

**Memorandum of Understanding
Between the
U.S. Fish and Wildlife Service,
And the
Arizona Counties of Apache, Cochise, Coconino, Gila, Mohave, and Santa Cruz
And the
New Mexico Counties of Catron, Cibola, Grant, Hidalgo, Lincoln, Los Alamos, Luna,
McKinley, Mora, San Juan, San Miguel, Santa Fe, Sierra, and Valencia**

SECTION I. PARTIES

This Memorandum of Understanding (hereinafter referred to as MOU) establishes a cooperating agency relationship and a coordinating process and is made and entered into by and between the:

A. U.S. Fish and Wildlife Service Region 2 (Service), as authorized and directed under the NEPA implementing regulations of 1977, as amended, and specifically acknowledging the following areas of the regulations, which are of mutual interest to the parties 40 CFR 1506.2, 40 CFR 1508.5, 40 CFR 1501.7, 40 CFR 1501.2, 40 CFR 1508.27, 40 CFR 1502.16, and 516 DM; and

B. Apache County, Cochise County, Coconino County, Gila County, Mohave County, and Santa Cruz County, as authorized under the State of Arizona, enabling counties to protect the health, safety, and welfare of its citizens, pursuant to Arizona Revised Statutes 11-802 and 11-933, as well as County laws, including County land use plans, water and watershed plans, and environmental and natural resource laws and policies; and

C. Catron County Board of Commissioners, Cibola County, Grant County, Hidalgo County, Lincoln County, Los Alamos County, Luna County, McKinley County, Mora County, San Juan County, San Miguel County, Santa Fe County, Sierra Count, and Valencia County, as authorized under the State of New Mexico, granting powers necessary and proper to provide the safety, preserve the health, promote the prosperity, and improve the morals, orders, comfort, and convenience of any County or its inhabitants, pursuant to New Mexico Revised Statute 4-7-31 (NMSA 1978), as well as County laws, including County land use plans, water and watershed plans, and environmental and natural resource laws and policies.

D. Hereinafter referred to as the Parties.

SECTION II. STATEMENT OF PURPOSE

The purpose of this MOU is for the signatory entities to contribute to the preparation of an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA). The proposed rule to revise the 1998 Mexican wolf nonessential experimental population rule (63 FR 1752) (1998 Final Rule) will be the proposed action of our EIS. We will analyze the environmental consequences from implementation of the proposed action and alternatives. The EIS will analyze proposed revisions to the Mexican Wolf Experimental Population Area (MWEPA) and Blue Range Wolf Recovery Area (BRWRA), and to some

aspects of currently authorized regulations for management of the experimental population of Mexican wolves in Arizona and New Mexico. The new rule may replace and supersede the 1998 Final Rule, pursuant to section 10(j) of the Endangered Species Act (Act). The EIS will also analyze alternatives that include implementing a management plan to authorize take of endangered Mexican wolves in areas of Arizona and New Mexico external to the MWEPA. The management plan would be implemented through a U.S. Fish and Wildlife Service (Service) permit.

Furthermore, for the purposes of the production of an EIS that will analyze a range of alternatives, this MOU:

A. Confirms the formal designation of the Service as the Lead Federal Agency with responsibility for completion of the EIS and Record of Decision (ROD). The Lead Federal Agency shall:

- i. Request the participation of each Cooperating Agency in the NEPA process at the earliest possible time; and
- ii. Use the environmental analysis and proposals of Parties with jurisdiction by law and/or special expertise, to the maximum extent possible consistent with its responsibility as Lead Federal Agency; and
- iii. Meet, either in person or teleconferencing, with a Cooperating Agency at the latter's request; and
- iv. Request that the counties designate one or more representative(s) to participate on the Interagency Planning Team.

B. Formally designates the Parties as Cooperating Agencies. It is recognized that Cooperating Agencies have legal authority and/or special expertise applicable to the planning process. Each Cooperating Agency shall:

- i. Participate in the NEPA process at the earliest possible time; and
- ii. Participate in the scoping process; and
- iii. Assume on request of the Lead Federal Agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise; and
- iv. Normally use its own funds. The Lead Federal Agency shall, to the extent available funds permit, fund those major activities or analyses it requests from Cooperating Agencies. The Lead Federal Agency shall include such funding requirements in their budget requests; and

- v. A Cooperating Agency may, in response to a Lead Federal Agency's request for assistance in preparing the environmental impact statement, reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement; and
- vi. Make available staff and/or consultant support, as approved by the individual County, at the Lead Federal Agency's request to enhance the latter's interdisciplinary capability; and
- vii. Designate representative(s) and agree to select individual(s) to represent the County on the Interagency Planning Team.

C. Formalizes and provides a framework for cooperation and coordination among the Parties that will ensure successful completion of the EIS in a timely, efficient, and thorough manner; and

E. Ensures the working relationship between the Parties meets the purposes and intent of NEPA; and

F. Provides a structural framework for coordination of the NEPA processes.

SECTION III. BACKGROUND

A. The Service proposes to revise the 1998 Final Rule and to implement a management plan for areas outside of the MWEPA. The EIS will analyze proposed revisions to: (1) the MWEPA and BRWRA, (2) some aspects of currently authorized regulations for management of the experimental population of Mexican wolves in Arizona and New Mexico, and (3) implement a management plan for Mexican wolves that are not part of the experimental population. A Notice of Intent to Prepare an EIS was published on August 5, 2013 (FR 47268, August 5, 2013). The EIS will analyze options for revising the 1998 Rule (including no action) and implementing a management plan, and includes various geographic and management scenarios. The proposed 10(j) rule was published on June 13, 2013. A draft EIS will be published, followed by a final EIS, ROD, and final 10(j) Rule (provided that the ROD does not select the No Action Alternative).

B. The Parties seek to fully consider the impacts of proposed actions on the physical, biological, social and economic aspects of the human environment, and;

C. The Parties desire to enter into this MOU and have the authority, through the Director, Region 2, U.S. Fish and Wildlife Service and the County Supervisors and Commissioners, to do so, and;

D. This MOU shall not be construed to affect the jurisdiction of Federal, State, County or other

local governmental agencies which exists as a matter of law, and:

E. Arizona and New Mexico Counties are legally responsible for the protection of health, safety, and welfare of individuals and communities that may be affected by reintroduction and recovery of the Mexican wolf;

F. Arizona Counties have determined that participation in the Proposed Amendment of Mexican Wolf 10(j) rule EIS should be consistent with the Counties' policies for the protection of the health, safety, and welfare of their citizens, and is important to representing the Counties' interest in, and authority for, management of natural resources within the boundaries of the Counties.

G. New Mexico Counties have determined that participation in the Proposed Amendment of Mexican Wolf 10(j) rule EIS should be consistent with the Counties' policies for the protection of the health, safety, and welfare of their citizens, and is important to representing the Counties' interest in, and authority for, management of natural resources within the boundaries of the Counties.

H. In the interest of enhancing communication, Black's Law Dictionary (7th Edition; ISBN 0314241302) and Merriam-Webster's Collegiate Dictionary (11th Edition; ISBN 0877798095) shall be the primary references for words used in this MOU;

SECTION IV. RECITALS

NOW THEREFORE, the Parties hereto agree to cooperatively develop appropriate documentation in order to satisfy the requirements of NEPA, and further agree that;

A. The Service will:

- i. serve as the Lead Federal Agency in coordinating the development of an EIS analyzing the environmental impacts of a proposed new designation of a MWEPA and of implementation of a management plan external to the MWEPA, and alternatives thereto; and
- ii. provide guidance as to proper process, document format, and information required to satisfy NEPA requirements; and
- iii. determine the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected for analysis, and make final determinations on content relative to applicable statutory and regulatory requirements; and
- iv. develop the EIS, consistent with Federal law, regulation and Department and Agency policy and will incorporate, to the maximum extent possible consistent with its responsibility as Lead Federal Agency, the comments, recommendations, and/or data

submitted by Parties in the EIS planning process; and

- v. provide available information and resources for development of the EIS; and
- vi. provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and
- vii. give, to the maximum extent possible, a reasonable time frame for review and return of consolidated and comprehensive comments; and

B. The Counties are recognized to have jurisdiction by law and special expertise and will:

- i. provide available information, data (and supporting analyses), comments, and resources for development of proper NEPA documentation and the EIS; and
- ii. provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and
- iii. help collect data to the maximum extent possible, participate in discussions about data assessment and technical reports, prepare selected sections, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS; and
- iv. receive working drafts of the EIS and its alternatives and analyses for review and comment in relation to areas of jurisdictional responsibility and/or special expertise; and
- v. return consolidated and comprehensive comments on working drafts to the Service in an agreed upon time frame consistent with the planning schedule; and
- vi. may meet with affected stakeholders and provide comments to the Service at any point in the development of the EIS, provided that internal draft documents are not disseminated (see **Document Control** section below).

C. Conflict Resolution. Conflicts between or among the Parties concerning this MOU that cannot be resolved at the lowest possible level shall be referred to the next higher level, et seq., as necessary, for resolution with full recognition of the Service's decision making responsibilities in the EIS process.

Legal Effect of MOU: The provisions of any statutes and/or regulations cited in this MOU contain legally binding requirements. The MOU itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on the Parties. Furthermore, this MOU does not create a right of action enforceable in a court of law for any of the Parties. Rather, this MOU contains procedural guidance to assist the Parties in carrying out existing legal requirements. No Party shall be liable

in damages to any other Party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement or any other cause of action arising from this agreement.

Document Control: All internal working draft documents for the development of any National Environmental Policy Act (NEPA) documents are pre-decisional and the Parties will ensure that these documents will not be available for review by individuals or entities other than the Parties to this MOU, or the Parties consultants, unless otherwise required by applicable law. All documents created, collected, or provided by the Parties in support of the development of NEPA documents are part of the official Service administrative record and may only be released by the Service to the extent allowable by the Freedom of Information Act and/or Privacy Act. The Counties will identify to the Service all personnel and consultants representing the County who will have access to the documents for the county and provide signed statements with regards to document control.

Enforcement Authority of the United States. Nothing contained in this MOU is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

No partnership. This MOU shall not make or be deemed to make any Party to this agreement the agent for or the partner of any other Party.

Notices. All notices, demands, or requests from one Party to another may be personally delivered, sent by facsimile/email, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the persons set forth below and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing and shall be effective at the time of personal delivery, facsimile/email transmission, or mailing upon notification of delivery by a recognized overnight delivery service or the United States Postal Service.

Elected officials not to benefit. No member of or delegate to Congress or a staff member to a member or delegate to Congress shall be entitled to any share or part of this MOU, or to any benefit that may arise from it.

Availability of funds. Implementation of this MOU by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOU will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this agreement to expend any appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Duplicate originals. This MOU may be executed in any number of duplicate originals. A complete original of this MOU shall be maintained in the official records of each of the Parties hereto.

No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other Federal law, this MOU shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this MOU maintain a suit for personal injuries or damages pursuant to the provision of this MOU. The duties, obligations, and responsibilities of the Parties to this MOU with respect to third parties shall remain as imposed under existing law.

Amendment. This MOU may be amended upon written agreement of all Parties. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects.

Termination. Any Party may terminate its participation in this MOU at any time. Any termination shall be made in writing. If not terminated sooner, this MOU will end upon agreement of all Parties once the EIS is final and the Service issues the ROD. Agencies may submit requests to be signatories to the June 30, 2010 MOU for Mexican Wolf Reintroduction within the AZ-NM Experimental Population Area for full participation and involvement in the Mexican wolf reintroduction project.

See http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_MOU.pdf for the current MOU.

Principal Contacts. The principal contacts for this MOU are:

i. United States Fish and Wildlife Service

Attn: Sherry Barrett
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87113
Phone: 505-761-4748

ii. Apache County, Arizona

Attn: Doyel Shamley
Apache County Natural Resources Coordinator
P.O. Box 940
Eager, Arizona 85925

Phone: 928-333-5999

iii. Catron County Board of Commissioners, New Mexico

Attn: Dr. Alex Thal

Catron County Natural Resources Coordinator

P.O. Box 2296

Silver City, New Mexico 88062

Phone: 575-388-7987

iv. Cibola County, New Mexico

Attn: Rheganne Vaughn

Chief Operations Officer/Assistant County Manager

515 W. High Street

Grants, New Mexico 87020

Phone: 505-287-9431

v. Cochise County, Arizona

Attn: James E. Vlahovich,

Deputy County Administrator

1415 Melody Lane, Building G

Bisbee, Arizona 85630

Phone: 520-559-3664

vi. Coconino County, Arizona

Attn: Cynthia Seelhammer

County Manager

219 Cherry Avenue

Flagstaff, Arizona 86001

Phone: 928-679-7130

vii. Gila County, Arizona

Attn: Ms. Jacque Griffin

Assistant County Manager

1400 E. Ash Street

Globe, Arizona 85501

Phone: 928-402-8770

viii. Grant County, New Mexico

Attn: Jon Paul Saari

County Manager

PO Box 898
Silver City, New Mexico 88062
575-574-0008

ix. Hidalgo County, New Mexico
Attn: Darr Shannon
Chairman, Hidalgo County Commission
300 Shakespeare Street
Lordsburg, New Mexico 88045
Phone: 575-542-9341

x. Lincoln County, New Mexico
Attn: Nita Taylor
County Manager
PO Box 711
Carrizozo, New Mexico 88301
Phone: 575-648-2385 ext. 101

xi. Los Alamos County, New Mexico
Attn: Harry Burgess
County Administrator
1000 Central Avenue, Suite 320
Los Alamos, New Mexico 87544
Phone: 505-663-1750

xii. Luna County, New Mexico
Attn: Charles "Tink" Jackson
Chair, Wolf Advisory Committee
P.O. Box 844
Deming, New Mexico 88031
Phone: 575-546-2851

xiii. McKinley County, New Mexico
Attn: Mr. Douglas W. Decker
McKinley County Attorney
P.O. Box 70
Gallup, New Mexico
Phone: 505-722-3868

xiv. Mora County, New Mexico

Attn: Rebecca Montoya
County Manager
PO Box 580
Mora, New Mexico 87732-0580
Phone: 575-387-5279

xv. Mohave County, Arizona
Attn: Karl Taylor
Planning Manager
700 West Beale Street
Kingman, Arizona 86402
Phone: 928-757-0903 ext. 5823

xvi. San Juan, New Mexico
Attn: Joanne Thomas
Administrative Assistant/Executive Office
1000 S. Oliver Drive
Aztec, New Mexico 87410
Phone: 505-334-4271

xvii. San Miguel County, New Mexico
Attn: Alex Tafoya
Planning and Zoning Supervisor
500 W. National Ave., Suite 203
Las Vegas, New Mexico 87701
Phone: 505-425-7805

xviii. Santa Cruz County, Arizona
Attn: Carlos Rivera
County Manager
2150 North Congress Drive
Nogales, Arizona 85621
Phone: 520-375-7812

xix. Santa Fe, New Mexico
Attn: Ambra Garcia
Executive Assistant
102 Grant Avenue
Santa Fe, New Mexico 87504
Phone: 505-986-6200

xx.Sierra County, New Mexico
Attn: Mark Huntzinger
County Manager
855 Van Patten
Truth or Consequences, New Mexico 87901
Phone: 575-894-6215

xxi.Valencia County, New Mexico
Attn: Yvette Tabor
Administrative Assistant, County Managers Office
PO Box 1119
Los Lunas, New Mexico 87031
Phone: 505-866-2014

Initiation. This MOU becomes effective upon written concurrence by the referenced signatory Parties below.

IN WITNESS WHEREOF:

The Parties hereto have executed the MOU as of the dates shown below.

Tom M. White, JR, Chairman
Apache County Board of Supervisors, Arizona

Date

Glyn Griffin, Chairman
Catron County Board of Commissioners, New Mexico

Date

Edward Michael, Chairman,
Cibola County Board of Commissioners, Arizona

Date

Ann English, Chair,
Cochise County Board of Supervisors, Arizona

Date

Liz Archuleta, Chair,
Coconino County Board of Supervisors, Arizona

Date

Michael A. Pastor, Chair,
Gila County Board of Supervisors, Arizona

Date

Brett Kasten, Chairman,
Grant County Board of Commissioners, New Mexico

Date

Darr Shannon, Chair,
Hidalgo County Board of Commissioners, New Mexico

Date

Jackie Powell, Chairwoman,
Lincoln County Board of Commissioners, New Mexico

Date

Geoff Rodgers, Council Chair,
Los Alamos County Council Members, New Mexico

Date

Javier Diaz, Chairman,
Luna County Board of Commissioners, New Mexico

Date

Genevieve Jackson, Chair,
McKinley County Board of Commissioners, New Mexico

Date

John P. Olivas, Chairman,
Mora County Board of Commissioners, New Mexico

Date

Gary Watson, Chairman,
Mohave County Board of Supervisors, Arizona

Date

Scott Eckstein, Chairman,
San Juan County Board of Commissioners, New Mexico

Date

Nicolas T. Leger, Chairman,
San Miguel County Board of Commissioners, New Mexico

Date

Manuel Ruiz, Chairman,
Santa Cruz County Board of Supervisors, Arizona

Date

Kathy Holian, Chair,
Santa Fe County Board of Commissioners, New Mexico

Date

Walter Armijo, Chairman,
Sierra County Board of Commissioners, New Mexico

Date

Charles Eaton, Chair,
Valencia County Board of Commissioners, New Mexico

Date

Benjamin N. Tuggle, Director, Region 2
U.S. Fish and Wildlife Service

Date