

# **Memorandum of Understanding**

*Between*

**THE STATE OF WYOMING**

**By and Through**

**The Director of the Wyoming Office of Federal Land Policy**

*And The*

Board of Commissioners, Big Horn County  
Board of Commissioners, Johnson County  
Board of Commissioners, Sheridan County  
Board of Commissioners, Washakie County  
Lake DeSmet Conservation District  
Powder River Conservation District  
Sheridan County Conservation District  
Shoshone Conservation District  
South Big Horn Conservation District  
Washakie County Conservation District

## **A. Parties to this Agreement**

This Memorandum of Understanding (MOU) is entered into by and between The State of Wyoming, by and through the Office of Federal Land Policy (State) and the County Commissions of Big Horn, Johnson, Sheridan, and Washakie Counties and the Lake DeSmet, Powder River, Sheridan County, Shoshone, South Big Horn, and Washakie County Conservation Districts (Counties and Conservation Districts).

## **B. Purpose of this Agreement**

The State of Wyoming, by and through the Director of the Wyoming Office of Federal Land Policy (State), and the United States Department of Agriculture-Forest Service, by and through the Bighorn National Forest Supervisor (BhNF), entered into a certain MOU, dated November 1, 2000, to provide coordination and cooperation in conducting the environmental analyses and in preparing the Environmental Impact Statement (EIS) for the Bighorn National Forest Land and Resource Management Plan revision (BhNF-LRMP). The BhNF-State MOU established the State as a "cooperating agency" in the environmental analyses and document-writing process, and established the procedures by which the State will participate on the BhNF Forest Leadership Team (BhNF-FLT, may also be called the BhNF Plan Revision Steering Committee) to conduct the analyses and develop the EIS.

The State-BhNF MOU established certain Counties and Conservation Districts as one of several designated entities who will be members of the State Working Team (as defined in the BhNF-State MOU, Sections. E-1 and E-2). In conformity with the State-BhNF MOU, the purpose of this MOU is to provide cooperation and coordination between the State and the signatory Counties and Conservation Districts to enhance the State's participation in the environmental analysis and preparation of the BhNF Plan revision EIS. The Counties and Conservation Districts will assist and cooperate with the State in the State's effort to carry out all terms, conditions and provisions of the State-BhNF MOU. The State-BhNF MOU is attached hereto as Appendix A and is hereby made part of this MOU. In turn, the State will involve the Counties and Conservation Districts in scoping matters and all other matters anticipated in the development of the EIS.

## **C. Statement of Mutual Interests and Benefits**

Both parties will benefit through increased communication, sharing of information, cooperation and coordination. In addition, the Counties and Conservation Districts will assist the State in a unified approach in developing and preparing sections in the EIS and/or supporting documents.

## **D. Term of this Agreement**

This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and

effect until terminated. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail.

**E. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:**

1. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.

2. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

3. **Entirety of Agreement.** This MOU, consisting of six (6) pages and Appendix A consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

4. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or his representative.

5. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

6. **Sovereign Immunity.** The State of Wyoming, by and through the Director of the Wyoming Office of Federal Land Policy, and the Counties and Conservation Districts do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

7. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

8. Primary Points of Contact. The primary points of contact for canyins out the provisions of the MOU are:

**State of Wyoming**

Carol Kruse  
Office of Federal Land Policy  
Herschler Building, 1 West  
Cheyenne, Wyoming 82002-0600  
307-777-5261 Phone  
307-777-3524 Fax  
[ckruse@state.wv.us](mailto:ckruse@state.wv.us)

**Sheridan and Johnson Counties**

John D. 'Don' Hall  
76 N. Main  
Buffalo, WY 82834  
307-684-7555 Phone  
307-684-5146 Fax  
[jococomm@vcn.com](mailto:jococomm@vcn.com)

**Washakie County**

John Dent  
PO Box 260  
Worland, WY 82401  
307-347-6491 Phone  
307-347-9366 Fax  
[shdent@iuno.com](mailto:shdent@iuno.com)

**Big Horn County**

Keith Grant  
1400 Road 11  
Lovell, WY 82431  
307-548-7773 Phone  
307-548-7521 Fax  
[grantranch@tctwest.net](mailto:grantranch@tctwest.net)

**Lake DeSmet and Powder River Conservation Districts**

John D. Pearson  
PO Box 696  
Buffalo, WY 82834  
307-684-9556 Phone  
307-684-5972 Fax  
[ldcdemp@vcn.com](mailto:ldcdemp@vcn.com)

**Shoshone, South Big Horn, and Washakie County Conservation Districts**

Earl Jensen  
427 1st Ave. S  
Greybull, WY 82426  
307-765-2067 Phone  
307-765-9243 Fax  
[grevhs@trib.com](mailto:grevhs@trib.com)

**Sheridan County Conservation District**

Curt Symons  
PO Box 2  
Wyamo, WY 82845  
307-737-2477 Phone  
307-672-0052 Fax  
[rogac\(@.cvberhighwav.net](mailto:rogac(@.cvberhighwav.net)

**F. Signatures**

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions, of this MOU as set forth herein. The effective date of this MOU is the date of the signature last affixed to these pages.

**STATE OF WYOMING**, by and through

Art Reese \_\_\_\_\_ 1-16-01 \_\_\_\_\_  
Art Reese, Director Date  
Office of Federal Land Policy

**BOARDS OF COUNTY COMMISSIONERS**, by and through

Donald M. Russell \_\_\_\_\_ 12-28-00 \_\_\_\_\_  
Donald M. Russell, Chair Date  
Big Horn County Board of Commissioners

Don Hall \_\_\_\_\_ 11-20-00 \_\_\_\_\_  
Don Hall, Chair Date  
Johnson County Board of Commissioners

Charley Whiton \_\_\_\_\_ 11-14-00 \_\_\_\_\_  
Charley Whiton, Chair Date  
Sheridan County Board of Commissioners

Alice Lass \_\_\_\_\_ 12-5-00 \_\_\_\_\_  
Alice Lass, Chair Date  
Washakie County Board of Commissioners

**CONSERVATION DISTRICTS, by and through**

John Pearson \_\_\_\_\_ 11-20-00 \_\_\_\_\_  
John Pearson, Chairman Date  
Lake DeSmet Conservation District

Greg Cunningham \_\_\_\_\_ 11-30-00 \_\_\_\_\_  
Greg Cunningham, Chairman Date  
Powder River Conservation District

Doug Masters \_\_\_\_\_ 11-17-00 \_\_\_\_\_  
Doug Masters, Chairman Date  
Sheridan County Conservation District

Bob Martens \_\_\_\_\_ 12-19-00 \_\_\_\_\_  
Bob Martens, Chairman Date  
Shoshone Conservation District

Linda Hamilton \_\_\_\_\_ \_\_\_\_\_  
Linda Hamilton, Chairman Date  
South Big Horn Conservation District

Dan Hampton \_\_\_\_\_ 12-9-00 \_\_\_\_\_  
Dan Hampton, Chair Date  
Washakie County Conservation District

**WYOMING ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

[indecipherable name] \_\_\_\_\_ 11-9-00 \_\_\_\_\_  
Assistant Attorney General Date

## **APPENDIX A**

*Attached to and Made a part of the Memorandum of Understanding Between*

The State of Wyoming  
and the  
Big Horn County Commission  
Johnson County Commission  
Sheridan County Commission  
Washakie County Commission  
Lake DeSmet Conservation District  
Powder River Conservation District  
Sheridan County Conservation District  
Shoshone Conservation District  
South Big Horn Conservation District  
Washakie County Conservation District

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST**  
**SERVICE,**  
**BIGHORN NATIONAL FOREST**  
**and**  
**THE STATE OF WYOMING**

This Memorandum of Understanding (MOU) is hereby entered into by and between the USDA Forest Service, Bighorn National Forest (Forest Service) and the State of Wyoming, by and through the Office of Federal Land Policy (State).

**A. PURPOSE**

This MOU is established to provide cooperation and coordination between the parties during revision of the Bighorn National Forest Land and Resource Management Plan (Forest Plan). This agreement establishes the State of Wyoming as a cooperating agency in this revision process.

In particular the Forest Service, as lead agency, has asked the State for assistance in the areas of social assessment, economics, and wildlife management. The State has special expertise in each of these areas. Information provided by the State will be used in the forest planning process.

**B. AUTHORITY**

This agreement is subject to 40 Code of Federal Regulations, Parts 1500 -1508 implementing the procedural provisions of the National Environmental Policy Act and Forest Service Handbook 1909.15. The State is authorized to enter into this MOU pursuant to Wyoming Statute 9-1-207, Wyoming Statute 9-1-209 and Executive Order 95-1.

**C. STATEMENT OF MUTUAL INTERESTS AND BENEFITS.**

Both parties will benefit through increased communication, sharing of information, cooperation and coordination. Information and expertise provided by the State will be used to develop alternatives for the Revised Forest Plan. In addition, the State as a cooperating agency, will assist in preparing sections in the environmental impact statement and/or supporting documents.

**D. THE FOREST SERVICE SHALL:**

1. Fully utilize the data and assessments provided by the State as baseline information, and utilize State assistance in developing alternatives and addressing environmental effects associated with the alternatives.

2. Provide the State with a schedule of all Bighorn. Forest Plan Revision Steering Committee meetings.
3. Provide information and drafts that require input or review to the State with .adequate time for analysis.
4. Be the lead agency for the project.

**E. THE STATE OF WYOMING SHALL:**

1. Designate liaisons from the specific State agencies and other State institutions who will provide information and special expertise, and will assist in interpreting and analyzing impacts with respect to each agency's area of expertise. Those agencies and their authority to participate include, but are not limited to:

- Office of Federal Land Policy, W.S. \* 9-1-207 and Exec. Order 95-1
- Wyoming Game and Fish Department, W.S. \* 23-1-302
- University of Wyoming, W.S. \* 21-17-113

The Forest Service recognizes delegation of authority as required by the Federal Advisory Committee Act (FACA) as amended by Section 204 of Public Law 104-4, Unfunded Mandates Reform Act of 1995 (2 U.S.C. Section 1534(b)).

2. Recognize the following State agencies as having resources and information which may be utilized by the entities named in clause E.1., in order to fulfill their designated roles in this MOU. Those agencies include:

- Wyoming Department of Environmental Quality
- Wyoming State Engineers Office
- Wyoming State Geological Survey
- Wyoming Department of Agriculture
- Oil and Gas Conservation Commission
- Wyoming Parks and Cultural Resources Commission
- Office of State Lands and Investments
- Wyoming Business Council
- Wyoming Department of Transportation
- Board of County Commissioners, Big Horn County
- Board of County Commissioners, Johnson County
- Board of County Commissioners, Sheridan County
- Board of County Commissioners, Washakie County
- Lake DeSmet Conservation District
- Powder River Conservation District
- Sheridan County Conservation District
- Shoshone Conservation District
- South Big Horn Conservation District
- Washakie County Conservation District

3. Through the Office of Federal Land Policy, provide a principal investigator to collect data for and write a social assessment of the relationship between the Bighorn National Forest and adjacent communities directly or indirectly affected by Forest Service planning decisions. The social assessment will include a community profile for each community. The profile shall discuss (1) the community as a whole, (2) the community's relationship to forest resources and, public lands, and (3) the community's interrelationship to the national forests, including understanding of National Forest policies. In addition, the profiles should utilize community data already collected by the Forest Service.

Based on this social assessment, the State of Wyoming will also provide a social effects analysis for all alternatives developed in the environmental impact statement (EIS), both Draft and Final. This social assessment will be considered in conjunction with the economic assessment, and will form the bulk of the social environment section in the EIS.

4. As part of the forest planning process as described at 36 Code of Federal Regulations 219.19(a)(6), the Wyoming Game and Fish Department will provide any available population data and map~ for Management Indicator Species (MIS) selected for the Revised Forest Plan. Updated population data will also be provided at intervals in the future as part of ongoing monitoring of the Revised Forest Plan. Population data and maps will also be provided for threatened, endangered, and Forest Service sensitive species, as available.

The Wyoming Game and Fish Department will assist in developing and assessing planning strategies and identifying impacts and alternatives to those portions of the Revised Forest Plan that have the potential to impact fish, wildlife or their habitats.

5. The parties recognize that the Wyoming Department of Environmental Quality has been designated as the primary agency responsible for air and water quality in Wyoming.

6. Be identified as a cooperating agency for the project.

F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. **TERMINATION.** Either party(s), in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

2. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

3. **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 responsibility 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 of this MOU are subject to the laws and regulations of the State of Wyoming, the laws of the United States, and fuel regulations of the Secretary of Agriculture.

4. **SOVEREIGN IMMUNITY.** The State of Wyoming and the Forest Service do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

5. **ENTIRETY OF AGREEMENT.** This MOU, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

6. **SEVERABILITY.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

7. **THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

8. **MODIFICATION.** Changes within the scope of this instrument shall be made by the issuance of a bilaterally executed modification.

9. **FREEDOM OF INFORMATION ACT (FOIA).** Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

10. **NON-FUND OBLIGATING DOCUMENT.** This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this

instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

**11. PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

Joel Strong  
USDA, Forest Service  
Bighorn National Forest  
2013 East Side 2nd St.  
Sheridan, Wyoming 82801  
(307) 674-2600

Art Reese  
State of Wyoming  
Office of Federal Land Policy  
Herschler Building  
Cheyenne, Wyoming 82002  
(307) 777-7331

**12. COMPLETION DATE.** This instrument is executed as of the date of the last signature and, unless sooner terminated, is effective through December 31, 2005 at which time it will expire unless renewed.

**THE PARTIES HERETO** have executed this agreement.

**OFFICE OF STATE LANDS & INVESTMENTS**

Art Reese \_\_\_\_\_ 10-31-00 \_\_\_\_\_  
ART REESE Date  
Director  
Office of Federal Land Policy

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

[indecipherable signature] \_\_\_\_\_ 10-31-00 \_\_\_\_\_  
Assistant Attorney General Date

**USDA FOREST SERVICE**

William T. Bass \_\_\_\_\_ 11-7-00 \_\_\_\_\_  
WILLIAM T. BASS Date  
Forest Supervisor  
Bighorn National Forest

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

Margot Braylon Gray \_\_\_\_\_ 10-29-00 \_\_\_\_\_  
FS Agreements Coordinator Date