



FS Agreement No. 20-MU-11045600-006

Cooperator Agreement No. MOU with U.S.F.S for
Montana Nonpoint
Source Management Plan
implementation on
U.S.F.S. managed lands

MEMORANDUM OF UNDERSTANDING
Between The
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
And The
USDA, FOREST SERVICE
NORTHERN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Montana Department of Environmental Quality, hereinafter referred to as "DEQ," and the USDA, Forest Service, Northern Region, hereinafter referred to as the "U.S. Forest Service." This MOU is intended to memorialize the understanding between the parties concerning the implementation of the Montana Nonpoint Source Management Plan on U.S. Forest Service managed lands.

Background: The Organic Administration Act of 1897 states "No National Forest shall be established, except to improve and protect the forest within the boundaries, or for the purposes of securing favorable conditions of water flows, and to furnish a continuous supply of timber." The Multiple Use-Sustained Yield Act of 1960 gave the U.S. Forest Service a statutory mission, balancing timber, watershed, range, wildlife, recreation, and wilderness management. The Federal Clean Water Act of 1987 as amended provides for the restoration of the Nation's waters. The U.S. Forest Service considers the objectives of the Federal Clean Water Act as a primary management consideration.

Within the State of Montana, the U.S. Environmental Protection Agency (EPA) delegated authority to implement and administer the Clean Water Act (CWA) to DEQ. All Federal agencies are obliged to meet state water quality standards that protect the beneficial uses of lakes, rivers, streams and wetlands. Designated beneficial uses of Montana's state waters include recreation, water supply, fisheries, aquatic life, and wildlife.

Section 303(d) of the CWA requires listing of impaired water bodies and outlines a program for addressing water body segments having impairments that preclude them from meeting or exceeding standards designated for beneficial uses. These impairments to water quality include both point and nonpoint sources. Under USDA Nonpoint Source Water Quality Policy Directive 9500-007, the U.S. Forest Service agreed to become a Designated Management Agency for National Forest System (NFS) lands within all states, including Montana. The U.S. Forest Service, as a Designated Management Agency, is responsible for conducting land management activities that maintain or enhance the water quality within NFS lands. DEQ is the lead agency for development of



Water Quality Plans/Total Maximum Daily Loads (TMDLs) for 303(d) listed, impaired water bodies and prioritizing TMDLs to address impairments, and for determinations of water quality standard achievement for water bodies within NFS lands. Section 313 of the CWA requires the U.S. Forest Service to adhere to the goals set forth in the state surface water quality laws and regulations. Section 319 of the CWA requires states to develop nonpoint source pollution management programs to qualify for Federal assistance grants to control nonpoint source pollution. Section 319(k) of the CWA, in conjunction with Executive Order 12372, states that Federal agencies shall accommodate State concerns regarding the consistency of agency projects with the state nonpoint source pollution management program. This MOU is a component of the national and Montana Nonpoint Source Program and identifies the process for cooperatively insuring proper design and implementation of water protection management systems on NFS lands in Montana.

The basis of the U.S. Forest Service's nonpoint source pollution control strategy stems from the agency's nonpoint source policy (U.S. Forest Service Manual 2532 and FSH 2509.22 R 1/R4 Amendment, including Manual and policy updates). In implementing nonpoint source pollution controls, the U.S. Forest Service will apply its nonpoint source strategy to all activities on NFS lands that may impair water quality. The U.S. Forest Service's nonpoint source strategy includes, among other things, integrated project planning that considers temporal and spatial distribution of impacts, identification of priority restoration needs, implementing restoration, implementing best management practices (BMPs) on all ground disturbing activities, monitoring, and adjusting BMPs or mitigating actions as needed to ensure that Montana Water Quality Standards are met and designated beneficial uses of water are protected.

The U.S. Forest Service restoration program may in some cases obviate the need to develop a TMDL. Specifically, segments are not required to be included on the Section 303(d) List of impaired waters needing a TMDL (Category 5) if a responsible entity demonstrates that "other pollution control measures required by local, State, or Federal authority" are stringent enough to achieve applicable state water quality standards (WQS) (see 40 CFR 130.7(b)(1)) within a reasonable period of time.

Within the State of Montana, the Montana Water Quality Act (Title 75 of Montana Code Annotated) gives DEQ authority and responsibility to protect, manage, and restore water quality. The 2017 Montana Nonpoint Source (NPS) Management Plan goal is to "protect and restore water quality from the harmful effects of nonpoint source pollution." The NPS Plan encourages DEQ to "develop, revise, or implement DEQ water quality improvement MOUs with agencies." These agreements are intended to foster interagency cooperation that will result in greater efficiency and quicker restoration of impaired waters and will help implement projects that will substantially achieve water quality standards for beneficial uses in waters on federal and state lands.

In Montana, the U.S. Forest Service manages approximately 19,169,000 acres, nearly 50,000 miles of road, and nearly 59,000 miles of watercourses. Although most forested watersheds are in satisfactory condition, some waterbodies on NFS lands do not meet state WQS. As of the signing of this MOU, approximately 596 watersheds of 1,660 total



watersheds between 10,000 and 40,000 acres in size have waterbodies entirely or in part within NFS lands that are included on the Section 303(d) List of impaired waters.

This MOU is necessary to continue cooperative implementation of the Montana NPS Management Plan on NFS lands.

Title: Memorandum of Understanding Implementing the Montana Water Quality Act and Montana Nonpoint Source Management Plan.

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties and to implement the Montana Nonpoint Source Management Plan within Montana on NFS lands in accordance with the following provisions. This MOU supersedes FS #14-MU-11015600-001.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The U.S. Forest Service mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The U.S. Forest Service's management system integrates ecological, economic, and social factors to maintain and enhance the quality of the environment to meet current and future needs. DEQ's mission is to protect, sustain, and improve a clean and healthful environment to benefit present and future generations. To help achieve these parallel missions, both agencies seek to restore and maintain watersheds and aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants, and wildlife. The compatibility of the missions, with respect to protecting the environment and water resources, forms the basis for jointly developing the concepts presented in this Memorandum of Understanding (MOU).

The goals of this MOU are as follows:

The U.S. Forest Service and DEQ shall work together to achieve the CWA goal that all streams and lakes on NFS lands meet applicable water quality standards. The U.S. Forest Service and DEQ seek to advance land management actions that improve watershed conditions on NFS lands. To that end, the U.S. Forest Service and DEQ shall build partnerships between the organizations to address water quality improvement needs and successfully attain the objectives of statutory programs and strategic plans.

The objectives of this MOU are as follows:

1. Strengthen the partnership and cooperation between DEQ and the U.S. Forest Service in restoring 303(d)-listed and impaired waters on NFS lands within the state and protection of existing high-quality waters.
2. Extend and sustain partnerships and participation in TMDL development, Watershed Restoration Plan (WRP) development, TMDL implementation



- evaluations, and planning, implementation, and protection efforts in watersheds affected by activities on NFS lands.
3. Extend and sustain partnerships in watersheds with mixed ownership; participate with other public and private landowners, conservation districts, and watershed groups within watershed boundaries by providing technical assistance to identify, prioritize, and prescribe restoration measures.
 4. Integrate forestry BMPs and needed watershed restoration measures into project planning and implementation that minimizes impacts to water quality and beneficial uses.
 5. Collaborate on watershed assessment methods and share watershed monitoring data through database collaboration.
 6. Implement watershed restoration that improves and protects wetlands and riparian corridors and reduces water quality impacts from roads, timber harvest, livestock and other forest management activities.

In consideration of the above premises, the parties agree as follows:

III. DEQ SHALL:

- A. Identify the U.S. Forest Service as the designated land management agency for water quality on all NFS lands.
- B. Encourage and help facilitate U.S. Forest Service representation with appropriate stake holders, such as watershed advisory groups and private citizens. DEQ shall include U.S. Forest Service personnel in TMDL and WRP technical advisory committees (TACs) when NFS lands comprise a significant portion of the watershed planning area.
- C. Participate in and comment on U.S. Forest Service analyses (e.g., Schedule of Proposed Actions (SOPA), Environmental Assessments (EA) or Environmental Impact Statements (EIS)) of project/activities with notable potential to affect water quality.
- D. Participate in the development of broad scale U.S. Forest Service planning processes (e.g., National Forest Plans, Travel Management Plans).
- E. Request water quality monitoring and assessment data from the U.S. Forest Service for the compilation of the state's 303(d) List of Impaired Water Bodies. Notify the U.S. Forest Service when a determination is made that a water body on NFS lands lacks "sufficient credible data" to make a beneficial use determination.
- F. Provide the U.S. Forest Service with copies of all appropriate laws, regulations, and policy documents including the state's Nonpoint Source Management Plan, the Schedule for the Development of TMDLs, Montana's 303(d) List of Impaired Water Bodies (including appropriate GIS data and layers), and TMDLs/Water Quality Restoration Plans for review and comment.



- G. Review, and if appropriate, provide letters of agreement on proposed U.S. Forest Service project activities within municipal water supply watersheds.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Coordinate with Montana DEQ Nonpoint Source Plan objectives and implement NPS watershed protection and restoration on NFS lands. The U.S. Forest Service shall apply its NPS strategy (U.S. Forest Service Manual 2534, etc.) to activities on NFS lands including contractor, permittee, and other authorized uses.
- B. When determining priority watersheds for integrated restoration, consider sediment, temperature, or other targets from TMDL assessments in conjunction with: U.S. Forest Service multiple-use management objectives; the Integrated Resource Restoration (IRR) approach to funding project activities; watershed ratings as developed through the Watershed Condition Framework (WCF); and the ability to affect change in the watershed.
- C. Assist in completing TMDL assessments, Watershed Restoration Plans, TMDL implementation evaluations, and other restoration implementation plans in watershed planning areas where the U.S. Forest Service is a significant land manager.
- D. Coordinate land planning activities to allow DEQ effective and timely input into the process. Continue to provide DEQ with analysis (e.g. SOPA, EA, EIS) of project/activities relating to water quality.
- E. At the broad scale, identify the minimum travel network necessary to achieve land management objectives while considering impacts to water quality (Sub-part A).
- F. Within priority watersheds, emphasize road maintenance and associated restoration or BMP needs (e.g., culvert replacement, road relocation, road system planning, temporary/long-term storage, and decommissioning).
- G. Ensure that new and renewed plans, leases, contracts, special use authorizations, easements, right-of-way documents, and other agreements involving permitted activity on NFS lands contain provisions for compliance with water pollution control statutes and regulations (federal and state) under the authority of the Clean Water Act.
- H. Continue to remediate and coordinate with DEQ on the clean-up of abandoned mine lands (AML) located on NFS lands and collaborate on mixed- ownership AML sites.



- I. Continue participation and support of the Montana Forest Practices BMP audit program, and implement the National U.S. Forest Service BMP monitoring program.
- J. Provide DEQ with the annual U.S. Forest Service accomplishment report for activities on NFS lands in Montana. Production of this annual accomplishment report would be coordinated by the FS R1 regional hydrologist. Report contents would be drawn primarily from the U.S. Forest Service's Watershed Improvement Tracking (WIT) database and would include all regional soil and water resource improvement activities that occurred during the previous federal fiscal year.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. An annual or biennial U.S. Forest Service/DEQ meeting shall be held to maintain coordination and communication, and to discuss emerging water quality issues, potential opportunities on overlapping priority areas, upcoming field reviews, water quality monitoring, work plan activities, and planned timeframes for major projects (EISs or Land Management Plans).
- B. Parties shall routinely coordinate to develop, prioritize, and revise watershed restoration and road management activities through the U.S. Forest Service's Watershed Condition Framework (WCF), DEQ's Water Quality Framework, or other prioritization programs that may be developed.
- C. For watersheds that have been identified as high priority by both parties, the U.S. Forest Service and DEQ shall work jointly to fund projects that mutually benefit both parties, when feasible. Using the Wyden Authority, the U.S. Forest Service may form partnership agreements with DEQ, other government agencies including local conservation districts, and/or non-government organizations including local watershed groups, to help support needed restoration, protection, and enhancement of resources on lands adjacent to NFS lands where there are tangible benefits to NFS lands. DEQ shall cooperate with the U.S. Forest Service on collaborating with other government and non-government organizations, and help support restoration activities through technical and financial assistance, when feasible.
- D. Parties shall coordinate water quality monitoring and watershed restoration activities in watersheds where the U.S. Forest Service manages more than 25% of the area. Coordination shall include reviewing results of water quality monitoring programs, which may include Pacfish Infish Biological Opinion (PIBO) or Watershed Improvement Tracking (WIT); collaboratively assessing the focus and schedules for upcoming agency water quality monitoring and watershed analysis work; and sharing potential schedules and methods for water quality sampling/assessments for upcoming major projects. Coordination emphasis shall be given to watersheds of mutual priority.



- E. Parties shall share technical expertise, water quality data, and support, where feasible. The U.S. Forest Service and DEQ shall work to create opportunities for gathering and/or exchanging critical information and data that may enhance watershed restoration opportunities. Parties shall work jointly to establish, update, and review standard field and laboratory data collection protocols.
- F. Parties shall periodically review U.S. Forest Service Region I/Region 4 (RI/R4) soil and water conservation practices and update as needed to fully meet Montana reasonable land, soil, and water conservation practices.
- G. Where appropriate, coordinate the National Environmental Policy Act (NEPA) (P.L. 91-190) and Montana Environmental Policy Act (MEPA) (75-1-102(2), MCA) processes and activities on projects in watersheds that include federal and state lands or funds.
- H. When feasible and where practicable, parties commit to mutual participation in non-point source BMP implementation and effectiveness reviews, including but not limited to: Montana DNRC's biannual Forestry BMP field reviews; non-point source BMP field reviews in support of individual forest's Forest Plan monitoring compliance; and the U.S. Forest Service's National Core BMP monitoring framework.
- I. Review this agreement and revise every five years, or earlier as needed.
- J. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal DEQ Contacts:

DEQ Program Contact	DEQ Administrative Contact
Tim Davis, Water Quality Division Administrator PO Box 200901 Helena, MT 59620 Telephone: 406-444-4632 Email: TimDavis@mt.gov	Robert Ray, Watershed Protection Section Environmental Program Specialist PO Box 200901 Helena, MT 59620 Telephone: 406-444-5319 Email: rray@mt.gov
John Kenning, Water Protection Bureau Chief PO Box 200901 Helena, MT 59620 Telephone: 406-444-0420 Email: JKenning@mt.gov	



Kristy Fortman, Acting Watershed
Protection Section Manager
PO Box 200901
Helena, MT 59620
Telephone: 406-444-7425
Email: Kristy.Fortman@mt.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Andy Efta, Regional Hydrologist Northern Region 26 Fort Missoula Rd Missoula, MT 59084 Telephone: (406) 329-3447 Email: james.efta@usda.gov	Meg Nemitz, G&A Specialist Northern Region 24 Fort Missoula Rd Missoula, MT 59084 Telephone: (406) 329-3264 Email: megan.nemitz@usda.gov

- K. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or DEQ is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To DEQ Program Manager, at DEQ's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- L. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or DEQ from participating in similar activities with other public or private agencies, organizations, and individuals.
- M. **ENDORSEMENT.** Any of DEQ's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of DEQ's products or activities, and does not by direct reference or implication convey DEQ's endorsement of the U.S. Forest Service's products or activities.
- N. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate,



coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- O. USE OF U.S. FOREST SERVICE INSIGNIA. In order for DEQ to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- P. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- Q. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- R. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned,



leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

- S. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. DEQ is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

" The Watershed Management Program of the U.S. Forest Service, Department of Agriculture, coordinates with the water quality management programs of the Montana Department of Environmental Quality on programs and activities affecting waters of the State."

DEQ may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. DEQ is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

- T. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. DEQ shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

- U. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. DEQ shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:



"This institution is an equal opportunity provider."

- V. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- W. DEBARMENT AND SUSPENSION. DEQ shall immediately inform the U.S. Forest Service 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 DEQ or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- X. MODIFICATIONS. Modifications within the scope of this MOU must 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.
- Y. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through December 31, 2024 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- Z. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.


SHAUN MCGRATH, Director
Montana Department of Environmental Quality

12/19/19

Date

LEANNE M. MARTEN, Regional Forester
U.S. Forest Service, Northern Region

Date

Approved For Legal Content on 12/10/19

by Kristin Bowers
DEQ Legal Counsel



The authority and format of this agreement have been reviewed and approved for signature.

MEG NEMITZ
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.