IMPLEMENTING AGREEMENT

for the

BUCKEYE WIND POWER PROJECT HABITAT CONSERVATION PLAN

by and between

THE UNITED STATES FISH AND WILDLIFE SERVICE

and

BUCKEYE WIND, LLC

IMPLEMENTING AGREEMENT

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This IMPLEMENTING AGREEMENT (IA) for the Buckeye Wind Power Project Habitat Conservation Plan (HCP), is entered into by and between the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (FWS), and Buckeye Wind, LLC, a wholly owned subsidiary of EverPower Wind Holdings, Inc, (Buckeye or Permittee), hereinafter collectively called the "Parties" and individually, a "Party." Buckeye will be the Permittee under the Incidental Take Permit (ITP), and as the Permittee, is responsible for all obligations assigned to it under the HCP, Programmatic Agreement (PA), and this IA.

1.0 RECITALS

The Parties have entered into this IA in consideration of the following facts:

1.1 The FWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

1.2 The ESA prohibits the "Take" of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the FWS may issue permits authorizing the incidental Take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such Take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such Take.

1.3 Buckeye proposes to develop a wind energy facility ("Facility") in Champaign County, Ohio.

1.4 The proposed development of the Facility has been determined to have the potential to affect the federally listed endangered species, Indiana bat (*Myotis sodalis*), referred to as the "Covered Species."

1.5 Buckeye, with technical assistance from the FWS, has prepared the HCP and related documents for the Covered Species. Buckeye has developed a series of measures, described in the HCP, to minimize and mitigate to the maximum extent practicable the effects of take of the Covered Species incidental to Buckeye's Covered Activities.

1.6 This IA defines the Parties' roles and responsibilities and provides a common understanding of actions that will be undertaken under the HCP and its accompanying ITP,

among other things, to minimize and mitigate for Take of the Covered Species incidental to Covered Activities on the Covered Lands.

THEREFORE, the Parties hereby agree as follows:

2.0 PURPOSES

The purposes of this IA are:

2.1 To ensure implementation of the terms of the HCP, the PA, the ITP, and this IA;

2.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the HCP, ITP and this IA; and

2.3 To provide "No Surprises" assurances to Buckeye pursuant to 50 C.F.R. § 17.22(b)(5) and (b)(1)(iii)(B).

3.0 TERMS USED

The following terms used in this IA will have the meanings set forth below:

3.1 Terms Defined in the ESA. Terms used in this IA and specifically defined in the ESA or in regulations adopted by FWS under the ESA, have the same meaning as in the ESA and those implementing regulations, unless this IA expressly provides otherwise.

3.2 "Authorized Take" means the extent of incidental take of the Covered Species authorized by FWS in the ITP issued to Buckeye under ESA Section 10(a)(1)(B).

3.3 "Changed Circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP (e.g., the listing of a new species or a fire or other natural catastrophic event in areas prone to these events). Changed Circumstances and the planned responses to those circumstances are described in Chapter 7 of the HCP. Changed Circumstances are not Unforeseen Circumstances, which are defined in Section 3.14 of this IA.

3.4 "Covered Activities" means certain activities carried out by Buckeye and its agents on the Covered Lands that may result in authorized take of Covered Species during the term of the ITP. These activities include those identified in Chapter 2 of the HCP.

3.5 "Covered Lands" means the geographic area described in Chapter 2 of the HCP upon which authorized take of the Covered Species may occur, and the lands to which the HCP's mitigation measures apply.

3.6 **"Covered Species"** means the Indiana bat, which the HCP sufficiently addresses to meet all the criteria for issuing an ITP under Section 10(a)(1)(B) of the ESA.

3.7 **"Facility"** means the wind energy facility that Buckeye proposes to develop in Champaign County, Ohio.

3.8 **"HCP"** means the Habitat Conservation Plan prepared by Buckeye to address the requirements of Section 10(a)(2)(A) of the ESA and incorporated by reference in this IA.

3.9 **"Listed Species"** means a species, including a subspecies or a distinct population segment of a vertebrate species, which is listed as endangered or threatened under the ESA.

3.10 **"Party"** or **"Parties"** means any or all of the signatories to this IA.

3.11 **"ITP"** means the Incidental Take Permit issued by FWS to Buckeye under Section 10(a)(1)(B) of the ESA for take incidental to Covered Activities on the Covered Lands, as it may be amended from time to time.

3.12 **"Permittee"** means Buckeye.

3.13 **"Take"** has the same meaning provided by the ESA (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such act), and its implementing regulations (an act which actually kills or injures wildlife, including significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering), with regard to activities subject to the ESA.

3.14 **"Unforeseen Circumstances"** means changes in circumstances affecting a Covered Species or the Covered Lands that could not reasonably have been anticipated by the Parties at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.15 **"Unlisted Species"** means a species, including a subspecies or a distinct population segment of a vertebrate species, that is not listed as endangered or threatened under the ESA, including proposed, candidate, and other species.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Permittee.

4.1.1 Permittee will fully and faithfully perform all obligations assigned to it under this IA, the ITP, the PA, and the HCP.

4.1.2 Each Party will promptly notify the other party of any lawsuits filed against it, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the HCP and ITP.

4.1.3 Permittee will notify FWS in writing within ten (10) days of the occurrence of any of the following: (1) any change in the registered name of Buckeye; (2) the dissolution of Buckeye; (3) the sale or conveyance of Buckeye; (4) bankruptcy proceedings by Buckeye as well as whether Buckeye is in receivership; (5) when Buckeye will no longer perform the Covered Activities in the Covered Lands; (6) the revocation or suspension of Buckeye's corporate authorization to do business in the state or states in which it is registered to do business; and (7) the disqualification of Buckeye from performing Covered Activities under the ITP for either of the disqualifying factors listed in 50 C.F.R. § 13.21(c) and (d), as may be amended, or under any future FWS regulation.

4.1.4 If FWS makes a finding of Unforeseen Circumstances, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species during the period necessary to determine the nature and location of additional or modified mitigation, if any, subject to the application of No Surprises assurances. (see Section 2.3 and 4.2.1(b) of this IA) .

4.1.5 The authority issued to Permittee applies to all of Permittee's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors and their officers, directors, employees, and agents, and consequently the Permittee is liable for any ITP violations that occur by any of the persons and/or entities referenced in this paragraph or by any other persons and/or entities under the control of the Permittee. Permittee shall conduct an educational program to inform all such persons and entities of the ITP and HCP's terms and conditions, and Permittee shall be responsible for supervising their compliance with those terms and conditions. All applicable contracts between Permittee and such persons and entities, where relevant, shall require their compliance with the HCP, PA, this IA, and the ITP.

4.2 Obligations of FWS.

4.2.1 Upon execution of this IA by all Parties and satisfaction of all other applicable legal requirements, FWS will issue Permittee an ITP under Section 10(a)(1)(B) of the ESA for authorized take by Permittee of the Covered Species resulting from Covered Activities on Covered Lands.

(a) Permit Coverage. The ITP will identify all Covered Species. The ITP will become effective for Covered Species that are Listed Species at the time the ITP is issued.

(b) "No Surprises" Assurances. The ITP will include the "No Surprises" assurances set forth in 50 C.F.R. § 17.22(b)(5) and (b)(1)(iii)(B) and articulated in the HCP in Chapter 7.

5.0 ENVIRONMENTAL REVIEW UNDER NATIONAL ENVIRONMENTAL POLICY ACT.

FWS's approval of the HCP and the issuance of the ITP under Section 10(a)(1)(B) of the ESA to Permittee are actions subject to review under the National Environmental Policy Act (NEPA)(42 U.S.C. § 4321 *et seq.*). FWS is the federal lead agency under NEPA and has evaluated the HCP in compliance with NEPA in the Environmental Impact Statement (EIS).

6.0 SECTION 106 REVIEW UNDER NATIONAL HISTORIC PRESERVATION ACT

FWS' issuance of an ITP to Buckeye triggers review under Section 106 of the National Historic Preservation Act (NHPA)(16 U.S.C. § 470f) and its implementing regulations (36 C.F.R. Part 800). The Parties have executed a PA, in accordance with 36 C.F.R. Part 800.14(b)(1)(ii), because effects on historic properties cannot fully be determined prior to FWS issuance of the ITP to Buckeye. The Parties agree to adhere to the terms of the PA.

7.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this IA and the HCP, the terms of this IA will control only for purposes of interpreting this IA. The provisions of the HCP, ITP, the PA and this IA shall be interpreted to be consistent with and complementary to each other. This IA is not intended to negate or nullify any provision of the ITP, PA and/or the HCP.

8.0 TERM

8.1 Initial Term. This IA and the HCP will become effective on the date that FWS issues the ITP. Upon the effective date, Permittee may take the Covered Species while carrying out Covered Activities on the Covered Lands, as authorized by and subject to the conditions of this IA, the HCP, the PA and the ITP. This IA, the HCP, and the ITP will remain in effect for thirty (30) years from issuance of the original ITP, except as provided below. The PA will remain in effect for thirty (30) years from the date of execution of the last signatory on the PA, except as provided below.

8.2 Permit Suspension or Revocation. FWS may suspend or revoke the ITP in accordance with the laws and regulations in force at the time of the suspension or revocation (see 5 U.S.C. § 558; 16 U.S.C. § 1539(a)(2)(C); 50 C.F.R. §§ 13.27-13.29). The suspension or revocation may apply to the entire ITP, or only to specified listed species, Covered Lands, or Covered Activities. In the event of suspension or revocation, Permittee's obligations under this

IA and the HCP will continue until FWS determines that all take of Covered Species that occurred under the ITP has been fully mitigated in accordance with the HCP.

8.3 Renewal of the Permit. Upon agreement of the Parties and compliance with all applicable laws and regulations, the ITP may be renewed beyond its initial term in accordance with FWS regulations in force on the date of the renewal. If Permittee desires to renew the ITP, it will notify FWS at least one hundred eighty (180) days before the then-current term is scheduled to expire. Renewal of the ITP constitutes extension of the HCP, the PA and this IA for the same amount of time, subject to any amendments that FWS may require at the time of renewal.

8.4 Relinquishment. Permittee may relinquish the ITP. Such relinquishment shall be in accordance with the regulations of FWS in force, if any, on the date of relinquishment (see 50 C.F.R. § 13.24, §13.26). If no such regulations exist, Permittee shall provide ninety (90) days written notice to FWS of its intent to relinquish the ITP. Notwithstanding its relinquishment of the ITP, Permittee shall remain responsible for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to relinquishment of the ITP. The ITP shall be deemed cancelled only upon a determination by FWS that such minimization and mitigation measures have been implemented. Upon relinquishment of the ITP, no further take shall be authorized under the terms of the relinquished ITP.

9.0 FUNDING

Permittee warrants that it has, and will expend, funds necessary to fulfill its obligations under the HCP. Permittee will notify FWS within thirty (30) days of the Permittee becoming aware of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing this notice, Permittee will provide FWS with a copy of its annual audited financial statements each year of the ITP, or with other reasonably available financial information that the Parties agree will provide adequate evidence of Permittee's ability to fulfill its obligations.

10.0 MONITORING AND REPORTING

10.1 Planned Periodic Reports. Buckeye will provide FWS with the reports described in Chapter 6 of the HCP at the notice address then in effect for FWS, and will provide any available information requested by FWS to verify the information contained in such reports.

10.2 Other Reports. Permittee will provide, within thirty (30) days of being requested by FWS, any additional information in its possession or control related to the HCP's implementation that FWS requests to assess whether the terms and conditions of the ITP and the HCP are being fully implemented.

10.3 Certification of Reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

"I certify under penalty of law, that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate and complete."

10.4 Monitoring by FWS. FWS may conduct inspections and monitoring in connection with the ITP in accordance with FWS regulations.

11.0 CHANGED CIRCUMSTANCES

11.1 Permittee-Initiated Response to Changed Circumstances. Permittee will give notice to FWS within seven (7) days after learning that any of the Changed Circumstances listed in Chapter 7 of the HCP has occurred. Permittee will modify its activities in the manner described in Chapter 7 of the HCP to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species as soon as practicable, but no later than thirty (30) days after learning of the Changed Circumstances, or such other period necessary to make the modification(s), as agreed to by FWS and the Permittee, and will report to FWS on its actions. Permittee will make these modifications without awaiting notice from FWS.

11.2 FWS-Initiated Response to Changed Circumstances. If FWS determines that Changed Circumstances provided for in the HCP have occurred and that Permittee has not responded in accordance with Chapter 7 of the HCP, FWS will notify Permittee and will direct Permittee to make the required changes. Permittee will report to FWS on its actions or intended actions within thirty (30) days after receiving notice from the FWS and shall make the required changes in the period of time necessary to implement the changes, as agreed to by FWS and the Permittee. Such changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP.

11.3 Listing of Species that are not Covered Species. In the event that a non-Covered Species that may be adversely affected by Covered Activities becomes listed under the ESA, Permittee will evaluate the potential for take based upon the HCP and other relevant information. If Permittee notifies FWS that the Covered Activities may take the species, or if FWS disagrees with Permittee's determination that the Covered Activities will not take the species, the Parties shall meet and confer in order to develop an appropriate response. Permittee will implement reasonable measures necessary to prevent take and/or jeopardy identified by FWS until (1) take of the non-Covered Species is authorized under Section 10 of ESA, either by amendment to the existing ITP and HCP, issuance of a new ITP and corresponding HCP, or negotiation of a Safe Harbor Agreement; or (2) FWS notifies Permittee that the measures are no longer needed to avoid jeopardy to the non-Covered Species, take of the non-Covered Species, or adverse modification of the critical habitat of the non-Covered Species.

12.0 ADAPTIVE MANAGEMENT

12.1 Permittee-Initiated Adaptive Management. Permittee will implement the adaptive management provisions in Chapter 6 of the HCP when changes in management practices are necessary to achieve the HCP's biological objectives or to respond to monitoring results or new scientific information. Permittee will make these changes without awaiting notice from FWS and will report to FWS on any actions taken under this Chapter.

12.2 FWS-Initiated Adaptive Management. If FWS determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with Chapter 6 of the HCP, FWS will notify Permittee and will direct Permittee to make the required changes. Permittee will report to FWS on its actions or intended actions within thirty (30) days after receiving notice from the FWS and shall make the required changes in the period of time necessary to implement the changes, as agreed to by FWS and the Permittee. These changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP.

12.3 Reductions in Mitigation. Permittee will not implement adaptive management changes that may result in less mitigation than provided for the Covered Species under the original terms of the HCP unless FWS first provides written approval. In such circumstances, Permittee may propose the adaptive management changes by notice to FWS, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on the Covered Species, and other environmental impacts. Within one hundred twenty (120) days of receiving the notice, FWS will either approve the proposed adaptive management changes, approve them as modified by FWS, or notify Permittee that the proposed changes constitute permit amendments that must be processed in accordance with Chapter 7 of the HCP.

12.4 No Increase in Take. This Section does not authorize any modifications that would increase the amount of take or increase the impacts of take of Covered Species beyond those analyzed under the original HCP and any amendments thereto. Any such modification must be processed in accordance with Chapter 7 of the HCP.

13.0 LAND TRANSACTIONS

13.1 Acquisition of Land by Permittee. Nothing in this IA, the HCP, the PA or the ITP limits Permittee's right to acquire additional lands. The ITP will not cover any lands that Permittee acquires except upon amendment of the ITP as provided in Chapter 7 of the HCP.

13.2 Disposal of Land by Permittee. Buckeye may not sell any lands included in Covered Lands, or exchange any portion thereof, to any new party during the term of this IA, unless (a) the ITP and HCP are modified to delete such lands; or (b) the lands are transferred to a third party who has agreed to be bound by the terms of the HCP. In responding to any requests to remove lands from Covered Lands, the FWS shall consent to such proposed removal unless it

finds that the proposed removal of land would materially compromise the effectiveness of the HCP. In such a case, the FWS shall notify Buckeye in writing of this determination, and the Parties shall promptly meet to discuss potential modifications to the ITP, PA and HCP to address the FWS' concerns. If Buckeye sells or exchanges any of the Covered Lands, upon sale or exchange such lands shall not be deemed a portion of the Covered Lands.

14.0 MODIFICATIONS AND AMENDMENTS

14.1 Minor Amendments.

14.1.1 Any Party may propose minor modifications to the HCP or this IA by providing notice to each Party. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The Parties will use reasonable efforts to respond to proposed modifications within sixty (60) days of receipt of such notice. Proposed modifications will become effective upon all Parties' written approval. If for any reason a receiving Party objects to a proposed modification, the modification must be processed as an amendment of the ITP in accordance with subsection 13.2 of this section. The FWS will not propose or approve minor modifications to the HCP or this IA if FWS determines that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.

14.1.2 Minor modifications to the HCP and this IA processed pursuant to this subsection may include but are not limited to the following:

(a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;

(b) corrections of any maps or exhibits to correct minor errors in mapping or to reflect previously approved changes in the ITP or HCP; and

(c) minor changes to survey, monitoring or reporting protocols.

14.1.3 Any other modifications to the HCP or this IA will be processed as amendments of the ITP in accordance with subsection 13.2 of this section.

14.2 Amendment of the ITP. The ITP may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, NEPA, and FWS' regulations. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species.

15.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

15.1 In General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this IA, the ITP, the PA and the HCP.

15.2 No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this IA or any other cause of action arising from this IA.

15.3 Injunctive and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this IA.

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

15.5 Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, suspension of, or termination of this IA, the HCP, and the ITP may arise from time to time. The Parties agree to work together in good faith to resolve any disputes, using the informal dispute resolution procedures set forth in this section or other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances warrant, it may seek any available remedy without waiting to complete informal dispute resolution. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

15.5.1 The aggrieved Party will notify the other Party of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

15.5.2 The Party alleged to be in violation will have thirty (30) days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available that may be responsive to these inquiries.

15.5.3 Within thirty (30) days after the response was provided or was due, the Parties' representatives having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek a solution.

15.5.4 If any issues cannot be resolved through negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if

a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

15.5.5 The Parties reserve the right, at any time without completing informal dispute resolution, to use whatever powers and remedies are available by law or regulation to ensure enforcement of or adherence to the HCP, this IA, and the ITP, including but not limited to, in the case of the FWS, suspension or revocation of the ITP and civil or criminal penalties.

15.5.6 The Parties agree to resolve any disputes concerning the PA in accordance with the Dispute Resolution section therein.

16.0 MISCELLANEOUS PROVISIONS

16.1 No Partnership. Neither this IA, the PA nor the HCP shall make or be deemed to make any Party to this IA the agent for or the partner of any other Party.

16.2 Notices. Any notice permitted or required by this IA shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such electronic notices shall thereafter be deemed effective upon receipt. Notices shall be transmitted so that they are received within the specified deadlines.

United States Fish and Wildlife Service

5600 American Blvd West

Bloomington, MN 55437-1173

Buckeye Wind, LLC

1251 Waterfront Place, 3rd Floor

Pittsburgh PA 15222

16.3 Severability. If any provision of this IA is found invalid or unenforceable, all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of the invalid or unenforceable provision.

16.4 Entire Agreement. This IA, together with the HCP and the ITP, constitute the entire agreement among the Parties. Excepting the HCP and ITP, this IA supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

16.5 Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

16.6 Availability of Funds. FWS' implementation of this IA, the PA and the HCP is subject to the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341) and the availability of appropriated funds. Nothing in this IA will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge this IA does not require FWS to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to the expenditures as evidenced in writing.

16.7 Duplicate Originals. This IA may be executed in any number of duplicate originals, and shall be deemed effective as of the date of the signature of the last Party to sign. A complete original of this IA shall be maintained in the official records of each of the Parties hereto.

16.8 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public under the ESA or other federal law, this IA 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 who is not a Party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The Parties' duties, obligations, and responsibilities with respect to third parties shall remain as imposed under existing law.

16.9 Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit FWS' authority to seek civil or criminal penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of FWS as an agency of the federal government. Nothing in this IA will limit the right or obligation of any federal agency to engage in consultation required under ESA Section 7 or other federal law; however, it is intended that Permittee's rights and obligations under the HCP, ITP, PA and this IA will be considered in any consultation affecting Permittee's use of the Covered Lands. Nothing in this IA is intended to limit the Permittee's rights under the HCP, the PA, this IA, and the ITP and ability to exercise those rights under applicable law.

16.10 References to Regulations. Any reference in this IA, the HCP, the PA or the ITP to any FWS regulation or rule shall be deemed to be a reference to the regulation or rule in existence at the time an action is taken.

16.11 Applicable Laws. All activities undertaken under this IA, the HCP, the PA or the ITP must be in compliance with all applicable state and federal laws and regulations.

16.12 Successors, Assigns, and Transfers. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITP shall be governed by the FWS regulations in force at the time.

16.13 Authorized Parties. Each Party warrants that the signatory below is authorized to execute this IA on behalf of that Party.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this IA to be in effect as of the date last signed below.

BY: _____ Date May 22, 2013

Michael Speerschneider
Senior Director for Permitting and Government Affairs
Buckeye Wind, LLC
Pittsburgh, PA

BY: Lynn M. Lewis Date 7/18/2013

Lynn. M. Lewis
Assistant Regional Director
United States Fish and Wildlife Service
Bloomington, MN

EXHIBITS

A. Final Buckeye Wind Habitat Conservation Plan, March 2013