high, or moderately high, continental priorities in the North American Waterfowl Management Plan; (4) threatened and endangered bird species listed in 50 CFR § 17.11; and (5) MBTA-listed gamebirds of management concern (as listed in the Birds of Management Concern list).

Stressor – any alteration or addition to the environment that impacts birds directly or the resources (including habitat) upon which birds depend.

Take – to pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to pursue, hunt, wound, kill, trap, capture or collect (50 CFR § 10.12). The Executive Order further defines “take” to include intentional take, meaning take that is the purpose of the activity in question, and incidental take, meaning take that results from, but is not the purpose of, the activity in question. Both intentional and unintentional take constitute take as defined by the MBTA. The

regulations implementing the Eagle Act define take to mean pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb bald and golden eagles (50 CFR § 22.3).

United States Shorebird Conservation Plan (USSCP) – an international effort undertaken by a partnership of federal, state, tribal, and provincial government agencies, non-governmental organizations, and private entities to promote stable and self-sustaining populations of all shorebird species. The plan provides a scientific framework to determine species, sites, and habitats that most urgently need conservation action (<http://www.USFWS.gov/shorebirdplan/>).

IX. DISPUTE RESOLUTION

Due to the nature of this MOU and the shared goals of the Parties, dispute resolution is not anticipated and conflict prevention is favored. Collaborative processes, including informal meetings or negotiations, will be used to avoid or minimize a dispute. However, should a dispute arise, notification of the specific nature of the dispute must be delivered in writing to the field office of the opposing party. Attempts to resolve the matter should occur within 30 days of receipt of written notice. Attempts at resolution will first occur at staff levels before being elevated, as required, through the Parties' respective organizational structures. For example, in the event there is no resolution at the field office level within 30 days, either party may elevate the issue to the appropriate officials at regional offices. In the event that there is no resolution at that regional office within 30 days, the dispute may be elevated by either party to the Headquarters of each agency. As a last mechanism for resolving conflicts, Alternative Dispute Resolution (ADR) processes will be effectuated through the Department of the Interior's Office of Collaborative Action and Dispute Resolution.

X. AGREEMENT

It is Mutually Agreed and Understood that:

- A. This MOU in no way alters or diminishes either Party's obligations or responsibilities under any statute or other legal authority.
- B. Either Party may terminate this MOU, in whole or in part, at any time before the date of expiration by providing the other Party 30-days written notice to that effect.
- C. Modifications to this MOU will be made in writing by mutual consent of both Parties, through an issuance of a written modification signed and dated by both Parties.
- D. This instrument in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
- E. Any information and documents furnished to a Party under this MOU may be subject to the Freedom of Information Act (FOIA, 5 U.S.C. § 552). A Party may not release documents originating from the other Party to a FOIA requester without first forwarding such document(s) to the originating Party for review, determination, and response.

directly to the requester.

- F. The MOU will not change or alter species conservation procedural requirements associated with the ESA, including the terms and conditions of existing or future biological opinions and incidental take statements, or with agency-defined priority species. Each agency's responsibilities towards such species remain unchanged.
- G. This instrument is neither a fiscal nor a funds obligation document, and it does not provide authority for obligations of that nature. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties 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 agreements that will be made in writing by representatives of the Parties and will be independently authorized by appropriate statutory authority. Specifically, this instrument does not establish authority for noncompetitive award of any contract or other agreement. Any contract or agreement for training or other service must fully comply with all applicable requirements for competition.
- H. Any press release that refers to this MOU, or the relationship established between the Parties of this MOU, must have prior written approval of both Parties.
- I. The Parties will schedule, at their mutual discretion, annual meetings at the headquarters level to review progress and identify opportunities for advancing the principles of this MOU.
- J. This instrument in no way alters or takes the place of either Party's requirements for conducting environmental analyses, including NEPA requirements.
- K. This MOU is intended only to improve the internal management of the executive branch of the federal government and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
- L. This MOU does not require or constitute changes to current contracts, permits, or other third party agreements, including approved state or tribal mining programs. The MOU recognizes that some elements of the MOU may not be fully implemented until such time as the OSMRE has successfully included them in formal planning processes.
- M. The principal contacts for this instrument are:


Harry Payne, Chief
Office of Surface Mining
Reclamation and Enforcement
U.S. Department of the Interior
1951 Constitution Avenue NW
Washington, DC 20240

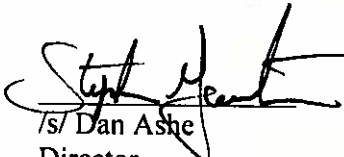
Brad Bortner, Chief
Division of Migratory Bird Management
U.S. Fish and Wildlife Service
U.S. Department of the Interior
5275 Leesburg Pike
Falls Church, VA 22041

XI. EFFECTIVE DATE

This Memorandum of Understanding between the Office of Surface Mining Reclamation and Enforcement and the United States Fish and Wildlife Service regarding enhanced collaboration to strengthen migratory bird conservation will become effective as of the date the last Party duly executes it below. This MOU will not automatically expire but will be reviewed within five years of the date of execution.

The Parties have executed this agreement as of the last date shown below.


/s/ Joseph Pizarchik
Director
Office of Surface Mining
Reclamation and Enforcement


/s/ Dan Ashe
Deputy Director
U.S. Fish and Wildlife Service

Date: 12-7-16

Date: 10/11/16