

MEMORANDUM OF UNDERSTANDING

Between the
U.S. DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

U.S. ARMY CORPS OF ENGINEERS
Fort Peck Project

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Land Management

STATE OF MONTANA
Montana Fish, Wildlife, and Parks
Department of Natural Resources and Conservation

FERGUS, PETROLEUM, GARFIELD, MCCONE, VALLEY,
PHILLIPS COUNTIES, BOARD OF COUNTY COMMISSIONERS

MISSOURI RIVER CONSERVATION DISTRICTS

Concerning

Agency Cooperation on the Charles M. Russell National Wildlife Refuge
Comprehensive Conservation Plan and Environmental Impact Statement

I. Introduction

The Fish and Wildlife Service (SERVICE) requests the U.S. Army Corps of Engineers (USACE), Fort Peck, Montana, Bureau of Land Management (BLM), Lewistown Field Office, Malta Field Office, and Miles City Field Office, the Montana, Fish, Wildlife, and Parks (FWP), Montana Department of Natural Resources and Conservation (DNRC), Fergus County, Petroleum County, Garfield County, McCone County, Valley County, and Phillips County, Board of County Commissioners (COUNTIES), and the Missouri River Conservation Districts Council (CONSERVATION DISTRICTS) to be Cooperating Agencies in the development of the Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) for Charles M. Russell National Wildlife Refuge and UL Bend National Wildlife Refuge (refuge). The planning area for the CCP is located in Fergus, Garfield, Petroleum, McCone, Phillips and Valley Counties, Montana.

The CCP/EIS process must comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. Sec. 4321 and all subsequent regulations implementing NEPA (see Council on Environmental Quality (CEQ)) regulations, 40 CFR Part 1500-1508, and Department of the Interior (DOI) requirements listed in Departmental Manual 516 "Environmental Quality."). In addition, the SERVICE is guided by the Fish and Wildlife Service Manual (602 FW3) on Comprehensive Conservation Planning. The SERVICE also considered the *Memorandum for the Heads*

of Federal Agencies, Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, James Connaughton, January 30, 2002 and *Memorandum for Heads of Federal Agencies, Subject: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, George T. Frampton, Council on Environmental Quality, July 28, 1999, Executive Order 13352, August 26, 2004, Facilitation of Cooperative Conservation and other guidance provided by the CEQ and DOI.

II. Purpose of Agreement

The purpose of this Memorandum of Understanding (MOU) is to establish an agreement between the SERVICE and the USACE, BLM, FWP, DNRC, the COUNTIES, and the CONSERVATION DISTRICTS regarding the roles and responsibilities of the agencies during the NEPA process. The SERVICE will be the lead federal agency and the listed agencies will be cooperating agencies on the project.

III. Justification and Roles of Cooperating Agencies

A. Justification for Cooperating Agency Status

1. Each agency has been appointed as a cooperating agency because they meet one or more of the following criteria:
 - the agency has jurisdiction by law within the Charles M. Russell National Wildlife Refuge (refuge)
 - the agency has specific areas of expertise/knowledge needed for completion of the CCP/EIS
 - the agency provides other benefits to the Service in the preparation of the CCP/EIS.
2. Each cooperating agency agrees to provide information or data within their area(s) of expertise, attend planning team meetings, and review and comment on documents. Cooperating Agency status comes with an expectation that the Cooperating Agency will bring resources to the table to facilitate the timely completion of the NEPA process.
3. Nothing in this MOU shall obligate the Cooperating Agencies to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of fund, service, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property shall be made in writing and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.
4. The cooperating agencies agree to assist the SERVICE in providing accurate information to the public. The CCP/EIS planning process for the refuge is intended to be

transparent with all agencies, organizations, stakeholder groups and the general public. The SERVICE regularly provides information about its planning process through planning updates, press releases, briefings, hard copies of documents, and posting documents on its website. All information presented to the public must be approved for publication by the SERVICE. The SERVICE recognizes that the agencies of the State of Montana must adhere to its public disclosure laws as necessary; however, releases of predecisional information (including working drafts) in a manner that purposely undermines or circumvents the spirit of this MOU, which is to develop a framework to work cooperatively in developing the CCP/EIS, or consistently misrepresents the planning process may be grounds to terminate the cooperating agency status. When information is received from State or local sources the Service cannot agree to maintain confidentiality of this information except to the extent that is permitted under the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

B. Cooperating Agencies

USACE

- Jurisdiction by law—USACE has primary jurisdiction on the lands related to the Fort Peck Project within the perimeter boundaries of the refuge.
- USACE has information and expertise that will be invaluable in the preparation of the EIS pertaining to:
 - Socioeconomic
 - Transportation
 - Cultural/Paleontological Resources
 - Wildlife and habitat conditions
 - Recreational use activities
- USACE will designate one to two representatives to serve on the planning team.

BLM

- Special Expertise—BLM has jurisdiction on lands immediately adjacent to refuge. From 1946 to 1976, management of the refuge was jointly administered by the Service and BLM.
- BLM has information and expertise that will be invaluable in the preparation of the CCP/EIS pertaining to:
 - Socioeconomic
 - Transportation
 - Cultural/Paleontological Resources
 - Biological information on wildlife and habitat conditions
- Ongoing communications between the agencies will benefit both agencies' planning processes.
- The BLM will appoint at least one representative from each adjacent Field Office to serve on the planning team.

FWP and DNRC

- The SERVICE provides an opportunity for State conservation agencies that have a direct land management relationship with the refuge, the opportunity to serve on

planning teams (Planning Policy, Fish and Wildlife Service Manual 602 FW3). The SERVICE and FWP and DNRC work cooperatively on many issues pertaining to wildlife, habitat, noxious weeds, and fire.

- FWP and DNRC have information and expertise that will assist the SERVICE in the preparation of the CCP/EIS pertaining to:
 - Biological information on wildlife and habitat conditions
 - Hunting and fishing data
 - Fire data
 - Noxious weeds

FWP and DNRC will provide one to two representatives each to serve on the planning team.

COUNTIES

- The COUNTIES have information and expertise (Executive Order 13352) that will assist in the preparation of the CCP/EIS pertaining to
 - Socioeconomic
 - Transportation
 - Land Use Plans
 - Noxious or invasive weeds
- The COUNTIES shall assign two representatives and designated alternates to speak on behalf of all six counties. It is the responsibility of the two assigned representatives to keep the Board of County Commissioners for all the counties briefed on the key developments of the CCP/EIS. To ensure consistency in communications, the same representatives shall serve for the duration of the project if at all possible. On occasion, other County Commissioners may be briefed on key developments in the planning process.

CONSERVATION DISTRICTS

- The CONSERVATION DISTRICTS have information and expertise (Executive Order 13352) that will assist in the preparation of the CCP/EIS pertaining to
 - Wise use and conservation of soils and water
 - Noxious or invasive weeds
- The CONSERVATION DISTRICTS shall assign one representative to speak on behalf the six CONSERVATION DISTRICTS that surround the refuge. It is the responsibility of the assigned representative or the designated alternate to keep the CONSERVATION DISTRICTS briefed on key developments of the CCP/EIS.

C. Roles and Responsibilities

1. The agencies understand that their cooperating agency status does not confer to them any special authority to change, edit, or veto all or part of the document.

2. In cases where a cooperating agency provides information it considers confidential, the SERVICE will work with a cooperating agency to present the information in a manner that protects the rights of the cooperating agency before sharing the information necessary for the environmental analysis with the other cooperating agencies. The release

of SERVICE information to a State or local agency that includes proprietary or confidential information must be reviewed under FOIA and adhere to statutory and regulatory authorities. The parties to this MOU will have access to all information necessary for their cooperating agency participation in the environmental analysis to the extent permitted by applicable law. The parties agree not to release predecisional information (including working drafts) in a manner that undermines the SERVICE's intent to provide accurate information to the public about its planning process as described under III. A. 4. When an agency of the State of Montana must disclose information under its disclosure laws, the SERVICE requests notification of any public disclosure of CCP documents made by an agency to this agreement.

3. The SERVICE possesses sole authority to direct the actions of its Contractors.

4. The SERVICE is responsible for making all substantive decisions involving the CCP/EIS and is the final decision maker for disputes that may arise in the process. The cooperating agencies agree that, once such disputes are resolved, they will not be revisited. However, the cooperating agencies retain the right to comment on all issues related to the CCP/EIS, including those in dispute, through the normal NEPA process.

5. Veto or decision-making power does not accompany cooperating agency status. As the lead agency charged with carrying out the NEPA process under Section 102(2)(c) of NEPA, the SERVICE retains sole decision-making authority over the CCP/EIS and its process.

6. The SERVICE or cooperating agencies may terminate this agreement at any time by providing written notice of the termination to the other parties.

IV. Authority

This memorandum is entered into under the following laws, authorities and regulations:

A. National Environmental Policy Act of 1969, as amended, PL 91-190, 42 U.S.C. 4321

B. Council of Environmental Quality NEPA Regulations (40 CFR Parts 1500-1508)

C. National Wildlife Refuge System Administration Act of 1966, as amended (16 USC 668dd et seq.) The act formally defines the mission of the Refuge System as the administration of "*a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitat within the United States for the benefit of present and future generations of Americans*" (16 USC 668dd(a)(2)).

V. Process and Procedure

1. The SERVICE is the lead agency for ensuring full compliance of the document with the requirements of NEPA. Under applicable laws, rules, regulations, orders, and policies, the SERVICE shall ensure that all necessary consultation and consideration is performed with all Federal, State, Local, and Tribal governments and private organizations.

2. The SERVICE will coordinate and consult with the cooperating agencies throughout the preparation of the CCP/EIS, particularly during the scoping and the Draft CCP/EIS development and impact analysis. This consultation is to assess alternatives accurately; identify areas that require clarification; and to avoid, mitigate, or otherwise address impacts to the natural environment.
3. The SERVICE has full responsibility for implementing procedures and regulations including, but not limited to public review of the CCP/EIS, public distribution of the CCP/EIS, and required decision documentation.
4. The SERVICE will arrange, announce, and conduct scoping meetings and will analyze the results.
5. The SERVICE will meet with the cooperating agencies at least once during each strategic phase of the planning process (Scoping, Alternatives, Draft CCP/EIS, Final CCP/EIS) and more often if needed. All cooperating agencies may participate in discussions on the proposed action and on special or critical resource needs related to the plan. The SERVICE will provide the cooperating agencies with opportunities to review and comment on the preliminary Draft and Final CCP/EIS. The cooperating agencies will provide comments to the SERVICE within the overall time schedule.
6. The SERVICE will provide copies of correspondence to the cooperating agencies as it applies to their area(s) of expertise.
7. Through consultation with the cooperating agencies, the SERVICE is responsible for selection of the Preferred Alternative and preparation of the Record of Decision. The SERVICE's Regional Director for Region 6, Mountain-Prairie Region is the final decision maker for the Record of Decision.
8. The primary designated points of contacts for the SERVICE shall be the refuge's Project Leader, Barron Crawford, and Planning Team Leader, Laurie Shannon (Region 6, Mountain-Prairie Region, Lakewood, Colorado). Other refuge staff personnel also serve on the planning team.
9. Each cooperating agency shall designate a representative(s) to serve on the planning team. If the designated representative(s) is not able to fulfill the duties, the cooperating agency shall designate a new representative in writing to the SERVICE. Given the four-year planning schedule, those contacts are not specifically identified in this document, but will be documented in Memorandum to the Files by the Planning Team Leader of all planning team members and updated as necessary. In order to ensure the consistency in communications, the designated representatives should make every effort to attend planning team meetings over the length of the planning process.
10. The cooperating agencies shall provide responses for data requests and provide review comments to the SERVICE.

11. The SERVICE may use environmental and other information developed by its Contractor for the purpose of NEPA compliance prior to issuing and/or approving applicable agreements.

12. The SERVICE will document all meetings, emails, and phone conversations for inclusion in the Administrative Record for the CCP/EIS. Cooperating agencies shall provide outside correspondence or phone conversations regarding the CCP/EIS to the SERVICE in a timely manner for inclusion into the Administrative Record. The SERVICE will maintain the official Administrative Record.

13. The SERVICE will have primary responsibility for writing and rewriting all sections, parts, or chapters of the CCP/EIS and for reestablishing a schedule for completion of chapters consistent with the overall time schedule.

14. The SERVICE will be the recipient of all comments on the CCP/EIS resulting from the review and comment periods.

15. Upon revision of the Draft CCP/EIS, the SERVICE will provide the cooperating agencies with a list of the significant changes in the Final CCP/EIS. If the cooperating agencies wish to review the preliminary Final CCP/EIS, a copy will be provided, but if the cooperating agencies feel a copy is not necessary, in the interest of saving paper, one will not be provided.

VII. Administration

1. Modifications to this MOU may be proposed by the cooperating agencies and shall become effective upon the written approval of all parties. Changes to this MOU must be initialed and dated on each replacement page by an authorized agent of each party.

2. Any party may withdraw from this MOU after 30 days written notice of their intention to do so to the other parties.

3. Nothing in this agreement will be construed as limiting or affecting in any way the authority or responsibility of the SERVICE or the cooperating agencies to perform within their authority.

This MOU will become effective upon the signature of all of its participants.

Approved

Barron Crawford
Barron Crawford, Project Leader,
Charles M. Russell National Wildlife Refuge

6-28-08
Date

John Earl Daggett
John Daggett, Project Engineer
U.S. Army Corps of Engineers, Ft. Peck Project

JUNE 17, 2008
Date

Gary L. Beres
Gary L. Beres, BLM Field Manager
Lewistown, MT

06-16-2008
Date

Mark Albers
Mark Albers, BLM Field Manager
Malta, MT

7/16/09
Date

M. Elaine Raper
M. Elaine Raper, BLM Field Manager
Miles City, MT

6/27/08
Date

Pat Gunderson
Pat Gunderson, Region 6 Supervisor
Montana Fish, Wildlife and Parks

9/8/08
Date

Clive Rooney
Clive Rooney, Northeastern Land Office Area Manager
Department of Natural Resources and Conservation
Lewistown, Montana

7/30/8
Date

Rick Strohmeyer
Rick Strohmeyer,
Department of Natural Resources and Conservation
Lewistown, MT

6-17-08
Date

Kenneth Ronish
Kenneth Ronish, Fergus County, Chairman
Lewistown, MT

7-7-08
Date

Lloyd N. Rowton
Lloyd N. Rowton, Petroleum County, Chairman
Winnett, MT

8-15-08
Date

Julie A. Jordan
Julie A. Jordan, Garfield County, Chairman
Jordan, MT
Vice

9-4-08
Date

Connie Eissinger
Connie Eissinger, McCone County, Chairman
Circle, MT

8-18-08
Date

Dave Pippin
Dave Pippin, Valley County, Chairman
Glasgow, MT

6-30-2008
Date

Richard Dunbar, Chairman pro tem
Richard Dunbar, Phillips County, Chairman
Malta, MT

6-17-08
Date

Jim Beck
Jim Beck, Missouri River Conservation Districts Council,
Cascade, MT

9/4/2008
Date

