

FS Agreement No. 17-SU-11132422-231

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
USDA ANIMAL & PLANT HEALTH INSPECTION SERVICE, WILDLIFE
SERVICES
And The
USDA, FOREST SERVICE
NATIONAL FOREST SYSTEM

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the USDA Animal & Plant Health Inspection Service, Wildlife Services, hereinafter referred to as "APHIS-WS," and the United States Department of Agriculture (USDA), Forest Service, National Forest System, hereinafter referred to as the "U.S. Forest Service."

Background: The APHIS-WS and the U.S. Forest Service are agencies of the United States Department of Agriculture (USDA) concerned with wildlife damage management (WDM) and research on National Forest System (NFS) lands.

For the purposes of this agreement APHIS-WS WDM action refers to managing damage caused by indigenous, non-native and feral vertebrates on NFS lands; to minimize livestock losses due to predation by coyotes, mountain lions and other predators; to manage wildlife diseases; to manage damage caused by invasive species such as feral hogs; and to protect other wildlife, plants, and habitat from wildlife damage as requested by the USFS and/or State or Federal wildlife management agencies. Under the Multiple Use Sustained-Yield Act of 1960 (16 U.S.C. 528-532) and other authorities, the U.S. Forest Service conducts activities to control wildlife damage to NFS resources caused by small mammals and other animals to National Forest System resources, such as timber stands and roads and non-National Forest System Resources such as permitted livestock and other agricultural resources. WDM actions may be taken on NFS lands to protect resources on adjacent federal, tribal or non-federal lands.

Title: WILDLIFE DAMAGE MANAGEMENT (WDM) ACTIVITIES ON NATIONAL FOREST SYSTEM LANDS

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to (1) to identify responsibilities and foster a partnership in discharging the Federal obligation under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426b), as amended, the Act of December 22, 1987 (101 Stat. 1329-1331, 7 U.S.C. 426c), Executive Order 13112, Forest Service Manual 2900 (Invasive Species Management), and the National Invasive Species Council Management Plan (2016-2018), for the management of indigenous, feral and non-native



vertebrates causing damage on NFS lands; (2) to establish general guidelines to assist field personnel in carrying out their WDM responsibilities consistent with policies of the U.S. Forest Service and APHIS-WS; and (3) to strengthen the cooperative approach to WDM on NFS lands through exchange of information and mutual program support, in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The U.S. Forest Service is responsible for managing land and resources under its jurisdiction, including conducting certain routine WDM operations to protect NFS lands and resources.

APHIS-WS is authorized under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-1331, 7 U.S.C. 426c) to provide WDM services¹. These acts establish WS as the lead agency for wildlife damage management activities and provide authorization to conduct activities and to enter into agreement with States, local jurisdictions, individuals, and public and private agencies, organizations, and institutions in the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases. This includes maintaining technical expertise in the science of WDM, use of control tools and techniques, conducting WDM research, complying with NEPA requirements for its WDM activities, and providing operational assistance in conducting damage management programs and wildlife disease surveillance at the request of cooperators.

APHIS-WS and U.S. Forest Service recognize that the National Wilderness Preservation System has been established by Congress through the Wilderness Act and other enabling legislation (16 U.S. C. 1131(c)). Forest Service direction concerning WDM within Wilderness Areas is provided in Forest Service Manual (FSM) 2323.33. Both parties are committed to ensuring that WDM in Wilderness Areas is provided in a manner that protects wilderness in its natural condition and preserves wilderness character for current and future generations.

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

III. APHIS-WS SHALL:

- A. Evaluate WDM needs in cooperation with the U.S. Forest Service.
- B. Develop, and annually update, Integrated Wildlife Damage Management plans that consider all applicable non-lethal and lethal methodologies to resolve wildlife damage issues in coordination with U.S. Forest Service. Cooperate with U.S.

¹ The functions of APHIS-WS under the Secretary of Agriculture were first established in 1885. These functions, administered through the Bureau of Biological Survey were transferred to the Secretary of the Interior by the 1939 Reorg. Plan No. II, Sec. 4(f), effective July 1, 1939, set out in note under section 133t of Title 5. On December 19, 1985, the wildlife damage management function was returned to the USDA from the U.S. Department of the Interior pursuant to Federal legislation (Public Law 99-190: H.J. Res. 4 65, 99th Cong. 1st Session).



Forest Service in the development and timely annual review of WDM plans governing APHIS-WS activities, and in reviewing and issuing timely decisions on pesticide-use proposals

- C. Serve as the lead agency for NEPA compliance for wildlife damage, invasive species, and wildlife disease management activities requested of APHIS-WS by: (1) entities other than the U.S. Forest Service; or (2) the U.S. Forest Service in certain circumstances as agreed upon between both agencies. When serving as the lead agency for NEPA compliance, APHIS-WS will coordinate with the U.S. Forest Service and appropriate State and local agencies and tribes in completing the NEPA process for such activities. As appropriate, APHIS-WS will invite the U.S. Forest Service to serve as a cooperating agency in the development of APHIS-WS led NEPA compliance documents.
- D. Request and obtain advance approval of U.S. Forest Service for any planned uses of pesticide within National Forest System (NFS) areas using the Pesticide-Use Proposal (form FS-2100-2). Pesticide shall not be used within any NFS area to control pests without prior written concurrence of the U.S. Forest Service. The Pesticide-Use Proposal (PUP) shall cover a 12-month period of planned use beginning 3 months after the date of submission. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when a WDM need arises that requires control measures which were not anticipated at the time an annual proposal was submitted. Only those products registered, or otherwise authorized, by the U.S. Environmental Protection Agency, and cognizant of State authority, for the specific purpose planned shall be authorized for use within NFS areas.

Before applying pesticide on any NFS area, APHIS-WS shall submit a PUP to the local U.S. Forest Service Region/Area Pesticide Use Coordinator (see: <http://www.fs.fed.us/foresthealth/pesticide/contactus.shtml>) along with a project work plan that includes, at a minimum, a precise statement of the treatment objectives; a description of equipment, materials, and supplies to be used, including pesticide formulation, quantities, and application methods; a description of the lines of responsibility for project planning, project monitoring, and after-action review; a description of any necessary interagency coordination; a description of the process by which treatment effectiveness will be determined; and a safety plan that includes a spill plan, communications plan, security plan and, when required by applicable local requirements, a provision for prior notification to sensitive individuals. APHIS-WS shall promptly report to the local U.S. Forest Service Pesticide Use Coordinator completion of each pesticide application project, confirming conformance to project work plan, and describing any allowed variance (e.g. utilization of lesser amounts of pesticide). Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials or containers shall be disposed of in any area administered by the U.S. Forest Service.



- E. Notify the U.S. Forest Service - prior to the implementation of WDM activities that may be controversial, generate media attention, or occur in wilderness or areas of high public use. As part of the pre-action planning process address communication expectations in Integrated Wildlife Damage Management plans. Inform the U.S. Forest Service about the results of WDM activities initiated by APHIS-WS in a timely manner. Additionally, provide the U.S. Forest Service-Washington Office with an annual report, summarizing the results of all WDM on NFS lands. The annual report shall include the resource(s) protected, estimates of predation damage prevented if available, names and amounts of pesticides used, the methods applied and the species captured, removed, or deterred.
- F. Provide the U.S. Forest Service personnel with WDM training sessions and technical information on WDM tools and techniques when requested.
- G. APHIS-WS shall obtain documented approval from the Regional Forester or their designee prior to conducting WDM on NFS Wilderness lands consistent with manual direction (2323.33c). Document decisions on a case-by-case basis. The parties will meet annually or as needed, with the Regional Forester or their designee to review all APHIS-WS activities on Wilderness lands.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Cooperate with APHIS-WS in the development and timely annual review of WDM plans governing APHIS-WS activities, and in reviewing and issuing timely decisions on pesticide-use proposals (i.e., within 90 days following submission by APHIS-WS).
- B. Serve as the lead agency for NEPA compliance for WDM activities that are requested of APHIS-WS or initiated by the U.S. Forest Service (except as provided for in III. C), and participate as a cooperating agency NEPA processes where APHIS-WS is the lead agency as appropriate.
- C. U.S. Forest Service will conduct an appropriate Minimum Requirements Analysis (MRA) for all APHIS-WS WDM activities in Wilderness Areas on NFS lands and will provide documentation of that analysis to APHIS-WS. U.S. Forest Service will coordinate with APHIS-WS and appropriate State and local agencies and tribes in completing the MRA process for such activities. As appropriate, U.S. Forest Service will invite APHIS-WS to serve as a cooperating agency in the development of U.S. Forest Service-led Wilderness Act compliance documents.
- D. Inform APHIS-WS of opportunities to participate in applicable U.S. Forest Service training at the national, regional, and forest levels, especially NEPA and Wilderness training.
- E. Involve APHIS-WS in the amendment/revision of forest plans which may influence WDM activities



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

- A. All WDM programs on NFS lands will be coordinated with appropriate State, Tribes, and Federal agencies prior to implementation of these programs.
- B. WDM on NFS land will be carried out in conformance with the Endangered Species Act, Wilderness Act, and other applicable laws and regulations, USDA policy on fish and wildlife (Departmental Regulation 9500-4), U.S. Forest Service policies and manual direction.
- C. Parties will comply with all applicable Federal, State, and local laws and regulations in the use of and application of pesticides.
- D. State-level WDM agreements will be developed, as needed, with the appropriate State, Tribes, and Federal agencies.
- E. Both parties will ensure interagency coordination in analyzing the effects of WDM activities by APHIS-WS on NFS lands and resources before NEPA decisions are signed. Whenever possible/practical, and when appropriate, each agency should serve as a cooperating agency in the development of WDM NEPA documents for which the other agency is taking the lead.
- F. The WDM programs will be evaluated on an annual basis, with emphasis on their effectiveness in reducing damage or the threat of damage by wildlife and meeting the objectives stated in this agreement and APHIS-WS relevant NEPA documents. WDM work plans will be developed and annually reviewed and updated in cooperation with appropriate State and Federal agencies, tribes, permittees, and others. Human health and safety zones and other areas where mitigation or restriction of WDM activities may be needed will be jointly identified.
- G. The APHIS-WS Deputy Administrator and the U.S. Forest Service Deputy Chief for National Forest System (or their designees) will meet annually to discuss coordination of WDM operations nationwide. APHIS-WS Regional Directors and U.S. Forest Service Regional Foresters (or their designees) will meet annually, or as needed, to discuss coordination of WDM operations in their respective States or regions.
- H. Problems regarding implementation of this agreement that arise and cannot be resolved at the field level will be reviewed and resolved by elevating to the next higher organizational level for prompt action.
- I. The Parties will cooperate on WDM research of mutual interest.
- J. The Parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purposes of this agreement. Nothing in this agreement authorizes any of the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the Parties require execution of separate agreements and are contingent upon the availability of appropriated funds. Each party



operates under its own laws, regulations, and policies, subject to the availability of appropriated funds.

- K. U.S. Forest Service and APHIS-WS are each responsible for fulfillment of their specific delegated statutory authorities and responsibilities concerning WDM actions on NFS lands. The FS and state fish and wildlife management agencies have a shared responsibility for managing fish and wildlife populations and their associated habitats on National Forest System lands. The U.S. Forest Service also cooperates and coordinates with APHIS-WS concerning WDM and APHIS-WS may carry out predator control programs in accordance with FSM 2323.33c.
- L. Native wildlife and non-native wild or feral animals can pose threats and damage to humans, natural and cultural resources, and permitted grazing livestock in wilderness and in areas adjacent to designated wilderness. When a need is identified, the parties will cooperate and collaborate through NEPA processes and subsequent work planning meetings to ensure that WDM is carried out in accordance with the Wilderness Act and other relevant direction. The parties recognize that APHIS-WS has special expertise and the authority to implement WDM. When requested by either U.S. Forest Service, cooperating States exercising their management authority to conduct WDM in Wilderness, or livestock producers possessing valid grazing permits or who graze livestock in areas adjacent to Wilderness, APHIS-WS may provide WDM assistance to protect: human health and safety; threatened, endangered and other native animals and plants; cultural resources; permitted grazing livestock; and other vulnerable or sensitive resources in designated wilderness. It is noted that APHIS WS predator control activities are expected to remain infrequent and of low intensity across NFS designated Wilderness lands.
- M. 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: William H. Clay, Deputy Administrator Address: USDA Animal & Plant Health Inspection Service, Wildlife Services, Mail Stop 3402 City, State, Zip: Washington, DC 20250-3402 Telephone: (202) 720-2054 FAX: (202) 690-0053 Email: bill.clay@aphis.usda.gov | Name: David Reinhold, Director OSS Address: USDA Animal and Plant Health Inspection Service, Wildlife Services, 4700 River Rd., Unit 87, Room 2D26 City, State, Zip: Riverdale, MD 20737-1234 Telephone: 301-851-4002 FAX: 301-734-2127 Email: David.S.Reinhold@aphis.usda.gov |

**Principal U.S. Forest Service Contacts:**

| U.S. Forest Service Program Manager Contact | U.S. Forest Service Administrative Contact |
|--|---|
| Name: Robert M Harper Address: USDA Forest Service, Watershed, Fish, Wildlife, Air, and Rare Plants, 1400 Independence Ave., SW. Stop Code 1121 City, State, Zip: Washington, DC 20250- 1121 Telephone: (202) 205-1671 Email: rharper@fs.fed.us | Name: Sandra Frost Address: USDA Forest Service, Watershed, Fish, Wildlife, Air, and Rare Plants, 1400 Independence Ave., SW. Stop Code 1121 City, State, Zip: Washington, DC 20250- 1121 Telephone: (202) 590-0763 Email: sfrost@fs.fed.us |

- N. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or APHIS-WS 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 APHIS-WS, at APHIS-WS'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.

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

- R. USE OF U.S. FOREST SERVICE INSIGNIA. In order for APHIS-WS 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.
- S. 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).
- T. 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.
- M. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. APHIS-WS 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:



"National Forest System of the U.S. Forest Service, Department of Agriculture, collaborates with many partners on the sound management of the nation's national forests and grasslands."

APHIS-WS may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. APHIS-WS is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

- N. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. APHIS-WS 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."

- O. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- P. 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.
- Q. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through May 15, 2022 at which time it will expire.



- R. 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.

WILLIAM CLAY

Digitally signed by WILLIAM CLAY
DN: c=US, o=U.S. Government,
ou=Department of Agriculture, cn=WILLIAM
CLAY,
0.9.2342.19200300.100.1.1=12001000074524
Date: 2017.05.19 10:11:14 -04'00'

WILLIAM H. CLAY, Deputy Administrator
USDA Animal & Plant Health Inspection Service,
Wildlife Services

Date

LESLIE A.C. WELDON, Deputy Chief
U.S. Forest Service, National Forest System

2-June-17
Date

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

Digitally signed by Eddie W Bell Jr
DN: cn=Eddie W Bell Jr, o=US Forest Service,
ou=WO AQM Grants Management,
email=eddiebell@fs.fed.us, c=US
Date: 2017.04.26 09:18:43 -04'00'

Eddie W. Bell Jr

EDDIE W BELL JR
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, 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.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (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.