



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



FEB 28 2012

In Reply Refer To:
FWS/AES/050277

Memorandum

To: Regional Directors, Region 1-8
From: Director *Dan Ashe*
Subject: Reimbursable Agreements and Environmental Reviews for Renewable Energy Projects

President Obama and Department of the Interior (DOI) Secretary Salazar have made the development and deployment of renewable energy sources such as solar power and wind power a national priority. The U.S. Fish and Wildlife Service (Service) has taken a number of steps to support development of renewable energy, including seeking increases in our last four budget requests to provide additional staff resources to work on renewable energy projects.

In addition to supporting the review of renewable energy projects through appropriated funding to the Service, we are pursuing other funding mechanisms. First, we are working with the Bureau of Land Management (BLM) to develop and implement a reimbursable agreement to reimburse the Service for section 7 consultations on renewable energy projects that are permitted by BLM. Second, and the focus of this memo, we have outlined a framework for developing reimbursable agreements with private developers of renewable energy projects that will provide sufficient funding to the Service to support a dedicated workforce and provide expedited development and review of renewable energy Habitat Conservation Plans.

The primary purpose of this memorandum is to clarify that the Service may, when no conflict of interest is present, use reimbursable agreements to accept funds from private entities and use those funds to pay the direct and indirect costs of assisting in the development and conducting environmental reviews of: 1. Habitat Conservation Plans prepared under the authority of section 10(a)(1)(B) of the Endangered Species Act; 2. applications for permits under the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act; and 3. Conservation Planning Assistance activities. When entering into a reimbursable agreement with a private party, the Service should continue to make every effort to provide timely environmental reviews for all other projects that require our environmental review. Attachments to this memorandum include supporting materials that you and your staff should use when developing such reimbursable agreements. While the focus of this effort is directed to renewable energy projects, reimbursable agreements may also be established for other project types. However, based on current Service authorizations, reimbursable agreements are appropriate vehicles for allowing private entities to fund Service work associated with meeting the regulatory requirements inherent in developing property in a manner consistent with federal environment law. The FY 2000 Appropriations Act

for the Department of the Interior (DOI) states in the section for the Service's Resource Management Account:

"That, notwithstanding any other provision of law, in fiscal year 1999 and thereafter, sums provided by private entities for activities pursuant to reimbursable agreements shall be credited to the "Resource Management" account and shall remain available until expended. (P.L. 106-113, Consolidated Appropriations Act, 2000)"

Subsequent DOI Appropriation Acts have recognized the authority of the Service to enter into reimbursable agreements with public and private entities. The Consolidated Appropriations Act of 2012, providing for current DOI appropriations, states that funds appropriated to the Service's Resource Management account may be utilized for the performance of authorized functions through, among other instruments, "reimbursable agreements with public and private entities." P.L. 112-74.

The Service Manual includes a chapter devoted to the subject of Reimbursable and Intergovernmental Agreements (264 FW 2; see Attachment 1) and should be consulted and followed when using reimbursable agreements to meet the heavy renewable energy workload. The overriding factor in the Service's determination of whether or not to enter into a reimbursable agreement is whether such an agreement is in the best interests of the Service. Implicit in this analysis are the ethical considerations of accepting funding from any specific private source. The Service Manual chapter on reimbursable agreements states that there should be an assurance that working with the private entity will not cause a conflict of interest (264 FW 2.18). Section 2.19 of the manual chapter describes factors that should be considered when entering into a reimbursable agreement with a private entity that would help avoid any conflict of interest. Before entering into a reimbursable agreement, an appropriately detailed assessment of those factors listed in section 2.19 should be completed and set forth in a written record. This record must be more than a simple checklist; rather, it should contain enough detail to document that the Service took careful consideration of the factors. The decisions of whether a conflict of interest exists and whether to enter into a reimbursable agreement are management prerogatives of the Service.

Also attached to this memorandum is a template task order document (Attachment 2) that includes language that will assist in avoiding a conflict of interest and provide for consistency across the Regions. We worked closely with the DOI's Division of General Law in the Solicitor's Office to develop the template in a way that meets our legal and ethical standards. A properly executed reimbursable agreement must also include an acquisition form 3-2019, as well as any other documents (e.g., partnership agreement, statement of principles) that the parties to the agreement deem to be appropriate. Per the Service Manual, reimbursable agreements that exceed \$250,000 must be approved by the Director.

Please direct any questions regarding this matter to Mr. Rick Sayers, Chief, Division of Consultation, Habitat Conservation Plans, Recovery, and State Grants at (703) 358-2171.

Attachment 1- FWS Manual Chapter 264 FW 2

Attachment 2- Task Order

Attachment 3- FWS Acquisition Form 3-2109