

FS Agreement No. 14-MU-11020000-053
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF COLORADO
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
(CDPHE)
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of Colorado, Department of Public Health and Environment, hereinafter referred to as "CDPHE," and the USDA, Forest Service, Rocky Mountain Region, hereinafter referred to as the "U.S. Forest Service."

Background: This MOU is an update to a similar previous MOU agreement between the parties that was established in September 2009. The MOU was been a very effective document that facilitated more efficient and effective communication and collaboration between the agencies. This MOU also provides a structure for Public Water System's Source Water Protection Plans to be considered, when protecting water quality on USFS lands.

Title: Management of water quality in State of Colorado defined Source Water Assessment Areas on National Forest System lands in Colorado

I. PURPOSE: The purpose of this MOU is to establish a framework for CDPHE and the U.S. Forest Service to work together in a cooperative manner on issues regarding the management and protection of water quality in state defined Source Water Assessment Areas on National Forest System (NFS) lands in Colorado.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

In the Organic Administration Act of 1897, a principal purpose for establishment of the Forest Reserves (predecessor to the National Forest System) was to "secure favorable conditions of water flows". The U.S. Forest Service administers over 14.5 million acres of NFS lands in Colorado, and nearly 90 percent of these lands lie in watersheds that contribute to public water supplies. Management of these lands is key to providing high quality water for domestic uses.

CDPHE, local governments, public water systems, and community stakeholders have responsibilities for ensuring protection of public water supplies. The 1996 Amendments to the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f *et seq.*, directed that each state develop a Source Water Assessment and Protection ("SWAP") Program. CDPHE's SWAP program encourages community-based



protection and preventative management strategies to ensure that all public drinking water sources are kept safe from future contamination.

In the SWAP program assessment, CDPHE delineated source water areas for each public water supply system in Colorado. NFS lands are located in 70 percent of the delineated surface water source assessment areas and 49 percent of the delineated groundwater source water assessment areas in the state. Forested land is identified in the source water assessments as a potential source of nonpoint source pollution to public water supplies.

CDPHE encourages public water systems to work with local governments and stakeholder groups to develop Source Water Area Protection Plans. These Protection Plans identify comprehensive management strategies and actions to protect the public water supply by minimizing the potential risks.

Management of NFS watershed that supply municipal water is guided by Federal regulations found at 36 C.F.R. § 251.9 for special uses and 36 C.F.R. § 219 for forest planning (the C.F.R. can be accessed at <http://www.gpoaccess.gov/cfr/index.html>). Municipal watersheds are to be managed under multiple use prescriptions as specified in the Land Management Plan. The need to protect public water supplies is to be recognized when developing prescriptions for multiple-use outputs. Protective actions or restrictions of use which are not specified in the Land Management Plan but are desired by a public water system can be considered by the U.S. Forest Service in written agreements and/or special use authorizations.

Protecting public water supply source areas on NFS lands required coordination and cooperation between CDPHE, U.S. Forest Service, and public water suppliers. There are numerous federal and state laws and local regulations pertaining to the management of land and water resources. Collaborative efforts consistent with those laws and regulations will promote the most effective management of water quality for public water supply uses and will enhance benefits to the public and the water resource. It is in the public interest to find reasonable solutions to challenging natural resource issues under cooperative agreements.

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

III. CDPHE SHALL:

A. Management of municipal supply watersheds/source water assessment areas

- Recognize that municipal supply watersheds on NFS lands are managed for multiple use outputs including drinking water per regulations at 36 C.F.R. 251.9 and 36 C.F.R. 219.

B. Data and information sharing

- Provide the U.S. Forest Service with updated (GIS) spatial data and information on delineated source water areas on NFS lands in Colorado.



all of which CDPHE considers as confidential state data pursuant to the Colorado Open Records Act § 24-72-204((2)(a)(VIII)).

- Request that the U.S. Forest Service permanently delete all record of this information from its databases and return the databases and all copies of privileged material provided by CDPHE in the U.S. Forest Service's possession in the event that the U.S. Forest Service terminates the data sharing agreement.
- C. Raising awareness of U.S. Forest Service policy and management direction for municipal water supply watersheds among public water providers
- Include information about U.S. Forest Service policy and management direction for municipal supply watersheds/source water areas and nonpoint source pollution control in the SWAP outreach materials for protection planning efforts to be distributed to public water system providers.
- D. Raising awareness of CDPHE's swap program and local protection planning efforts among local U.S. Forest Service offices
- Provide updated information about the SWAP program to the U.S. Forest Service.
 - Invite the U.S. Forest Service to participate in Citizen Advisory Groups pertaining to the SWAP program.
- E. Importance of local planning in source water protection
- Encourage public water systems suppliers to include the U.S. Forest Service in their local SWAP planning efforts where NFS lands are involved.
- F. Municipal watershed ordinance
- G. Natural disturbances
- Work with the U.S. Forest Service to identify priority areas for fuels treatments and treatment approaches to protect municipal water supplies using methodology developed by the Front Range Watershed Protection and Data Refinement Group (available at <http://www.colorado.gov/es/Satellite/CDPHE-WO/CBON1251596793639>) or other agreed upon approach.
- H. Raising awareness of the importance of spill response in municipal water supply watersheds



IV. THE U.S. FOREST SERVICE SHALL:

A. Management of municipal supply watersheds/source water assessment areas

- Recognize a CDPHE-delineated Source Water Area as a "Municipal Supply Watershed" per the definition in Forest Service Manual (FSM) 2542 (<http://www.fs.fed.us/im/directives/>).
- Provide direction and desired conditions for municipal supply watersheds/source water areas in Revised Land Management Plans to protect water quality while allowing for multiple use outputs (per 36 C.F.R. 251.9, 36 C.F.R. 219 and FSM 2542).
- Include appropriate Best Management Practice (BMP) prescriptions and other mitigation measures in U.S. Forest Service authorized projects and activities in municipal supply watersheds/source water assessment areas to protect water quality for public water supply uses.

B. Data and information sharing

- Refer all requests for source water area database information to CDPHE.
- Permanently delete all record of this information from its databases and return the databases and all copies of privileged material provided by CDPHE in the U.S. Forest Service's possession in the event that the U.S. Forest Service terminates the data sharing agreement.

C. Raising awareness of U.S. Forest Service policy and management direction for municipal water supply watersheds among public water providers

- Provide information about U.S. Forest Service policy and management direction for municipal supply watersheds/source water areas and nonpoint source pollution control (e.g., National BMP Program <http://www.fs.fed.us/biology/watershed/BMP.html>), Watershed Conservation Practices Forest Service Handbook (FSH) 2509.25 <http://www.fs.fed.us/im/directives/>) to CDPHE.

D. Raising awareness of CDPHE's swap program and local protection planning efforts among local U.S. Forest Service offices

- Distribute information on CDPHE's SWAP program to field units.



E. Importance of local planning in source water protection

- Participate in local SWAP planning efforts.
- Provide public water system suppliers the opportunity to review and comment on projects or activities planned for the corresponding municipal supply watershed/source water assessment area through established NEPA public involvement procedures.

F. Municipal watershed ordinance

- Recognize municipal watershed ordinances or regulations to the extent that they control or abate water pollution but will resist attempts to deny, restrict, or otherwise control management activities or land use on NFS lands.

G. Natural disturbances

- Work with CDPHE to identify priority areas for fuels treatments and treatment approaches to protect municipal water supplies using methodology developed by the Front Range Watershed Protection and Data Refinement Group (available at <http://www.colorado.gov/es/Satellite/CDPHE-WO-CBON-1251596793639>) or other agreed upon approach.
- Use the Burned Area Emergency Response (BAER) Program to mitigate post-fire effects in Source Water Areas where applicable per FSM 2523 and FSH 2509.13 (<http://www.fs.fed.us/im/directives/>).

H. Raising awareness of the importance of spill response in municipal water supply watersheds

- Provide Emergency Response Awareness training to all employees who are likely to discover a hazardous materials release on NFS lands (FSH 6709.11) that will: 1) address hazardous material releases by third parties on NFS lands and lands leased by the U.S. Forest Service and 2) include information about required spill notification procedures
 - Spill hotline number is: 1-877-518-5608
- Communicate the importance of spill reporting to special use administrators in the field units periodically to maintain awareness of this issue.



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

- A. Management of municipal supply watersheds/source water assessment areas
- Management, protection, and use of NFS lands can play an increasingly important, and where consistent with laws and regulations, expanded role in assuring sustainable supplies of high quality water to meet the needs of both ecosystems and growing populations in the face of climate change.
- B. Data and information sharing
- C. Raising awareness of U.S. Forest Service policy and management direction for municipal water supply watersheds for among public water providers
- D. Raising awareness of CDPHE's swap program and local protection planning efforts among local U.S. Forest Service offices
- E. Importance of local planning in source water protection
- Any management strategies or actions that the U.S. Forest Service agrees to in a protection plan will be implemented through Land Management Plan direction, a MOU with the public water system supplier, a Special Use Authorization, or a project specific National Environmental Policy Act (NEPA) decision, as appropriate.
- F. Municipal watershed ordinance
- Municipalities have authority under State law (C.R.S. § 31-15-707(1)(b)) to enact a watershed ordinance or other regulations to protect their water-supply watersheds.
- G. Natural disturbances
- Natural disturbances, such as severe wildfires, can have significant impacts on forested ecosystems that are critical to maintaining sustainable supplies of clean water and that climate change makes it even more important to manage forests in a manner that maintains watershed resiliency to provide for favorable conditions of water flows.
- H. Raising awareness of the importance of spill response in municipal water supply watersheds
- CDPHE and the U.S. Forest Service will coordinate and collaborate to minimize any potential impacts from spills and releases after they are reported.



I. 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: John Duggan Source Water Assessment & Protection Program Coordinator Colorado Dept. Public Health and Environment Water Quality Control Division Address: 4300 Cherry Creek Drive South City, State, Zip: Denver, CO 80246- 1530 Telephone: (303) 692-3534 FAX: (303) 782-0390 Email: john.duggan@state.co.us	Name: Ron Falco, Acting Director, Water Quality Control Division, Colorado Dept. Public Health and Environment Water Quality Control Division Address: 4300 Cherry Creek Drive South City, State, Zip: Denver, CO 80246- 1530 Telephone: (303) 692-3509 FAX: (303) 782-0390 Email: steve.gunderson@state.co.us

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Joan Carlson Hydrologist U.S. Forest Service Rocky Mountain Region Regional Office Address: 740 Simms Street City, State, Zip: Golden, CO 80401- 4720 Telephone: (303) 275-5097 FAX: Email: jycarlson@fs.fed.us	Name: Dana Mees Grants and Agreements Specialist U.S. Forest Service Rocky Mountain Region Regional Office Address: 740 Simms Street City, State, Zip: Golden, CO 80401- 4720 Telephone: 303-275-5273 FAX: 303-275-5390 Email: dmees@fs.fed.us

J. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this agreement.

K. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or CDPHE 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 CDPHE, at CDPHE'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.

- L. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or CDPHE from participating in similar activities with other public or private agencies, organizations, and individuals.
- M. ENDORSEMENT. Any of CDPHE's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of CDPHE's products or activities.
- N. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at 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.

- O. USE OF U.S. FOREST SERVICE INSIGNIA. In order for CDPHE 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.

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

- U. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- V. DEBARMENT AND SUSPENSION. CDPHE 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 CDPHE 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.
- W. 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.
- X. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through June 30, 2019 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- Y. 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.

7/9/14

RON FALCO, Acting Director
CDPHE, Water Quality Control Division

Date

7/15/14

DR. LARRY WOLK, Executive Director
Colorado Dept. Public Health and Environment

Date

for *Daniel J. Jiron* 6/24/13
DANIEL J. JIRON, Regional Forester
U.S. Forest Service, Rocky Mountain Region Date

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

Cristie B. Lee 6-16-14
CRISTIE B. LEE Date
U.S. Forest Service Grants & Agreements Specialist

Burden Statement

According to the Paperwork Reduction Act of 1996, 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.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-3410 or call toll free (866) 632-6992 (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.