



MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENTS OF ENERGY, DEFENSE, AGRICULTURE, AND INTERIOR
REGARDING ENERGY RIGHT -OF- WAY CORRIDORS ON FEDERAL LANDS

February 2006

I. PURPOSE

With the signing of this Memorandum of Understanding (MOU), the Department of Energy, the Department of Agriculture, the Department of the Interior and the Department of Defense (hereinafter collectively referred to as the "Agencies") commit to work together to meet each Agency's obligations under Sections 368 and 372 of the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 368, 372, 119 Stat. 727-728, 734-735 (2005) (hereinafter "EPAAct 2005"). These Sections require the Agencies to coordinate all applicable Federal authorizations and environmental reviews related to energy right-of-way corridor planning and energy right-of-way administration for proposed or existing utility facilities. The intent of this MOU is to delineate certain of the Agencies' duties under these Sections.

II. BACKGROUND

Section 368 of EPAAct 2005 requires the Secretaries of Energy, Agriculture, Defense, and the Interior to consult with one another, and with the Federal Energy Regulatory Commission (FERC), States, Tribal and/or local units of government, affected utilities, and other interested persons to:

1. Designate, under their respective authorities, corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land in the eleven contiguous western states (as defined in 43 U.S.C. §1702(o)) (*see* EPAAct 2005 §368(a)(1), 119 Stat. 727);
2. Perform any environmental reviews that may be required to complete the designation of such corridors (*see* EP Act 2005 §368(a)(2), 119 Stat. 727); and,
3. Incorporate the designated energy right-of-way corridors into the relevant Agency land use and resource management plans or equivalent plans (*see* EP Act 2005 §368(a)(3), 119 Stat. 727).



To ensure that the energy right-of-way corridor planning¹ and designation process takes place in a systematic, publicly transparent and environmentally responsible manner, the Agencies will conduct all environmental reviews required by Federal law, including the National Environmental Policy Act (NEPA). Prior environmental analyses undertaken during previous corridor designation processes shall be taken into account when reviewing applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within such corridors.

Section 368 of EPAct 2005 recognizes that cooperation and participation among the signatories to this MOU is essential to proper energy corridor planning in the eleven western states and throughout the nation. The Agencies will ensure that additional energy right-of-way corridors will be promptly identified and designated as necessary and will expedite applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within these corridors. The Agencies shall take into account the need for upgraded and new electricity transmission and distribution facilities to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver electricity.

Section 372 of EPAct 2005 addresses energy rights-of-way on federal lands and requires the Agencies to coordinate all applicable Federal authorizations and related environmental reviews relating to a proposed or existing utility facility. That Section also requires the Agencies to include in a MOU provisions that—

1. 1 Establish a unified right-of-way application and an administrative procedure for processing right-of-way applications (*see* EPAct 2005 §372(a)(2)(A)(i)-(ii), 119 Stat. 735);
2. Provide for coordination of planning relating to the granting of the rights-of-way (*see* EPAct 2005 §372(a)(2)(B), 119 Stat. 735);
3. Provide for an MOU among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions (*see* EPAct 2005 §372(a)(2)(C), 119 Stat. 735); and
4. Provide for coordination of use of right-of-way stipulations to achieve consistency (*see* EPAct 2005 §372(a)(2)(D), 119 Stat. 735).

¹ For the purposes of this MOU, energy right-of-way corridor planning includes, but is not limited to, the identification and analysis of energy right-of-way corridors. The Agencies will consider national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices when designating energy right-of-way corridors.



III. AGENCY RESPONSIBILITIES

a. General

The Agencies hereby agree to cooperate to ensure that timely decisions are made and that the responsibilities of each Agency are met. The Agencies agree to work with Federal, State, Tribal and local governments as appropriate, affected utility industries, and other interested persons in carrying out the provisions of Sections 368 and 372. In particular, the Agencies agree to:

1. Coordinate all applicable federal land authorizations and environmental reviews relating to a proposed or existing facility. In addition, the Agencies will coordinate preparation of a programmatic environmental impact statement (PEIS) that will address the environmental effects of designating energy right-of-way corridors. The PEIS will be used to support each Agency's Record of Decision (ROD) when the Agency designates an energy right-of-way corridor. *See* EPAct 2005 § 368(a), 119 Stat. 727.
2. Establish a unified right-of-way application form and an administrative procedure for processing right-of-way applications, including lines of authority, steps in application processing, and timeframes for application processing. *See* EP Act 2005 § 372(a)(2)(A), 119 Stat. 735.
3. Coordinate planning related to granting rights-of-way.
4. Coordinate use of right-of-way stipulations to achieve consistency. *See* EPAct 2005 § 372(a)(2)(D), 119 Stat. 735. A unified right-of-way grant form shall contain agreed-upon terms and conditions so that rights-of-way crossing land managed by more than one Federal Agency can be processed in a unified manner. *See* EPAct 2005 § 372(a)(2)(D), 119 Stat. 735. For purpose of this MOU, BLM and FS hereby stipulate to the following definitions:
 - A. *Energy Right-of- Way Corridor*: A parcel of land with specific boundaries identified by law, Secretarial order, the land use planning process, or by other management decisions as a preferred location for energy-related facilities and infrastructures. The corridor may be designated as suitable to accommodate one or more than one type of energy use or facility. A designated energy right-of-way corridor under Section 368 may already be occupied by existing utility facilities.



- B. *Right-of-Way*: An easement, lease, permit, or license to occupy, use, or traverse public lands granted for transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom or hydrogen, or for systems for the generation, transmission, and distribution of electric energy. 43 U.S.C. § 1761(a)(4).

 - C. *Energy Right-of-Way Application*: An application for an energy right-of-way seeking an authorization for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, any refined product produced therefrom, or hydrogen, or for systems for the generation, transmission, or distribution of electric energy. An application need not be limited to a facility that would be located within a corridor.
5. Consult with the Secretary of Commerce when designating energy right-of-way corridors and expediting energy right-of-way applications;

 6. Notify each Agency within one month from the date an Agency receives an energy right-of-way application. *See* EPAct2005 § 372(a)(2)(B), 119 Stat. 735. Such notification shall contain the date the Agency received the energy right-of-way application, a summary of the requests made in the application and the anticipated timeframe required to process the application. Notification within one week of receipt of the application is required if the Agency receiving the energy right-of-way application determines that the right-of-way sought by the application will cross or intersect Federal land administered by another Agency.

 7. Review the progress made by each Agency under this MOU every five years.

b. Department of Energy

The Department of Energy ("DOE") shall serve as the lead Agency and will furnish a project manager to direct and facilitate all activities required to successfully implement energy corridor planning and analysis on Federal lands, including the production of a PEIS, first for the eleven western states and then for the remaining States. In addition, DOE will:

1. Provide access to and make available relevant data and other necessary information to evaluate corridor paths;

2. Provide a list of contacts in the state and regional offices and other management units and assist in making these contacts available; and



3. Provide appropriate technical staff to produce the PEIS and provide management oversight/review throughout the project.

c. Department of the Interior, Bureau of Land Management

The Bureau of Land Management ("BLM") shall serve as co-lead and will furnish an assistant project manager who will support the DOE project manager. BLM will apply its planning regulations in amending its resource management plans. In addition, the BLM will:

1. Provide information regarding the status of existing land use plans and associated NEP A documents and identify land use plans to be amended;
2. Provide access to and make available relevant data and other necessary information to evaluate corridor paths;
3. Provide a list of contacts in the State Offices and other management units and assist in making these contacts available as needed;
4. Provide appropriate staff and management oversight/review throughout all projects;
5. Incorporate any designated corridor into the relevant BLM resource management plan; and
6. Coordinate with other Interior Department land management agencies and tribal entities, as appropriate, with respect to any corridors that may involve other federal or tribal lands.

d. Department of Agriculture, United States Forest Service

The United States Forest Service ("USDA FS") shall serve as a cooperating agency and shall furnish an assistant project manager to support the DOE project manager. In addition, the USDA FS will:

1. Provide information regarding the status of existing land use plans and associated NEPA documents and identify land use plans to be amended;
2. Provide access to and make available relevant data and other necessary information to evaluate corridor paths;



3. Provide a list of contacts in each of the Regional Offices and other management units and assist in making these contacts available;
4. Provide appropriate staff and management oversight/review throughout the project; and
5. Incorporate any designated corridor into the relevant USDA FS Land and Resource Management Plan.

e. **Department of Defense**

The Department of Defense (DoD) will serve as a cooperating agency in the preparation of the Energy Corridor Programmatic EIS, and will work closely with the DOE project manager. In addition, the DoD will:

1. Provide relevant information concerning current and projected military use of lands under DoD jurisdiction or control;
2. Provide access to existing NEPA documents and installation integrated Natural Resource Management Plans ("INRMPs") related to lands under DoD jurisdiction or control;
3. Provide baseline environmental data as needed to evaluate proposed energy right-of-way corridors, provided the DoD determines that any such energy corridor may be designated on lands under DoD jurisdiction or control without compromising safety, security, or DoD's use of its lands as it deems necessary for military testing, training, and operations;
4. Provide a list of contacts in each of its Regional Environmental Coordinator offices and, as needed, at its military installations, and assist in making these contacts available;
5. Provide appropriate staff and management oversight/review throughout the project; and
6. Incorporate any designated energy right-of-way corridors into the relevant INRMPs.



IV. SCOPE OF THE MOU

1. Nothing in this MOU obligates the participating Agencies appropriations to expend or enter into any contract or other obligation.
2. This MOU may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all parties.
3. This MOU is to be construed in a manner consistent with all existing laws and regulations.
4. This MOU neither expands nor is in derogation of those powers and authorities vested in the parties by applicable law, statutes or regulations.
5. The parties intend to fully carry out the terms of this MOU. In addition, this MOU does not limit the ability of any of the participating Agencies to review and respond to applications submitted by any organization or member of the public.
6. This MOU is strictly for internal management purposes of the parties. It is not a contract for acquisition of supplies or services. is not legally enforceable, and shall not be construed to create any legal obligation on the part of any of the parties, or any private right or cause of action for or by any person or entity.
7. Participation in this MOU may be terminated sixty (60) days after providing written notice of such termination to the other participating Agencies. Upon one party's unilateral withdrawal, this MOU shall remain in effect unless all of the participating Agencies unanimously agree to withdraw.
8. The Agencies will review this MOU every 5 years.

V. SECURITY AND CLASSIFICATION

All applicable security classifications and guidelines shall apply. Before any classified work under this project is initiated, the Agencies' representatives will establish appropriate security requirements/procedures.

Any disclosure of information to the public subject to the Freedom of Information Act, 5 U.S.C. § 552, regarding work undertaken pursuant to this MOU shall be coordinated between the Agencies.



VI. AUTHORITIES

The Department of Energy derives its authority to enter into this MOU under the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 368, 372, 119 Stat. 727-728, 734-735 (2005), and the Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 et seq. as amended.

The Department of the Interior derives its authority to enter into this MOU under the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 368, 372, 119 Stat. 727-728, 734-735 (2005), and the Federal Land Policy and Management Act, 43 U.S.C. §1737(b).

The Department of Agriculture derives its authority to enter into this MOU under the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 368, 372, 119 Stat. 727-728, 734-735 (2005), and 16 U.S.C. §§528-531, 551.

The Department of Defense derives its authority to enter into this MOU under 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 16 U.S.C. §§670a-670f.

VII. PRINCIPAL CONTACTS

Each party hereby designates contacts as the initial principal contacts for the agency. These contacts may be changed at the participating Agency's discretion upon notice to the other participating Agencies. The following are the initial principal contacts for each agency:

Julia Souder	julia.souder@hq.doe.gov	202-586-5461
Scott Powers	scott_yowers@blm.gov	406-896-5319
Ron Montagna	ron_montagna@blm.gov	202-452-7782
Bob Cunningham	rcunningham@fs.fed.us	202-205-2494
John Allen	john.allen@osd.mil	703-681-5411

VIII. DATE EFFECTIVE

This MOU shall take effect on the date of the last approving signature.



SIGNATORIES

ACCEPTANCE FOR THE DEPARTMENT OF ENERGY

By: (Original Signature on File)
Clay Sell, *Deity* Secretary

Date: 1/30/2006

ACCEPTANCE FOR THE DEPARTMENT OF AGRICULTURE:

By: (Original Signature on File)
Mark Rey, Under Secretary

Date: 2/5/06

ACCEPTANCE FOR THE DEPARTMENT OF THE INTERIOR:

By: (Original Signature on File)
P. Lynn Scarlett, Deputy Secretary

Date: 2/8/06

ACCEPTANCE FOR THE DEPARTMENT OF DEFENSE

By: (Original Signature on File)
Kenneth Krieg, Undersecretary of Defense for Acquisition, Technology and Logistics

Date: 7 February 2006