



FS Agreement No. 25-MU-11020000-006

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL
RESOURCES
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN REGION AND NORTHERN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the South Dakota Department of Agriculture and Natural Resources hereinafter referred to as “DANR,” and the United States Department of Agriculture (USDA), Forest Service, Rocky Mountain Region and Northern Region, hereinafter referred to as the “Forest Service.”

Background: This MOU is an update to a similar previous MOU agreement between the parties that was established in 2009 and last updated in 2019. The MOU has been an effective document that has facilitated more efficient and effective collaboration between the agencies.

Title: Management of Water Quality on National Forest System Lands in South Dakota

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to protect water quality and designated uses, consistent with DANR requirements for water quality protection and Forest Service requirements to administer National Forest System (NFS) lands including protecting water quality. Water quality will be protected by meeting State water quality standards, by protecting designated uses of water, and by complying with any State environmental permitting requirements in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Land management activities and other authorized uses of NFS lands may be the source of water pollutants that can degrade water quality and impair designated uses of water.

Nonpoint source (NPS) water pollution is typically addressed through restoration programs and by applying Best Management Practices (BMPs).



The State of South Dakota is responsible under the Clean Water Act for protecting water quality for administering the State water quality programs.

South Dakota Codified Law § 34A-2-1 declares the public policy of the state to be to conserve the waters of the state and to protect, maintain, and improve the quality thereof for water supplies; for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate uses; to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate and uses of such waters; to provide for the prevention, abatement, and control of new and existing water pollution; and to cooperate with the federal government in carrying out these objectives.

The Forest Service is charged by Congress with administering NFS lands in the State of South Dakota under various federal laws.

The Forest Service, under Section 313 of the federal Clean Water Act (33 U.S.C. § 1323) is subject to, and shall comply with, all State requirements respecting the control and abatement of water pollution in the same manner and to the same extent as any non-governmental entity.

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

III. DANR SHALL:

A. NONPOINT SOURCE POLLUTION CONTROL

1. Support implementation of the Forest Service NPS strategy as compliance with the South Dakota Nonpoint Source Management Program, applicable sections of the South Dakota Codified Law, and the federal Clean Water Act.
2. Approve the use of Best Management Practices (BMPs) contained in "National Best Management Practices for Water Quality on National Forest System Lands, Volume 1: National Core BMP Technical Guide" (FS-990a), Forest Service Handbook (FSH 2509.25 R2 Amendment [Watershed Conservation Practices (WCP) Handbook] for NFS lands in Region 2 and FSH 2509.22 R1/R4 Amendment [Soil and Water Conservation Practices Handbook] for NFS lands in Region 1 as meeting the requirements of the BMPs in the South Dakota Nonpoint Source Management Plan.
3. Conduct periodic field reviews jointly with the Forest Service of various watersheds and activities on NFS lands to evaluate implementation and effectiveness of BMPs on the ground. Based on these reviews, BMPs may



be adjusted to improve protection of water quality, or joint recommendations to adopt site specific water quality standards or to adjust use designations may be made.

B. PROJECT PLANNING

1. Review Forest Service projects and activities that may have an effect on water quality and provide timely comments.
2. Review and consult or cooperate with the Forest Service on projects and activities on NFS lands proposed by public or private proponents that may have an effect on water quality. This provision meets the purposes and objectives of the South Dakota Nonpoint Source Management Plan.
3. Contact the Forest Service during the planning process for any project they are involved in that may affect NFS lands or resources.

C. SOUTH DAKOTA WATER QUALITY STANDARDS

1. Provide applicable draft water quality rules and regulations to the Forest Service for review during their development, and final rules and regulations for guidance after promulgation.
2. Promptly notify the Forest Service if DANR suspects that state water quality standards are being exceeded or designated uses are being impaired by nonpoint sources on NFS lands. If appropriate, DANR and the Forest Service will jointly evaluate and attempt to properly and expeditiously address the situation.
3. Cooperate with the Forest Service to determine what actions are necessary, if any, to address the issue if a situation described in clause "2" above arises, or if a waterbody on NFS lands is listed as impaired on the 303(d) list. These actions may include, but are not limited to, water quality monitoring, refining BMPs, changes to water quality standards or establishing a stakeholder group to investigate the situation and recommend actions to be taken.

D. WATER QUALITY RESTORATION

1. Work with the Forest Service to set priorities for watershed restoration strategies for watersheds not meeting water quality or natural resource goals.



2. Cooperate with the Forest Service on development of Total Maximum Daily Loads (TMDLs) and TMDL implementation plans for impaired waterbodies on NFS lands.
3. Agree that Section 319 funds may be used for any project on NFS lands meeting Section 319 grant criteria if a non-federal entity agrees to contribute the funds or in-kind services needed for the required match (currently a minimum of 40% non-federal funds). Such a 319 grant award would have to be authorized and documented in an appropriate written agreement, separate from this MOU.

E. MONITORING

1. Coordinate present and proposed water quality monitoring plans and activities adjacent to and within NFS boundaries using consistent scientific approaches with the Forest Service when applicable and appropriate.
2. Continue to have the primary responsibility for the collection, analysis, and processing of water quality samples on NFS lands.
3. Routinely make available to the Forest Service any water quality data and information.

F. RECORD KEEPING AND OWNERSHIP OF DATA

1. Keep pertinent records, data and information in good order and available to the Forest Service and the public in conformance with the South Dakota Public Records Law.
2. Agree that any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. § 552).

G. GENERAL ACTIVITIES

1. Agree to provide, on request, technical expertise and support not otherwise available to the Forest Service, to the extent the DANR's authority, program, priorities, budget, and availability of expertise allow.
2. Agree to share training opportunities as authorized and in accordance with Clause V. E below.



H. REVIEWS AND REPORTS

1. Meet periodically with the Forest Service to review the MOU's provisions and effectiveness, assess the progress of each agency, explore coordination needs and identify new objectives or other needed changes in the MOU.
2. Provide minutes of any meetings between the Forest Service and DANR and a jointly prepared status report on the MOU to EPA as part of their report required under Section 319(h) of the federal Clean Water Act.

IV. THE FOREST SERVICE SHALL:

A. NONPOINT SOURCE POLLUTION CONTROL

1. Recognize South Dakota Nonpoint Source Management Program objectives and be responsible for implementing NPS controls consistent with the South Dakota Nonpoint Source Management Program on NFS lands in South Dakota.
2. Apply the Forest Service NPS strategy (Forest Service Manual 2532, FSH 2509.25 R2 Amendment and FSH 2509.22 R1/R4 Amendment) to all activities on NFS land to control NPS pollution. The NPS strategy is to implement BMPs, monitor the implementation and effectiveness of BMPs in protecting water quality and designated uses, and adjust BMPs or mitigate actions as needed to ensure that South Dakota water quality standards are met, and designated uses of water are protected.
3. Ensure that all new and renewed authorizations for occupancy and use of NFS lands contain provisions for compliance with the South Dakota Nonpoint Source Management Program.
4. Provide draft FSH 2509.25 R2 Amendment and FSH 2509.22 R1/R4 Amendment to DANR for review during the updates of these handbooks. The fact that the Forest Service agrees to provide these draft amendments to DANR is not to be construed as designating these Amendments formal rules for purposes of the Administrative Procedures Act, 5 U.S.C. § 553.
5. Monitor BMPs on selected activities for implementation and effectiveness using Forest Service national BMP monitoring protocols and share monitoring results with DANR every two years in accordance with the biannual Forest Service BMP monitoring cycle. These results may be used to select areas to be jointly field reviewed.



6. Conduct periodic field reviews jointly with DANR of various watersheds and activities on NFS lands to evaluate implementation and effectiveness of BMPs on the ground. Based on these reviews, BMPs may be adjusted to improve protection of water quality, or joint recommendations to adopt site specific water quality standards or to adjust use designations may be made.

B. PROJECT PLANNING

1. Provide DANR appropriate and timely opportunity to participate, through the applicable National Environmental Policy Act procedures, in proposed project and activity plans that have potential to impact water quality.

C. SOUTH DAKOTA WATER QUALITY STANDARDS

1. Recognize South Dakota's identified designated uses of water.
2. Be responsible for ensuring attainment of state water quality standards in NFS authorized activities on NFS lands in South Dakota.
3. Coordinate and cooperate, to the extent consistent with applicable law, with DANR during development and revision of water quality standards.
4. Promptly notify the DANR if the Forest Service suspects that state water quality standards are being exceeded or designated uses are being impaired by nonpoint sources on NFS lands by its or other authorized user's activities, or is so notified by some other party. If appropriate, DANR and the Forest Service will jointly evaluate and attempt to properly and expeditiously address the situation.
5. Cooperate with DANR to determine what actions are necessary, if any, to address the issue if a situation described in clause "4" above arises, or if a waterbody on NFS lands is listed as impaired on the 303(d) list. These actions may include, but are not limited to, water quality monitoring, refining BMPs, changes to water quality standards or establishing a stakeholder group to investigate the situation and recommend actions to be taken.

D. WATER QUALITY RESTORATION

1. Work with DANR to set priorities for watershed restoration strategies for watersheds not meeting water quality or natural resource goals.



2. Cooperate with DANR on development of Total Maximum Daily Loads (TMDLs) and TMDL implementation plans for impaired waterbodies on NFS lands.
3. Agree that lack of Section 319 funds does not relieve the Forest Service from its responsibility to apply needed restoration or BMPs where required.

E. MONITORING

1. Coordinate present and proposed water quality monitoring plans and activities adjacent to and within NFS boundaries using consistent scientific approaches with DANR when applicable and appropriate.
2. Assist or support DANR in the collection, analysis, and processing of water quality samples on NFS lands as resources allow.
3. Routinely make available to DANR any water quality data and information.

F. RECORD KEEPING AND OWNERSHIP OF DATA

1. Keep pertinent records, data and other information in good order and available to DANR and the public in conformance with the Freedom of Information Act and the Privacy Act.
2. Agree that any information furnished to DANR under this MOU is subject to the South Dakota Public Records Law (SD Codified Law § 1-27-1).

G. GENERAL ACTIVITIES

1. Agree to provide, on request, technical expertise and support not otherwise available to DANR, to the extent the Forest Service's authority, program, priorities, budget, and availability of expertise allow.
2. Agree to share training opportunities as authorized and in accordance with Clause V. F below.

H. REVIEWS AND REPORTS

1. Meet periodically with DANR to review the MOU's provisions and effectiveness, assess the progress of each agency, explore coordination needs and identify new objectives or other needed changes in the MOU.



2. Provide DANR with information on watershed assessments as part of the reporting procedures established by Sections 319(a) and 319(b) of the federal Clean Water Act.

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

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Kristopher Dozark 319 Implementation Coordinator 523 East Capitol Avenue Pierre SD 57501 Telephone: 605-773-4254 FAX: 605-773-4068 Email: kris.dozark@state.sd.us	Paul Lorenzen Program Administrator 523 East Capitol Avenue Pierre SD 57501 Telephone: 605-773-3796 FAX: 605-773-4068 Email: paul.lorenzen@state.sd.us

Principal Forest Service Contacts:

Forest Service Program Manager Contact	Forest Service Administrative Contact
Karen Wait Water Quality Hydrologist 1617 Cole Blvd Bldg 17 Lakewood CO 80401 Telephone: 303-941-6316 Email: karen.wait@usda.gov	Lisa Street Grants Management Specialist 1617 Cole Blvd Bldg 17 Lakewood CO 80401 Telephone: 303-579-5992 Email: lisa.street@usda.gov

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

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

To DANR at DANR'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.

- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the Forest Service or DANR from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. ENDORSEMENT. Any of DANR's contributions made under this MOU do not by direct reference or implication convey Forest Service endorsement of DANR's products or activities.
- E. 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, 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.

- F. USE OF FOREST SERVICE INSIGNIA. In order for DANR to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the 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.



- G. 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.
- H. 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).
- I. 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.
- J. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. DANR shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- K. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. DANR 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."

- L. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- M. DEBARMENT AND SUSPENSION. DANR shall immediately inform the 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 DANR or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- N. 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.
- O. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through December 1, 2029 at which time it will expire.
- P. 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.

Hunter.Roberts
ts

Digitally signed by
Hunter.Roberts
Date: 2024.12.04
11:30:55 -06'00'

HUNTER ROBERTS, Secretary
South Dakota Department of Agriculture and Natural
Resources

Date



Andrea
Delgado

Digitally signed by Andrea
Delgado
Date: 2024.12.10
17:22:43 -07'00'

TROY HEITHECKER, Regional Forester
Forest Service, Rocky Mountain Region

Date

BENNIE
SOUTH

Digitally signed by
BENNIE SOUTH
Date: 2024.12.05
10:35:13 -07'00'

LEANNE MARTEN, Regional Forester
Forest Service, Northern Region

Date

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

Digitally signed by LISA
STREET
Date: 2024.12.03 12:45:03
-07'00'

LISA STREET
Forest Service Grants Management Specialist

Date

Paperwork Reduction Act 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. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection is 0596-0217. Response to this collection of information is mandatory. The authority to collect the information Section 7 of the Granger-Thye Act (16 U.S.C. 580d) and Title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751-1753). 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Clearance Officer, OIRM, 1400 Independence Avenue, SW, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0596-0217), 725 17th Street NW, Washington, D.C. 20503.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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The Privacy Act of 1974, 5 U.S.C. 552a and the Freedom of Information Act, 5 U.S.C. 552 govern the confidentiality to be provided for information received by the Forest Service.