

FS Agreement No. 23-MU-11031600-095Cooperator Agreement No. 23-667-2090-27688

**MEMORANDUM OF UNDERSTANDING**  
**Between The**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**  
**And The**  
**USDA, FOREST SERVICE**  
**SOUTHWESTERN REGION**

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the New Mexico Environment Department hereinafter referred to as “Environment Department,” and the United States Department of Agriculture (USDA), Forest Service, Southwestern Region, hereinafter referred to as the “Forest Service.”

Background: The New Mexico Water Quality Protection Agreement is a decades-old MOU between the Environment Department and U.S. Forest Service that was last signed in June 2017. The Environment Department is responsible for overseeing water infrastructure systems and water quality issues throughout New Mexico. The Environment Department closely coordinates with U.S. Forest Service on many programs that focus on protecting the quality of New Mexico's waters and assuring safe and effective infrastructure for delivering clean water to communities throughout the state, which is documented in this MOU.

Title: Water Quality Protection in New Mexico

**I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to have a common objective of improving and protecting the quality of New Mexico's waters by implementing progressive watershed-based restoration protection programs to meet applicable water quality standards in accordance with the following provisions.

**II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

Whereas:

The New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to -17, creates the New Mexico Water Quality Control Commission (Commission) and identifies the Commission as the State water pollution control agency for all purposes of the Clean Water Act in New Mexico;

The Commission has designated the Environment Department as the State's lead agency to implement Sections 208 and 319 of the Clean Water Act;



The Commission has authorized the Environment Department to enter into agreements with federal agencies for the purpose of water quality management, while retaining enforcement authority to ensure compliance with 20.6.4 NMAC;

The Forest Service is authorized and directed by acts of Congress, including but not limited to the Organic Act of June 4, 1897, as amended (16 U.S.C. § 551) and the Multiple-Use Sustained Yield Act of June 12, 1960 (16 U.S.C. §§ 528-31), and by regulations issued by the Secretary of Agriculture to administer and protect the lands and resources of National Forest System (NFS) lands and to cooperate with other agencies;

The Forest Service, under Section 313 of the Clean Water Act, 33 U.S.C. §1323, is directed to meet federal, state, interstate, and local substantive and procedural requirements respecting control and abatement of water pollution in the same manner and to the same extent as a non-governmental entity; and

The Commission has designated the Forest Service as the management agency for implementation of the New Mexico Nonpoint Source Management Program on NFS lands.

Therefore, it is mutually advantageous, and in the public interest, for the parties to coordinate their efforts to:

- A. Respond to the water quality objectives defined by Congress in the federal Water Pollution Control Act (Clean Water Act), as amended. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters;
- B. Fulfill the goals and policies of the State of New Mexico as defined in the New Mexico Nonpoint Source Pollution Management Program developed pursuant to Section 319, 33 U.S.C. § 1329, of the Clean Water Act, and as defined in New Mexico's Standards for Interstate and Intrastate Waters (20.6.4 NMAC);
- C. Identify the responsibilities and activities to be performed by each agency in carrying out the New Mexico Water Quality Management Plan (WQMP) developed pursuant to section 208, 33 U.S.C. § 1288, of the Clean Water Act and Nonpoint Source Management Program as related to activities on NFS lands, as that term is defined by 16 U.S.C. § 1609(a); and
- D. To foster a collaborative effort in implementing watershed approaches to restore those watersheds not meeting clean water, natural resource, and public health goals and to sustain healthy conditions in other watersheds.



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

### III. THE ENVIRONMENT DEPARTMENT SHALL:

- A. Recommend that the Commission continue its designation of the Forest Service as the Designated Management Agency for implementation of the New Mexico Nonpoint Source Pollution Management Program on NFS lands;
- B. Share timely drafts of Environment Department proposed water quality laws, regulations, standards, and policies to the Forest Service for review and comment during their development;
- C. Participate in the Forest Service Land Resource Management Plan (LRMP) implementation process in a manner consistent with the Environment Department's regulatory responsibility and authority, in order to make recommendations on necessary LRMPs and implementing projects, activities, or Best Management Practices (BMPs);
- D. Review water quality standards when the Forest Service and/or the Surface Water Quality Bureau monitoring indicates that criteria or designated uses may not be appropriate;
- E. Coordinate with the Forest Service in all phases of Total Maximum Daily Load (TMDL) development on NFS lands in ensuring that the Forest Service has the timely opportunity to-share input on monitoring site locations and TMDL plans to restore impaired waters;
- F. Share information to the Forest Service regarding the Clean Water Act Section 319(h), 33 U.S.C. § 1329(h), grant process;
- G. In addition to the other provisions of this MOU, when an Outstanding National Resource Water (ONRW) located on NFS lands could be affected by Forest Service resource management decisions or determined to be impaired through the Environment Department's assessment process, the Surface Water Quality Bureau shall:
  - 1. Respond to the Forest Service regarding whether a proposed authorization of a use of NFS lands will comply with all requirements of the State's Antidegradation Policy and Implementation Procedures;
  - 2. Where a Clean Water Act Section 401 certification is required for a proposed authorization of a use on NFS lands, make determinations about compliance with the State's Antidegradation Policy and Implementation Procedures through the Section 401 certification process;



3. Coordinate with the Forest Service to develop shared protocols for implementing ONRW protections, including strategies to prevent future degradation in ONRW streams and wetlands;
  4. Inform the Forest Service of potential ONRW degradation as soon as practicable after the Surface Water Quality Bureau determines potential degradation (including but not limited to potential new ONRW impairments identified through assessment of verified and validated data during the development of the Clean Water Act Section 303(d)/305(b) Integrated Report);
  5. If potential degradation of an ONRW has been determined, collaborate with Forest Service to review available verified and validated water quality and other data to determine whether degradation has occurred, and in cases where degradation is confirmed, conduct a joint meeting with the Forest Service and interested parties and stakeholders, including the original petitioners of the ONRW, to identify potential sources of degradation and identify action steps to address and/or remedy the degradation; and
  6. In cases where degradation of an ONRW has been confirmed, coordinate with the Forest Service to increase water quality sampling efforts and frequency, if resources are sufficient to do so. The goal is to collect additional data to be able to assess water quality standards attainment every two-year Clean Water Act 303(d) listing cycle until the ONRW attains its designated uses and meets standards.
- H. Recognize past projects and management actions that have, and may continue to, improve watershed conditions on NFS lands;
- I. Offer timely guidance and assistance regarding the Clean Water Act Section 401 water quality certification process for Forest Service conducted projects and activities subject to Clean Water Act Section 404 requirements; and
- J. Coordinate with the Forest Service for appropriate authorization for activities on NFS lands as deemed necessary by the Forest Service.

#### **IV. THE FOREST SERVICE SHALL:**

- A. Serve as the Designated Management Agency within the context of the WQMP for all NFS lands within the State;
- B. Recognize New Mexico identified designated uses of water and nonpoint source management program objectives;
- C. Ensure all LRMPs, where water quality is an issue, meet requirements of the New Mexico water quality standards (20.6.4 NMAC), WQMP and the



- Nonpoint Source Management Program developed pursuant to federal regulations, the Clean Water Act, and the State Continuing Planning Process;
- D. Identify program elements needed to support State programs and projects adopted pursuant to Sections 208 and 319 of the Clean Water Act and incorporate them into the Forest Service program planning (including under the National Environmental Policy Act) and budgeting system;
- E. The Forest Service can notify the NMED using their email address [env.review@env.nm.gov](mailto:env.review@env.nm.gov) and to other staff and bureaus upon request, for Forest Service projects and actions in New Mexico made available for public review through the National Environmental Policy Act (NEPA).
- F. In addition to other provisions of this MOU, when an ONRW located on NFS lands could be affected by Forest Service resource management decisions or determined to be impaired through the Environment Department's assessment process, the Forest Service shall:
1. Serve as the oversight agency for ONRWs located on NFS lands and implement all elements applicable to oversight agencies of the State's Antidegradation Policy for ONRWs (Paragraphs 3 and 4 of Subsection A of 20.6.4.8 NMAC);
  2. The Forest Service may inquire with the Surface Water Quality Bureau and a response in writing regarding whether a proposed action will comply with all applicable antidegradation requirements;
  3. Coordinate with the Surface Water Quality Bureau to develop shared protocols for implementing ONRW protections, including strategies to prevent future degradation in ONRW streams and wetlands;
  4. Notify the Surface Water Quality Bureau, as soon as practicable after the Forest Service detects or determines potential degradation of an ONRW;
  5. If potential degradation of an ONRW has been determined, collaborate with the Surface Water Quality Bureau to review available verified and validated water quality and other data to determine whether degradation has occurred, and in cases where degradation is confirmed conduct a joint meeting with the Bureau and interested parties and stakeholders, including the original petitioners of the ONRW, to identify potential sources of degradation and identify action steps to address and/or remedy the degradation;
  6. In cases where degradation of an ONRW has been confirmed, collaborate the Surface Water Quality Bureau to increase water quality sampling efforts and frequency in order to submit verified and validated water quality data to the Surface Water Quality Bureau for assessment. The goal



is for the Bureau to be able to assess water quality standards attainment every two-year Clean Water Act 303(d) assessment cycle until the ONRW attains its designated uses and meets standards; and

7. Consider whether a proposed action will impact water quality in an ONRW when conducting analyses under the National Environmental Policy Act (NEPA).

G. Best Management Practices:

1. Ensure that all work schedules and plans for implementation of projects that have potential to impact water quality contain site-specific BMPs, developed through the LRMP implementation process;
  2. Consider technical, economic, and institutional feasibility and potential water quality impacts from the proposed activity in the selection of BMPs, but in no case shall economic and institutional feasibility be used as a basis to allow violations of water quality standards (20.6.4 NMAC); and
  3. Comply with BMPs on selected activities to ensure they are implemented and are effective and adjust as necessary.
- H. Ensure that all new and renewed authorizations for use of NFS lands contain provisions for compliance with all federal, state, and local water pollution control and abatement statutes, regulations, standards, and ordinances, including compliance with Clean Water Act Section 401, 33 U.S.C. § 1341, as enforceable conditions to those authorizations;
- I. Consult with the Surface Water Quality Bureau in situations where the Forest Service does not administer the entire watershed and the parties have mutually determined there will be a significant water quality impact due to an activity within the watershed, that the impact will preclude attainment of water quality standards on or off NFS lands, and that the water does not currently meet water quality standards;
- J. Share the Surface Water Quality Bureau appropriate and timely opportunity to participate in project and activity plans, beginning with the scoping phase, that have the potential to impact watershed condition, riparian areas, or water quality, including projects requiring Clean Water Act Section 401, U.S.C. §1341 certification;
- K. Share with the Surface Water Quality Bureau, to the same extent as required of non-governmental entities, with an annual general assessment of water quality accomplishments, monitoring results, problems, and priorities, including activities that meet the goals and objectives of TMDL plans to restore impaired waters;



- L. Share with the Surface Water Quality Bureau water quality and watershed assessment data collected on NFS lands, including GIS data;
- M. Forest Service wills strive to increase internal education and training to increase employee awareness of, and sensitivity to, the importance of maintaining and improving water quality and the requirements of State and federal water quality regulations and standards;
- N. Collaborate in the TMDL development process, including providing input to the Surface Water Quality Bureau on monitoring locations and implementation plans;
- O. Share Clean Water Act Section 404, 33 U.S.C. § 1344, applications or pre-construction notifications for Forest Service conducted activities to the Surface Water Quality Bureau in a timely manner for Clean Water Act Section 401, 33 U.S.C. § 1344, water quality certification review;

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

- A. They will work together in setting priorities for planning watershed actions and in developing watershed-based plans and watershed restoration action plans for watersheds not meeting clean water or natural resource goals;
- B. Coordinate efforts on preventative or mitigative land management practices, generally referred to as BMPs, to improve or protect the quality of waters on or downstream of NFS lands;
- C. Coordinate efforts on identifying existing or potential nonpoint source water pollution problems on NFS lands, including ONRWs;
- D. Coordinate efforts to assess or monitor water quality or watershed conditions on NFS lands using consistent scientific approaches when applicable;
- E. Share data, data analysis, and watershed assessment results to improve future planning and management activities on NFS lands;
- F. Use such water quality information for validating existing water quality criteria and designated uses and, when appropriate, develop the data into proposed standards revisions for consideration by the Commission during regularly scheduled water quality standards reviews;
- G. Share training opportunities;



- H. Collaborate and support not otherwise available to the other party, to the extent the supplying party's program priorities, budget, and availability of expertise allow;
- I. Meet, no less than annually, to maintain coordination and communication, report on water quality management progress and problems, and review proceedings under this MOU, and:
- J. Work together to evaluate complaints regarding potential water quality standards violations to assure that sources of potential violations are addressed.
- K. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Abraham Franklin, Program Manager Watershed Protection Section Surface Water Quality Bureau New Mexico Environment Dept. P.O. Box 5469 Santa Fe, NM 87502 Telephone: (505) 946-8952 Email: <a href="mailto:wpsprogram.manager@state.nm.us">wpsprogram.manager@state.nm.us</a>	Christina Keyes, Chief Financial Officer Administrative Services Division New Mexico Environment Department P.O. Box 5469 Santa Fe, NM 87502 Telephone: 505-795-2173 Email: <a href="mailto:christina.keyes@env.nm.gov">christina.keyes@env.nm.gov</a>

**Principal Forest Service Contacts:**

<b>Forest Service Program Manager Contact</b>	<b>Forest Service Administrative Contact</b>
Kerry Jones NMED Liaison 11 Forest Lane Santa Fe, NM 87508 Telephone: (505) 438-5673 Email: <a href="mailto:kerry.jones@usda.gov">kerry.jones@usda.gov</a>	Lisa Street 333 Broadway Blvd SE Albuquerque, NM 87102 Telephone: 303-579-5992 Email: <a href="mailto:lisa.street@usda.gov">lisa.street@usda.gov</a>

- L. NOTICES. Any communications affecting the operations covered by this agreement given by the Forest Service or the Environmental Department is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

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

To the Environmental Department at the Environmental Department'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.

- M. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the Forest Service or the Environmental Department from participating in similar activities with other public or private agencies, organizations, and individuals.
- N. ENDORSEMENT. Any of the Environmental Department's contributions made under this MOU do not by direct reference or implication convey Forest Service endorsement of the Environmental Department's products or activities.
- O. 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, 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.

- P. USE OF FOREST SERVICE INSIGNIA. In order for the Environmental Department to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the 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.



- Q. 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.
- R. 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).
- S. 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.
- T. PUBLIC NOTICES. It is the Forest Service's policy to inform the public as fully as possible of its programs and activities. The Environmental Department is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:
- "Water Resources Program of the Forest Service, Department of Agriculture, Southwestern Region."
- The Environmental Department may call on the Forest Service's Office of Communication for advice regarding public notices. The Environmental Department is requested to provide copies of notices or announcements to the Forest Service Program Manager and to The Forest Service's Office of Communications as far in advance of release as possible.
- U. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The Environmental Department shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- V. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Environmental Department 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."***

- W. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- X. DEBARMENT AND SUSPENSION. The Environmental Department shall immediately inform the 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 Environmental Department or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- Y. 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.
- Z. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through five years for the date of last signature at which time it will expire.
- AA. 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.

DocuSigned by:  
  
 4/28/2023  
 \_\_\_\_\_  
 JAMES C. KENNEY, Secretary or Designee Date  
 New Mexico Environment Department

\_\_\_\_\_  
 SHERRI K. SCHWENKE, Deputy Regional Forester Date  
 Forest Service, Southwestern Region

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

 Digitally signed by LISA  
 STREET  
 Date: 2023.04.27  
 11:08:58 -06'00'  
 \_\_\_\_\_  
 LISA STREET Date  
 Forest Service Grants Management Specialist

Burden Statement

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