

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF IDAHO
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
FOR THE NATIONAL FORESTS IN IDAHO

THIS MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the State of Idaho by and through the Office of the Governor (hereinafter the “State”), and United States Department of Agriculture Forest Service, (hereinafter the “Forest Service”).

A. PURPOSE:

This Memorandum of Understanding (“MOU”) is established by the undersigned parties to provide an agreement to cooperate with the establishment of rules governing the management of inventoried roadless areas located within the National Forests in Idaho. The Governor of the State of Idaho has submitted a petition (per the requirements of § 553 of the Administrative Procedure Act) to the Secretary of Agriculture, which contains the Governor’s recommendations for the management of the inventoried roadless areas in Idaho. On December 22, 2006, the Secretary of Agriculture directed the Chief of the Forest Service to initiate rulemaking for roadless management direction for the National Forests in Idaho in response to the Governor’s petition.

In accordance with the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. §§ 1501.6, 1508.5), the State of Idaho is hereby established as a cooperating agency in the preparation of analysis and documentation required by the National Environmental Policy Act (“NEPA”) associated with this rulemaking. The Idaho-specific rulemaking process will include publishing a proposed rule for public review and comment and preparing the appropriate NEPA analysis and documentation. The extent of the environmental analysis required will be assessed and will depend largely on the extent and effects of the proposed changes to existing Forest Plans and the Roadless Area Conservation Rule of 2001.

With regard to the responsibilities of the State contained herein, the State of Idaho intends to fulfill its obligations by and through the Governor’s Roadless Rule Task Force (Executive Order 2006-44), attached to and incorporated herein by reference as Appendix A.

For the purpose of this MOU, the applicable “inventoried roadless areas” are those in Idaho that are described and defined in the Petition of Governor James E. Risch for Roadless Area Management in Idaho dated 5 October 2006. Using the description contained in the petition as a platform for discussion, it is anticipated that the parties will reach a mutual agreement regarding a consistent inventoried roadless area database for those roadless areas in Idaho prior to the development of specific regulatory language.

B. AUTHORITY:

This agreement is authorized pursuant to the Organic Administration Act of 1897, 16 U.S.C. §551; Multiple Use, Sustained Yield Act, 16 U.S.C. §§528-531; Forest and Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. §§1601-1614; see also 23 U.S.C. 201, 205, Administrative Procedure Act 5 U.S.C. §553, 7 C.F.R. §1.28; 40 C.F.R. Parts 1500-1508; and Forest Service Handbook 1909.15. The State of Idaho is authorized to enter into this agreement pursuant to Idaho Code §67-802(4).

C. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The USDA Forest Service manages National Forest System (“NFS”) lands to maintain and enhance the quality of the environment to meet the Nation’s current and future needs. Forest Service land management supports recreation, water, timber, minerals, fish, wildlife, wilderness, and aesthetic values for current and future generations. Currently there are over 20 million acres of National Forest in the State of Idaho, of which approximately 9.3 million acres are considered inventoried roadless areas as defined by the Roadless Area Conservation Rule of 2001.

The State of Idaho is responsible for representing its citizens in matters affecting them. State governments are important partners in management of the nation’s land and natural resources. State agencies have knowledge and expertise relative to natural resources, economic growth and development, resource planning, transportation, and other matters, all of which may be affected by Forest Service management.

Both parties involved will benefit by resolving conflicts over roadless area management through increased communication, sharing of information, participation, cooperation, and coordination in implementing their respective missions as part of the Idaho-specific rulemaking process.

D. BOTH PARTIES SHALL:

1. Establish a State-Forest Service Steering Team to coordinate the various aspects of implementation of this MOU, including identifying State and Forest Service involvement in NEPA Interdisciplinary teams and other working groups as needed during this rulemaking process.
2. Cooperate in the development of specific regulatory language for a proposed state-specific rule to establish management direction for the inventoried roadless areas within the National Forests in Idaho.
3. Jointly develop a detailed work plan that sets out required action steps, milestones, and time frames associated with all aspects of this rulemaking effort.
4. Consider the recommendations of the Roadless Area Conservation National Advisory Committee in the development of the final regulatory language.
5. Review and assess the appropriate level of environmental analyses required by NEPA associated with this state-specific roadless rulemaking.

6. Cooperate in the preparation of analyses and documentation, development of the description of the proposed action and any alternatives, and the compilation of any required ecological, social, and economic resource information as required by NEPA associated with this state-specific Roadless rulemaking.
7. Develop and agree upon an inventoried roadless area database subject to specific regulatory language.
8. Coordinate the development of the proposed state rule with the existing land management planning efforts in progress within the State of Idaho.
9. Develop a process for updating the inventory of roadless areas subject to specific regulatory language during subsequent rounds of Forest Planning.

E. THE FOREST SERVICE SHALL:

1. Take the lead in coordinating the preparation of analysis and documentation required by the NEPA.
2. Coordinate the logistics of the federal review and clearance process involved with rulemaking.
3. If the rule is determined by the Office of Management and Budget (“OMB”) to be “significant” per Executive Order 12866, the Forest Service will take the lead in developing a civil rights impact analysis and benefit-cost analysis.
4. Review the completeness and adequacy of roadless area evaluations as requested by the State in their roadless petition.
5. Recognize the State of Idaho, and their Roadless Rule Task Force, as a Cooperating Agency for this rule-making.

F. THE STATE SHALL:

1. Provide to the Forest Service specific regulatory language that would implement Idaho’s preferred management direction for the inventoried roadless areas within the National Forests in Idaho.
2. Perform the duties and obligations of a cooperating agency in the preparation of the NEPA documentation associated with developing a rule for the inventoried roadless areas within the State of Idaho.
3. Cooperate with the Forest Service in other procedures required in a rulemaking process (i.e., those procedures outside of the NEPA process).
4. On behalf of the Governor, have the Roadless Rule Task Force, coordinate and direct the State’s participation as “Cooperating Agency” for the environmental analysis associated with this rulemaking.

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

1. APPROVAL. The Secretary of Agriculture, or the Secretary’s designee, shall make the final decision for any Idaho inventoried roadless area management rule.
2. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. §552).

3. FEDERAL ADVISORY COMMITTEE ACT (FACA). In order to meet the intergovernmental committee exception to FACA, all participants of any NEPA ID team must be a full-time or part-time officer or employee of the Federal Government or elected officer of the State, local, or tribal government (or their designated employee with authority to act on their behalf), acting in their official capacity (41 C.F.R. 102—3.40(g)).
4. IDAHO PUBLIC RECORDS ACT. All records provided to the State participants related to the execution and performance of this MOU shall be subject to the provisions, requirements, and exemptions of the Idaho Public Records Act, Idaho Code §§ 9-337-350.
5. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
6. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and State and shall remain in effect until December 31, 2008 or until a state-specific inventoried roadless area management rule is approved by the Secretary of Agriculture, or the Secretary's designee. This MOU may be extended or amended upon written request of either the Forest Service or the State and the subsequent written concurrence of the other. Either party may terminate this MOU with a 60-day written notice to the other party.
7. IMPLEMENTATION AND MONITORING. The Forest Service and the State agree that there may be benefits to continuing the relationship represented by this MOU. Both parties agree to consider extending this MOU or developing a new MOU once the State-specific rule is approved. The State specifically intends to continue this relationship by and through the Governor's Roadless Rule Implementation Commission (Executive Order 2006-43), attached to and incorporated herein by reference as Appendix B.
8. DISPUTES. Disputes between the Forest Service and the State concerning any aspect of this rulemaking and associated environmental analysis will be resolved through good faith efforts between the parties to the MOU.
9. RESPONSIBILITIES OF THE PARTIES. The Forest Service and the State and their respective agencies and officers will handle their own activities and contribute their own personnel and financial resources, in pursuing these objectives, with exception of any funding that might be provided the State separately by the U.S. Department of Agriculture. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
10. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact

Andy Brunelle
Capital City Coordinator
304 N. 8th, Rm 134
Boise, ID 83702
(208) 334-1770
abrunelle@fs.fed.us

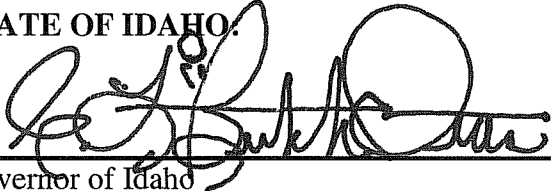
Cooperator Project Contact

Jim Caswell
Administrator
Governor's Office of Species
Conservation
300 N. 6th St., Ste. 101
Boise, ID 83702
(208) 334-2189
jcaswell@osc.idaho.gov

11. **NON-FUND OBLIGATING DOCUMENT.** Nothing in this MOU shall obligate either the Forest Service or the State to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the State will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each agreement must comply with all applicable statutes and regulations.
12. **FUNDING ASSISTANCE TO THE STATE.** The Forest Service may provide financial assistance to the State in association with actions undertaken pursuant to this MOU. However, those negotiations and agreements will occur separately from this document.
13. **ESTABLISHMENT OF RESPONSIBILITY.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
14. **ADMINISTRATIVE.**
 - Nothing in this MOU will be construed to alter the legal rights and remedies that each party would otherwise have.
 - Nothing in this MOU will be construed to extend jurisdiction or decision-making authority to either party to this MOU, beyond that which exists under current law, regulations, or ordinances.
 - Nothing in this MOU will be construed as limiting or affecting the authority or legal responsibilities of any party, or as binding any party to perform beyond the responsive authority of each, or to require them to assume or expend any sum in excess of appropriation available.
 - The provisions in this MOU are subject to the applicable laws and regulations of the State of Idaho, the applicable laws of the United States, and the applicable regulations of the Secretary of Agriculture, Environmental Protection Agency, and the Council on Environmental Quality.
15. **AUTHORIZED REPRESENTATIVES.** By signature below, the coordinator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this instrument.

STATE OF IDAHO.




Governor of Idaho
C.L. "Butch" Otter

4-13-07

Date

USDA FOREST SERVICE:



Chief - USDA Forest Service
Abigail R. Kimbell

Date