

IMPLEMENTING AGREEMENT

for the

Benton County

Prairie Species Habitat Conservation Plan

January 11, 2011

TABLE OF CONTENTS

1.0	PARTIES	1
2.0	RECITALS AND PURPOSES	1
2.1	Recitals.....	1
2.2	Purposes	1
3.0	DEFINITIONS	2
3.1	Terms defined in Endangered Species Act	2
3.2	“Changed circumstances”	2
3.3	“Covered Activities”	2
3.4	“Covered Lands”	3
3.5	“Covered Species”	3
3.6	“HCP”	3
3.7	“Listed species”	3
3.8	“Permit”	3
3.9	“Permittee”	3
3.10	“Take”	3
3.11	“Unforeseen circumstances”	3
3.12	“Unlisted species”	4
4.0	OBLIGATIONS OF THE PARTIES	4
4.1	Obligations of Permittee.	4
4.2	Obligations of the USFWS.	4
4.2.1	Permit coverage.	4
4.2.2	“No surprises” assurances.....	4
4.3	Obligations of the ODA.	4
4.4	Unforeseen circumstances	4
4.4.1	Limitation of additional mitigation for unforeseen circumstances	4
4.4.2	Basis for determination of unforeseen circumstances.	5
4.4.3	Burden of demonstrating unforeseen circumstances requiring additional mitigation.	5
4.4.4	Notification of unforeseen circumstances.....	5
5.0	INCORPORATION OF HCP	6
6.0	TERM	6
6.1	Initial Term.	6
6.2	Permit suspension or revocation.	6
6.3	Extension of the Permit.....	6
7.0	FUNDING	6
8.0	MONITORING AND REPORTING	7
8.1	Planned periodic reports.	7
8.2	Other reports.	7
8.3	Certification of reports.....	7
8.4	Monitoring by USFWS.....	7
9.0	CHANGED CIRCUMSTANCES	7
9.1	Permittee-initiated response to changed circumstances.....	7
9.2	9.2 USFWS or ODA-initiated response to changed circumstances.....	8
10.0	ADAPTIVE MANAGEMENT	8
10.1	Permittee-initiated adaptive management.....	8

10.2	USFWS or ODA-initiated adaptive management.....	8
10.3	Reductions in mitigation.....	8
10.4	No increase in take.....	8
11.0	LAND TRANSACTIONS.....	9
11.1	Acquisition of land by Permittee.....	9
11.2	Disposal of Prairie Conservation Areas by Permittee.....	9
12.0	EMERGENCY MANAGEMENT.....	9
13.0	MODIFICATIONS AND AMENDMENTS.....	10
13.1	Minor modifications.....	10
13.2	Major Amendments of the Permit.....	11
14.0	REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION.....	11
14.1	In general.....	11
14.2	No monetary damages.....	11
14.3	Injunctive and temporary relief.....	12
14.4	Enforcement authority of the United States.....	12
14.5	ODA Enforcement Permit.....	12
14.6	Dispute resolution.....	12
14.6.1	Informal dispute resolution process.....	12
15.0	MISCELLANEOUS PROVISIONS.....	13
15.1	No partnership.....	13
15.2	Notices.....	13
15.3	Entire agreement.....	14
15.4	Elected officials not to benefit.....	14
15.5	Availability of funds.....	14
15.6	Duplicate originals.....	14
15.7	No third-party beneficiaries.....	14
15.8	Relationship to the ESA and other authorities.....	15
15.9	References to regulations.....	15
15.10	Applicable laws.....	15
15.11	Successors and assigns.....	15

Implementing Agreement

1.0 *PARTIES*

The parties to this Implementing Agreement (Agreement) are Benton County (Benton County or Permittee), the United States Fish and Wildlife Service (USFWS) and Oregon Department of Agriculture (ODA). Benton County, the USFWS and ODA are referred to collectively as “the Parties”.

2.0 *RECITALS AND PURPOSES*

2.1 *Recitals*

The Parties have entered into this Agreement in consideration of the following facts:

- (a) Lands within Benton County contain upland and wet prairies habitat for the following listed and unlisted prairie species: Fender’s blue butterfly, Taylor’s checkerspot butterfly, Kincaid’s lupine, Willamette daisy, Nelson’s checkermallow, Bradshaw’s lomatium, and peacock larkspur.
- (b) Benton County; several non-federal state and local land managers, a utility company, and two conservation organizations (Cooperators); and private landowners needing a County permit or Agricultural Building Authorization (private landowners) wish to conduct activities in Benton County resulting in impacts to Fender’s blue butterfly, Taylor’s checkerspot butterfly, Kincaid’s lupine, Willamette daisy, Nelson’s checkermallow, Bradshaw’s lomatium, and peacock larkspur (Covered Species).
- (c) Benton County is seeking a Permit from the USFWS to allow the County, Cooperators, and private landowners to conduct activities likely to impact the species. In return, Benton County, Cooperators, and private landowners agree to minimize and mitigate to the maximum extent practicable their impacts to the Covered Species.
- (d) Benton County has prepared a Habitat Conservation Plan identifying the activities, lands, and species to be covered by the Permit and setting forth the conservation measures to be implemented to mitigate for impacts to the covered species as a result of the covered activities. Also included in the HCP are adaptive management and monitoring requirements, and the costs, funding sources, and tasks necessary to implement the HCP.
- (e) The ODA is not a party to the Permit issued to Benton County by the USFWS, and it does not issue a separate incidental take permit. The HCP includes conservation measures needed to meet its and Cooperators’ obligations under the State of Oregon’s ESA.

2.2 *Purposes*

The purposes of this Agreement are:

- (a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any of the Parties fail to perform their obligations as set forth in this Agreement; and,

(c) To provide assurances to Benton County that as long as the terms of the HCP, the Permit (USFWS only), and this Agreement are performed, no additional mitigation will be required of Permittee by USFWS or ODA, with respect to Covered Species, except as provided for in this Agreement or required by law.

3.0 *DEFINITIONS*

The following terms as used in this Agreement will have the meanings set forth below:

3.1 *Terms defined in Endangered Species Act*

Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the USFWS or the State of Oregon have the same meaning as in the federal or Oregon ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 *“Changed circumstances”*

Changed Circumstances means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties to the HCP and that can reasonably be planned for in the HCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed circumstances and the planned responses to those circumstances are described in Chapter 8 of the HCP. Changed circumstances are not Unforeseen Circumstances.

3.3 *“Covered Activities”*

Covered Activities means certain activities carried out by Benton County, Cooperators, and private landowners on covered lands that may result in incidental take of the Covered Species. Covered Activities are described in Chapter 4 of the HCP and include:

- Home, Farm, and Forest Development
- Benton County Permits and Authorizations
- Public Service Facilities Construction
- Transportation and Work in Rights-of-Way
- Water and Wastewater Management
- Utility Construction and Maintenance
- Parks, Natural Areas, and Open Space Management
- Agricultural Activities
- HCP Implementation
- Emergency Response Activities

3.4 *“Covered Lands”*

Covered Lands means the lands upon which the Permit authorizes incidental take of the Covered Species and the lands to which the HCP's conservation and mitigation measures apply. These lands are described in Chapter 3 of the HCP.

3.5 *“Covered Species”*

Covered Species means the Fender's blue butterfly, Taylor's checkerspot butterfly, Kincaid's lupine, Willamette daisy, Nelson's checkermallow, Bradshaw's lomatium, and peacock larkspur, which the HCP addresses in a manner sufficient to meet all of the criteria for issuing a Permit under ESA Section 10(a)(1)(B) and as required under the State of Oregon ESA.

3.6 *“HCP”*

HCP means the habitat conservation plan prepared by Benton County.

3.7 *“Listed species”*

Listed Species means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the state or federal ESA.

3.8 *“Permit”*

Permit means the incidental take permit issued by the USFWS to Benton County pursuant to Section 10(a)(1)(B) of the ESA for take incidental to the Covered activities in Benton County, as it may be amended from time to time.

3.9 *“Permittee”*

Permittee means Benton County.

3.10 *“Take”*

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.11 *“Unforeseen circumstances”*

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers, USFWS, and ODA at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.12 *“Unlisted species”*

Unlisted Species means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 *OBLIGATIONS OF THE PARTIES*

4.1 *Obligations of Permittee.*

The Permittee will fully and faithfully perform all obligations assigned to it under this Agreement, the Permit, and the HCP.

4.2 *Obligations of the USFWS.*

Upon execution of this Agreement by the Parties, and satisfaction of all other applicable legal requirements, the USFWS will issue the Permittee a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take of the Covered Species resulting from Covered Activities on Covered Lands.

4.2.1 **Permit coverage.**

The Permit issued by the USFWS will identify all Covered Species and will take effect for Covered Species at the time the Permit is issued.

4.2.2 **“No surprises” assurances.**

Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the Permit, the USFWS can require Permittee to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the “no surprises” regulations at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5).

4.3 *Obligations of the ODA.*

Upon execution of this Agreement by the Parties, ODA agrees to provide Benton County with incidental take coverage for the covered plant species as allowed under the State of Oregon ESA.

4.4 *Unforeseen circumstances*

4.4.1 **Limitation of additional mitigation for unforeseen circumstances.**

If unforeseen circumstances arise during the Permit term warranting additional mitigation from Benton County, so long as the County is in compliance with the HCP obligations, any additional

mitigation shall maintain the original terms of the HCP to the maximum extent possible. Any such changes in mitigation requirements will be limited to modifications to the habitat restoration, enhancement, and management activities; monitoring; and plant material collection activities undertaken as mitigation in the Prairie Conservation Areas or Benton County Type I Special Management Areas (SMAs), so long as such changes do not require additional funding, land, or water resources without the consent of the County.

4.4.2 Basis for determination of unforeseen circumstances.

If, during the implementation of this HCP, an unforeseen circumstance occurs that could have a significant negative impact on one or more of the Covered Species or could affect the ability of Benton County to effectively manage covered activities under this HCP, the USFWS or ODA shall notify Benton County, in writing, of the unforeseen circumstance. The USFWS or ODA's determination of unforeseen circumstances shall be based on the following factors:

- size of current range of affected species,
- percentage of range adversely affected by the HCP,
- percentage of range conserved by the HCP,
- ecological significance of the portion of the range affected by the HCP,
- level of knowledge about the affected species,
- degree of specificity of the species' conservation program under the HCP,
- whether conservation measures in the HCP provides an overall net benefit to the species and contains measurable criteria for assessing biological success of the HCP conservation measures, and
- whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

4.4.3 Burden of demonstrating unforeseen circumstances requiring additional mitigation.

The USFWS or ODA have the burden of demonstrating when such unforeseen circumstances exist requiring additional mitigation.

4.4.4 Notification of unforeseen circumstances.

USFWS or ODA will provide Benton County with 120 days written notice of the proposed findings of unforeseen circumstances. During that 120-day period, USFWS or ODA shall meet with Benton County to discuss the proposed finding and provide the County with an opportunity to submit information to rebut the proposed finding and to consider any proposed changes to the HCP or Permit. During that period, Permittee will avoid actions contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

If the parties mutually agree to modify or amend the HCP or Permit, the procedures set forth in Section 13.2 will be followed.

5.0 *INCORPORATION OF HCP*

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 *TERM*

6.1 *Initial Term.*

This Agreement and the HCP will become effective on the date the USFWS issues the Permit. This Agreement, the HCP, and the Permit will remain in effect for a period of Fifty (50) years from issuance of the Permit, except as provided below.

6.2 *Permit suspension or revocation.*

The USFWS may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation (See 5 U.S.C. § 558; 50 C.F.R. §§ 13.27 - 13.29; 15 C.F.R. Part 904) except the USFWS may revoke the Permit based on a determination that the continuation of the Covered Activities would likely jeopardize the continued existence of the Covered Species, but only if the USFWS has been unsuccessful in remedying the situation in a timely fashion through other means as provided in the "No Surprises" rule (50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5)). Such suspension or revocation may apply to the entire Permit, or only to specified Covered Species, Covered Lands, or Covered Activities. In the event of suspension or revocation, Permittee's obligations under this Agreement and the HCP will continue until the USFWS and ODA determine that all take of Covered Species that occurred under the Permit has been fully mitigated in accordance with the HCP.

6.3 *Extension of the Permit.*

Upon agreement of the parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the USFWS in force on the date of such extension. If Permittee desires to extend the Permit, it will so notify the USFWS at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications the USFWS may require at the time of extension.

7.0 *FUNDING*

Permittee warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP. Permittee will promptly notify the USFWS and ODA of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing any such notice, Permittee will provide the USFWS and ODA with a copy of its Annual HCP Compliance Report each year of the Permit, or with such other reasonably available financial

information the parties agree will provide adequate evidence of Permittee's ability to fulfill its obligations.

8.0 *MONITORING AND REPORTING*

8.1 *Planned periodic reports.*

As described in the HCP, the Permittee will submit Annual HCP Compliance Reports.

8.2 *Other reports.*

Permittee will provide, within 30 days of being requested by the USFWS and/or ODA any additional information in its possession or control related to implementation of the HCP requested by the USFWS and/or ODA for the purpose of assessing whether the terms and conditions of the Permit (USFWS only) and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.3 *Certification of reports.*

All reports will include the following certification executed by a responsible Benton County official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 *Monitoring by USFWS.*

The USFWS may conduct inspections and monitoring in connection with the Permit in accordance with its regulations. (See 50 C.F.R. § 13.47)

9.0 *CHANGED CIRCUMSTANCES*

9.1 *Permittee-initiated response to changed circumstances.*

Permittee will give notice to the USFWS and ODA within seven days after learning that any of the changed circumstances listed in the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the changed circumstances, Permittee will modify its activities to the extent necessary to mitigate the effects of the changed circumstances on Covered Species, and will report to the USFWS and ODA on its actions. Permittee will make such modifications without awaiting notice from the USFWS or ODA.

original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under Section 13.3 of this Agreement.

11.0 *LAND TRANSACTIONS*

11.1 *Acquisition of land by Permittee.*

Nothing in this Agreement, the HCP, or the Permit limits the Permittee's or HCP Cooperator's right to acquire additional lands. Any lands that may be acquired that are outside those areas defined as Covered Lands will not be covered by the Permit and the HCP except upon amendment of the Permit and the HCP as provided in section 13.2 of this Agreement.

11.2 *Disposal of Prairie Conservation Areas by Permittee.*

Permittee's or HCP Cooperator's transfer of ownership or control of Prairie Conservation Areas will require prior approval by the USFWS and ODA and an amendment of the Permit and HCP in accordance with section 13.2 of this Agreement, except transfers of Covered Lands may be processed as minor modifications in accordance with section 13.1 of this Agreement if:

- (a) The land will be transferred to an agency of the federal government and, prior to transfer, the USFWS and ODA have determined the transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;
- (b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to the USFWS and ODA (e.g., an easement held by the state fish and wildlife agency or a conservation organization with the USFWS and ODA as third-party beneficiaries) to ensure the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP;
- (c) The USFWS and ODA determines the amount of land to be transferred will not have a material impact on the ability of the Permittee to comply with the requirements of the HCP and the terms and conditions of the Permit.

12.0 *EMERGENCY MANAGEMENT*

Permittee, USFWS, and ODA agree that in the event a PCA is threatened by fire, flood, or similar emergency, emergency response personnel shall be permitted full access to the area, as necessary, to protect human life, property, and/or biological resources. In the event disturbance of a PCA is necessary to protect life or to prevent the catastrophic loss of property, emergency personnel shall, where time permits, attempt to contact the USFWS and ODA for input on how best to respond to the emergency to maximize preservation of the Covered Species and habitat values, while preserving life and preventing the catastrophic loss of property. If time does not permit such consultation, Benton County is authorized to allow emergency personnel to disturb the habitat area as necessary to preserve life and prevent the catastrophic loss of property. After

the emergency relief process begins, Benton County shall meet and consult with USFWS or ODA to determine the need and schedule for rehabilitating any Prairie Conservation Area.

13.0 *MODIFICATIONS AND AMENDMENTS*

13.1 *Minor modifications.*

(a) Any party may propose minor modifications to the HCP or this Agreement by providing written notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If the USFWS and ODA concur with the minor amendments proposed by Benton County, they will submit such approval in writing within 120 days or less. If the USFWS and ODA do not send notice or approval or disapproval, the amendment is approved automatically. The modifications will be considered effective on the date of USFWS' and ODA's written authorization or after 120-days if USFWS and ODA fail to send notice of approval or disapproval. A record of any minor amendments to the HCP, incidental take permit, or Implementing Agreement shall be documented in writing.

If, for any reason, a receiving party objects to a proposed modification, it must be processed as a major amendment to the Permit in accordance with subsection 13.3 of this section. The USFWS or ODA will not approve minor modifications to the HCP or this Agreement if USFWS or ODA determines such modifications would result in (1) operations under the HCP significantly different from those analyzed in connection with the original HCP, (2) adverse effects on the environment new or significantly different from those analyzed in connection with the original HCP, or (3) additional take not analyzed in connection with the original HCP.

(b) Minor amendments to the HCP and this Agreement processed pursuant to this subsection may include but are not limited to the following:

- Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the incidental take permit, Implementing Agreement, or HCP.
- Changes in land ownership.
- Changes to non-USFWS survey, monitoring, or reporting protocols.
- Changes to the biological goal or objectives in response to adaptive management.
- Modifications to or adoption of additional conservation measures likely to improve the conservation of Covered Species.
- Discontinuing any conservation measures determined through monitoring and adaptive management to be ineffective.
- Any other types of modifications clarifying components of the incidental take permit, Implementing Agreement, or HCP.

(c) Minor amendments to the HCP, Permit, and/or this Agreement do not require amendment of the County's implementing ordinance adopting the HCP, Permit, and this Agreement.

(d) Any other amendments to the HCP or this Agreement will be processed as major amendments to the Permit in accordance with subsection 13.3 of this section.

13.2 *Major Amendments of the Permit.*

(a) The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the USFWS's permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species.

Major amendments to the HCP, Permit, and/or this Agreement may include, but are not limited to, the following:

- Revisions (additions or deletions) to the Plan Area, not qualifying as a minor modification.
- Adding or removing one or more species to the list of Covered Species.
- Increasing the amount of take allowed under the incidental take permit.
- Adding one or more activities to the list of Covered Activities if that activity will result in greater adverse effects to the Covered Species than that analyzed through the NEPA documentation.
- Modifying a conservation measure so substantially as to affect the level of authorized take, the Covered Activities, funding, or the nature and scope of the conservation measures.
- Extending the Permit term beyond 50 years.

The parties agree a major modification of the HCP will occur only if Benton County has sufficient funding to assist in make the necessary revisions to the HCP.

14.0 *REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION*

14.1 *In general.*

Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permit, and the HCP.

14.2 *No monetary damages.*

No party shall be liable in damages to any other party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

14.3 *Injunctive and temporary relief.*

The parties acknowledge the Covered Species are unique and their loss as species would result in irreparable damage to the environment, and therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

14.4 *Enforcement authority of the United States.*

Nothing contained in this Agreement is intended to limit the authority of the United States government or State of Oregon to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the state or federal ESA or other applicable laws.

14.5 *ODA Enforcement Permit.*

The ODA shall have no authority to enforce the terms of the Permit issued to Benton County by the USFWS.

14.6 *Dispute resolution.*

The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and/or the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.'

14.6.1 **Informal dispute resolution process.**

Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or filed suit in state or federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed upon, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

15.0 MISCELLANEOUS PROVISIONS

15.1 *No partnership.*

This Agreement, the Permit, or the HCP shall not make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

15.2 *Notices.*

Any notice allowed or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified, and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided they are also delivered personally or by certified mail. Notices shall be transmitted so they are received within the specified deadlines.

State Supervisor
Oregon Fish and Wildlife Office
United States Fish and Wildlife Service
2600 S.E. 98th Ave.
Portland, Oregon 97266
Telephone: 503-231-6179
Fax: 503-231-6195

Director
Oregon Department of Agriculture
635 Capitol St. NE
Salem, OR 97301-2532
Telephone: 503-986-4550
Fax: 503-986-4747

Commissioners
Benton County Government
P.O. Box 3020
Corvallis, Oregon 97330-3020
Telephone: 541-766-6800
Fax: 541-766-6893

15.3 *Entire agreement.*

This Agreement, together with the HCP and the Permit (USFWS only), constitutes the entire agreement among the parties. It supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each party acknowledges no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party not embodied herein.

15.4 *Elected officials not to benefit.*

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit arising from it. No Oregon State Legislator nor the Governor of Oregon shall be entitled to any share or part of this Agreement, or to any benefit arising from it.

15.5 *Availability of funds.*

Implementation of this Agreement by the USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge the USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing. Nothing in this Agreement will be construed by the parties to require an obligation, appropriate, or expenditure of any money from the treasury of the State of Oregon. The parties acknowledge ODA will not be required under this Agreement to expand any state agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditures as evidence in writing.

15.6 *Duplicate originals.*

This Agreement may be executed in any number of duplicate originals. A complete, signed original of this Agreement shall be maintained in the official records of each of the parties hereto.

15.7 *No third-party beneficiaries.*

Without limiting the applicability of rights granted to the public pursuant to the state or federal ESA or other state or federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed under existing law.

15.8 *Relationship to the ESA and other authorities.*

The terms of this Agreement shall be governed by and construed in accordance with the state and federal ESA and applicable state and federal law. In particular, nothing in this Agreement is intended to limit the authority of the USFWS or ODA to seek penalties or otherwise fulfill their responsibilities under state or federal ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government or the ODA, as an agency of Oregon state government. Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended the rights and obligations of Permittee under the HCP and this Agreement will be considered in any consultation affecting Permittee's use of the Covered Lands.

15.9 *References to regulations.*

Any reference in this Agreement, the HCP, or the Permit to any regulation or rule of the USFWS or ODA shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

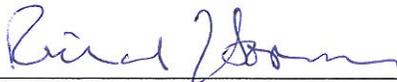
15.10 *Applicable laws.*

All activities undertaken pursuant to this Agreement, the HCP, or the Permit must be in compliance with all applicable state and federal laws and regulations.

15.11 *Successors and assigns.*

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the Permit shall be governed by the USFWS' regulations in force at the time.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date the USFWS issues the Permit.

BY  Date 1/14/11
Richard Hannan
Deputy Regional Director
United States Fish and Wildlife Service
Portland, Oregon

BY  Date 1/13/11
Katy Coban
Director
Oregon Department of Agriculture
Salem, Oregon

BY  Date 01-11-11
Linda Modrell
County Commissioner
Benton County
Corvallis, Oregon

BY  Date 1-11-11
Jay Dixon
County Commissioner
Benton County
Corvallis, Oregon

BY  Date 1/11/2011
Annabelle Jaramillo
County Commissioner
Benton County
Corvallis, Oregon