

**MEMORANDUM OF UNDERSTANDING
IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM
IN THE STATE OF IDAHO**

I. PARTIES TO THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made between: Idaho Department of Environmental Quality (DEQ), Idaho Department of Lands (IDL), U.S. Department of Agriculture, Forest Service, Northern and Intermountain Regions (Forest Service); and the U.S. Department of Interior, Bureau of Land Management (BLM). (The BLM and Forest Service, collectively, are identified herein as the Federal Land Management Agencies or Federal Agencies).

II. PURPOSE

This MOU outlines the roles and responsibilities of the parties in implementing the nonpoint source water quality provisions of the federal Clean Water Act for the State of Idaho.

State agencies may enter into interagency cooperative agreements under authority of Title 67, Chapter 23, of Idaho Code.

III. AUTHORITIES, ROLES, AND RESPONSIBILITIES

Idaho Department of Environmental Quality

The DEQ is delegated authority for control of water pollution under the Clean Water Act, the Idaho Environmental Protection and Health Act of 1972, Title 39, Chapter 1, Idaho Code, as amended; and the Water Quality Standards, IDAPA 58.01.02. Under the Antidegradation Policy established in 40 CFR 131.12 DEQ is the lead state agency for ensuring existing beneficial uses and the level of water quality necessary to protect those uses are maintained and protected. In addition, DEQ is the lead state agency for ensuring the quality of high quality waters is maintained and protected, unless lowering that quality is deemed appropriate according to state regulations. Implementation of antidegradation by DEQ is accomplished, in part, by holding Basin Advisory Group meetings, implementing a procedure for identifying impaired water bodies and designating Outstanding Resource Waters, and implementing a coordinated monitoring program (Title 39, Chapter 36, Idaho Code).

DEQ is the lead designated management agency in Idaho for implementation of Section 319 of the Clean Water Act. The Nonpoint Source Management Program document (1989) contains the implementation actions prepared by an interagency work group. DEQ administers (jointly with the Soil Conservation Commission) the Water Quality Standards and Antidegradation Policy.

DEQ addresses waste treatment aspects of mining through plan and specification review, and provides direct regulatory oversight for cyanide leaching facilities (Title 39, Chapter 1, Idaho Code). DEQ addresses forest practices through implementation of the Forest Practices Water Quality Management Plan (1988), the Water Quality Standards and the monitoring of Best Management Practices (BMP).

Pursuant to the Ground Water Quality Protection Act, DEQ is designated as the primary agency to coordinate and administer ground water quality protection programs for the State of Idaho (Title 39, Chapter 1, Idaho Code). DEQ is responsible for collecting ground water quality monitoring data for management of regional and local ground water quality. DEQ is the lead agency in implementing the Ground Water Quality Protection Plan and Ground Water Quality Rule (IDAPA 58.01.11, Ground Water Quality Rule). DEQ addresses ground water quality protection through reuse permits (IDAPA 58.01.17, Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater) and regulation of on-site sewage disposal systems (Title 39, Chapter 1, Idaho Code, and IDAPA 58.01.03, Individual/Subsurface Sewage Disposal Rules). DEQ is the designated lead agency for the Public Drinking Water Program (Title 37, Chapter 21 and Title 39, Chapter 1 and 18, Idaho Code, and IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems), the Underground Storage Tank Program (Title 39, Chapter 88, Idaho Code) and the Wellhead Protection Program. Agricultural ground water issues are addressed through the state's Nonpoint Source Section 319 Program and the agricultural groundwater protection program for Idaho in the Ground Water Quality Plan.

Idaho Department of Lands

The IDL has authority to administer the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), the Idaho Dredge and Placer Mining Protection Act, the Idaho Surface Mining Act (Title 47, Chapters 13 and 15, Idaho Code) and the Idaho Lake Protection Act (Title 58, Chapter 13, Idaho Code).

IDL has the responsibility to ensure compliance with Forest Practices BMPs on all lands in the state. On state forest lands, IDL has the responsibility to apply BMPs which will provide for protection of beneficial uses of water. On private lands, IDL has the responsibility to administer the Idaho Forest Practices Act Rules (IDAPA 20.02.01) and take enforcement action, when needed.

IDL provides other state agencies the opportunity to review and comment on mine applications, BMP design, and reclamation plans. Pre-operational site reviews and subsequent site inspections are often conducted in coordination with other state and federal agencies.

IDL has entered into separate MOU's with the Forest Service and BLM to coordinate the administration of their respective laws and regulations pertaining to mining operations on National Forest System and BLM lands.

United States Department of Agriculture, Forest Service

The Forest Service, under the Organic Act of 1897, as amended (16 U.S.C. 551), the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528), as amended, and the National Forest Management Act of 1976, as amended (16 U.S.C. 1600), is directed to regulate the occupancy and use of National Forest System lands.

The Clean Water Act, as amended, (33 U.S.C. 1323) directs the Forest Service to meet federal, state, interstate and local substantive as well as procedural requirements respecting control and abatement of pollution in the same manner, and to the same extent as any nongovernmental entity.

The Forest Service is responsible for the management of over 20.4 million acres of National Forest System lands in Idaho. These public lands form the headwaters of many of Idaho's river systems. The Forest Service has the statutory authority to regulate, permit and enforce land-use activities on National Forest System lands that affect water quality.

As the designated management agency the Forest Service is responsible for (1) implementing nonpoint source pollution controls, and (2) meeting Idaho Water Quality Standards, including designated beneficial uses. A primary tool used for mitigating nonpoint source pollution is through implementation of BMPs.

The basis of the Forest Service's nonpoint source pollution control policy stems from the Forest Service's nonpoint source strategy (Forest Service Manual 2532 and FSH 2509.22 R1/R4 Amendment, including Manual and policy updates). In implementing nonpoint source pollution controls the Forest Service will apply its nonpoint source strategy to all activities on National Forest System lands that may impair water quality. The Forest Service's nonpoint source strategy includes, among other things, integrated project planning that considers temporal and spatial distribution of impacts, identification of priority restoration needs, implementing restoration, implementing BMPs on all ground disturbing activities, monitoring, and adjusting BMPs or mitigating actions as needed to ensure that Idaho Water Quality Standards are met and designated beneficial uses of water are protected.

The Forest Service also coordinates water quality programs on National Forest System lands within its jurisdiction with the local, state and federal agencies, affected public lands users, adjoining land owners, and other affected interests.

Bureau of Land Management

The BLM, under the Taylor Grazing Act of 1934, as amended, [43 U.S.C. 315] authorizes livestock grazing on public land and provides for protection of those lands from erosion and soil deterioration.

The Federal Land Policy and Management Act of 1976, as amended, [43 U.S.C. 1701] requires that public lands be managed in a manner that will protect the quality of water resources, and that in developing or revising land use plans the Secretary shall provide for compliance with applicable pollution control laws, including state and federal air, water, and noise implementation plans.

Congress established The Public Rangelands Improvement Act of 1973 [43 U.S.C. 1901] which requires that public lands be managed to maintain and improve the condition of public rangelands so that they become as productive as reasonable for all rangeland values in accordance with management objectives.

The Federal Water Pollution Control Act of 1972, as amended, requires federal agencies to meet federal, state, interstate, and local substantive as well as procedural requirements respecting control and abatement of pollution. Idaho BLM Standards and Guides for Rangeland Health (August, 1997) establish the goal that surface and ground water on public lands comply with Idaho Water Quality Standards.

BLM is responsible for the administration, management and protection of 12 million acres of public land in Idaho. It has statutory authority to regulate, authorize, and enforce land use activities that affect water quality. BLM is the designated nonpoint source management agency on the lands under its management. BLM's goals are to maintain or improve surface and ground water quality consistent with state and federal water quality standards, minimize harmful consequences of activities that result in nonpoint source pollution, and inventory, monitor, and evaluate water quality data necessary for the proper management of public lands. BLM also coordinates all water quality programs with the local, state and federal agencies, affected public land users, adjoining land owners, and other affected interests.

IV. DEFINITIONS

Best Management Practice (BMP): means practices, techniques, or measures developed or identified by the designated agency and identified in the state water quality management plan, which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.(I.C. 39-3602. (3))

Designated Management Agency: An agency identified by a Water Quality Management Plan and designated by the Governor to implement specific control recommendations.

Federal Lands: For this MOU only, lands administered by the USDA, Forest Service, and USDI, Bureau of Land Management.

Federal Land Management Agencies: For this MOU only, the USDA, Forest Service, and USDI, Bureau of Land Management.

Nonpoint Source Pollution: Ground and surface water pollution that comes from varied and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

V. THEREFORE THE PARTIES MUTUALLY AGREE:

1. To implement the feedback loop concept as described in the Idaho Nonpoint Source Management Plan (1999) document. This concept is based on implementation of BMPs and use of a process to evaluate the effectiveness of BMPs in restoring and maintaining the beneficial uses of the waters of the state as designated in the Idaho Water Quality Standards.

2. To be consistent with the Idaho Nonpoint Source Management Plan (1999), as required by Section 319 of the Clean Water Act.
3. To jointly coordinate water quality monitoring plans and activities adjacent to and within federal lands boundaries using consistent scientific approaches, when applicable and appropriate.
4. To develop and encourage interagency participation in water quality training programs.
5. To develop and implement related documents to supplement this MOU on topics such as agriculture, forestry, and mining nonpoint source water quality control programs. The parties responsible for entering in to such documents will first be added as signatories through a written modification to this MOU, with joint or individual documents later negotiated and incorporated as appendices to this MOU.

VI. IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY AGREES:

1. To coordinate water quality management planning and implementation efforts with other state and federal agencies and keep all agencies updated on any changes to state standards, regulations or guidelines.
2. To invite other Idaho state and federal agency representation on policy or technical advisory committees that relate to water quality issues.
3. To review the federal agency's listing of proposed projects and activities subject to the requirements of the NEPA process, participate in those affecting water quality and provide timely review comments necessary for finalizing the NEPA documents.
4. If a drainage has a significant acreage of mixed ownership, DEQ shall take the lead in coordinating participation of various landowners, for purposes of developing the monitoring plan and implementing the field work.

VII. THE FEDERAL LAND MANAGEMENT AGENCIES AGREE:

1. That federal agencies will be subject to, and comply with, state requirements related to the abatement of surface water pollution in the same manner and to the same extent as any non-governmental entity.
2. To cooperate with DEQ to develop appropriate strategies needed to meet water quality standards and support all beneficial uses of 303(d) listed water bodies on federal lands. Options include but are not limited to Total Maximum Daily Load (TMDL) and Category 4b implementation plans.
3. As requested, to work with DEQ in setting priorities for watershed restoration strategies for 303(d) (33 U.S.C. 1313 (d)) listed water bodies.
4. To prioritize watershed restoration activities to reduce, eliminate, or prevent nonpoint source pollution.

5. As requested, to provide DEQ water quality/Best Management Practice monitoring plans, results of BMP effectiveness determinations and any other information necessary to meet the intent of Idaho's NPS Water Quality Management Program and Antidegradation Policy.
6. To ensure that all new and renewed plans, leases, contracts, special use authorizations, easements, right-of-way documents and other agreements involving permitted or contracted activity on federal lands, contain provisions for compliance with all water pollution control statutes and regulations (federal and state) under the authority of the Clean Water Act.
7. As requested, to provide DEQ a schedule of proposed land-disturbing activities during the forthcoming year.
8. To include DEQ at the appropriate time during NEPA scoping for projects with potential to impact water quality.
9. To incorporate a response to the eleven Federal Consistency questions posed in Chapter 7 of the 1999 Idaho Nonpoint Source Management Plan, into NEPA documents. The response will be used to assist DEQ in making a determination on whether the relevant operations of the federal agencies are being conducted in a manner consistent with the Idaho Nonpoint Source Management Program.

VIII. IT IS FURTHER AGREED:

1. The parties will coordinate water pollution control activities on federal, state and private lands in Idaho to protect, maintain and restore the beneficial uses, as defined in the Idaho Water Quality Standards, of the waters of the state.
2. That in cases of conflict between agency missions the parties to this MOU will provide an opportunity for informal conflict resolution prior to taking other actions provided by law.
3. That nothing in this MOU shall be construed as limiting or affecting in any way the legal authority of DEQ, IDL or the federal agencies in connection with the administration and protection of federal lands in accordance with federal laws and regulations.
4. That nothing in this MOU shall be construed as obligating the parties to this MOU to expend funds in any contract or other obligation for future payment of funds or services in any contract in excess of those available or authorized for expenditure.
5. That the parties will periodically review this MOU and appendix and make revisions and updates, as needed, to meet the purpose of the MOU. Amendments shall become effective following written approval of all parties.
6. That this MOU shall become effective upon signature of all parties and shall continue in force unless terminated by written consent of all the parties, for five years from the date of the last signatory, or by any party upon thirty days notice in writing to the other parties of the intention to terminate upon a date indicated.

7. That each provision of this MOU is subject to the applicable laws and rules of the State of Idaho, and the laws and regulations of the United States.
8. That nothing in this MOU shall be construed as creating a right of action between any of the parties, or for any other entity.
9. That any information furnished to the federal agencies under this instrument is subject to the Freedom of Information Act (5 U.S.C. § 552).
10. That the parties will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
11. The principal representatives to this MOU are:

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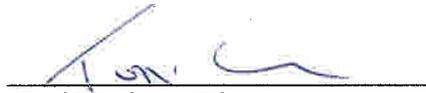
12. That this instrument is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
13. Nothing in this MOU shall obligate the State of Idaho, the Forest Service or BLM 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 parties 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.

That the Memorandum of Understanding of February, 1993 between the Forest Service and U.S. Environmental Protection Agency (EPA); Idaho Department of Environmental Quality (DEQ); Idaho Department of Lands (IDL); Idaho Department of Water Resources (IDWR); Idaho Soil Conservation Commission (SCC) ; Cooperative Extension Service, University of Idaho (CES); U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS); U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS); U.S. Department of Agriculture, Forest Service, Northern, Intermountain and Pacific Northwest Regions (Forest Service); U.S. Department of Interior, and the Bureau of Land Management (BLM) will remain in place as it applies to all parties except the Forest Service(Northern and Intermountain Regions only), BLM,DEQ, and IDL, mutually and exclusively. This document and its attached appendix will supersede any and all previous documents of this type as they would otherwise apply to the Forest Service, BLM, DEQ and IDL with respect to implementing the nonpoint source water quality program in the State of Idaho.

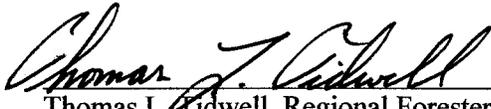
By signature below the cooperators certify that the individuals listed in this document as representatives are authorized to act in their respective areas for matters related to this instrument.



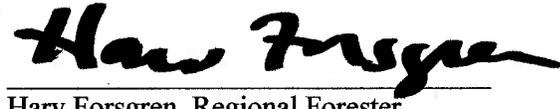
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Idaho Department of Lands



Toni Hardesty, Director
Department of Environmental Quality



Thomas L. Tidwell, Regional Forester
US Forest Service, Northern Region



Harv Forsgren, Regional Forester
US Forest Service, Intermountain Region



Tom Dyer, State Director
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THE AUTHORITY AND FORMAT OF THIS INSTRUMENT HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE  1/15/08 AGREEMENTS COORDINATOR, <i>RY</i> DATE

February 14, 2008
DATE OF EXECUTION

FORESTRY PRACTICES APPENDIX TO THE MEMORANDUM OF UNDERSTANDING IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM IN THE STATE OF IDAHO

I. PURPOSE

The purpose of this Appendix to the *Memorandum of Understanding Implementing the Nonpoint Source Water Quality Program in the State of Idaho* (MOU) is to facilitate coordination of water pollution control activities on federal, state, and private forest lands in Idaho to protect, maintain and restore the beneficial uses, as defined in the Idaho Water Quality Standards (IDAPA 58.01.02.010.06), of the waters of the state.

II. DEFINITION

Best Management Practice (BMP): means practices, techniques, or measures developed or identified by the designated agency and identified in the state water quality management plan, which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.(I.C. 39-3602. (2)

III. OBJECTIVES

The parties to this MOU and this Appendix agree to implement the:

- A. Water quality protection provisions of the *Rules Pertaining to the Idaho Forest Practices Act* (IFPA) (IDAPA 20.02.01) as the minimum standard for protection;
- B. Idaho Forest Practices Water Quality Management Plan, as revised and currently applicable (1988);
- C. Forestry sections of the Idaho Nonpoint Source Management Plan (1999), as currently applicable.

IV. AGREEMENTS

The parties agree as follows:

A. The DEQ agrees:

- 1. To coordinate water quality management planning and implementation efforts with the:

- a. IDL, where state and private forest lands administered or regulated by IDL are involved;
 - b. Forest Service, where National Forest System lands are involved; and
 - c. BLM, where public lands administered by the BLM are involved.
2. To coordinate and chair the statewide interagency Forest Practices Audit every fourth year and involve IDL, private forest land owners, and the federal agencies on the Forest Practices Audit Team.
 3. To request in writing, as needed, that IDL conduct a timely evaluation and potential modification of the relevant forest practice rule(s) should monitoring and surveillance, or other evidence, indicate a IFPA rule is not providing adequate protection of water quality to insure full protection of a beneficial use, as defined in the Idaho Water Quality Standards.

DEQ will, in any request for a rule modification, provide IDL:

- a. Reference to the rule modification request on a statewide, geographic or watershed basis.
 - b. Reference to the evidence DEQ has used to make its determination the rule is not fully protecting beneficial uses.
 - c. A recommendation of how the rule should be modified to ensure adequate protection of water quality is achieved, and full protection of beneficial uses is provided.
4. In the event that beneficial uses are not protected, or other provisions of the IFPA as it applies to water quality are not being met, DEQ may elect to pursue enforcement action in cooperation with the appropriate agencies.

B. The IDL agrees:

1. To comply with the water quality protection provisions of the IFPA as they apply to state and private forest lands.
2. To provide training to IDL staff, forest landowners and operators regarding potential impacts from forest practices to water quality, applicable state and federal law and state-of-the-art techniques used to prevent water quality degradation.
3. To conduct annual internal reviews of BMPs by examining a representative sample of timber related projects and preparing written BMP evaluation reports. Summaries of these reports will be provided to DEQ for inclusion in the annual Forest Practices Water Quality Management Plan Report.
4. To participate in the statewide Forest Practices Audit, in part, by providing necessary information for assisting the audit team in selecting timber sales to audit, and offering technical assistance in the audit planning process.
5. To notify the federal agencies of suspected non-compliance with the water quality protection provisions of the IFPA on federally administered lands.

6. To notify DEQ of all suspected incidents of beneficial use impairment that occur on state and private forest lands, and to coordinate enforcement or other efforts to address the impairments with the appropriate agencies.
7. To conduct an evaluation of any written request for a modification of an IFPA rule and respond in writing within thirty (30) days indicating what action will be taken. The IDL may deny the request by stating the reason(s) for the denial, refer the request to the Forest Practices Act Advisory Committee for a determination, or initiate rule making procedures in accordance with section 67-5203, Idaho Code.
8. To involve the Forest Practices Act Advisory Committee in all requests for a modification of an IFPA rule by soliciting their technical advice and recommendations. The director of IDL will consider all factors involved when making recommendations for modifications of an IFPA rule to the State Board of Land Commissioners.

C. The Federal Agencies agree:

1. As the Designated Management Agencies for National Forest System and BLM lands in Idaho, to ensure all new and renewed authorizations for use of National Forest System and BLM lands contain water quality protection that, at a minimum, meets provisions of the IFPA rules and the forestry portions of the Idaho Nonpoint Source Management Plan, as currently applicable.
2. To conduct interim internal reviews of best management practices (BMPs) by annually examining a representative sample (target 10%) of timber related projects on lands they administer and prepare written BMP evaluation reports. Summaries of these reports will be provided to IDL and DEQ, for inclusion in the annual Forest Practices Water Quality Management Plan Report.
3. To participate in the statewide Forest Practices Audit, in part, by providing necessary information for selecting timber sales to be audited, and to provide technical expertise in the planning of the audit.
4. To notify DEQ of all suspected incidents of beneficial use impairment that occur on National Forest System lands and public lands administered by the BLM in Idaho.
5. To notify IDL and DEQ of all suspected non-compliance with the water quality protection provisions of the IFPA rules on federally administered lands.
6. To provide technical support to IDL in the administration and implementation of the water quality protection provisions of the IFPA rules on federally administered lands.

D. It is mutually agreed:

1. The parties will provide copies of reports on water quality, BMP monitoring and other water quality protection activities as these documents are developed, and as applicable.

2. The parties will make every attempt to coordinate training and provide technical support regarding interpretation and implementation of the water quality protection rules of the IFPA.
3. That, with respect to these parties only, the MOU and this Appendix supersedes, rescinds and replaces that Memorandum of Understanding and its related appendix entered into between these parties on, or about, February, 1993.