

**COOPERATING AGENCY STATUS
MEMORANDUM OF AGREEMENT**

Between the

STATE OF MONTANA

And the

USDA FOREST SERVICE, NORTHERN REGION

This Memorandum of Agreement (MOA) is hereby entered into by and between the Montana Department of Natural Resources and Conservation, Forestry Division, hereinafter referred to as DNRC, and the USDA Forest Service, Northern Region, hereinafter referred to as the Forest Service.

I. PURPOSE:

In 2007, recognizing the effect federal resource management has on the State of Montana's ability to protect precious resources, the Montana legislature passed Senate Bill 293 (codified at Montana Code Annotated section 76-13-702), mandating that DNRC establish cooperative agency status with the U. S. Forest Service. In addition, the Council on Environmental Quality (CEQ) regulations specifically address cooperating agency status (40 C.F.R. Sections 1501.6 & 1508.5) and the National Environmental Policy Act (NEPA) mandates that federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. Sections 4331(a), 4332(2)). Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decision-making authority of any agency involved in the NEPA process. Benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include: disclosing relevant information early in the analytical process; applying available technical expertise; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

DNRC is responsible for protecting and ensuring the present and future benefits of Montana's natural resources. Therefore, the DNRC has a high level of interest in the management of the National Forest System lands in Montana and the subsequent effect federal resource planning and policy have on Montana's ability to ensure present and future beneficial uses. The Forest Service recognizes that the DNRC has knowledge and expertise relative to natural resource planning, wildland fire protection, transportation, rural community stability and development, and other matters, all of which may be affected by federal planning policies, and project implementation. Additionally, the Forest Service and the DNRC both have obligations to the public in contributing to the quality of the human environment, the public health, and the regional economy and natural resource base.

III. THE FOREST SERVICE SHALL:

- A. Serve as the responsible party for ensuring compliance with all applicable federal regulations and guidelines relating to federal land management planning and policy development.
- B. Systematically notify the DNRC of opportunities to participate in the development of individual Forest planning revisions and amendments at the Forest level and in future federal forest policy development at the Regional level.
- C. Identify a principal contact for each proposed Forest planning document and/or Regional and National policy issue; and
- D. Retain decision making authority for management of the National Forests. This authority is not modified by this MOA.

IV. DNRC SHALL:

- A. Participate in the development of individual Forest plan revisions, and Forest plan amendments. This may include, but is not limited to; assisting in the development of draft planning documents and establishing environmental objectives and monitoring systems.
- B. Participate in the development of federal forest policy including but not limited to; climate change, renewable energy standards, forest restoration, and water resource protection.
- C. Provide advice and information throughout the Forest plan revision or amendment process to enhance a cross-jurisdictional partnership. DNRC will provide information or data on particular issues, including social, economic and/or forest health and wildfire hazard concerns. DNRC may assemble and present the data or information with the assistance of experts retained by DNRC. This MOA does not obligate DNRC to expend funds at the request of the Forest Service in furtherance of activities contemplated by this MOA.
- D. Identify a principal contact for each proposed Forest planning document and/or Regional and National policy issue.
- E. Provide advice and information on regional management strategies and vegetation management project prioritization; and
- F. Coordinate and communicate with the Forest Service regarding proposed planning documents and policies that require review and comment by the DNRC under this MOA.

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

- A. FREEDOM OF INFORMATION (FOIA) AND RIGHT TO KNOW. Any information furnished to the Forest Service under this MOA is subject to the Freedom of Information Act (5 U.S.C. 522). Any information furnished to DNRC under this MOA is subject to Montana's Right to Know provision found in Article II, Section 9 of the 1972 Montana Constitution, and its implementing legislation found in Title 2, Chapter 6 of the Montana Code Annotated
- B. DISPUTE RESOLUTION. Disputes concerning the content of land management plans, amendments and policy development or directives shall be resolved through good-faith efforts between the cooperators. In all instances involving questions regarding content or relevance of environmental data and analyses, evaluation and wording in preparing plans, amendments and policies, the Forest Service shall make the final determination on the inclusion, deletion, or modification of such items in the document. Should the Forest Service or DNRC prove unable to resolve disputes as described above, this MOA does not preclude the DNRC from pursuing relief through any applicable administrative or judicial review or litigation. Nothing in the MOA shall compromise or affect the rights of the DNRC to contest the outcome of plan revisions, plan amendments or federal natural resource policy development and/or adoption through any means available.
- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOA does not restrict the Forest Service or the DNRC from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. PRINCIPAL CONTACT. The principal contacts for this MOA are:
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| <p><u>Forest Service Contact</u>
Tom Tidwell
Regional Forester
P.O. Box 7669
Missoula, MT 59807
Ph: (406) 329-3316
Fax: (406) 329-3347
E-Mail: ttidwell@fs.fed.us</p> | <p><u>DNRC Contact</u>
Robert Harrington
State Forester
2705 Spurgin Road
Missoula, MT 59804
Ph: (406) 542-4301
Fax: (406) 542-4217
E-Mail: rharrington@mt.gov</p> |
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- E. NON-FUND OBLIGATION DOCUMENT. This MOA is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by

Appendix A

I. State agency interests related to this MOA.

A. Montana Department of Natural Resources and Conservation (DNRC)

1. DNRC is responsible for promoting the stewardship of Montana's water, soil, forest, and rangeland resources and for the oversight of forest practices and oil and gas exploration and production. The department is organized into seven divisions Centralized Services Division, Conservation and Resource Development Division, Forestry Division, Trust Land Management Division, Water Resources Division, Oil and Gas Conservation Division, and Reserved Water Rights Compact Division. The Forestry Division provides wildland fire protection for private, state, and federal lands, conservation seedlings for state and private lands, provides assistance to private forest landowners, and regulates forest practices on private lands. The Trust Land Management Division is responsible for managing the surface and mineral resources of forestlands, grazing, agriculture, and other classified state trust lands to produce revenue for the benefit of Montana's public school system and other endowed institutions.
2. DNRC's statutory authorities include, but are not limited to, the Streamside Management Zone Law (Title 77, Chapter 5, Part 3) and the State Slash Law (Title 76, Chapter 13, Part 4).
3. DNRC's primary interest for the purposes of this MOA includes issues involving existing and future forest conditions, timber supply, maintaining rural communities, federal forest land allocations, transportation planning, interdependent issues on state trust lands, wildland fire protection, water quality and aquatic habitats.