

Nomination Received by Council on Environmental Quality, Executive Office of the President  
For the CEQ NEPA Pilot Project Program  
<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project-nominations>

**PART I. NOMINATOR**

|                       |   |
|-----------------------|---|
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| <b>Last Name:</b>     | Lee                                     |
| <b>Organization:</b>  | Environmental Planning Strategies, Inc. |
| <b>Project Title:</b> | Integrated Federal Planning             |
| <b>Submitted by:</b>  | Member of the Public                    |
| <b>Date Received:</b> | 05/25/2011                              |

**PART II. SHORT ANSWERS**

**I. What Federal agency or agencies will be involved in this pilot project?**

USDA FS, BLM, DOE, USFWS, DOC, NMFS, FAA, FHWA, USDA RUS, EPA, and other agencies

**II. What is the Federal action to which this NEPA pilot project applies?**

"Integrated Federal Planning (IFP) will guide the multi-federal agency authorizations and permitting required for renewable energy production and transmission projects on federal land. The federal action addressed by this NEPA pilot project. The timeliness and quality of multi-federal authorization and permitting decisions will be improved through rigorous application of IFP, enabling federal managers and staff to implement recent agency policies and instructions, such as those of the BLM and FS and the nine-agency MOU Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land. In addition, IFP promotes fulfillment of all legal and policy obligations while enhancing public understanding and civic responsibility. Based on 20 years of successful Informed Facilitation practice, IFP ensures an applicants proposal is efficiently evaluated and improved prior to issuance of a notice of intent to prepare an environmental assessment or statement. IFP continues through public involvement, alternative consideration and decision making. NEPA provides the umbrella for efficient, complete, and timely interagency planning and meaningful public involvement, permitting, and legal compliance. The pilot will host agency and proponent workshops and training. Two developing renewable energy and/or ancillary electric transmission projects will be selected for IFP. The pilot will compile results and critique accomplishments."

**III. How will this pilot project reduce the costs and time needed to complete the NEPA process?**

"A stitch in time saves nine. Agencies have varying procedures to evaluate a permit application, approve an application, and plan a project. Often a Lead Federal Agency postpones involvement of key participants in project planning until after a notice of intent is released for public review and comment. Under pressing deadlines, critical and legally-required coordination and consultation is often missed or short-changed. Integrated Federal Planning provides flexible and adaptive methods to achieve productive interdisciplinary study and evaluation of what will become a well-reasoned and fully integrated proposal, federal decisions, and

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ultimately a worthwhile and needed project.

Integrated Federal Planning puts the hard work and heavy lifting up-front prior to the public release of a notice of intent to prepare an environmental assessment or impact statement. Consistent with inherently governmental responsibilities, federal officials, the project proponent, appropriate federal, state, and tribal representatives, and interdisciplinary professionals engage early and throughout project planning and the decision making regarding an applicant's proposed project. Through the assistance of an Informed Facilitator partnered with the lead and cooperating agencies planners and staff, planning and evaluation of the proponents project are effective, efficient, and within applicable laws, regulations, and each participating agencies policies and procedures. The involved agencies develop clear and well-defined planning results, leading to informed federal authorizing and permitting decisions rendered within the full concurrence of each participant.

Necessary and appropriate technical, environmental and socioeconomic reviews advance with clarity, eliminating false starts, unnecessary planning steps and misunderstandings. Creative and meaningful agency, tribal, Non-Governmental Organizations (NGOs), and public involvement is achieved at appropriate times during the evaluation of the proposed project. The overall costs and the time necessary to complete environmental reviews and required multi-agency authorizations and permitting are significantly reduced from those of current multi-agency practices. "

#### **IV. How will this pilot project ensure rigorous environmental protection?**

"If people truly understand what they are doing, they are more likely to do it well.

After a thorough understanding of the integrated and relevant environments, including the socioeconomic, cultural, technical, and environmental components, at a scale of analysis appropriate for the scope of decisions to be made, the interagency team develops a comprehensive understanding of the chains of cause-and-effect relationships likely to occur if the proposed action were implemented. Reasonable and feasible mitigating alternatives to meet the need for action are creatively and openly developed by the team using the cause-and-effect relationships. These evaluations appropriately engage the public, NGOs, tribal, and agency staff consistent with requirement of the FACA. Analyses of likely consequences, including cumulative effects, are developed, enabling discovery of effective mitigation cast in realistic terms and firmly grounded in the rigorous analyses of the interdisciplinary-interagency professional team.

By seamlessly integrating the planning of an applicant's proposed project, documentation directly addresses the pending federal decisions and integrates compliance among applicable laws and regulations. For example, NEPA, the ESA, Section 404 of the CWA, the EO for Environmental Justice, and other laws, regulations, and EOs become more than mere disclosures of information. They become vital elements of informed decision making, promote collaboratively-crafted and effective mitigation, and support effective and meaningful public participation.

Agencies, tribes, NGOs, and the interested and affected people are provided timely opportunities to truly understand the issues associated with the pending decisions and to become meaningfully involved throughout planning. Such engagement creatively improves outcomes and fosters effective mitigation which is logically developed, agreed upon, and

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documented. An additional benefit is the minimization or avoidance of conflict, both internally and externally."

**V. How will this pilot project improve the quality and transparency of agency decisionmaking?**

**"Clarity fosters comprehension.**

**By integrating federal planning and carefully crafting a notice of intent among the affected federal, state, and tribal agencies; the time, efforts, energies, and funds of interested and affected persons', agencies', and organizations' are conserved. The federal proposal is well thought out, enhancing the likelihood of meaningful public engagement.**

**The Lead Federal Agency develops a proposal from the applicants proposed project. Through IFP, the need for action, scope of agency decisions, identification of issues, types of alternatives, and mitigation are developed early, concurrently, and together, as described in the CEQ NEPA regulations (§102(2)(A), §1500.2(c), §1500.5(a), §1501.2(d), §1501.8(b), §1502.5). Through interdisciplinary planning and concise and clear presentation, public involvement becomes meaningful and efficient.**

**Easy-to-read and understand planning documents are the foundation for the creative and pragmatic exchange of information among people involved in the federal proposal. Participants have meaningful opportunities to ask detailed and helpful questions, challenge assumptions, provide additional information, and correct errors or omissions. These exchanges further refine the cause-and-effect relationships of the project and provide grounded, site-specific information and proposed mitigation from the participants' perspectives, providing answers to such questions as: How close do I live to the project? Can I recreate there? And, how does the project potentially affect me?**

**Answers to the questions above and others uncover additional mitigation and alternative actions through enhanced understanding of what is important to people and how the project directly or indirectly affects their lives and values. Effective public participation may discover actions that could have cumulative contributions to cause-and-effect relationships, identify potentials for induced growth and change, challenge the need for action, identify more effective metrics, and focus impact analyses on resources that are truly important for the decisions to be made. Such information from the public may very well lead to improved methodologies for conducting IFP and improving federal decision making."**

**VI. Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe?**

**"Yes.**

**Informed Facilitation is a proven and effective way to implementing IFP. The Informed Facilitator, a professional knowledgeable in pertinent laws, agency missions, regulations, technologies and sciences, provides the comprehensive mastery of effective planning methods while remaining unassociated with pending federal authorizations, parties of interest, and the deliberations of applicable federal decisions. Facilitated Planning through**

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**Informed Facilitation has demonstrated success for over 20 years in projects ranging from management of wildlife damage and invasive and endangered species to planning for timber sales, major highways, water/sewer infrastructure, military integrated natural resources management plans (INRMPs), airfield, ground-based training, radars, and test facilities. Since 1988, practical, dynamic workshops have provided expertise to state and federal agency and contractor professionals, including those of US EPA, all four branches of DOD, FS, DOE, NMFS, FHWA/state DOTs, FAA, and other agencies.**

**The Pilot Project will host effective workshops for managers, planners, and professional interdisciplinary staff for training in effective implementation of IFP using Facilitated Planning and Informed Facilitation. Each workshop, tailored specifically to the needs of the participants, would focus on:**

- **Awareness training for program managers and administrators who would be reviewing and authorizing renewable energy proposals;**
- **An agency coordination team, including project managers, professional technical staff, tribal representatives, contractor technical staff and project proponents from cooperative and investor-owned utilities;**
- **Project Managers involved in projects as lead agency or cooperating agency representatives;**
- **Informed Facilitators who would facilitate and expedite IFP by partnering with the federal manager(s) to efficiently coordinate and provide strategic guidance, management of planning and legal compliance processes (including NEPA), draft planning and decision documents, and develop effective and timely public involvement;**
- **Upper management professionals to ensure sufficient and appropriate funding and support for timely project planning, management of internal and external conflict, and decision making; and**
- **Preparation of RFPs and SOWs for selection of contractor support for effective implementation of IFP, NEPA, and inherently governmental responsibilities."**

### **PART III. PROJECT DESCRIPTION**

*(See attachment on following page.)*

## CEQ NEPA Pilot Project Submittal Integrated Federal Planning Environmental Planning Strategies, Inc. 5-24-11

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Integrated Federal Planning (IFP) and the nine-agency MOU (USDA, DOC, DOD, DOE, EPA, CEQ, FERC, ACHP, and DOI) support Section 1221(a) of the Energy Policy Act of 2005 and Administration priorities. The President said that the country that harnesses the power of clean, renewable energy will lead the 21<sup>st</sup> century. He has made major policy speeches and developed budget proposals emphasizing the development and use of renewable energy while cutting greenhouse gases, reducing environmental impacts, and enhancing national security interests through reducing the use of foreign oil. Secretaries Vilsack, USDA, Salazar, DOI, and Chu, DOE, have called for initializing renewable energy planning, siting, and design to maximize development opportunities while minimizing impacts to wildlife, wildlands, water, and other resources while avoiding needless delays. Industry and agency representatives agree that the current agency processes used nationwide are neither efficient nor involve the necessary federal and state agencies and tribal governments, the proponent, interested entities, and the public in early planning efforts in productive and meaningful ways.

IFP has been presented and discussed at the DOI interagency meeting (Washington, D.C., 2/8-9/2011), the DOE/DOI/USDA/FERC/CEQ meeting (Washington, D.C. 4/18/11), the NAEP Energy Symposium (4/26/11, Denver), FS and USDA leadership, and the CEQ/DOI/DOE renewable energy team. Environmental Planning Strategies, Inc. has been collaborating with Mr. Robert Cunningham, Assistant Director of Lands and Realty Management, FS, in developing Integrated Federal Planning and this submission.

Consistent with the nine-agency MOU, BLM and USFS 2011 directives, and Administration and agency policies, DOE, BLM, FS, and RUS (USDA), are currently evaluating proposals for construction of electric transmission through internal screening processes. These projects are sufficiently early in the evaluation process for appropriate use of IFP. The agencies of the MOU would be involved once the projects are selected and the lead agencies determined. It is expected that projects would be selected within the next 6 months. Completion may take two to three years from acceptance of a land use application. This is substantially less than the 5 to 10 years currently experienced for such projects. Regional workshops (see below) are currently in the early organization and planning.

Transmission and renewable energy proposals are located in the eastern, central, and western U.S. Integrated issues for transmission lines include as appropriate: viewsheds, human health (EMF), loss of wildlife and protected species habitats, water quality, wetlands quality, wetlands filling with dredged/fill material, historic and cultural resources, induced growth, quality of life in rural areas, property values, potential for imminent domain acquisition of private property, conflicts between placement on federal/private land, noise, soil erosion, and other issues over lengthy linear features. Issues regarding electrical generation from wind, solar, geothermal, and hydropower are similar, yet within a smaller geographic context.

IFP guides the development of a notice of intent to prepare an EIS or other environmental document. The qualified Informed Facilitator team aids the Project Manager and agency/tribal team in focusing the underlying need for action with effectiveness measures and the clearly defined responsibilities and decisions of each agency. The proposed action is presented through a proper understanding of baseline conditions and activities (the no action alternative), and the comprehensive understanding of the chains of cause-and-effect relationships, including cumulative impacts and effects associated with induced growth. This early work produces

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reasonable alternatives and effective mitigation. The effectiveness of each alternative, an improved proposed action, and the social, economic, and environmental benefits and consequences of each alternative are understood. Planning is documented, reviewed, and corrected concurrently with the progress of the analysis. Each agency is afforded reliable information to make informed and timely decisions regarding the project application and associated permits. NGOs and the public are involved in a meaningful way throughout the process, consistent with requirements of FACA.

Implementing IFP requires the agencies involved in the MOU, state agencies, affected tribes, and the applicant to coordinate cost recovery for payment of agency and contractor support; committed lead and participating agency professional managerial and technical personnel; and GIS support technology. Contractor support would include the Informed Facilitator and support partners, and would ultimately involve support for GIS, engineering, public involvement strategies and meeting logistics, and administrative support. Contractors would be under the control of the Federal Lead Agency per the responsibilities of inherently governmental policies.

### **Useful references/citations**

Lee, J.L. 1997. NEPA is a Powerful Collaborative Planning Process. *Federal Facilities Environmental Journal*. Spring p. 85-99.

Lee, J.L. and R.S. Russell. 1999. Tools for Powerful Planning: Using the Facilitated Planning Approach. *Environmental Regulation and Permitting*. Autumn, p. 13-27

Lee, J.L. and R.S. Russell. 1999. Effective NEPA Implementation: The Facilitated Approach. *Environmental Regulation and Permitting*. Spring, p. 53-70 [750]

### **For questions, please contact:**

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**FOREST SERVICE MANUAL  
NATIONAL HEADQUARTERS (WO)  
WASHINGTON, DC**

**FSM 2700 – SPECIAL USES MANAGEMENT**

**CHAPTER 2720 – SPECIAL USES ADMINISTRATION**

**Interim Directive No.:** 2720-2011-1

**Effective Date:** May 10, 2011

**Duration:** This interim directive expires on November 10, 2012.

**Approved:** JOE L. MEADE  
Acting Associate Deputy Chief, NFS

**Date Approved:** 05/02/2011

**Posting Instructions:** Interim directives are numbered consecutively by title and calendar year. Post by document at the end of the chapter. Retain this transmittal as the first page(s) of this document. The last interim directive was 2710-2009-2 to FSM 2710.

|   |                |          |
|---|----------------|----------|
| <b>New Document</b>   | id_2720-2011-1 | 17 Pages |
| <b>Superseded Document(s)<br/>(Interim Directive Number<br/>and Effective Date)</b> | None           |          |

**Digest:**

2726.43 - This interim directive (ID) sets forth direction to reserved code for processing proposals and applications for use of National Forest System (NFS) lands for electric transmission projects subject to the October 23, 2009, memorandum of understanding (MOU) among the U. S. Department of Agriculture and eight other federal departments or agencies regarding coordination in federal agency evaluation and authorization of electric transmission projects on lands managed by more than one federal agency.

2726.43a thru 2726.43j - Establishes codes, captions, and sets forth direction for authorizing electric transmission projects, responsibilities pursuant to the MOU, the Forest Service's process for evaluating special use proposals and applications, and the Forest Service's responsibilities when it functions as the lead agency for an electric transmission project that is subject to the MOU.

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## **2726 - ENERGY GENERATION AND TRANSMISSION**

### **2726.4 - Electric Transmission and Distribution Lines**

#### **2726.43 - Powerline**

This designation includes distribution and transmission for the non Federal Lands Recreation Enhancement Act (FREA) fee exempt facilities. Requests for this use are encouraged to use existing rights-of-way corridors or to site along existing rights-of-way. Reducing the dispersion of rights-of-way is encouraged by Federal Land Policy and Management Act (FLPMA). The Record of Decision designating the Section 368 corridors in the western states (P.L. 109-58) established Interagency Operating Procedures (IOP) that are mandatory in the designated corridors and are appropriate as the best management practices in other rights-of-way.

#### **2726.43a - Definitions**

Authorizing Agency. Any federal agency that is responsible for issuing a land use authorization for a qualifying project.

Authorizing Officer. For purposes of section 43e, the Forest Service or Bureau of Land Management (BLM) official delegated the authority to supervise the project manager and the project interdisciplinary team and to authorize the use and occupancy of National Forest System (NFS) and BLM lands for a qualifying project pursuant to the Memorandum of Understanding (MOU) and Service First authority.

Cooperating Agency. An agency with jurisdiction by law regarding a proposed electric transmission project on federal land; an agency that otherwise has special expertise with respect to environmental and other issues pertinent to evaluation and authorization of a qualifying project; or a State, tribe, or local government with relevant expertise or authority or that is potentially affected by or interested in a qualifying project.

Corridors of Concern. Section 368 corridors or segments of such corridors contested in litigation and generally located in northeastern California and northwestern Nevada; southern California, southeastern Nevada, and western Utah; and southern Wyoming, northeastern Utah, and northwestern Colorado.

Department of Energy (DOE) Director. The Director of Permitting and Siting in DOE's Office of Electricity Delivery and Energy Reliability.

Electric Transmission Project. An electricity conveyance and attendant facilities that serves regional or multi-regional areas and that begins and terminates at a substation.

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Forest Service Principal Contact. The Washington Office Lands and Realty Management Assistant Director, Land Stewardship, who serves as the Forest Service’s principal contact under the MOU (MOU, clause X).

Lead Agency. The federal agency with the most significant land management interests related to a qualifying project or the agency recommended by other participating agencies impacted by the project to be the lead agency.

Participating Agency. Any of the nine federal departments or agencies that signed the MOU.

Project Manager. The federal official who manages the project interdisciplinary team established for evaluation and authorization of a qualifying project.

Project Interdisciplinary Team. A team of qualified professionals from the lead and cooperating agencies representing multiple disciplines and established for evaluation and authorization of a qualifying project, including preparation of the requisite environmental analysis and necessary land use authorizations.

Qualifying Project. For purposes of section 43b, a high-voltage (generally 230 kilovolts or more) electric transmission project and its attendant facilities or an otherwise regionally or nationally significant electric transmission line and its attendant facilities, in which all or part of the proposed transmission line crosses lands administered by more than one participating agency, other than an electric transmission project proposed to be sited in a National Interest Electric Transmission Corridor as designated by the Secretary of Energy pursuant to section 216(b) of the Federal Power Act.

Section 368 Corridor. An energy transmission corridor that was designated in a land use plan by Department of the Interior (DOI) or U. S. Department of Agriculture (USDA) on January 14, 2009, per section 368(a) of the Energy Policy Act and that has an identified width, centerline, and compatible energy transmission use.

Service First Authority. Statutory authority granted to the Secretaries of the Interior and Agriculture that in part allows them to make reciprocal delegations of their respective authorities, duties, and responsibilities to promote customer service and efficiency (Pub. L. No. 111-8, Div. E, Title IV, § 418, 123 Stat. 747 (2005)).

## **2726.43b - Electric Transmission Projects**

1. Requirements That Apply To All Electric Transmission Projects. Forest Service officials are encouraged to identify the authorized or authorizing officer and engage proponents and affected Federal and State agencies and tribes, as appropriate, early in the

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consideration of proposed electric transmission projects. See section 43j for specific direction on selection of the authorizing officer and engagement of proponents and other interested parties for qualifying projects.

- a. For electric transmission projects that cross more than one national forest or national grassland in a region, the authorized or authorizing officer may be the regional forester or the forest or grassland supervisor of one of the affected administrative units, acting with delegated authority from the regional forester (FSM 2704.32, para. 4).
  - b. For electric transmission projects that involve more than one region, the authorized or authorizing officer may be the regional forester of one of the affected regions or a forest or grassland supervisor acting with delegated authority from both regional foresters (FSM 2704.32, para. 3).
  - c. Where practicable and appropriate, encourage proponents of electric transmission projects to locate their projects within designated energy corridors or adjacent to existing rights-of-way. Notify proponents of any corridors of concern. Consider reasonable alternative locations if a proposed electric transmission project would be located within a corridor of concern.
  - d. The records of decision designating the Section 368 corridors adopted mandatory interagency operating procedures (IOPs). The IOPs establish best management practices and coordinated and consistent land use authorization standards between the Bureau of Land Management (BLM) and the Forest Service, as well as practical measures to avoid or minimize undesirable environmental consequences. The IOPs are required for electric transmission projects located within Section 368 corridors and are recommended for electric transmission projects located elsewhere. The IOPs are available at the West-wide Energy Corridor Web site at [www.corridoreis.anl.gov](http://www.corridoreis.anl.gov) and in BLM and Forest Service records of decision designating the Section 368 corridors at [www.corridoreis.anl.gov](http://www.corridoreis.anl.gov).
2. Requirements That Apply to Qualifying Projects. With regard to the Forest Service, sections 43b through 43j implement the DOE's regulations at 10 CFR Part 900 and the memorandum of understanding among the USDA and eight other federal departments or agencies regarding coordination of evaluation of high-voltage (generally 230 kilovolts or more) or otherwise regionally or nationally significant proposed electric transmission projects located on lands managed by more than one federal agency, dated October 23, 2009 (hereinafter "MOU"). A copy of the MOU is posted at [http://www.oe.energy.gov/fed\\_transmission.htm](http://www.oe.energy.gov/fed_transmission.htm). The eight other signatories to the MOU

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include DOE, the DOI, the U. S. Department of Commerce, the U. S. Department of Defense, the U. S. Environmental Protection Agency, the Council on Environmental Quality, the Federal Energy Regulatory Commission, and the Advisory Council on Historic Preservation.

Sections 43b through 43j do not apply to proposed electric transmission projects that would:

- a. Involve only National Forest System (NFS) lands or would not involve high-voltage or otherwise regionally or nationally significant proposed electric transmission projects;
- b. Cross an international border of the United States, federal submerged lands, or national marine sanctuaries; or
- c. Be constructed by the Tennessee Valley Authority, Western Area Power Administration, Bonneville Power Administration, and Southwestern Power Administration.

Nothing in sections 43b through 43j affects the jurisdiction of the Federal Energy Regulatory Commission to license hydroelectric facilities and appurtenant transmission lines under Part I of the Federal Power Act (16 U.S.C. 791-828c).

### **2726.43c - Department of Energy Federal Coordination Responsibilities**

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109-58) added section 216 to the Federal Power Act (FPA) (16 U.S.C. 791-828c), which addresses siting of interstate electric transmission facilities. The DOE is designated as the lead federal agency by section 216(h) of the FPA (16 U.S.C. 824p(h)) for purposes of coordinating all applicable federal authorizations and associated environmental analysis for interstate electric transmission facilities on federal lands.

The DOE promulgated regulations at 10 CFR Part 900 to provide a process for timely coordination of required procedures for federal authorizations for proposed electric transmission facilities on federal lands managed by more than one federal agency (10 CFR 900.1). As part of the coordination process, the regulations provide for preparation of a single National Environmental Policy Act (NEPA) document for qualifying projects (10 CFR 900.1). Specifically, the regulations provide that:

1. A qualifying project proponent or applicant seeking information relating to a qualifying project from an authorizing agency shall request that information pursuant to 10 CFR Part 900 and shall notify the DOE Director of the request (10 CFR 900.4(a)).

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2. A request submitted under section 43c, paragraph 1, must specify the information sought in sufficient detail and must contain sufficient information for the authorizing agency to provide the requested information (10 CFR 900.4(b)).
3. Within 60 days of receipt of a request submitted under section 43c, paragraph 1, the authorizing agency must provide, to the extent allowed under existing law, information concerning the request to the qualifying project proponent or applicant and the DOE Director (10 CFR 900.4(c)).
4. Requests for DOE coordination of evaluation of a qualifying project must be filed with the DOE Director. These requests must include a certification that a copy of the request has been sent to all authorizing agencies and that the authorizing agencies have been informed that they may coordinate their application and environmental reviews for the qualifying project with DOE and the other authorizing agencies (10 CFR 900.5(a), (b)(5)-(b)(6)).
5. Upon receipt of a request submitted under section 43c, paragraph 4, DOE and the authorizing agencies will jointly determine the lead agency and the appropriate level of coordination required (10 CFR 900.6(a)(1); FSM 2726.43h).
6. Non-federal entities that have their own permitting process may participate in the DOE coordination process (10 CFR 900.6(a)(2)).
7. In coordinating preparation of a single environmental review document for qualifying projects, DOE must rely on the authorizing agencies, as appropriate, to ensure compliance with all applicable federal law (10 CFR 900.6(b)(3)).
8. The single environmental review document prepared for qualifying projects must be made available to all authorizing agencies to ensure that the environmental review for qualifying projects complies with the legal requirements that apply to the authorizing agencies in connection with evaluation and authorization of qualifying projects (10 CFR 900.6(b)(4)).
9. To the extent practicable and in accordance with Federal law, the DOE must establish, maintain, and utilize a single location to store and display (electronically, if practicable) all information assembled in connection with environmental and cultural resource review of qualifying projects and shall make this information available to qualifying project applicants, authorizing agencies, and tribes, multistate entities, and State agencies that have their own authorizing process (10 CFR 900.6(b)(1)).
10. To the extent practicable and in accordance with Federal law, the DOE must establish and maintain a single location to store and display the information utilized by the authorizing agencies as the basis for their decisions on proposed qualifying projects (10 CFR 900.6(b)(2)).

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Through the MOU, the DOE implemented some of its coordination authorities under section 216(h). The MOU establishes a framework for DOE to delegate certain aspects of its authority to act as the lead federal agency for purposes of section 216(h). The MOU also encourages early cooperation and participation by the participating agencies on matters related to federal authorizations, including environmental, cultural, and historic preservation reviews, and any other approvals that may be required for qualifying projects.

The DOE has developed a public Web site at [http://www.oe.energy.gov/fed\\_transmission.htm](http://www.oe.energy.gov/fed_transmission.htm) to serve as a central source of information about section 216(h) in general, as well as specific qualifying projects. The Web site provides:

1. General information on the process the DOE and the other participating agencies utilize to implement the MOU, including contacts for each participating agency;
2. A list of qualifying projects;
3. Identification of the lead agency for each qualifying project;
4. The anticipated schedule for completion of federal interagency review and the status of federal interagency review for qualifying projects;
5. Links to lead agencies' Web sites for more specific information on qualifying projects; and
6. Information on the participating agencies' procedures for processing applications for qualifying projects.

**2726.43d - Responsibilities of the Forest Service Principal Contact**

The Forest Service principal contact shall assist with identifying and assigning appropriate personnel to qualifying projects and project interdisciplinary teams and ensuring that:

1. Qualifying project timelines are fairly negotiated and met;
2. Forest Service participation in qualifying projects receives a high priority within the Agency;
3. Qualifying project design, impact, and mitigation issues are recognized and addressed early in development of qualifying projects; and
4. The Forest Service's interests are fully and appropriately considered in development of each qualifying project so that issues can be identified and resolved expeditiously as the project develops (MOU, clause VIII.A).

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**2726.43e - Proposals for Qualifying Projects That Involve National Forest System Lands**

1. The DOE is available to assist the Forest Service in determining whether a proposed electric transmission project is a qualifying project and to provide technical assistance with regard to evaluating qualifying project proposals, siting, and mitigation issues and coordination with regional interconnect institutions (MOU, clause VII.D).
2. To expedite processing of qualifying projects, at the pre-proposal meeting, encourage potential qualifying project proponents to submit proposals that are sufficient to accept as applications, and work with qualifying project proponents to achieve that goal (36 CFR 251.54(g)(1)); section 43g, para. 2a). Inform potential qualifying project proponents of cost recovery requirements at the pre-proposal meeting (36 CFR 251.54(a); FSH 2709.11, sec. 12.1, 22).
3. If a proponent submits a proposal for a qualifying project involving NFS lands, inform the proponent and cooperating agencies that the DOE coordination of evaluation and authorization of the qualifying project is appropriate.
4. Qualifying project proponents must submit sufficient information for the Forest Service to evaluate their proposal (36 CFR 251.54(e)(1) and (e)(5)).
5. Within 60 days of receipt of a request from a qualifying project proponent for information regarding a qualifying project, provide, to the extent allowed under existing law, information concerning the request to the qualifying project proponent and the DOE Director (10 CFR 900.4(c); FSM 2726.43b, para. 3).
6. Within 20 days after receiving a proposal for a qualifying project, apply the initial and second-level screening criteria to the proposal (36 CFR 251.54(e)(1) and (e)(5)), and notify the qualifying project proponent and cooperating agencies of whether the proposal is rejected or whether the Forest Service can accept an application for the qualifying project (36 CFR 251.54(g)(1)).

**2726.43f - Department of Energy Coordination Process When a Qualifying Project Involves National Forest System Lands**

1. Department of Energy coordination of evaluation and authorization of qualifying projects involving NFS lands begins after a proposal for a qualifying project meets the initial and second-level screening criteria and the Forest Service has notified the proponent that the Agency is prepared to accept an application for the qualifying project (36 CFR 251.54(g)(1)).

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2. Once the qualifying project proponent has been notified that the Forest Service is prepared to accept an application for the qualifying project, identify other participating agencies for the qualifying project. Notify the qualifying project proponent of the other participating agencies, and notify affected field offices of the other participating agencies for the proposed qualifying project. Facilitate a pre-application meeting for prospective applicants and cooperating agencies to communicate key issues of concern; explain applicable processes; outline the data requirements and applicant submissions necessary to complete evaluation and authorization of a proposed qualifying project in a timely manner; and establish schedules for completing those requirements (see MOU, clause V.A).
3. Work with cooperating agencies at each phase of the application evaluation process for qualifying projects to improve coordination, identify and obtain relevant data in a timely manner, set schedules, and identify and expeditiously resolve issues or concerns (MOU, clause V.B).
4. If disputes among the participating agencies or cooperating agencies remain unresolved:
  - a. The participating or cooperating agency that seeks resolution must provide a written statement of its dispute, along with any rationale or supporting documents, to the other participating or cooperating agencies and DOE within 5 working days. The affected participating or cooperating agencies and DOE must engage in discussions in an attempt to resolve the dispute (MOU, clause IX.J(1));
  - b. If no resolution is reached within 10 calendar days of receipt of the statement of dispute, the dispute may be elevated in writing, along with any rationale or supporting documents to the affected participating or cooperating agencies' respective headquarters-level officials or their designees and the Council on Environmental Quality (CEQ). The principal contacts for the parties shall engage in discussions to resolve the dispute (MOU, clause IX.J(2));
  - c. If the dispute is not resolved by the headquarters-level officials within 15 working days of their receipt of the written statement of the dispute, the affected participating or cooperating agencies must promptly elevate the matter to the principal policy makers for the affected participating or cooperating agencies and the CEQ Chair, who shall endeavor to resolve the matter within 20 working days (MOU, clause IX.J(3));
  - d. The time limits in paragraph 4b, may be extended with the agreement of the parties to the dispute. The parties may employ an agency dispute resolution services office to assist in the resolution of disputes. Disputes must be resolved within

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sufficient time to enable completion of decisions within the deadlines established by the lead agency in consultation with the affected participating or cooperating agencies (MOU, clause IX.J(4)); and

e. Any participating or cooperating agency that learns of a qualifying project applicant's or State's intent to appeal any matter under subsection 216(h)(6) of the Federal Power Act must immediately notify the principal policy makers of the affected participating or cooperating agencies and the CEQ Chair, who shall engage the qualifying project applicant or state in discussions to resolve the matter (MOU, clause IX.J(5)).

**2726.43g - Forest Service Cost Recovery for Qualifying Projects**

1. Because of the DOE coordination process for qualifying projects, the Forest Service may incur costs that are necessary for processing an application for a qualifying project after a proposal for the qualifying project has passed initial and second-level screening, but before an application for the qualifying project has been accepted (36 CFR 251.58(c)(1); FSM 2709.11, sec. 21.11). Therefore, the Forest Service may incur processing costs for qualifying projects involving NFS lands as soon as a proposal for a qualifying project meets the initial and second-level screening criteria and the Forest Service has notified the proponent that the Agency is prepared to accept an application for the qualifying project (36 CFR 251.54(g)(1); FSM 2709.11, sec. 22). These processing costs may not be billed until an application for the qualifying project has been accepted (sec. 43f, para. 2).

2. It is imperative to recover processing costs for applications for qualifying projects as soon as practicable because of their complexity and the need to involve multiple agencies in their evaluation. Expediting cost recovery will also expedite interagency evaluation of qualifying projects.

a. If a proposal for a qualifying project is sufficient to accept as an application, accept the proposal as an application, and commence billing processing fees for the application as they are incurred (36 CFR 251.58(c)(4)(i); FSM 2709.11, sec. 22, 26, para. 2a(1)).

b. If a proposal for a qualifying project is insufficient to accept as an application, inform the proponent as soon as possible what is required to make the proposal sufficient, and encourage the proponent to submit an application as soon as practicable. Once an application is accepted, commence billing processing fees for the application as they are incurred (36 CFR 251.58(c)(4)(i); FSM 2709.11, sec. 22, 26, para. 2a(1)).

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3. The work performed by the authorizing officer, project manager, and project interdisciplinary team on qualifying projects (sec. 43j) is subject to cost recovery (36 CFR 251.58(c)(1); FSH 2709.11, sec. 21.11; MOU, clause VI).
4. Cost recovery agreements for qualifying projects should be amended in accordance with their terms to address changes in cost estimates as qualifying projects develop.
5. Ensure that applicants for qualifying projects understand cost recovery requirements. If applicants fail to pay processing fees as required, the Forest Service must cease processing an application until the required processing fees are paid (36 CFR 251.58(e)(2)(ii); FSH 2709.11, sec. 27.1, para. 2).

**2726.43h - Acceptance of an Application for a Qualifying Project**

1. Within 20 days after receiving an application for a qualifying project, notify the qualifying project proponent and the cooperating agencies whether the application is accepted for federal interagency review or whether the application must be revised before it can be accepted and if so, of the revisions that are required before it can be accepted.
2. Within 7 days after accepting an application for a qualifying project, notify the applicable regional office and Forest Service principal contact.
3. The Forest Service principal contact shall immediately notify the DOE Director and the principal contacts for the cooperating agencies that a proposed qualifying project involving NFS lands is ready for federal interagency review.
4. The affected regional office must coordinate among cooperating agencies, recommend a lead agency for the qualifying project, and notify the Forest Service principal contact of the recommendation of the lead agency for the qualifying project.
5. The DOE must designate the lead agency for qualifying projects (MOU, clause III). The lead agency must notify the participating agencies of the qualifying project and the designation of the lead agency.

**2726.43i - Designation of the Lead Agency When the Department of the Interior- and USDA-Administered Lands are Involved**

1. For qualifying projects that will cross the DOI-administered lands, including trust or restricted Indian land, and USDA-administered lands, DOI and USDA must consult and jointly determine:
  - a. Whether a sufficient land management interest exists to support their assumption of the lead agency role; and

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- b. If so, which of the two departments should assume that role.

The DOI and USDA must notify the DOE Director of their determination in writing or electronically. Unless DOE notifies in writing or electronically DOI and USDA of its objection to that determination within 2 business days, the determination is deemed accepted. DOI and USDA must delegate the lead agency role to the affected bureau or agency with their respective departments (MOU, clause III). For DOI, the lead agency role must be delegated to BLM. For USDA, the lead agency role must be delegated to the Forest Service (MOU, clause VI.A).

2. When the lead agency is not established according to paragraph 1, the affected participating agencies shall consult and jointly determine a lead agency within 20 days after determining that a proposal is a qualifying project. The affected participating agencies must notify the DOE Director of their determination in writing or electronically. Unless DOE notifies in writing or electronically the affected participating agencies of its objection within 2 business days, that determination is deemed accepted (MOU, clause III).

#### **2726.43j - Forest Service Responsibilities as the Lead Agency**

1. The Forest Service's responsibilities as the lead agency are displayed in exhibit 01.
2. After the Forest Service is designated as the lead agency, the Forest Service must designate the authorizing officer (AO), the project manager (PM), and the project interdisciplinary team for the qualifying project.
3. The affected regional office must designate the AO within 7 days after designation of the Forest Service as the lead agency. The AO shall be responsible for evaluating the application for the qualifying project and issuing necessary land use authorizations for both the Forest Service and BLM. Applicable land use authorization forms for qualifying projects are posted on the Service First Web site at <http://www.fs.fed.us/servicefirst>. A sample letter for delegation of Forest Service authority to personnel of other federal agencies under the Service First authority is posted at <http://www.fs.fed.us/servicefirst>.
4. The AO shall designate the PM within 21 days after designation of the Forest Service as the lead agency. The PM shall be a senior professional with extensive experience in managing major rights-of-way projects and shall meet the qualifications established in BLM's Rights-of-Way Program for project managers. The PM has overall responsibility for managing the project interdisciplinary team and for preparing all required environmental documentation for the qualifying project. The PM shall provide the DOE Director the PM's contact information and general information about the qualifying project electronically or in writing. The PM shall:

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- a. Establish a charter for the qualifying project that enumerates the roles and responsibilities of the AO, the PM, the project interdisciplinary team, and the cooperating agencies; and
- b. Execute a cooperating agency memorandum of understanding (CAMOU) that establishes the relationship among the cooperating agencies. The PM may execute one CAMOU for all the cooperating agencies or execute a separate CAMOU for each cooperating agency. A CAMOU must establish a timeline for submission of environmental analysis by the cooperating agencies (MOU, clause VIII.B(1)). In addition, a CAMOU must state that:
  - (1) Each cooperating agency must establish a principal contact for coordination and consultation with the Forest Service during the life of the qualifying project (MOU, clause VIII.B(4));
  - (2) Cooperating agencies must provide in accordance with the deadlines established in the CAMOU any information necessary to complete evaluation of the qualifying project and issue required land use authorizations (MOU, clause VIII.B(1));
  - (3) To the extent practicable and consistent with federal law, all qualifying project data must be submitted in electronic geospatial or other generally accessible electronic formats (for example, geographic information system data must include metadata descriptions meeting Federal Geographic Data Committee standards) (MOU, clause V.F);
  - (4) Each cooperating agency must share information and data relating to the qualifying project with other cooperating agencies (MOU, clause VIII.B(5));
  - (5) Cooperating agencies must provide personnel and expertise to the Forest Service in connection with evaluation of the qualifying project as agreed to during initial negotiations for the qualifying project (MOU, clause VIII.B(2));
  - (6) Cooperating agencies must ensure that any issues or problems with the qualifying project are brought to the immediate attention of the PM and must participate fully in seeking and implementing resolution of those issues or problems (MOU, clause VIII.B(6)); and
  - (7) The Forest Service must inform cooperating agencies regarding new information and necessary changes related to the qualifying project (MOU, clause VIII.B(6)).

A CAMOU may include the dispute resolution process in section 43f, paragraph 4.

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5. The AO and the cooperating agencies' principal contacts shall select the project interdisciplinary team within 21 days after designation of the Forest Service as the lead agency. The project team shall represent a wide range of expertise and experience, including the biological, physical, social, cultural, and economic sciences as well as legal, administrative, and engineering practice, which is required to evaluate and authorize a qualifying project. Employees from the Forest Service, BLM, the U. S. Fish and Wildlife Service, and the National Park Service can serve on project interdisciplinary teams under the Service First authority. Federal employees from other agencies may serve on project interdisciplinary teams under the Economy in Government Act, 31 U.S.C. 1535.
6. The PM and project interdisciplinary team shall convene within 21 days after designation of the Forest Service as the lead agency. The PM and project interdisciplinary team shall consult fully with DOE, the cooperating agencies, and the qualifying project applicant to develop a preliminary schedule for evaluation and authorization of the qualifying project, including compliance with NEPA and other applicable federal law; to ensure close coordination; to improve efficiency; and to identify and resolve issues quickly (MOU, clause V.A). The DOE must approve any deviation from the schedule for the qualifying project once it has been finalized (MOU, clause VII.D). The PM shall coordinate concurrently with each cooperating agency to ensure that each cooperating agency's requirements are met during the NEPA process and to ensure compliance with other applicable law.
7. Early in federal interagency review of the qualifying project, the PM and project interdisciplinary team shall host necessary meetings with the cooperating agencies and the qualifying project applicant to develop an integrated interagency notice of intent to prepare an environmental impact statement (EIS) or other environmental documents necessary to implement the qualifying project (MOU, clause V.D). At this early stage, the cooperating agencies should consider the underlying need, performance objectives, and appropriate alternatives for and effects of the qualifying project. This interagency engagement will enhance decisionmaking, project performance, and environmental protection, while reducing costs and the time required for environmental analysis and processing of land use authorizations.
8. The Forest Service must develop a single environmental analysis for the qualifying project application, incorporating, to the maximum extent practicable, a single environmental record for the qualifying project that will serve as the basis for issuance of land use authorizations required for the qualifying project (MOU, clause V.D). The Forest Service must provide for engagement of cooperating agencies and others, including knowledgeable professionals, in development of the environmental analysis for the qualifying project and must integrate siting, environmental, and other considerations, as appropriate, in the environmental analysis.

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9. To the extent consistent with applicable law, cooperating agencies must make necessary decisions, including issuance by the Forest Service of an environmental assessment (EA) and finding of no significant impact (FONSI) or environmental impact statement (EIS), as applicable, regarding federal evaluation and authorization of the qualifying project:

- a. Within 1 year of acceptance of a qualifying project application, when an EA and FONSI are determined to be the appropriate level of review under NEPA; or
- b. Within 1 year and 30 days after the close of the public comment period for a draft EIS, when an EIS is determined to be the appropriate level of review under NEPA.

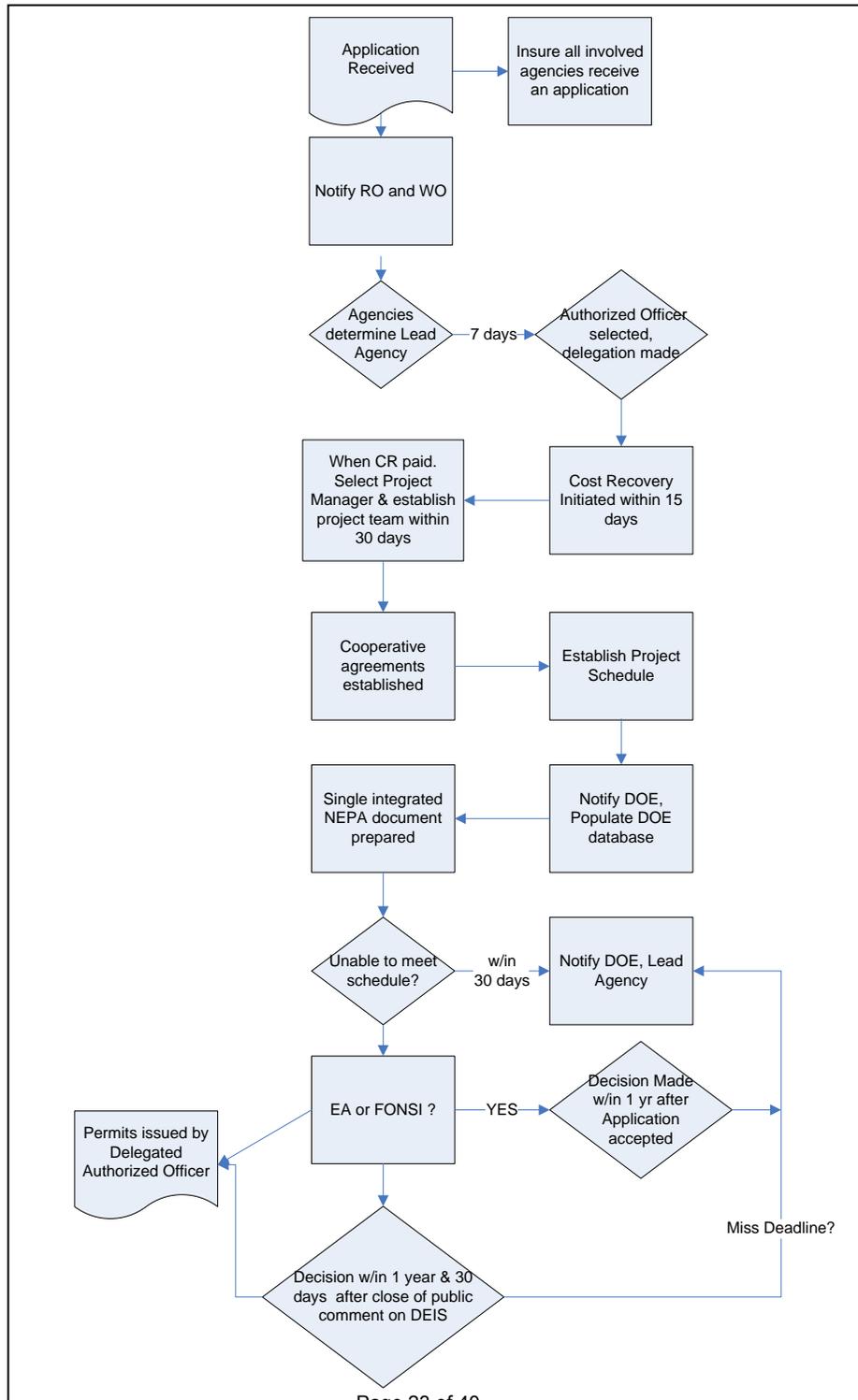
If a cooperating agency is unable to meet an applicable deadline, the cooperating agency must promptly notify the PM, other cooperating agencies, the qualifying project applicant, and other relevant parties, explain the reason for delay, and propose a new projected completion date. If the PM determines that the delay will result in a substantive change to the project schedule, the PM shall justify the change in writing to DOE (MOU, clause V.C).

10. The Forest Service must develop and maintain the administrative record for evaluation and authorization of the qualifying project. The administrative record must include all information and data compiled and utilized by the cooperating agencies in connection with evaluation and authorization of the qualifying project. To the extent practicable and consistent with federal law, the Forest Service must ensure that all qualifying project data are maintained in electronic geospatial or other generally accessible electronic formats (for example, geographic information system data must include metadata descriptions meeting Federal Geographic Data Committee standards) and, as appropriate, must provide public access to the data by maintaining on the Forest Service's Web site information and links to the information provided by all cooperating agencies in connection with evaluation and authorization of the qualifying project (MOU, clauses V.E and V.F).

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**2725.43j – Exhibit 01**

**Flow Chart of the Forest Service – Bureau of Land Management Process  
 (from Instructional Memorandum No. 2010-169)**





## U.S. Forest Service Natural Resources & Environment

### Briefing Paper

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Date: March 30, 2011

**Topic:** Using Integrated Federal Planning for Renewable Energy and Transmission Projects

**Issue:** Federal agency evaluations of proposed renewable energy projects are often out of sync with the planning and engagement of other agencies and Tribes, occurring too late or hastily to assure success.

**Summary/Key Points:**

- Integrated Federal Planning puts the hard work and heavy lifting up-front with all agencies working together, focusing planning and making good projects better without wasting time and money on poor ones.
- By partnering with an Informed Facilitator all participants (federal officials, the project proponent, appropriate state, local, and Tribal representatives, and knowledgeable, interdisciplinary professionals) concurrently engage in the systematic consideration of an applicant's proposed action.
- Integrated planning is managed by the Project Manager of the Lead Federal Agency(ies).
- Compliance with pertinent laws, environmental review, and other planning integrate and advance with clarity, minimizing false starts and misunderstandings while reducing timelines and costs.

**Recommendation:** Select a few proposed energy projects to pilot Integrated Federal Planning.

**Background:** Each federal agency involved in renewable energy projects has customary planning and decisionmaking practices, procedures, and legal requirements for meeting its specific mission. Often, agencies have both jurisdictional decisions and legal mandates for renewable energy projects, many of which are complex and controversial. Delaying necessary federal coordination long after a land use application is accepted by the Lead Federal Agency can compress detailed reviews and technical evaluations which are often challenged by urgent timelines and limited funding. Critical and legally-required agency coordination, consultation, and public involvement can be overlooked, neglected, or short-changed.

Integrated Federal Planning guides the development of a notice of intent to prepare an environmental impact statement or other environmental documents. A qualified Informed Facilitator aids the Project Manager in focusing the underlying need for action with effectiveness measures and the clearly defined decisions of each agency. The proposed action is presented through a proper understanding of baseline conditions and activities (the no action alternative), and the comprehensive understanding of the chains of cause-and-effect relationships, including cumulative impacts and induced growth. This early work produces reasonable alternatives and effective mitigation. The effectiveness of each alternative, an improved proposed action, and the social, economic, and environmental benefits and consequences of each alternative are understood. Planning is documented, reviewed, and corrected concurrently. Each agency is afforded reliable information to make informed and timely decisions regarding the project application and associated permits.

Through Integrated Federal Planning, planning and documentation comply with all legal requirements, such as the National Environmental Policy Act (NEPA). An impact statement avoids becoming a tome of information that is somehow related to the pending decisions of federal and state agencies and Tribes. Analyses and consultation results are easy to understand. Planning, environmental review, and legal compliance are in sync with technical and analytic results, providing agency decisionmakers, Tribes, and the public timely opportunities to truly understand a pending project and improve the outcome.

**Contact:** Jim Pena, Associate Deputy Chief, National Forest System, 202-205-1523



MEMORANDUM OF UNDERSTANDING  
AMONG THE

U.S. DEPARTMENT OF AGRICULTURE, DEPARTMENT OF COMMERCE,  
DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY, ENVIRONMENTAL  
PROTECTION AGENCY, THE COUNCIL ON ENVIRONMENTAL QUALITY, THE  
FEDERAL ENERGY REGULATORY COMMISSION, THE ADVISORY COUNCIL  
ON HISTORIC PRESERVATION, AND DEPARTMENT OF THE INTERIOR,  
REGARDING COORDINATION IN FEDERAL AGENCY REVIEW OF ELECTRIC  
TRANSMISSION FACILITIES ON FEDERAL LAND

I. PURPOSE

The Department of Agriculture (USDA), Department of Commerce (DOC), Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA), Council on Environmental Quality (CEQ), Advisory Council on Historic Preservation (ACHP), Department of the Interior (DOI), and the Federal Energy Regulatory Commission (FERC) (“Participating Agencies” or “Participating Agency,” as appropriate), enter into this Memorandum of Understanding (MOU) to expedite the siting and construction of qualified electric transmission infrastructure in the United States. As described below, this MOU improves coordination among project applicants, federal agencies, and states and tribes involved in the siting and permitting process. It will improve uniformity, consistency, and transparency by setting forth the roles and responsibilities of these entities when project applicants wish to construct electric transmission infrastructure. In addition, this MOU provides a single point of contact (POC) for coordinating all federal authorizations required to site electric transmission facilities on federal lands, which include interests in land administered by the Participating Agencies.

This MOU supersedes the August 8, 2006, MOU signed by the Participating Agencies. This MOU does not apply to transmission lines that cross the U.S. international border, federal submerged lands, national marine sanctuaries, or the facilities constructed by federal Power Marketing Administrations. Nothing in this MOU will affect the FERC’s jurisdiction to license hydroelectric facilities and the appurtenant transmission lines under Part I of the Federal Power Act (FPA).

Through this MOU, the DOE implements its authority under section 216 of the Federal Power Act (FPA), as amended by section 1221(a) of the Energy Policy Act of 2005, to designate a Lead Agency to: (1) serve as the point of contact for applicants, state agencies, Indian tribes, and others regarding proposed projects; (2) coordinate preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands for Qualifying Projects as defined in Section III; (3) coordinate all federal agency reviews necessary for project development and siting, including the Bald and Golden Eagle Protection Act, the Clean Air Act (CAA) the Clean Water Act (CWA), Coastal Zone Management Act (CZMA),



Endangered Species Act (ESA), Magnuson Stevens Fishery Conservation and Management Act (MSFCMA), Marine Mammal Protection Act (MMPA), National Marine Sanctuaries Act (NMSA), FPA, the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, the National Environmental Policy Act (NEPA), and National Historic Preservation Act (NHPA) (Federal Agency Reviews); and (4) maintain a consolidated administrative record of all federal actions taken with respect to a Qualifying Project.

## II. BACKGROUND

The President has stated that the country that harnesses the power of clean, renewable energy will lead the 21st century. Expanding and modernizing the transmission grid by siting proposed electric transmission facilities will help to accommodate additional electricity generation capacity over the next several decades, including new renewable generation as well as improve reliability and reduce congestion. The Participating Agencies have significant roles to play in siting these facilities.

Transmission siting involves many different authorities governing the use of federal, state, tribal, and county lands, as well as private lands that make up the landscape. As a result, projects involving multiple federal land management agencies are subject to a wide array of processes and procedural requirements for compliance with legal mandates and multiple authorizations. The intent of this MOU is the coordination of these various requirements and designation of a single federal point-of -contact. On non-federal lands, project applicants must adhere to the processes and comply with the requirements of each land owner and state.

The Participating Agencies have a significant interest in working with constituents and stakeholders to assess impacts from transmission projects and to site these facilities appropriately. Pursuant to statute, the Participating Agencies play different roles in the federal review, authorization and siting process.

Under section 216(h) of the FPA, DOE is authorized to act as the Lead Agency to coordinate federal authorizations and related Federal Agency Reviews required to site an interstate electric transmission facility on federal land. DOE has previously delegated its 216(h) authority to FERC for transmission projects located within National Interest Electric Transmission Corridors (NIETCs) as designated by the Secretary of Energy. That authorization remains unchanged by this MOU. Through this MOU, DOE exercises its authority to designate a Lead Agency for coordinating all required federal authorizations and Federal Agency Reviews for transmission proposals other than applications made pursuant to section 216(b) of the FPA. With respect to such transmission projects the Participating Agencies will carry out their responsibilities under this MOU pursuant to the FERC regulations concerning the siting of transmission facilities in NIETCs (see Part 50 of Chapter 18 of the Code of Federal Regulations).



## DEFINITIONS

**Cooperating Agencies:** For purposes of this MOU, Cooperating Agencies are those that have jurisdiction by law regarding a proposed project, or that otherwise have special expertise with respect to environmental and other issues pertinent to Federal Agency Reviews. States, tribes and local governments with relevant expertise or authority, or that are potentially affected by or interested in a project, also will be invited to participate throughout the Federal Agency Review process as Cooperating Agencies.

**Qualifying Projects:** For purposes of this MOU, Qualifying Projects are high voltage transmission line projects (generally though not necessarily 230 kV or above), and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one Participating Agency. Qualifying Projects will not include those transmission projects proposed to be sited in a NIETC pursuant to section 216(b) of the FPA.

### III. ASSIGNMENT OF LEAD AGENCY FOR FEDERAL AGENCY REVIEWS

DOE will designate a Lead Agency for Qualifying Projects. This designation will recognize the agency with the most significant land management interests related to the Qualifying Project or the agency recommended by other Participating Agencies impacted by the project to be the Lead Agency.

For Qualifying Projects that would cross DOI-administered lands, including trust or restricted Indian land, and USDA-administered lands, the DOI and USDA will consult and jointly determine: 1) whether a sufficient land management interest exists to support their assumption of the Lead Agency role and 2) if so, which of the two agencies should assume that role. The DOI and USDA will notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days, such determination is deemed accepted.

When the Lead Agency is not established as described above, the relevant Participating Agencies will consult and jointly determine a Lead Agency within 20 days after determining that a proposal is a Qualifying Project. The agencies will notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies those Participating Agencies of its objection within 2 business days, such determination is deemed accepted.



#### IV. AUTHORITY TO ENTER INTO THIS MOU

##### General

Section 1221 of the Energy Policy Act of 2005 requires that all federal agencies with authority to issue Federal authorizations enter into a memorandum of understanding to ensure timely and coordinated review and permitting of electricity transmission facilities.

##### USDA

The authority for the USDA to enter into this MOU includes Service First, Pub. L. No. 111-8, Div. E, Title IV, § 418, 123 Stat. 747 (2005).

##### DOC

The authority for the DOC to enter into this MOU includes sections 1221(h), 119 Stat. 594, 946-951 (2005) and 16 U.S.C. 824p.

##### DoD

The Authority for the DOD to enter into this MOU includes the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 368, 372, 119 Stat. 727-728, 734-735 (2005), and 10 U.S.C. § 2668, and the Sikes Act, 10 U.S.C. §§ 670a-670f, and The Military Lands Withdrawal Act of 1999, Pub. L. No. 106-65, §§ 113 Stat. 885 (1999).

The United States Army Corps of Engineers (USACE) within DOD is responsible for administering laws for the protection and preservation of waters of the United States, pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899 and section 404 of the CWA. Under the RHA the USACE may authorize work and/or structures in or affecting the course, condition, location or capacity of navigable waters of the United States. Under the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the United States, including wetlands, where the USACE determines that the proposed action is the least environmentally damaging practicable alternative. A USACE permit is required whether the work in waters is permanent or temporary. Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, storage and work areas. A USACE permit is required whether work is proposed on federally-owned land or private property.

##### DOE

The authority for the DOE to enter into this MOU includes sections 301 and 641 of the DOE Organization Act (42 U.S.C. 7151 and 7251) and 216(h) and 309 of the FPA (16 U.S.C. 824p(h) and 825h).

##### EPA

The authority for the EPA to enter into this MOU includes NEPA, the CWA, and the CAA.



### CEQ

The authority for the CEQ to enter into this MOU is the NEPA(42 U.S.C. 4321 *et seq.*).

### FERC

The authority for the FERC to enter this MOU includes section 309 of the FPA.

### ACHP

The authority for the ACHP to enter into this MOU includes section 202 of the NHPA.

### DOI

The authority for the DOI to enter into this MOU includes section 307(b) of the Federal Land Policy and Management Act of 1976 (43 USC § 1737(b)), the ESA (16 U.S.C. § 1531 *et seq.*), NEPA, the Migratory Bird Treaty Act (16 U.S.C. § 703 *et seq.*), the NPS Organic Act (16 U.S.C. §§ 1-3), the Indian Right-of-Way Act of 1948 (25 U.S.C. § 323 *et seq.*), the Act of June 17, 1902 (Reclamation Act), as amended and supplemented (43 U.S.C. § 391 *et seq.*), and Service First, §330, Pub. L. No. 106-291, as amended by §428, Pub. L. No. 109-54 and §418, Pub. L. No. 111-8.

## V. LEAD AGENCY RESPONSIBILITIES

- A. Pre-Application Coordination: The Lead Agency will notify Participating Agencies of proposed Qualifying Projects in a timely manner and facilitate a pre-application meeting for prospective applicants and relevant federal and state agencies and Tribes to communicate key issues of concern; explain applicable processes; outline the data requirements and applicant submissions necessary to complete the required Federal Agency Reviews in a timely manner; and establish schedules. Upon the request of the applicant, the Lead Agency will coordinate with Participating Agencies and will provide appropriate follow-up information to the applicant within 60 days of the meeting.
- B. Consultation with Cooperating Agencies: The Lead Agency will consult fully with the Cooperating Agencies throughout the Federal Agency Review Process to improve coordination, identify and obtain relevant data in a timely manner, set schedules, and identify and expeditiously resolve issues or concerns. If disputes remain unresolved, the dispute resolution process described in section IX.J may be used.
- C. Schedule: The Lead Agency will consult with DOE, the Qualifying Project applicant, other affected parties, and Cooperating Agencies to establish an efficient project schedule. The Cooperating Agencies will work diligently to comply with the agreed-upon timeline, to the extent consistent with applicable law. Cooperating Agencies will make necessary decisions, within their respective authorities, regarding federal approvals in accordance with the following time-lines: 1) when an environmental assessment and finding of no significant impact



- is determined to be the appropriate level of review under NEPA, within one year of acceptance of a completed application, or 2) when an Environmental Impact Statement (EIS) is required pursuant to NEPA, within 1 year and 30 days after the close of the public comment period for a draft EIS. If a Participating Agency is unable to meet an applicable deadline, it will promptly notify the Lead Agency, Cooperating Agencies, the applicant and other relevant parties, explain the reason for delay, and propose a new projected completion date. If the Lead Agency determines that such delay will result in a substantive change to the project schedule, the Lead Agency will justify such change in writing to DOE.
- D. NEPA and Other Environmental Compliance: The Lead Agency will prepare a unified environmental review document for each Qualifying Project application, incorporating, to the maximum extent practicable, a single environmental record on which all entities with authority to issue authorizations for a given project can base their decisions.
  - E. Consolidated Administrative Record: The Lead Agency will maintain a consolidated administrative record of the information assembled and utilized by the Cooperating Agencies as the basis for their decisions.
  - F. Electronic Format and Data Standards: The Lead Agency will, to the extent practicable and consistent with federal law, ensure that all project data are submitted and maintained in electronic geospatial formats or other generally-accessible electronic forms (e.g., geographic information system data must include metadata descriptions meeting Federal Geographic Data Committee standards); will compile and make available the information assembled and utilized by the Cooperating Agencies; and as appropriate, provide public access to the data by maintaining on the agency website information and links to the information available from all Cooperating Agencies.
  - G. Implementing Procedures: The prospective Lead Agencies will coordinate and establish necessary agency procedures to implement their responsibilities when designated as Lead Agency.
- VI. COORDINATED Bureau of Land Management (BLM) and U.S. Forest Service (USFS) AUTHORITY
- A. Authorizing Officer: For those Qualifying Projects crossing BLM and USFS lands, the BLM and the USFS will select an Authorizing Officer (AO) in accordance with “Service First” authority. The AO may come from either agency. The AO has the authority and responsibility to supervise the work of BLM and USFS personnel on project teams and to issue the right-of-way and temporary use permits on federal lands administered by the BLM or the USFS.



- B. Project Manager: The AO will select a Project Manager for each Qualifying Project. The Project Manager will have the authority and responsibility to oversee the project and to facilitate issuance of the relevant final authorizing document(s) (e.g. permit(s)) for the project.
- C. Project Teams: The AO will establish the project team consisting of qualified specialists from the Lead Agency and Participating Agencies to assist in the project review. The Project Manager will oversee the work of such teams and elevate to appropriate line officers the need for additional resources or schedule adjustments.
- D. Cost Recovery Account: The BLM, USFS, and Participating Agencies will, consistent with relevant law, fund their costs for each project through cost-recovery funds.

## VII. RESPONSIBILITIES OF PARTICIPATING AGENCIES

When a Participating Agency is contacted regarding an application for siting a transmission line on federal land, and the Participating Agency determines that it may be a Qualifying Project, the Participating Agency will consult with other relevant Participating Agencies regarding recommendations for Lead Agency designation.

### A. USDA

The USDA will fulfill the responsibilities of the Lead Agency, in accordance with section IV of this MOU. The USDA will participate fully in the application and permit process whenever its lands are involved.

### USFS

The USFS will fulfill the responsibilities of the Lead Agency in accordance with section IV of this MOU. The USFS AO may issue permits for transmission lines on federal lands administered by the BLM or USFS, under the Service First initiative.

### B. DOC

The DOC will participate in the application and permit process whenever and to the extent that resources subject to its jurisdiction are involved, including consultations pursuant to the ESA, the MSFCMA, and NMSA, and authorizations issued pursuant to the MMPA.

### C. DoD

Consistent with its national defense mission, the DoD will participate fully in the application and permit process whenever its lands or other lands necessary for training, testing, and operations are identified as locations for qualifying transmission projects. The Lead Agency will consult with DoD



when applicants for transmission projects request use of DoD lands for transmission right-of-ways. DoD will determine whether proposed qualifying projects will adversely impact Defense activities and will work with the Lead Agency to identify measures to mitigate those impacts.

#### Army Corps of Engineers (USACE)

The USACE will determine whether qualified electric transmission proposals adjacent to Corps civil works water resources projects will adversely impact the project missions, resources and values of such projects, and will work with the Lead Agency to identify measures to avoid, minimize and mitigate those impacts.

The USACE has statutory permitting authorities under Section 404 of the CWA and Section 10 of the RHA. Under these authorities, the USACE is responsible for issuing permits for work involving the discharge of dredged or fill material into waters of the United States, including some wetlands, and for work in navigable waters. Whether a preferred alternative is located on Federal, state, or other public or private land, does not obviate the need for a project proponent to obtain a permit if the proposed work would result in impacts to aquatic resources or navigable water bodies. The Lead Agency shall consult with the USACE to determine if work associated with the construction of a transmission line may have impacts to jurisdictional waters under either statute. If it is determined that a project will have an impact to a jurisdictional area, or if a transmission line will span a navigable water body, the Lead Agency shall inform the project applicant that a USACE permit will likely be necessary. The Lead Agency should endeavor to include pertinent information in any environmental documentation prepared in compliance with NEPA in order to satisfy the USACE's NEPA requirements.

#### D. DOE

The DOE, having designated the Lead Agency herein, will provide expertise to assist the Lead Agency in determining the suitability of proposed qualifying projects, based on national goals and objectives; technical assistance with regard to evaluating transmission proposals, siting, and mitigation issues; and coordination with regional interconnect institutions, as needed, especially early in the planning process. To ensure adherence to applicable schedules, DOE will provide assistance to the Lead Agency in establishing the schedule and will approve any deviation in the established project schedule. The DOE will also maintain a publicly available website and links to the information available from all Participating and Cooperating Agencies.

#### E. EPA

The EPA will fulfill its responsibilities relevant to the siting of electric transmission facilities, including, but not limited to, commenting on EIS under section 309 of the CAA, and exercising the authority to participate in the CWA section 404 permit process and to restrict, in certain circumstances, the use of



specific disposal sites for dredged or fill material pursuant to Section 404(c). In this regard, EPA, in coordination with the USACE, will review electric transmission facility proposals that involve the discharge of dredged or fill material in waters of the United States for compliance with the CWA Section 404(b)(1) Guidelines. Additionally, EPA has authority to issue and/or review state and tribe-based permits under the CAA or for activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System, established under section 402 of the CWA.

F. CEQ

The CEQ will be available to assist in resolving any issues regarding the coordination of the environmental reviews required for siting and permitting qualifying projects.

G. FERC

The FERC will fulfill the responsibilities of the Lead Agency, in accordance with section IV of this MOU.

H. ACHP

The ACHP will be available to assist in resolving any issues regarding the coordination of the environmental reviews required for siting and permitting qualifying projects and to participate in consultation under Section 106 of the NHPA, as needed, in accordance with 36 CFR part 800 "Protection of Historic Properties."

I. DOI

The DOI will fulfill the responsibilities of the Lead Agency in accordance with section IV of this MOU. The DOI will also issue permits for transmission lines on the National System of Public Lands and National Forest System lands, under the Service First initiative, §330, Pub. L. No. 106-291, as amended by §428, Pub. L. No. 109-54 and §418, Pub. L. No. 111-8. Pursuant to the Service First initiative, the BLM may, through Fiscal Year 2011, issue right-of-way grants on National Forest System lands using relevant USDA authority and the USFS may issue grants on public lands using relevant BLM authority.

BLM

The BLM will, where appropriate, be the Agency within the DOI that is responsible for implementation of the duties described in this MOU.

U.S. Fish and Wildlife Service (FWS)

Consistent with its principal trust responsibility to protect and conserve migratory birds, threatened and endangered species, certain marine mammals, and inter-jurisdictional fish, the FWS will consult with applicants for transmission projects potentially affecting any of these resources. The FWS will also consult with



applicants on qualifying projects potentially affecting fresh water or marine resources and water quality. The FWS will determine whether proposed qualifying projects adjacent to national wildlife refuges will adversely impact the resources and values of such refuges, and will work with the Lead Agency to identify measures to mitigate those impacts.

#### Bureau of Indian Affairs (BIA)

The BIA will facilitate contact with tribes likely to be affected by qualifying transmission projects and ensure that tribal interests are represented and considered. The BIA will review and approve, as appropriate, rights-of-way across trust and restricted Indian land for transmission projects.

#### Bureau of Reclamation (BOR)

The BOR will coordinate discussions among the BLM, Federal Preference Power Customers, the Power Marketing Administrations within DOE, and Federal Project Use Customers to ensure minimal impacts to qualifying federal project operations and maintenance resulting from the construction and operation of new high-voltage transmission lines.

#### National Park Service (NPS)

The NPS will determine whether proposed qualifying projects adjacent to units of the National Park System will adversely impact the resources and values of such units, and will work with the Lead Agency to identify measures to mitigate those impacts.

#### United States Geological Survey (USGS)

The USGS will provide unbiased science and predictive understanding when needed to assist siting qualifying transmission infrastructure on federal lands, including impacts to the water, biology, energy, and mineral resources of those lands. As necessary, the USGS may develop and evaluate inventory and monitoring methods, protocols, experimental designs, analytical tools, and models to measure and assess the immediate and long-term effects of transmission infrastructure.

### VIII. PARTICIPATING AGENCY AGREEMENTS

All Departments signatory to this MOU with their respective agencies, and the independent agencies signatory to this MOU, agree to the following:

- A. Agency Points-of-Contact (POC): Each Participating Agency will establish, for purposes of implementation of this MOU, a POC to assist with coordination of that agency's participation in future projects. The POC will assist with identifying and assigning appropriate personnel to the project and/or the project team; ensure that timelines are fairly negotiated and met; ensure that their



respective agency participation receives a high priority within the agency; ensure that project design, impact, and mitigation issues are recognized and addressed early in the project planning; and in other ways ensure that each project receives full and appropriate consideration of that agency's interests such that issues can be identified and resolved expeditiously as the project develops.

B. Cooperating Agencies: Cooperating Agencies should participate fully throughout the Federal Agency Review process as described below:

- (1) **Timely Coordination**: Cooperating Agencies will submit reviews in accordance with the timeline established by the Lead Agency after consultation with Cooperating Agencies.
- (2) **Personnel and Expertise**: Cooperating Agencies will provide personnel and/or expertise to the Lead Agency as agreed to during initial project negotiations.
- (3) **Provide Data and Studies**: Cooperating Agencies will be responsible for the provision of any information necessary to complete application reviews and authorizations in accordance with deadlines established by the Lead Agency after consultation with Cooperating Agencies.
- (4) **Communicate Effectively**: Each Cooperating Agency will assign a lead POC for coordination and consultation with the Lead Agency during the life of the project (from the point of initial application to the point of operation).
- (5) **Share Information and Data**: Each Cooperating Agency will share information and data with other Cooperating Agencies and, to the maximum extent practicable, submit information in a common standard for electronic record-keeping and analysis.
- (6) **Issue Resolution**: Cooperating Agencies will ensure that any issues or problems with the project or processes are brought to the immediate attention of the Lead Agency, and will participate fully in seeking and implementing resolution. The Lead Agency will inform Cooperating Agencies regarding new information and necessary changes related to the project.



## IX. ADMINISTRATIVE PROVISIONS

- A. Nothing in this MOU is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the Participating Agencies.
- B. Nothing in this MOU binds the Participating Agencies to perform beyond their respective authorities.
- C. Nothing in this MOU may be construed to obligate the Participating Agencies or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate the Participating Agencies, or the United States to spend funds on any particular project or purpose, even if funds are available.
- D. The mission requirements, funding, personnel, and other priorities of the Participating Agencies may affect their ability to fully implement all the provisions identified in this MOU.
- E. Specific activities that involve the transfer of money, services, or property between or among the Participating Agencies will require execution of separate agreements or contracts.
- F. Nothing in this MOU is intended to, or will, be construed to restrict the Participating Agencies from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- H. Any information furnished between the Participating Agencies under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (FOIA). The Participating Agencies agree to consult one another prior to releasing potentially privileged or exempt documents.
- I. All press releases and public statements issued by the Participating Agencies concerning or characterizing this MOU will be jointly reviewed and agreed to by delegated staff representing each of the undersigned signatories.
- J. All participants agree to resolve disputes expeditiously. If a dispute arises among the Participating Agencies regarding the terms or the implementation of this MOU, the following steps will be taken:
  - (1) The Participating Agency that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting



documents, to the other Participating Agencies and DOE within 5 working days. The Participating Agencies and DOE will engage in discussions in an attempt to arrive at a consensus and resolve the dispute;

- (2) If no resolution is reached within 10 calendar days of receipt of the statement of dispute, the dispute may be elevated in writing, along with any rationale or supporting documents to the relevant Participating Agencies' respective headquarters-level officials or their designees and CEQ. The principal contacts for the parties will engage in discussions to seek consensus;
- (3) If consensus is not reached by the headquarters-level officials within fifteen working days of their receipt of the written statement of the dispute, the Participating Agencies will promptly elevate the matter to the principal policy makers for the respective Participating Agencies and the CEQ Chair who will endeavor to resolve the matter within 20 working days;
- (4) The time limits in paragraph (2) may be extended on the agreement of the parties to the dispute. The parties may employ an agency dispute resolution services office to assist in the resolution of disputes. Disputes will be resolved within sufficient time to enable completion of decisions within the deadlines established by the Lead Agency in consultation with the relevant Participating Agencies; and
- (5) Any Participating Agency that learns of an applicant or state's intent to appeal any matter under subsection 216(h)(6) of the FPA will immediately notify the principal policy makers of the affected Participating Agencies and CEQ Chair who will engage the applicant or state in discussions to resolve the matter.

- K. Periodic meetings of the Participating Agencies will be scheduled to review progress and identify opportunities for advancing the purposes of this MOU.
- L. A Participating Agency may terminate participation in this MOU 120 days after providing written notice to the other Participating Agencies.
- M. A Participating Agency may amend or modify this MOU through agreement among all Participating Agencies.
- N. This MOU is not intended to authorize the siting of any electric transmission facility within the boundaries of any unit of the National Wildlife Refuge System, National Park System, or National Marine Sanctuary System.
- O. This MOU is not intended nor will it be interpreted to alter or diminish the consultation responsibilities of federal agencies under Section 7(a)(2) of the ESA or the NHPA.



## X. PRINCIPAL CONTACTS

Each Participant hereby designates the following federal employees as the principal contacts regarding this MOU. These contacts may be changed through written notice to each Participant and Participating Agency

|            |   |
|------------|---|
| DOE:       | Director of the Office of Electricity Delivery and Energy Reliability |
| FERC:      | Director of the Office of Energy Projects                             |
| DOC/NOAA:  | Deputy General Counsel  |
| DOD:       | Deputy Undersecretary of Defense for Installations and Environment    |
| DOD/USACE: | Assistant Secretary of the Army for Civil Works                       |
| EPA:       | Director of the Office of Federal Activities                          |
| DOI:       | Assistant Director for Minerals and Realty, Bureau of Land Management |
| CEQ:       | Associate Director for NEPA   |
| USDA/FS:   | Assistant Director of Lands, Forest Service                           |
| ACHP:      | Director of the Office of Federal Agency Programs                     |

## XI. TERM OF THE AGREEMENT

This MOU will take effect on the date of the last approving signature specified below.



XII. SIGNATORIES

By: *Ashton B. Carter*

Date: OCT 23 2009

ASHTON B. CARTER  
UNDER SECRETARY OF DEFENSE  
ACQUISITION, TECHNOLOGY & LOGISTICS

*Tom Vilsack*

By:

Date: October 23, 2009

TOM VILSACK  
SECRETARY OF AGRICULTURE

By: *Ken Salazar*

Date: OCT 23 2009

KEN SALAZAR  
SECRETARY OF THE INTERIOR

By: *Gary F. Locke*

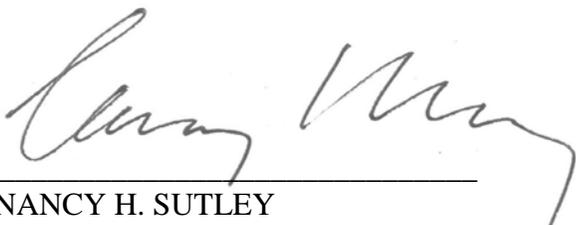
Date: Oct 22, 2009

GARY F. LOCKE  
SECRETARY OF COMMERCE



By:  Date: 10/23/09  
JON WELLINGHOFF  
CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

By:  Date: October 23, 2009  
LISA P. JACKSON  
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

By:  Date: October 23, 2009  
NANCY H. SUTLEY  
CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY

By:  Date: October 22, 2009  
JOHN L. NAU  
CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: October 23, 2009  
DR. STEVEN CHU  
SECRETARY OF ENERGY