

# MEMORANDUM OF UNDERSTANDING

for

## CONSERVATION OF THE BALD EAGLE IN ARIZONA

This Memorandum of Understanding (hereafter MOU) renewal is made and entered into by and among the Arizona Game and Fish Commission, Arizona Public Service, U.S. Bureau of Land Management (Arizona), Bureau of Reclamation (Lower Colorado Region, Phoenix Area Office), 56<sup>th</sup> Fighter Wing at Luke Air Force Base (Department of Defense), Maricopa County, National Park Service (Intermountain Region), Salt River Project, U.S. Army Corps of Engineers (South Pacific Division), U.S. Fish and Wildlife Service (Southwest Region), U.S. Forest Service (Southwestern Region), and other signatories for the Conservation of the Bald Eagle in Arizona. Collectively, the parties to this MOU will be referred to as the Cooperators. All references in this MOU to the bald eagle are to the wintering and breeding populations of the bald eagles in Arizona (*Haliaeetus leucocephalus*).

### AUTHORITIES

The Arizona Game and Fish Commission is authorized pursuant to A.R.S. 17-231.B.7 to enter into this MOU. The Arizona Game and Fish Department and its Director act under the authority of the Commission. The State of Arizona Required Provisions (Appendix A) is hereby made part of this agreement.

### PURPOSE

The purpose of this MOU is to continue the conservation partnership previously established by a 2007 MOU to maintain, and where feasible and appropriate, enhance the breeding bald eagle population in Arizona. The baseline for measuring the adequacy of this conservation effort shall be the bald eagle's status in Arizona in the year the MOU for the Conservation Assessment and Strategy for the Bald Eagle was originally signed (2007).

### OBJECTIVES

This MOU has the following objectives:

1. Implement the "Conservation Assessment and Strategy for the Bald Eagle in Arizona" (hereafter CAS, see Appendix B).
2. Continue long-standing relationships and participation among the Cooperators as equal partners committed to conservation of the breeding bald eagle population in Arizona.
3. Maintain the Southwestern Bald Eagle Management Committee (SWBEMC), composed of signatories to this MOU and additional non-signatory partners, as the primary forum in which this conservation effort will be administered and monitored.
4. Implement any monitoring program required by Section 4(g) of the Endangered Species Act.

WITNESSETH:

WHEREAS, (a) bald eagles are protected under the Bald and Golden Eagle Protection Act of 1940 as amended (16 U.S.C. 668-668d) and implementing regulations at 50 CFR Part 22, the Migratory Bird Treaty Act (16 USC 703 et seq.), and if applicable, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); (b) nearly all breeding bald eagles in the American Southwest

occur in Arizona; (c) the breeding population in Arizona now exceeds established recovery goals, yet remains vulnerable due to factors described in the CAS; and (d) an aggressive management program carried out by land and wildlife management agencies, assisted by their public and private partners, is one reason for bald eagle recovery in Arizona, and remains an effective means of continuing to conserve the breeding population in Arizona;

WHEREAS, the Arizona Game and Fish Department and Commission have statutory authority and public trust responsibility to manage fish and wildlife populations in Arizona and has determined that support and implementation of the CAS is consistent with its responsibilities under Arizona Revised Statutes Title 17;

WHEREAS, the Mission of the U.S. Fish & Wildlife Service, a Federal wildlife agency, is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. In support of that Mission, the U.S. Fish & Wildlife Service administers federal regulations protecting the bald eagle, such as the Bald and Golden Eagle Protection Act of 1940 as amended (16 U.S.C. 668-668d) and its implementing regulations (50 CFR Part 22) and the Migratory Bird Treaty Act (16 USC 703 et seq.). The U.S. Fish and Wildlife Service finds that the implementation of the Arizona Bald Eagle Conservation Assessment and Strategy supports its mission and the conservation of the bald eagle in Arizona.

WHEREAS, Arizona Public Service has determined that support and implementation of the CAS is consistent with its efforts to help conserve wildlife resources in the State of Arizona. Arizona Public Service's participation in this MOU shall be administered by its Forestry & Special Programs Department;

WHEREAS, the U.S. Bureau of Land Management, a Federal land management agency, has the authority under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et. seq.; the Sikes Act, 16 U.S.C. 670a et seq.; and has found that conservation of the Bald Eagle would be consistent with its special status species policies and land use plans;

WHEREAS, the Bureau of Reclamation, a Federal agency, has determined that support and implementation of the CAS is consistent with its obligations under the Migratory Bird Treaty Act (16 USC 703 et seq.) as implemented through Executive Order 13186 - Responsibilities of Federal Agencies To Protect Migratory Birds (66 FR 3853), to use its authorities in furtherance of the purposes of the Act by carrying out programs for conservation of migratory birds;

WHEREAS, the 56th Fighter Wing at Luke Air Force Base, a component within the Department of Defense, a Federal agency, has determined that support and implementation of the CAS will assist it in complying with the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d) and implementing regulations at 50 CFR Part 22; and has in cooperation with the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department, prepared and implemented an integrated natural resource management plan (INRMP) pursuant to the Sikes Act (16 USC 670a et seq.) for the conservation and rehabilitation of natural resources on the installation, and has determined that support and implementation of the CAS is consistent with the INRMP;

WHEREAS, Maricopa County is authorized, pursuant to A.R.S. §11-933 and A.R.S. §11-952, to enter into this Memorandum of Understanding (hereafter MOU), entitled *Memorandum of Understanding*

*for the Conservation of the Bald Eagle in Arizona*, by and among the Arizona Game and Fish Department and various other agencies for the Conservation of the Bald Eagle in Arizona. Maricopa County's participation in this MOU shall be administered by its Parks and Recreation Department;

WHEREAS, the National Park Service, a Federal land management agency, has the responsibility to manage lands and resources for the benefit of current and future generations of visitors to lands it owns and/or manages and administers, and has determined that implementation of the CAS is consistent with its obligations under Section 7 (a)(1) of the Endangered Species Act;

WHEREAS, Salt River Project has determined that support and implementation of the CAS is consistent with its efforts to help conserve wildlife resources in the State of Arizona;

WHEREAS, the U.S. Army Corps of Engineer, a Federal agency, has found that the conservation of Federally and State-listed threatened and endangered species on existing Corps project lands is consistent with environmental stewardship and natural resource management guidance for Corps of Engineers Civil Works water resource projects; and has found that conservation of the Bald Eagle and implementation of the CAS would be consistent with Section 2 of the Conservation of Forest Land Act of 1960 and Section 7(a)(1) of the Endangered Species Act of 1973, as amended;

WHEREAS, the U.S. Forest Service, a Federal land management agency, has the responsibility to conserve fish, wildlife, and plants, and manage habitats and activities for the conservation of sensitive species of wildlife to promote maintenance of viable populations and biological diversity on the National Forests, and has determined that support and implementation of the CAS is consistent with its obligations under the National Forest Management Act (36 CFR 219.26 and 219.19).

NOW THEREFORE, in consideration of the above premises, the cooperators enter into this MOU as full and equal partners to accomplish its purpose and objectives.

ALL COOPERATORS AGREE TO:

1. Further develop and implement the objectives, strategies, tasks, and recommendations identified in the CAS.
2. Based upon availability of authority, resources, and funding, provide bald eagle conservation program personnel with facilities, equipment, logistical support, and access to lands under their control, under appropriate authorizing agreements.
3. Designate a representative to the SWBEMC.
4. Participate regularly in SWBEMC meetings to enhance communication and cooperation, and to help develop and implement management guidelines and procedures consistent with those identified in the CAS.
5. Contribute to the development and distribution of public information and educational materials relating to the CAS and the programs and management practices identified therein.
6. Provide ongoing review and feedback on all activities proposed, planned, or executed pursuant to this MOU.
7. Keep local governments, municipalities, the conservation community, citizens, and other interested and affected parties informed on the status of the bald eagle conservation program, and solicit their input on issues and actions of concern or interest to them.

8. Develop voluntary opportunities and incentives for local communities and private landowners to participate in bald eagle conservation activities, including ways that might provide local economic benefits.

FURTHER, THE ARIZONA GAME AND FISH DEPARTMENT AGREES TO:

1. Implement, on a daily basis, the administrative and field actions necessary to support this conservation effort.
2. Chair the SWBEMC and provide to its members the information, reports, and recommendations necessary for them to cooperatively determine and implement the best management practices for the conservation of breeding bald eagles in Arizona.

IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE COOPERATORS THAT:

1. Sufficiency of Resources. The terms of this Agreement are contingent upon sufficient resources being available to the Signatories for the performance of this Agreement. The Signatories with the assistance of the Lead Agency, AGFD, will develop a work plan each year, develop budgets, and, as funding is available, assess priorities and apply the available funding to those priorities as allowable within individual funding agreements. The decision as to whether sufficient resources are available to each Signatory shall be determined by each Signatory, shall be accepted by all other Signatories, and shall be final.
2. Non-Fund Obligor Document. Nothing in this Agreement shall obligate the Signatories to obligate or transfer any funds, expend appropriations, or to enter into any contract or other obligations. Specific work projects or activities that involve transfer of funds, services, or property among the Signatories may require execution of separate agreements or contracts and be contingent upon the availability of appropriated or other funds. Appropriate statutory authority must independently authorize such activities; this Agreement does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
3. Establishment of Responsibility. This Agreement is non-binding and establishes no duty or obligation on any party; this Agreement is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity in any administrative or judicial proceeding by a party or non-party against any party or against any employee, officer, agent, or representative of any party.
4. Responsibilities of Parties. The Signatories to this Agreement and their respective agencies and offices will handle their own activities and use their own resources, including the expenditure of their own funds, in pursuing the objectives of this Agreement. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. Employee assignment to the Project is subject to approval by the employing agency.
5. Endorsement. Any contributions made under this agreement or subsequent project agreement(s) do not by direct reference or implication convey signatory endorsement of the products or activities.

6. Members of Congress. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
7. Debarment/Suspension. Any non-federal signatory shall immediately inform all federal signatories if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the Department or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify federal signatories without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
8. Felony Conviction or Tax Delinquent Status. By entering into this agreement Corporate signatories acknowledge that they: 1) do not have a tax delinquency, meaning that they are not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government.
9. Freedom of Information Act (FOIA). Any information provided to the Federal Agencies under this instrument may be subject to release under the Freedom of Information Act (5 U.S.C. 552). However, nothing in this Agreement shall be construed to affect the applicability of the exemptions set forth in 5 U.S.C. Section 552 (b).
10. Participation in Similar Activities. This instrument in no way restricts the Signatories from participating in similar activities with other public or private agencies, organizations, and individuals. This Agreement does not modify or supersede other existing agreements between or among any of the Signatories.
11. Commencement/Expiration/Withdrawal. This Agreement takes effect upon the date of the last signature of approval and shall remain in effect for no more than five years from the date of execution, unless renewed, extended, or canceled. This Agreement may be renewed, extended, or amended upon written request by any Signatory, and subsequent written concurrence of the other Signatories. All such actions shall be discussed in a meeting of the SWBEMC. Any Signatory may withdraw from this Agreement with a 60-day written notice to the other Signatories, through the SWBEMC Chair. Withdrawal by one party shall not affect the continued cooperation of the remaining parties under this Agreement. Further, in accordance with the laws of the State of Arizona, all parties are hereby put on notice that State of Arizona participation in this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.
12. Modifications. Modifications, except for additional signatories, within the scope of this agreement shall be made by mutual consent of the Parties, by the issuance of a written modification signed and dated by all properly authorized signatory officials, prior to any

changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

13. Additional Signatories. This Agreement may be amended at any time to include additional Signatories. An entity requesting inclusion as a Signatory shall submit its request to the SWBEMC Chair in the form of a document defining its proposed responsibilities pursuant to this Agreement. Inclusion of additional Cooperators shall be approved by majority voice concurrence of the current signatories present in a SWBEMC meeting. On approval, the new Cooperator must comply with all aspects of the Agreement as it was structured at the time of approval of its request for Cooperator status.
14. Conflict Resolution. Conflicts between or among the Signatories concerning this Agreement that cannot be resolved at the lowest possible level shall be referred to the next higher level in the respective cooperator's organization, et seq., as necessary, for resolution.
15. Principle Contacts. The principal contact for each signatory under this agreement will be the signatory's designated representative for the Southwestern Bald Eagle Management Committee. The Chair of the Southwestern Bald Eagle Management Committee will maintain an updated list of principle contacts which is available upon request.

**SWBEMC Chair Contact**

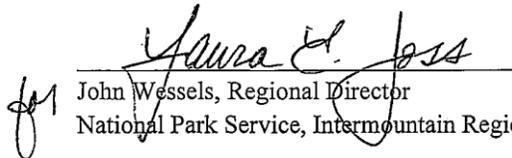
Kenneth V. Jacobson, Raptor Management Coordinator  
Arizona Game and Fish Department, Wildlife Management Division  
5000 W. Carefree Hwy  
Phoenix, Arizona 85086  
Phone: (623) 236-7575  
Fax: (623) 236-7926  
e-mail: [kjacobson@azgfd.gov](mailto:kjacobson@azgfd.gov)

IN WITNESS WHEREOF:

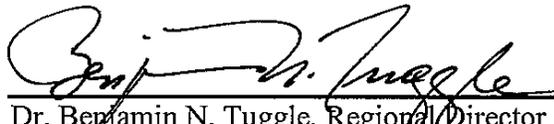
The cooperators hereto have executed this MOU as of the last written date below:

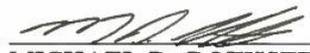
 5/15/2013  
Arizona Game and Fish Department

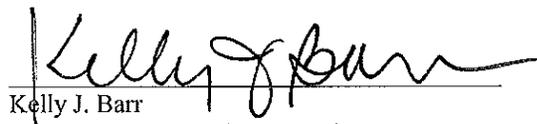
 5/30/2013  
GILBERT ZEPEDA  
Acting Regional Forester  
U.S. Forest Service, Southwestern Region

 6/4/2013  
John Wessels, Regional Director  
National Park Service, Intermountain Region

 6/12/2013  
U.S. Bureau of Land Management

 6/28/2013  
Dr. Benjamin N. Tuggle, Regional Director  
U.S. Fish and Wildlife Service

 2/24/13  
MICHAEL D. ROTHSTEIN Date  
Brigadier General, USAF  
Commander, 56<sup>th</sup> Fighter Wing

 8/7/2013  
Kelly J. Barr  
Senior Director, Environmental Management,  
Policy and Compliance  
Salt River Project

MARICOPA COUNTY  
BOARD OF SUPERVISORS

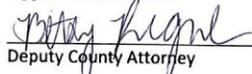
BY:

  
Chairman, Board of Supervisors

ATTEST:

 Date: AUG 21 2013  
Clerk of the Board

Approved as to Form

 Date: 7-26-13  
Deputy County Attorney

 12/27/2013  
Randy N. Chandler, Area Manager  
Phoenix Area Office, Bureau of Reclamation

 4/4/2014  
Arizona Public Service

## APPENDIX A: STATE OF ARIZONA REQUIRED PROVISIONS

1. Civil Rights and Non-discrimination. In carrying out the terms of this Agreement, the Parties agree to comply with State Executive Order 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
2. Audit. In accordance with A.R.S. § 35-214, all books, accounts, reports, files, electronic data, and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement. Upon request, Party shall produce original of any and all such records.
3. Arbitration. The parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulations and court rules, including, but not limited to, 5 U.S.C. § 575 and A.R.S. § 12-1518(B) and 12-133.