

## **Sample Federal/State/Tribal MOU to Implement Forest and Rangeland Restoration and Fuels Reduction Projects Protecting Tribal Treaty, Trust & Reserved Rights & Interests**

On or about January 25, 2006 (during the Bush '43 administration), the U.S. Forest Service, Interior Department Bureau of Land Management and the Confederated Tribes of the Warm Springs Reservation of Oregon entered into a Memorandum of Understanding (“MOU”).<sup>1</sup> The MOU was intended to provide a framework by which the parties could proceed to plan and implement forest and rangeland restoration and fuels reduction projects on lands subject to “high intensity fires.

The first paragraph of the Preamble to the MOU noted how during

“the past decade Tribal forests on the Warm Springs Indian Reservation (the “Reservation”) in Oregon and the adjoining U.S. Forest Service (“USFS”) and Bureau of Land Management (“BLM”) administered lands have been subjected to repeated uncharacteristic high intensity wildfires, many of which originated on federally managed lands” (emphasis added).

The third paragraph of the Preamble to the MOU noted the federal agencies’ inability to address all the lands under their jurisdiction.

“WHEREAS, because federal agencies have *more acres requiring treatment than they can treat* using available appropriations provided by Congress...” (emphasis added).

The fifth paragraph of the Preamble to the MOU noted the Tribes’ interest in protecting tribal treaty, trust and reserved rights and interests related to its Tribal forests, and the USFS’ and BLM’s recognition of those rights and interests.

“WHEREAS, the Confederated Tribes of the Warm Springs Reservation of Oregon (“CTWS”) is a sovereign government whose interests include protecting and preserving *tribal treaty, trust and reserved rights and interests within Tribal usual and accustomed areas on lands ceded to the United States and in aboriginal use areas*, include protecting the Reservation and its members from hazardous forest fires

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<sup>1</sup> See Memorandum of Understanding Between The Confederated Tribes of the Warm Springs Reservation of Oregon, the USDA Forest Service Pacific Northwest Region, and Bureau of Land Management Oregon State Office, *For the Purpose of Providing a Framework for Planning and Implementing Forest and Rangeland Restoration and Fuels Reduction Projects* (Jan. 25, 2006), available at: <http://www.blm.gov/or/resources/forests/files/MOU-OR-930-0602.pdf>.

and conditions, and promoting business enterprises to support the welfare and economic self-sufficiency of its members” (emphasis added).

Section I.A.2 of the MOU entitled, “Forest Ecosystem, Watershed, Wildlife, fish and Tribal Asset Restoration Needs,” recognizes a number of the tribe’s treaty, trust and reserved off-reservation rights and interests.

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“The forest ecosystem, watershed, wildlife, fish and cultural food ***and other treaty, trust and reserved asset restoration needs*** subject to fire threats and other resource management-related conditions are varied, depending on the particular threat and the resource involved. In general, however, *these restoration needs will be identified as they relate to high priority resources, including, but not limited to, water quality and quantity, salmon, steelhead, resident trout, whitefish, lamprey, deer, bighorn sheep, elk, eagles, huckleberries, choke cherries, roots, red cedar, camas, celery, and bear grass*” (emphasis added).

Section I.B.1.d of the MOU provides that among the management objectives of the MOU is the improvement and protection of

“d. ***tribal treaty, trust and reserved resources***, including tribal cultural and subsistence foods and materials and the landscape that supports such resources” (emphasis added).

Section 2.B.b of the MOU provides that a second management objective is the reduction of

“b. fire hazards to tribal lands, ***other tribal treaty, trust and reserved resources***, at-risk rural communities, and municipal water supplies” (emphasis added).

Pursuant to Section III.A.1 of the MOU, the USFS and BLM committed *inter alia* to

“utilize **the full variety of contracting methods available under current statutes and authorities. These include competitive stewardship contracts, traditional service and timber contracts, and sole source agreements with the CTWS [Tribes] under the Tribal Forest Protection Act.** As provided and consistent with this MOU and to the extent permitted by and consistent with all applicable laws and land use plans, the USFS and BLM agree to offer 8,000 acres per year for forest restoration and fuels reduction projects within the geographic scope of this MOU” (emphasis added).

Pursuant to Section III.B.3 of the MOU, the Tribes committed to

“offer to provide, as appropriate—at its cost (including reasonable indirect costs)—its assistance and expertise in implementation of this MOU, including but not limited to: [...]3. project implementation, including ***contributing tribal expertise in tribal treaty,***

*trust and reserved resources* and tribal expertise in sustainable and restoration forestry practices;” (emphasis added).

Pursuant to subsection D of Section V of the MOU entitled, “Identification and Implementation of Projects under this MOU,” the USFS and BLM stated that,

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“Management considerations for USFS or BLM offerings developed under this MOU are derived from the Purpose and Objectives (Section I) of this MOU and include, but are not limited to, the following: 1. Impact on tribal culturally significant species; 2. *Impact on tribal trust and reserved resources*; 3. Impact on high-priority resources;” (emphasis added).