

Federal Leadership Forum

Memorandum of Understanding

The Bureau of Land Management, Fish and Wildlife Service, National Park Service Environmental Protection Agency, and the Forest Service agree to establish a "Core Team" to assist in furthering interagency cooperation and improving the overall National Environmental Policy Act coordination among the agencies. This agreement represents a unique mechanism to improve NEPA coordination and provide for better public land management decisions through the disclosure of environmental effects and provision of appropriate mitigation measures, and the use of a Dispute Resolution Plan (see attachment) for more efficient and supported resolution of areas of significant concern among the agencies.

A. The Core Team will lead the interagency effort for continuous improvement of the oil and gas NEPA process. That work is ongoing and includes (1) preparation of a draft "Guidance Document," embodying solutions the Federal Leadership Forum decides to implement, and (2) course work to be added to agency training programs. The Core Team will recommend solutions to the FLF dealing with other NEPA issues of interagency concern as they arise, as well as those issues already identified. The Core Team will meet quarterly or as needed.

B. Each agency will provide management support and appoint to the Core Team appropriate management staff (or designee) with sufficient decision making authority as follows: at least three BLM representatives from the Colorado, Utah, Wyoming, or Montana State offices; one from the EPA Ecosystem Protection Group, NEPA Unit, Region 8; one Forest Service from each of Regions 2 and 4; one from National Park Service, Intermountain Region or Natural Resource Program Center; and one from the Fish and Wildlife Service Region 6. The Core Team may request other agency personnel for short term assignments in support of the work described in section A, above.

C. The Core Team will serve as the working group for the implementation of Step B of the *Dispute Resolution Plan* (copy attached) and, when appropriate, taking such disputes to the Federal Leadership Forum as described in Step C.

D. This Memorandum of Understanding in no way restricts the Cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

E. Nothing in this Memorandum of Understanding shall obligate the Cooperators to expend appropriations or enter into any contract or other obligations.

F. This Memorandum of Understanding may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all of the Cooperators. Cooperator participation in this Memorandum of Understanding may be terminated with the 60-day written notice of any party to the Cooperators. Unless terminated under the terms of this paragraph, this Memorandum of Understanding will remain in full force and in effect until 5 years from the date of its ratification.

G. The Memorandum of Understanding is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibilities, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

H. The terms of this Memorandum of Understanding are not intended to be enforceable by any party other than the cooperators hereto.

I. Actions taken relative to or under the auspices of the Memorandum of Understanding will comply with all federal statutes relating to nondiscrimination. These include, but are not limited to, Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which states, in part, that no person in the United States shall be discriminated against on the basis of race, color, national origin, sex, religion, age, disability, or political beliefs.

J. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

Bureau of Land Management

Colorado State Director Date

Montana State Director Date

Utah State Director Date

Wyoming State Director Date

Environmental Protection Agency

Regional Administrator, Region 8 Date

Fish and Wildlife Service

Director, Region 6 Date

Forest Service

Regional Forester, Region 2 Date

Regional Forester, Region 4 Date

National Park Service Date

Director, Intermountain Region Date

Dispute Resolution Plan for Federal Leadership Forum Agencies Engaged in NEPA Oil and Gas Review Processes

PRINCIPLES/OBJECTIVES

The purpose of this Dispute Resolution Plan is to provide a mechanism for timely resolution of disputes arising among the Federal Leadership Forum agencies regarding NEPA oil and gas projects. In promoting dispute resolution, the following principles should be followed:

1. Energy should be expended primarily in *preventing* disputes, through full implementation of improved NEPA procedures, including increased communication, notification, sharing of information, and wide participation.
2. The dispute resolution process should encourage direct discussions among the Federal agency staff most directly involved with the issues and at the lowest appropriate level.
3. Efforts to resolve disputes should be undertaken as early as possible in the NEPA review process, from the pre-scoping through the final decision.
4. The dispute resolution process will strive to keep within NEPA timeliness, but permit deferral of decisions in order to seek resolution of important issues as needed.

STEPS/PROCEDURES

A. Direct and Early Communication and Negotiation

5. **Notice of a Concern:** As soon as Federal agency staff members become aware of a potential problem concerning a NEPA review of an Oil & Gas development project, they will promptly contact the authorized officer and NEPA contact person in the lead agency. They will communicate the substance of their concern, problem, objection, or disagreement and offer to meet, either on the phone or in person, to discuss possible solutions. The staff may raise concerns about any aspect of the project, including public involvement and participation, scope of analysis, EA or EIS requirements, findings or lack of findings of significant impact, proposed mitigation measures, proposed Records Of Decision, etc.
6. **Direct Negotiation Session:** The lead agency manager and staff directly involved in managing the NEPA process on the specific project in question will meet promptly with the Federal agency staff who have raised the concerns and attempt to negotiate a mutually satisfactory solution to the issue.
7. **Recording Agreements:** Agreements reached successfully through such direct talks will be committed to writing. A copy will be sent to all members of the Core Team for their information only.

B. Engagement of the Core Team: Mediation

1. **Invoking Mediation:** If direct and early communication and negotiation (above) fails to achieve resolution, any of those involved in Step A may ask for the assistance of the Core Team, an interagency working group representing managers from Bureau of Land Management, Environmental Protection Agency, National Park Service, Fish & Wildlife Service and Forest Service. Core Team assistance will be requested in a written document outlining the issues involved and circulated to the Core Team members.
2. **Assessment of Previous Efforts at Resolution:** The members of the Core Team will first assess whether adequate efforts were made to reach resolution at the field/program level (i.e., the procedures described in Step A above). If not, they will encourage such direct discussions, providing coaching and advice as needed. If the Core Team determines that adequate efforts at the field/program level have been made and failed, they will take up the matter, proceeding to mediated negotiations. The Core Team may recommend delays in the NEPA time line, if needed.
3. **Securing the Services of a Mediator:** The Core Team will secure the services of a neutral mediator/facilitator to assist their consideration of the dispute. The agencies involved in the process will work together to find a mutually acceptable mediator and determine a mechanism for paying the costs of his/her services.
4. **Convening the Problem-Solving Group:** In preparing for a mediation session, the mediator will help the members of the Core Team determine which agencies and which staff from each agency will participate in the dispute resolution process. Core Team members will bring continuity and a broad overview, while other staff will provide detailed and technical knowledge of the specific case. Not all members of the Core Team will be required to participate, particularly if their agency is not implicated in a specific dispute (although additional perspectives may prove helpful at times). For BLM, the Deputy State Director for the involved BLM state, and the Forest Service Regional representative, will participate in most cases. Some matters may require the participation of other Federal agencies, such as the US Geological Survey, the Bureau of Reclamation, and/or the Bureau of Indian Affairs and the affected tribal governments.
5. **Mediation Sessions and Reporting:** The convened group will meet one or more times with the mediator to attempt to negotiate a resolution to the issue. If the group is able to reach an agreement, the mediator will draft a document reflecting that agreement for review and approval by the group.

C. Appeal to the Federal Leadership Forum

6. If mediation efforts through the Core Team fail to reach timely resolution of the dispute, the Core Team may ask the Federal Leadership Forum to resolve the issues. The Core Team may also recommend that additional time be provided for Core Team discussion.