

FS Agreement No. 21-MU-11046000-003

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF IDAHO
And The
USDA, FOREST SERVICE
INTERMOUNTAIN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the state of Idaho, hereinafter referred to as “the State,” and the United States Department of Agriculture (USDA), Forest Service, Intermountain Region, hereinafter referred to as the “U.S. Forest Service.”

Background: The greater sage-grouse is a state-managed species that is dependent on sagebrush steppe ecosystems. State agencies are at the forefront of efforts to maintain healthy fish and wildlife populations and to conserve species such as greater sage-grouse. Federal efforts have also been initiated to protect habitats for greater sage-grouse conservation by incorporating species-specific components into forest land management plans.

To achieve greater sage-grouse conservation while balancing multiple-use needs, the U.S. Forest Service may require compensatory mitigation when undertaking U.S. Forest Service management actions authorizing third party actions that result in greater sage-grouse habitat loss and degradation, consistent with current land management plans, valid existing rights, and applicable law. Mitigation must follow the mitigation hierarchy from the White House Council on Environmental Quality’s (CEQ’s) NEPA regulations at 40 CFR 1508.20 which explain that mitigation first involves avoiding environmental impacts when possible, then minimizing impacts, and then compensating for residual impacts by applying beneficial mitigation actions.

Mitigation actions ought to account for any uncertainty associated with the effectiveness of such mitigation, be durable, timely and in response to the residual impacts and in addition to other mitigation efforts, actions should be consistent with the State’s approach and best available science when calculating functional equivalencies of the habitat degradation that is being compensated for.

In 2015, the Idaho Governor issued Executive Order 2015-04 directing all executive agencies to implement the Idaho Sage-Grouse Management Plan to the extent consistent with State law. The application of the foundational elements of Idaho’s Sage-Grouse Management Plan are consistent with the U.S. Fish and Wildlife Service COT (Conservation Objectives Team) Report and apply across all land ownerships in Idaho. This plan included compensatory mitigation for large-scale anthropogenic development



within a set of project screening criteria, based on the three-tiered management approach if new, significant, and unavoidable impacts are demonstrated to be associated with the project. In the Governor's plan, if unavoidable impacts are demonstrated to be associated with the project, a compensatory mitigation plan would be based on the guiding principles of Idaho's Mitigation Framework, 2011. This framework was update in 2019, and the State of Idaho finalized the Idaho Sage-steppe Mitigation Principles document. This framework offers core principles and standards that the state favors for determining what effective mitigation actions proponents should take to meet their mitigation objectives associated with permits for infrastructure development in sage-grouse habitat in Idaho.

In 2015, the U.S. Forest Service created land management plan components for Intermountain Regional Forests in Idaho, then proposed alterations to many of the components in 2019. This MOU describes a framework for coordination between the state and the U.S. Forest Service under whichever plans are currently in effect.

Title: Coordination for Greater Sage-grouse Habitat Mitigation

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to enhance coordination between the State of Idaho and the U.S. Forest Service for the management and protection of greater sage-grouse and its habitat on U.S. Forest Service lands and employing mitigation (avoid, minimize, compensatory mitigation) in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

This Memorandum of Understanding (MOU) is entered into by and between the State of Idaho and the U.S. Forest Service. The State of Idaho is responsible for protecting, preserving, perpetuating, and managing Idaho's wildlife resources as required by State law and regulations. The U.S. Forest Service operates under authorities directly related to fish and wildlife such as the National Forest Management Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Multiple Use and Sustained Yield Act. It is mutually beneficial to and the desire of the State and the U.S. Forest Service to work together for the common purpose of developing, maintaining, and managing the fish and wildlife resources, associated habitats, and other related resources on National Forest System (NFS) lands. Such cooperation is in the best interests of the wildlife and fish resources and in the best interests of the people of Idaho and the United States.

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

III. THE STATE SHALL:

- A.** Recognize the U.S. Forest Service as the agency responsible for the management of NFS lands in Idaho and the fish and wildlife habitats on these lands.



- B. As designated by the Governor, serve as a cooperating agency when the U.S. Forest Service prepares NEPA documents for proposed actions in greater sage-grouse habitat, should the State elect to seek cooperating agency status.
- C. Participate, as the Governor deems appropriate, in preparation of environmental analyses under NEPA and other federal laws and regulations that may be required when there is a U.S. Forest Service action or decision associated with State fish and wildlife management actions or policy on NFS lands. Participation would include, but is not limited to, timely review of any proposed project in greater sage-grouse habitat on public lands managed by the U.S. Forest Service to determine whether that proposed project complies with the State's most current policies and programs relating to greater sage-grouse conservation.
- D. In instances where the Governor or designated agency determines that the Federal-State coordinated landscape would benefit the greater sage-grouse or its habitat using onsite mitigation or offsite compensatory mitigation (assessed using the State's habitat quantification tool and best available science), the Governor or designated agency hereby agrees to make such recommendations consistent with the Idaho Sage-steppe Mitigation Principles document to the project proponent and to the U.S. Forest Service in writing.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Per standing policy, when authorizing uses on the public lands that it manages, verify that those uses are in conformance with its approved land management plans, including the land use planning decisions relating to greater sage-grouse conservation.
- B. Recognize the Governor or designated State agency as a cooperating agency under NEPA for any proposed land use planning decision relating to greater sage-grouse conservation or any proposed project sited in greater sage-grouse habitat.
- C. Notify the Governor or designated state agency (e.g., through technical teams described in land use plans) when it receives an application or proposal for a project that could create anthropogenic disturbance in a greater sage-grouse habitat management area, and shall encourage each such project proponent to coordinate with the Governor or designated state agency relating to any such project to the extent necessary for the State of Idaho to provide a written recommendation regarding a proponent's ability to avoid or minimizing habitat degradation as well as any potential compensatory mitigation obligation to the U.S. Forest Service.
- D. Consider use of Idaho's Compensatory Mitigation Principles and analyze the State's recommendation for compensatory mitigation (whether or not a proponent includes the state recommendation in its application) as an alternative in its NEPA analysis if compensatory mitigation is required by the U.S. Forest Service.



E. When using compensatory mitigation, the deciding official will consider a minimum equivalency of functional acres (a combination of habitat quality and quantity) to replace the areas that have been degraded. When practicable, there will be an emphasis placed on habitat restoration (vs. habitat protection/preservation through protected easements).

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

A. **DISPUTE RESOLUTION.** If a dispute arises regarding the terms or the implementation of this MOU, emphasis will be placed on disputes being resolved by the Forest Supervisor and the Governor’s designee. If a disagreement arises, the Forest Supervisor and Governor’s designee will first attempt to resolve the dispute remotely via email, phone, or virtual call. If there is no resolution at this first level within 30 days of the first attempt to reach resolution, the Forest Supervisor and the Governor’s designee will attempt to resolve it themselves through a face-to-face meeting. If disagreements cannot be resolved, they may be referred to higher administrative levels within the U.S. Forest Service and State.

B. **OTHER AUTHORITIES.** The parties agree and recognize other Federal and State laws may have a bearing on their respective authorities to manage fish and wildlife and their habitats, such as the Migratory Bird Treaty Act, Endangered Species Act and state water law.

C. **PUBLIC RECORDS.** Any information provided to the State under this instrument is subject to the Idaho Public Records Law (Idaho Code section 74-101 et. seq.), when not otherwise subject to Freedom of Information regulations (5 U.S.C. 552).

D. **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
Name: Joshua Uriarte Address: 304 N. 8 th Street Ste. 149 City, State, Zip: Boise ID 83702 Telephone: 208-332-1556 Email: joshua.uriarte@osc.idaho.gov	Name: Mike Edmondson Address: 304 N. 8 th Street Ste. 149 City, State, Zip: Boise, ID 83702 Telephone: 208-332-1551 Email: Mike.edmondson@osc.idaho.gov



Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Steve Beverlin, NR Director Address: 324 25 th Street City, State, Zip: Ogden, UT 84401 Telephone: 801-625-5669 Email: sbeverlin@usda.gov	Name: Timothy Wagoner Address: 324 25 th Street City, State, Zip: Ogden UT, 84401 Telephone: 801-625-5796 FAX: 801-625-5365 Email: timothy.wagoner@usda.gov

E. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the State 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 the State, at the State’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.

F. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

G. **ENDORSEMENT.** Any of the State’s contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the State's products or activities and vice versa.

H. **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.

- I. USE OF U.S. FOREST SERVICE INSIGNIA. In order for the State 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.
- J. 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.
- K. 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).
- L. 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.
- M. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The State 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 Intermountain Region of the U.S. Forest Service, Department of Agriculture, coordinates with the state of Idaho when considering decisions about mitigation for greater sage-grouse habitat conservation."

The State may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The State is/are 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.

- N. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The State shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- O. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The State 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."

- P. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- Q. DEBARMENT AND SUSPENSION. The State 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 the State 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.

- R. 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.
- S. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through October 31, 2025 at which time it will expire.
- T. 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.

LITTLE, BRAD
Governor of Idaho

5-20-21

Date

MARY FARNSWORTH
U.S. Forest Service, Intermountain Region
Regional Forester

Date

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

TIMOTHY WAGONER
Digitally signed by
TIMOTHY WAGONER
Date: 2020.12.04
09:47:28 -07'00'

TIM WAGONER
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.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

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.