FS Agreement No. 08-MU-11020000-013
Cooperator Tax ID No.
Cooperator Agreement No.
1/8/08

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

THIS MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the State of Colorado by and through the Colorado Department of Natural Resources, 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 a rule governing the management of inventoried roadless areas located within the National Forests in Colorado.

On April 11, 2007, the Governor of the State of Colorado submitted a petition under the authority and 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 Colorado. On August 24, 2007, the Secretary of Agriculture directed the Forest Service to initiate rulemaking for roadless management direction for the National Forests in Colorado 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 Colorado 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 Colorado-specific rulemaking process will include publishing a proposed rule for public review and comment and preparing and publishing an environmental impact statement.

B. AUTHORITY:

Work under 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 is authorized to enter into this agreement pursuant to Colorado Revised Statutes (C.R.S.) specifically sections 23-31-101 to 23-31-804, C.R.S. (Colorado State Forest Service), 33-1-101 to 33-6-209, C.R.S. (Colorado Division of Wildlife), 33-10-101 to 33-33-113, C.R.S. (Colorado Division of Parks and Outdoor Recreation) and Colorado Constitution Article IX, Sections 9 and 10, sections 36-1-100.3 to 36-7-304 C.R.S. (Colorado State Board of Land Commissioners)

C. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service administers National Forest System (NFS) lands so they are utilized in the combination that best meets the needs of the American people. Forest Service land management supports recreation, water, timber, minerals, fish, wildlife, wilderness, and aesthetic values for current and future generations.

The State of Colorado represents its citizens in matters affecting them including the management and use of natural resources and the conservation of state and federal lands within its borders. Additionally, state agencies possess 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.

The Forest Service and the State of Colorado are committed to conserving and managing inventoried roadless areas and consider these areas an important component of the NFS. The Forest Service and the State of Colorado believe that the most viable path for lasting conservation of these areas must properly integrate local, State, and national perspectives on roadless area management.

Using the description contained in Governor Bill Ritter, Jr.'s Colorado Inventoried Roadless Areas 2007 Petition and dated April 11, 2007 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 Colorado prior to the development of specific regulatory language.

D. BOTH PARTIES SHALL:

1. Develop and agree upon an inventoried roadless area database subject to specific regulatory language.
2. Identify State and Forest Service involvement in NEPA Interdisciplinary (ID) teams and other working groups as needed during this rulemaking process.
3. 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 Colorado.
4. Jointly develop significant action steps, milestones, and time frames associated with this rulemaking effort.
5. Consider the recommendations of the Roadless Area Conservation National Advisory Committee in the development of the regulatory language.
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 rulemaking.

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. Take the lead in developing a civil rights impact analysis and benefit-cost analysis if the rule is determined by the Office of Management and Budget ("OMB") to be "significant" per Executive Order 12866.
4. Recognize the State of Colorado as a Cooperating Agency for preparation of analysis and documentation required by NEPA associated with this rulemaking.
5. Continue managing lands consistent with the instructions identified in Under Secretary Mark Rey's letter of April 27, 2007 regarding the State's request for "interim protection". See Attachment A.

F. THE STATE SHALL:

1. Cooperate with the Forest Service to develop specific regulatory language that would implement Colorado's preferred management direction for the inventoried roadless areas within the National Forests in Colorado.
2. Perform the duties and obligations of a cooperating agency (40 CFR 1501.6-7) in the preparation of the NEPA documentation associated with developing a rule for the inventoried roadless areas within the State of Colorado.
3. Assign the Colorado Department of Natural Resources (DNR) to coordinate and direct the State's participation as "Cooperating Agency" for this rulemaking effort.

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 Colorado inventoried roadless area management rule in accord with Under Secretary Mark Rey's letter of April 27, 2007. See Attachment A.

2. FREEDOM OF INFORMATION ACT (FOIA) AND COLORADO OPEN RECORDS ACT. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. §552). Any information furnished to the State under this instrument is subject to the Colorado Public (Open) Records Act, as applicable (sections 24-72-101 to 502, C.R.S.).

3. FEDERAL ADVISORY COMMITTEE ACT (FACA). In order to meet the intergovernmental committee exception to FACA, all participants of any NEPA Interdisciplinary 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. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

5. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and State and shall remain in effect until a state-specific inventoried roadless area management rule is approved by the Secretary of Agriculture, or the Secretary's designee, but not longer than 5 years from the date of the last signature. This MOU may be 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.

6. IMPLEMENTATION. 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.

7. 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.

8. 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. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

9. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact
Kathy Kurtz – CO Roadless Project Leader
Forest Service, Rocky Mountain Region
740 Simms Street
Golden, CO 80401
Phone: 303/275-5083
Fax: 303/275-5134
Email: kkurtz@fs.fed.us

State Project Contact
Paul Orbuch – Assistant Director
Department of Natural Resources
1313 Sherman St, Rm. 718
Denver, CO 80203
Phone: 303/866-3337
Fax: 303/866-2115
Email: Paul.Orbuch@state.co.us

Forest Service Grants and Agreement Contact
Dana Mees – Rocky Mountain Region Grants and Agreements Specialist
Forest Service, Rocky Mountain Region
740 Simms Street
Golden, CO 80401
Phone: 303/275-5273
Fax: 303/275-5396
Email: dmees@fs.fed.us

10. 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.

11. 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.

12. 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 Colorado, 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.

13. AUTHORIZED REPRESENTATIVES. By signature below, the State certifies that the individuals listed in this document as representatives of the State are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this instrument.

STATE OF COLORADO:

M.K. Deputy Director for 1/7/08

Executive Director, Department of Natural Resources
Harris Sherman

Date

USDA FOREST SERVICE:

Rick D. Cables 1-10-08

Regional Forester, Rocky Mountain Region
Rick Cables

Date

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

LuAnn Waida 1/8/08

LuAnn Waida
Rocky Mountain Region Grants & Agreements Specialist

Date

T Monahan 1/7/08

Timothy Monahan
Assistant Attorney General – State of Colorado

Date

Attachment A

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USDA

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

APR 27 2007

Honorable Governor Bill Ritter, Jr.
136 State Capitol Building
Denver, CO 80203

Dear Governor Ritter:

Thank you for your April 11, 2007 letter expressing your desire to proceed with rulemaking to improve the management of Inventoried Roadless Areas (IRAs) on National Forest System lands within the State of Colorado. Let me assure you that USDA and the Forest Service are committed to working closely with you to insure an outcome that is mutually beneficial for the Forest Service, Colorado and the long term health of the land.

In your letter, you request clarifications and assurances regarding limitations on activities during the rulemaking and the State's ability to withdraw its petition. We can meet your needs on both counts.

As noted in your letter, the Forest Service is currently subject to the terms of the California court's injunction and order reinstating the 2001 Roadless Rule. The Forest Service must and has committed to comply with the court's orders. For the foreseeable future, all activities within inventoried roadless areas must conform to the prohibitions set out in the 2001 Rule or be within the exceptions set out within the rule itself. Therefore, the assurance you seek is already in place. Also, I will direct the Forest Service to institute a practice to notify the State of any new activities that would occur within inventoried roadless areas (consistent with the restrictions of the 2001 rule) during the review of your petition and any subsequent rulemaking. Notifications to the State will promote close coordination and assure that no surprises occur. Should the 2001 Rule be modified or overturned during the pendency of the Colorado rulemaking, the FS will execute an memorandum of agreement with the state to continue such notification, and to assure, consistent with any subsequent court order, that no activity inconsistent with the 2001 Rule will be authorized without the state's endorsement during the time necessary to promulgate the Colorado rule.

Similarly, there is no question that the State may withdraw its petition at any time. USDA is committed to working with the States in a collaborative fashion and has no interest in pursuing a petitioned rule if the State loses confidence in the outcome. Every day the Forest Service, States and other partners demonstrate their ability to work together, refine and evolve proposals, and learn from the public. This flexibility is at the heart of developing the kind of refined and informed management direction needed to guide management of inventoried roadless areas. No

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law compels USDA to promulgate roadless rules. Such rules are promulgated solely at the discretion of the Secretary in an effort to meet public needs. We look forward to working with you on the Colorado petition, as modified by your April 11, 2007 letter. Our collaboration with the State will also involve granting full cooperating agency status to the State in the preparation of the Environmental Impact Statement associated with the rulemaking.

With or without a rule, the Secretary and the Forest Service will continue to fulfill their statutory duty to assure that National Forest System lands are managed to best meet the needs of the American people. The citizens of Colorado, and the nation, deserve nothing less.

I appreciate your decision to proceed to move forward and submit your petition. I look forward to working closely with you.

Sincerely,

MARK REY
Under Secretary
Natural Resources and Environment