

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF IDAHO  
AND  
USDA, FOREST SERVICE  
NATIONAL FORESTS IN IDAHO  
NORTHERN AND INTERMOUNTAIN REGIONS

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 USDA, Forest Service, Northern and Intermountain Regions (hereinafter the "U.S. Forest Service").

**A. PURPOSE:**

This Memorandum of Understanding ("MOU") has been established by the undersigned parties to provide an agreement to cooperate on activities subject to the Idaho Roadless Rule, 36 CFR 294, Subpart C.

In accordance with the Council on Environmental Quality ("CEQ") regulations (40 C.F.R. §§ 1501.6, 1508.5), the State of Idaho will be established as a cooperating agency in the preparation of analysis and documentation required by the National Environmental Policy Act ("NEPA") associated with specific projects and plans undertaken in Idaho Roadless Areas affected by the Idaho Roadless Rule. The State will be responsible for identifying which projects and plans it seeks cooperating agency status. The U.S. Forest Service will be responsible for notifying the State of all proposed projects and plans in Idaho Roadless Areas.

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 Implementation Commission (Executive Order 2014-5), attached to and incorporated herein by reference as Appendix A, or by other means established by the State after public notification.

For the purpose of this MOU, the applicable "Idaho Roadless Areas" are those lands in Idaho that are described and defined in the Roadless Area Conservation, National Forest System Lands in Idaho Final Environmental Impact Statement (FEIS), August 2008, and 36 CFR Part 294 Subpart C, Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho; Final Rule, October 16, 2008.

Upon execution, this agreement replaces 09-MU-11015600-025 that expired December 31, 2014.

**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 mission of the U.S. Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. U.S. Forest Service land management supports recreation, water, timber, minerals, fish, wildlife, livestock, 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 have been designated Idaho Roadless Areas by the Idaho Roadless Rule of 2008.

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 U.S. 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.

**D. BOTH PARTIES SHALL:**

1. Establish a State-Forest Service process to coordinate the various aspects of implementation of this MOU, including identifying State and U.S. Forest Service involvement in NEPA Interdisciplinary teams and other working groups as needed during project specific analysis.
2. Cooperate in developing a mutual understanding of the requirements of the Idaho Roadless Rule.
3. Jointly develop work plans that sets out required action steps, milestones, and time frames associated with all aspects of implementing the Idaho Roadless Rule.
4. Coordinate the involvement of the Governor's Roadless Rule Implementation Commission or other established method with the proposed projects in progress within the State of Idaho.
5. Coordinate the involvement of the Governor's Roadless Rule Implementation Commission or other established method with land management planning efforts in progress within the State of Idaho as they relate to Idaho Roadless Areas.
6. Consider the recommendations of the Roadless Area Conservation National Advisory Committee during the implementation of the Idaho Roadless Rule.
7. Review and assess the appropriate level of environmental analyses required by NEPA associated with project specific analysis for projects covered under the Idaho Roadless Rule.
8. 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 projects covered under the Idaho Roadless Rule.

9. Develop a mutually agreeable process for advising the U.S. Forest Service on proposed corrections and modifications to Idaho Roadless Areas subject to limitations and process requirements of the Idaho Roadless Rule.
10. Develop a process for considering updating the inventory of roadless areas subject to specific requirements of the Idaho Roadless Rule during subsequent rounds of land management planning.

**E. THE U.S. FOREST SERVICE SHALL:**

1. Take the lead in training employees in the application of the Idaho Roadless Rule, including its requirements, obligations and consultation requirements.
2. Coordinate the logistics of review of proposed actions within Idaho Roadless Areas by the Governor's Roadless Rule Implementation Commission and/or the state.
3. Recognize the State of Idaho, and the Governor's Roadless Rule Implementation Commission or other designated group or agency, as a Cooperating Agency for activities undertaken pursuant to the Idaho Roadless Rule.

**F. THE STATE SHALL:**

1. Establish and convene the Governor's Roadless Rule Implementation Commission or other established group/agency on a timely basis to review and evaluate proposed projects in Idaho Roadless Areas.
2. Perform the duties and obligations of a cooperating agency in the preparation of the NEPA documentation associated with proposed project actions and plans in Idaho Roadless areas should the state elect to seek cooperating agency status.
3. Cooperate with the U.S. Forest Service in evaluating and reviewing proposed project activities within Idaho Roadless Areas.
4. On behalf of the Governor, have the Roadless Rule Implementation Commission or other established or authorized group or agency, coordinate and direct the State's participation as "Cooperating Agency" for the environmental analysis associated with the Idaho Roadless Rule.

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

1. APPROVAL. The Responsible Official as identified in the Idaho Roadless Rule shall make the final decision for any proposed projects on the National Forests affected by the Idaho Roadless Rule.
2. 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).
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 U.S. Forest Service or the State from participating in similar activities with other public or private agencies, organizations, Tribes, and individuals.
6. IMPLEMENTATION AND MONITORING. The U.S. Forest Service and the State agree that there may be benefits to continuing the relationship represented by this MOU.
7. DISPUTES. Disputes between the U.S. Forest Service and the State concerning any aspect of this agreement and associated environmental analysis will be resolved through good faith efforts between the parties to the MOU.
8. RESPONSIBILITIES OF THE PARTIES. The U.S. 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.
9. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

**Forest Service Project Contact**

Anne Davy  
Idaho Roadless Coordinator  
U.S. Forest Service Northern Region  
P.O. Box 7669  
Missoula, MT 59807  
Phone: 406-329-3314  
Fax: 406-329-3411  
Email: adavy@fs.fed.us

**Cooperator Project Contact**

Sam Eaton  
Governor's Office of Species Conservation  
304 N. 8<sup>th</sup> St., Ste. 149  
Boise, ID 83720-0195  
Phone: 208-332-1552  
Email: sam.eaton@osc.idaho.gov

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10. 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 U.S. 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 laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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, Secretary of Interior, Environmental Protection Agency, and the Council on Environmental Quality.

16. 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:

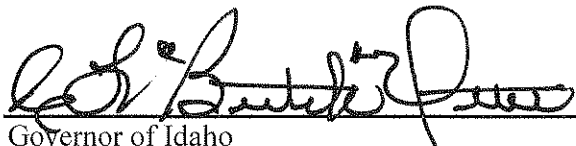
To the U.S. Forest Service Program Manager, at the address specified in the MOU.

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.

17. 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 does not by direct reference or implication convey the State's endorsement of the U.S. Forest Service products or activities.
18. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
19. MODIFICATION. 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.
20. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU is executed as of the date of the last signature and is effective through December 31, 2019 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
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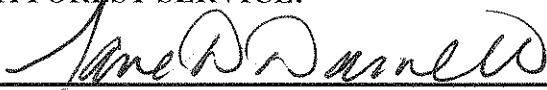
21. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

**STATE OF IDAHO:**


Governor of Idaho  
C.L. "BUTCH" OTTER

9/25/15  
Date

**USDA FOREST SERVICE:**


for   
DAVID E. SCHMID, Acting Regional Forester  
Northern Region, U.S. Forest Service

3/5/2015  
Date

NORA B. RASURE, Regional Forester  
Intermountain Region, U.S. Forest Service

Date

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

 2/3/2015  
TERESA L. JOHNSON Date  
Northern Region Grants Management Specialist





21. 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.

**STATE OF IDAHO:**

Governor of Idaho  
C.L. "BUTCH" OTTER

Date

**USDA FOREST SERVICE:**

DAVID E. SCHMID, Acting Regional Forester  
Northern Region, U.S. Forest Service

Date

*Nora Christensen*

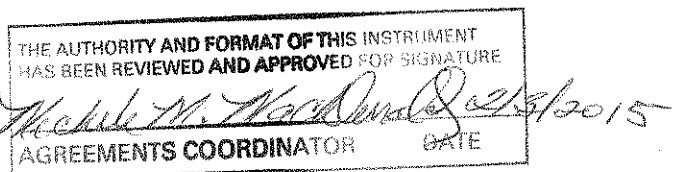
2-6-2015

for NORA B. RASURE, Regional Forester  
Intermountain Region, U.S. Forest Service

Date

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

*Teresa L. Johnson* 2/3/2015  
TERESA L. JOHNSON Date  
Northern Region Grants Management Specialist







*The Office of the Governor*

**EXECUTIVE ORDER NO. 2014-5**

**GOVERNOR'S ROADLESS RULE IMPLEMENTATION COMMISSION**

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*WHEREAS, Idaho's 250 inventoried roadless areas comprise approximately 9.3 million acres in 12 national forests across Idaho; and*

*WHEREAS, Idaho has more inventoried roadless acres than any other state in the coterminous forty-eight; and*

*WHEREAS, Idaho's inventoried roadless areas provide pristine habitat for protected species and a significant benefit to Idaho's economy; and*

*WHEREAS, Idaho roadless areas provide excellent recreational opportunities for hunters, fishermen and outdoor enthusiasts, as well as a significant source for drinking and irrigation water throughout the Northwest; and*

*WHEREAS, Idaho counties, communities and interested parties provided input during the drafting of management recommendations for inventoried roadless areas in Idaho; and*

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho do hereby order:

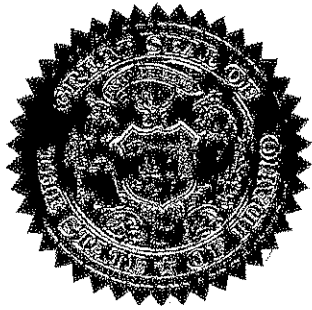
1. The creation of the Governor's Roadless Rule Implementation Commission (Commission).
2. The members of the Commission shall be appointed by and serve at the pleasure of the Governor.
  - i. The Commission shall be composed of 15 members, representing the various geographic areas of the State.
  - ii. Commission members shall be appointed from the following three categories:
    1. Five individuals who:
      - a. Participated as a member of the Roadless Area Conservation National Advisory Committee (RACNAC); or
      - b. Represent developed outdoor recreation, off highway vehicle users, or commercial recreation activities; or
      - c. Represent energy or mineral development interests; or
      - d. Represent the commercial timber industry; or
      - e. Hold federal a grazing permit or other federal land use permits.
    2. Five individuals representing:
      - a. A nationally, regionally or locally recognized environmental organization; or
      - b. Dispersed recreational activities; or
      - c. Archaeological and historical interest; or
      - d. Nationally or regionally recognized wildlife or sportsmen's interest groups.
    3. Five individuals who:
      - a. Hold State elected office or their designee; or



- b. Hold county or local elected office; or
- c. Represent an American Indian Tribe within the State of Idaho; or
- d. Represent the public at large.

iii. The Chair and Vice Chair of the Commission shall be selected by a majority vote of the members. The chair and vice chair shall serve at the pleasure of the Governor. Vacancies in the chair or vice chair shall be filled by a majority vote of the commission at the next meeting.

3. The Commission shall, in partnership with the U.S. Forest Service, Department of Agriculture and Tribes of Idaho ensure the implementation of the Inventoried Roadless Area Rule for Idaho.



*Ben Ysursa*  
BEN YSURSA  
SECRETARY OF STATE

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 8<sup>th</sup> day of May in the year of our Lord two thousand and twelve and of the Independence of the United States of America the two hundred thirty-sixth and of the Statehood of Idaho the one hundred twenty-second.

*C.L. "Butch" Otter*  
C.L. "BUTCH" OTTER  
GOVERNOR

