

MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF WYOMING STATE ENGINEERS OFFICE
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

This MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the Wyoming State Engineer's Office, hereinafter referred to as SEO, and United States Department of Agriculture Forest Service, Rocky Mountain Region 2 and Intermountain Region 4, hereinafter referred to as Forest Service.

A. PURPOSE:

To document and strengthen the existing cooperative working relationship between the SEO and the Forest Service with respect to permits under state law for water rights and uses on or derived from National Forest System (NFS) lands in Wyoming.

B. FOREST SERVICE SHALL:

1. Recognize and respect the authority of the SEO under the constitution and laws of the state of Wyoming.
2. Manage land, water, and other natural resources located on NFS lands within the state of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
3. Apply for permits and acquire water rights under state law as sole applicant for water used directly by the Forest Service for administrative purposes on NFS lands.
4. Apply for and acquire water rights under state law, as sole applicant, for water used by permittees, contractors, and other authorized users of the NFS to carry out activities related to multiple use objectives when both the water use(s) and point(s) of diversion are located on NFS lands. An exception to this policy could apply to certain permitted ski areas.
5. Inform and require applicants seeking to acquire water rights where points of diversion and use are on NFS lands of the requirement to obtain water rights under state law, in the name of the United States. An exception to this policy could apply to certain permitted ski areas.
6. Protest water rights applications made by users if the water right(s), in the opinion of the Forest Service should be held in the name of the United States. All protests shall be made under state law.
7. Inform applicants seeking to divert, convey and/or store water on NFS lands of the need to obtain valid water rights from the SEO while concurrently pursuing authorization to occupy NFS lands.
8. Provide the SEO three copies of National Forest Visitor Information Maps for each National Forest in Wyoming and most recent land status maps as available to assist SEO staff in ascertaining legal descriptions of water rights applications that may involve the use of NFS lands.

9. Provide a primary contact in the appropriate Regional Office to collaboratively address water rights policy and procedural issues that are relevant to both the Forest Service and SEO.
10. Provide a Forest Hydrologist contact list for each National Forest and Grassland within Wyoming to address any questions related to an individual water right on a specific Forest or Grassland.

C. SEO SHALL:

1. Recognize and respect the authority of the Forest Service, under the constitution and laws of the United States, to manage NFS lands throughout the state of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
2. Use reasonable efforts to inform applicants proposing to divert, convey, use, or store water on NFS lands of the potential need to obtain a land use authorization from the Forest Service concurrent with securing a water right from the SEO.
3. Use reasonable efforts to notify Regional Office contact and allow 30 days for comment on water rights applications and petitions for new uses and changes to existing uses by others that propose to abandon, divert, convey, use, or store water on NFS lands.
4. When proper under state law, approve applications and issue permits according to state law, for water rights and facilities proposed to be located on NFS lands as follows:
 - a. When the Forest Service is the sole applicant for a water right to use water on NFS lands, a permit will be issued solely to the Forest Service.
 - b. When an application proposes to divert water on NFS lands and the use is proposed on NFS lands, SEO will notify the Forest Service as described in C1, C2, and C3.
 - c. When an application proposes to divert water on NFS lands for use off NFS lands, SEO will notify the Forest Service as described in C1, C2, and C3.
 - d. When an application for a time limited use is made, such as temporary water use agreements for road construction, pipelines, etc., a permit will be issued solely to the applicant and a courtesy notice will be provided to the Forest Service of the water right issued.
 - e. The SEO agrees to use reasonable efforts to conform to the requirement of this Section C. Failure to conform to this section does not invalidate any permit, adjudication, or other action taken by the SEO or Board of Control.
5. Provide a primary contact in the SEO to address water rights policy and procedural issues that are relevant to both the Forest Service and SEO.

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

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5

U.S.C. 552). Information held by the SEO is subject to the terms of the Wyoming public records law (Wyo. Stat. Ann 16-4-201 et seq.).

2. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or the SEO from participating in similar activities with other public or private agencies, organizations, and individuals.
3. **COMMENCEMENT/EXPIRATION/TERMINATION.** This MOU takes effect upon the signature of the Forest Service and the SEO and shall remain in effect for five years from the date of execution. This MOU may be extended or amended upon written request of either the Forest Service or the SEO and the subsequent written concurrence of the other(s). Either the Forest Service or the SEO may terminate this MOU with a 60-day written notice to the other(s).
4. **RESPONSIBILITIES OF PARTIES.** The Forest Service and the SEO will handle their own activities and use their own resources, including the expenditure of their own funds under this MOU.
5. **PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

Forest Service Project Contact

Scott Ludwig
Rocky Mountain Region
Water Rights & Uses
PO Box 25127
Lakewood, CO 80225
Phone: 303-275-5099
FAX: 303-275-5122
E-Mail: saludwig@fs.fed.us

SEO Project Contact

John Barnes
SEO Surface Water Division
Surface Water Administrator
122 West 25th
Herschler Building, 4th East
Cheyenne, WY 82002
Phone: 307-777-6475
FAX: 307-777-5451
E-Mail: jbarne@seo.wyo.gov

Forest Service Administrative Contact

Jane Darnell
Forest Service Wyoming State
Coordinator
122 West 25th
Herschler Building, 1st Floor West
Cheyenne, WY 82002
Phone: 307-777-6087
FAX:
E-Mail:

SEO Administrative Contact

Harry LaBonde
SEO
Deputy State Engineer
122 West 25th
Herschler Building, 4th East
Cheyenne, WY 82002
Phone: 307-777-6150
FAX: 307-777-5451
E-Mail: hlabon@seo.wyo.gov

6. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or the SEO to expend, 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 SEO 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 such agreement must comply with all applicable statutes and regulations.
7. 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, the State of Wyoming, the Wyoming State Engineer, or their agencies, officers, or any person.
8. SOVEREIGN IMMUNITY. Neither the United States nor the State of Wyoming, waives its sovereign immunity by entering into this MOU, and each fully retains all its immunities and defenses as provided by applicable law with respect to any action based on or occurring as a result of this MOU.
9. THIRD PARTY BENEFICIARY. The parties do not intend to create any individual or entity the status of third party beneficiary. This MOU shall not be construed so as to create any third party beneficiary status.
10. ENFORCEABILITY. This instrument is a memorandum of understanding, unsupported by consideration, and is not a contract. While this instrument provides guidelines which the parties intend to follow, it is not enforceable against either party in any proceeding and there are no penalties for nonperformance.
11. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator 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 Memorandum of Understanding.

WYOMING STATE ENGINEER'S
OFFICE

Patrick T. Tyrrell 4/20/06
Patrick T. Tyrrell DATE

Wyoming Attorney General's Approval
as to form

Hugh McFadden 4-18-06
Hugh McFadden DATE

Attorney General's Office

USDA FOREST SERVICE
Rocky Mountain Region

USDA FOREST SERVICE
Intermountain Region

Rick C. Cables 6-19-06 Jack G. Troyer 5.10.2006
RICK C. CABLES DATE JACK G. TROYER DATE

The authority and format of this
instrument has been reviewed and
approved for signature

The authority and format of this instrument
has been reviewed and approved for
signature.

Luan Waida 6/19/06 Devin K. Machey 5/8/06
DATE DATE

Rocky Mountain Region Agreements
Coordinator

Intermountain Region Agreements
Coordinator

Forest Service Unit	Forest Service Contact	Address/Phone Number
PRIMARY FOREST SERVICE CONTACT - Region Two (R2) Water Rights Program	Scott Ludwig	740 Simms Street Golden, CO 80401 (303) 275-5099
Wyoming Water Right Coordinator-Region Four (R4) Water Rights Program (includes Bridger-Teton, Caribou-Targhee National Forests)	Steve Spencer	161 E. Mallard, Suite 110 Boise, ID 83706 (208) 331-5944
Utah Water Rights Coordinator-Region Four (R4) Water Rights Program (includes Ashley, Wasatch-Cache National Forests)	Darren Knuteson	USDA Forest Service 324 25 th Street Ogden, UT 84401 (801) 625-5829
Ashley National Forest (R4)	Helen Kempenich	355 N. Vernal Ave Vernal, UT 84078 (435) 781-5170
Bighorn National Forest (R2)	Dan Scaife	2013 Eastside 2 nd Street Sheridan, Wyoming 82801 (307) 674-2646
Black Hills National Forest (R2)	Les Gonyer	23939 Highway 385 Hill City, South Dakota 57745 (605) 574-2543
Bridger-Teton National Forest (R4)	Beth Thomas	P.O. Box 1888 Jackson, WY 83001 (307) 739-5521
Caribou-Targhee National Forest (R4)	Brad Higginson	USDA Forest Service 1405 Hollipark Drive Idaho Falls, ID 83401 (208) 557-5786
Medicine Bow National Forest (R2)	Dave Gloss	P.O. Box 249 Saratoga, Wyoming 82331 (307) 326-2510
Shoshone National Forest (R2)	Greg Bevenger	808 Meadow Lane Cody, Wyoming 82414 (307) 578-1263
Wasatch-Cache National Forest (R4)	Charlie Condrat	8236 Federal Building 125 South State Street Salt Lake City, UT 84138 (801) 236-3439