

APPENDIX A - 1

MEMORANDUM OF UNDERSTANDING IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM IN THE STATE OF IDAHO

I. AGENCIES TO THE AGREEMENT

This Memorandum of Understanding is made between: U.S. Environmental Protection Agency (EPA); Idaho Department of Health and Welfare, Division of Environmental Quality (IDHW); Idaho Department of Lands (IDL); Idaho Department of Water Resources (IDWR); Idaho Soil Conservation Commission (SCC); Cooperative Extension Service, University of Idaho (CES); U.S. Department of Agriculture, Soil Conservation Service (SCS); U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS); U.S. Department of Agriculture, Forest Service, Northern, Intermountain and Pacific Northwest Regions (Forest Service); U.S. Department of Interior, Bureau of Land Management (BLM).

II. PURPOSE

This agreement outlines the roles and responsibilities of the management agencies in implementing the nonpoint source water quality provisions of the Federal Clean Water Act for the State of Idaho.

State agencies may enter into interagency cooperative agreements under authority of Title 67, Chapter 23, Idaho Code.

III. AUTHORITIES, ROLES, AND RESPONSIBILITIES

U.S. Environmental Protection Agency

The Environmental Protection Agency (EPA) has authority under Section 319 of the Clean Water Act (33 U.S.C. 466 et seq.) to ensure that nonpoint source impacts to water quality are adequately addressed by the state. EPA has authority to review and approve, or disapprove, state water quality standards (Section 303). EPA has authority under Section 309 of the Clean Air Act to comment on National Environmental Policy Act (NEPA) documents developed by the federal land management agencies.

Idaho Department of Health and Welfare, Division of Environmental Quality

The Idaho Department of Health and Welfare, Division of Environmental Quality (IDHW) is delegated authority for control of water pollution under the Clean Water Act; the Idaho Environmental Protection and Health Act of 1972, Title 39, Chapter 1, Idaho Code, as amended; and Title 1, Chapter 2, Water Quality Standards and Wastewater Treatment Requirements, Rules and Regulations of IDHW.

Under the Antidegradation Policy, IDHW is the lead state agency for holding Basin Area meetings, implementing a procedure for identifying Stream Segments of Concern and designating Outstanding Resource Waters, and implementing a coordinated monitoring program (Executive order No. 83-23).

IDHW is the statewide designated management agency for implementation of Section 319 of the Clean Water Act. The Nonpoint Source Management Program (1989) contains the implementation actions prepared by an interagency work group. The IDHW administers (jointly with SCC) the State Agricultural Water Quality Program (Title 39, Chapter 36, Idaho Code). IDHW addresses waste treatment aspects of mining through plan and specification review, and provides direct regulatory oversight for cyanide leaching facilities (Title 39, Chapter 1, Idaho Code). IDHW addresses forest practices through implementation of the Forest Practices Water Quality Management Plan (1988), revision of water quality standards, and assessment of BMP effectiveness (Title 39, Chapter 13, Idaho Code). IDHW is responsible for implementation of the State Nutrient Management Act (Title 39, Chapter 1, Idaho Code), and Rules and Regulations for Nutrient Management (Title 1, Chapter 16).

Pursuant to the Ground Water Quality Protection Act, IDHW is designated as the primary agency to coordinate and administer ground water quality protection programs for the State of Idaho (Title 39, Chapter 1, Idaho Code). IDHW has the responsibility for collecting ground water quality monitoring data for management of regional and local ground water quality. IDHW is the lead agency in coordinating the preparation of a Comprehensive Ground Water Quality Protection Plan and Ground Water Quality Standards with the Ground Water Council. IDHW addresses ground water quality protection through the permitting of land application of waste water (Title 1, Chapter 17, Idaho Code) and regulation of on-site sewage disposal systems (Title 39, Chapters 1 and 16, Idaho Code). IDHW is the designated lead agency for the Public Drinking Water Program (Title 37, Chapter 21 and Title 39, Chapters 1 and 18, Idaho Code), the Underground Storage Tank Program and the Wellhead Protection Program. Agricultural ground water issues are addressed through the state's Nonpoint Source Section 319 Program and the Ground Water Quality Council.

Idaho Department of Lands

The Idaho Department of Lands (IDL) has authority to administer the Idaho Forest Practices Act (Title 38, Chapter 1, Idaho Code), the Dredge and Placer Mining Protection Act and the Idaho Surface Mining Act (Title 47, Chapters 13 and 15, Idaho Code), and the Idaho Lake Protection Act (Title 58, Chapter 13, Idaho Code). Under the Antidegradation Policy IDL is designated as the lead agency for surface mining, dredge and placer mining, and forest practices on all lands within the state (Executive order 88-23).

IDL has the responsibility to ensure compliance with forest practice BMPs on all lands in the state. on state forest lands, IDL has the responsibility to apply BMPs which will provide for protection of beneficial uses of water. On private lands, IDL has the responsibility to administer the Forest Practice Act, Rules and Regulations, and take enforcement action when needed. IDL provides other state

agencies the opportunity to review and comment on mine applications, BMP design, and reclamation plans. Pre-operational site reviews and subsequent site inspections are often conducted in coordination with other state and federal agencies.

IDL has entered into separate MOUs with the USFS and BLM to coordinate the administration of their respective laws and regulations pertaining the mining operations on National Forest System and Bureau of Land Management lands.

Idaho Department of Water Resources

The Idaho Department of Water Resources has authority to regulate stream channel alterations under the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the safety of most impoundment structures, including irrigation and stock pond facilities, and mine tailings impoundments under the Dam Safety Act (Title 42, Chapter 17, Idaho Code). Wastewater disposal by injection wells is regulated under Title 42, Chapter 39, Idaho Code. The Idaho Department of Water Resources also has statutory responsibility for administering the appropriation and allotment of surface and ground water resources of the state, including geothermal resources, and to protect the resources against waste and contamination, Title 42, Chapter 2, Idaho Code.

IDWR has the responsibility to administer the Stream Channel Protection Act on all continuously flowing streams within the state boundaries for any activity which will alter a stream channel. IDWR has entered into separate MOUs with the USFS, BLM, Idaho Department of Transportation and other road districts to protect streams and their associated environments by close coordination and cooperation on all projects with the potential to alter stream channels. Other projects must seek individual permits through an application and permit process involving all interested agencies, and the Army Corps of Engineers, for review under Section 404. Applications are processed simultaneously under a joint state and federal review with separate approvals. IDWR cannot subrogate permitting authority.

IDWR has the responsibility to maintain the natural resource geographic information system for the state as well as a comprehensive ground water data system which is accessible to the public. This is an integral part of the ground water protection program.

Idaho Department of Agriculture

Authority for the Department's role for control of nonpoint source pollution in agriculture comes from the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), the Idaho Fertilizer Law (Title 22, Chapter 6, Idaho Code), and the Idaho Chemigation Law (Title 22, Chapter 14, Idaho Code). The Idaho Department of Agriculture is responsible for regulating the use of pesticides and fertilizers and for licensing applicators, and provides assistance in the monitoring, development and evaluation of the effectiveness of best management practices relating to agricultural chemicals. The Department has a cooperative enforcement agreement with the Environmental Protection Agency (EPA) to enforce the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in Idaho. The

Department coordinates with the Department of Health and Welfare - Division of Environmental Quality (DEQ) and the Idaho Department of Water Resources (IDWR) in administering the Idaho Ground Water Quality Protection Act of 1989.

Authority for the Department's role for control of dairy waste in agriculture comes from the various Chapters which regulate the Idaho dairy industry (Title 37, Chapter 3, 4, 5, and 7 Idaho Code), the Pasteurized Milk Ordinance, as amended, and the regulations adopted pursuant thereto which authorizes the Department to inspect the sanitary conditions of dairy products, dairies, dairy processing facilities, warehouses, etc.

State Soil Conservation Commission

The responsibilities of the State Soil Conservation Commission, Department of Lands, are defined by Title 22, Chapter 27, Idaho Code. The Commission offers assistance to the supervisors of the 51 Soil Conservation Districts (SCDs), organized as provided in the Soil Conservation District Law in carrying out their powers and programs.

SCC jointly (with IDHW) administers the State Agricultural Water Quality Program (SAWQP). SCC is authorized to contract with IDHW to provide technical assistance for SAWQP projects. The State Agricultural Pollution Abatement Plan designates the SCC and SCDs as the agricultural nonpoint source management agencies at the state and local level, respectively. The SCDs may enter into contracts with IDHW for planning and implementation of ground water and surface water projects pursuant to rules and regulations of the Agricultural Water Quality Program (Title 39, Chapter 36, Idaho Code).

The SCC is the lead agency for coordination, implementation of the Antidegradation Policy for agricultural activities through the SCDs (Executive order 88-23). The Commission works to secure the cooperation and assistance of state and federal agencies in the work of the Districts.

University of Idaho, Cooperative Extension Service

The extension system, under the Smith-Lever Act of 1914, was designated as the education arm of the United States Department of Agriculture. In July of 1989, the USDA Water Quality Program that supports the President's Water Quality initiative designated Extension as having the key role in water quality education and a lesser role of technical assistance.

Extension has responsibility to prepare news items, bulletins, publications and educational material to inform and educate the general public about water quality issues and enacted legislation. Extension provides agri-chemical application and rate recommendations, based on research, and consistent with water quality goals.

Cooperation and coordination with other agencies is of utmost importance. Extension will assist in building staff capacity for the planning, delivery and analysis of water quality procedures. Production

management systems will be expanded and enhanced through cooperation with SCS in updating field office technical guides, other references, and through organized professional training. Extension is one of three lead agencies (CES, SCS, ASCS) in implementing USDA water quality initiatives such as hydrologic unit planning and demonstration project activities.

United States Department of Agriculture, Soil Conservation Service

The Soil Conservation Service (SCS) receives its authority and direction from the Soil Conservation and Domestic Allotment Act, Section 7 (Public Law 46-74; USC 590a (3)), the Agriculture and Consumer Protection Act, Title 10, and the Agricultural Credit Act, Title 4. The SCS provides technical assistance to units of government and private land users for the planning and implementation of water quality measures and initiatives.

The SCS maintains, periodically revises, and supplements the Field Office Technical Guide which serves as one source for the state to consider in adopting agricultural best management practices.

The SCS administers USDA-SCS programs such as PL-566 Small Watershed Program, Conservation Operations, Resource Conservation and Development (RC&D), River Basin Planning, Soil Survey, Snow Survey, Emergency Watershed Protection, and the Plant Materials Program, each of which has a water quality component. The SCS shares leadership with ASCS and CES in implementing USDA water quality initiatives such as hydrologic unit planning and demonstration project activities.

The SCS assists in developing tools to quantify environmental and economic effects of BMPS, and supports and encourages more resource data collection and research, including monitoring, in the areas of surface and ground water.

Agricultural Stabilization and Conservation Service

The ASCS administers a number of agricultural programs, several of which directly benefit Idaho's water quality. Conservation and land-use adjustment assistance is provided through sharing with individual farmers the cost of installing needed soil, water, woodland, and wildlife conserving practices under the annual and long-term Cost-Share Programs, the Conservation Reserve Program, and the Rock Creek Rural Clean Water Program. The ASCS shares leadership with the SCS and CES in implementing USDA water quality initiatives; which include hydrologic unit planning and demonstration project activities, and Agricultural Conservation Program (ACP) special water quality projects.

United States Department of Agriculture, Forest Service

The Forest Service, under the Organic Act Of 1897 (16 U.S.C. 551), the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528), as amended, and the National Forest Management Act of 1976 (16 U.S.C. 1600), is directed to regulate the occupancy and use of National Forest System Lands.

The Clean Water Act, as amended, (33 U.S.C. 1323) directs the Forest Service to meet state, interstate and local substantive as well as procedural requirements respecting control and abatement of pollution in the same manner, and to the same extent as any nongovernmental entity.

Executive Order 12372 (September 17, 1983) directs the Forest Service to make efforts to accommodate and foster intergovernmental partnership by relying on state processes, to the extent feasible for state coordination and review of proposed federal financial assistance and direct federal development.

The U.S. Forest Service is responsible for the management of over 20.4 million acres of National Forest Service lands in Idaho. These are public lands that form the headwaters of many of Idaho's important river systems. The Forest Service has the statutory authority to regulate, permit and enforce land-use activities on the National Forest System lands that affect water quality.

As the designated management agency, the Forest Service is responsible for implementing 1) nonpoint source (NPS) pollution control; and 2) the Idaho State Water Quality Standards on National Forest System lands. The basis of the Forest Services's nonpoint source pollution control policy stems from the: National Nonpoint Source Policy (December 12, 1984) ; Forest Service Nonpoint Strategy (January 29, 1985); and the USDA Nonpoint Source Water Quality Policy (December 5, 1986). The Forest Service's water quality policy is to: 1) promote the improvement, protection, restoration and the maintenance of water quality to support beneficial uses on all national forest service waters; 2) promote and apply approved best management practices to all management activities as the method for control of NPS pollution; 3) comply with established state or national water quality goals; and 4) design monitoring programs for specific activities and practices that may affect or have the potential to affect in-stream beneficial uses on National Forest System lands.

The Forest Service also coordinates all water quality programs, on National Forest System lands within its jurisdiction, with the local, state and federal agencies, affected public lands users, adjoining land owners, and other affected interests.

Bureau of Land Management

The Taylor Grazing Act of 1934, as amended, authorizes livestock grazing on public land and provides for protection from erosion and soil deterioration.

The Federal Land Policy and Management Act of 1976, as amended, requires that public lands be managed in a manner that will protect the quality of water resources, and that in developing or revising land use plans the Secretary shall provide for compliance with applicable pollution control laws, including state and federal air, water, and noise, implementation plans.

The Public Range Lands Improvement Act of 1973 requires that the public lands be managed to maintain and improve condition of rangeland values.

The Federal Water Pollution Control Act of 1972, as amended, requires federal agencies to meet state, interstate, and local substantive as well as procedural requirements respecting control and abatement of pollution. Executive Order 12372 (September 17, 1983) directs BLM to foster intergovernmental partnership by relying on state processes for coordination and review of proposed federal financial assistance and federal programs.

BLM is responsible for the administration, management and protection of 12 million acres of public land in Idaho. It has statutory authority to regulate, license, and enforce land use activities that affect water quality. BLM is the designated nonpoint source managements agency on the lands under its management. The BLM's goals are to maintain or improve surface and ground water quality consistent with state and federal water quality standards, minimize harmful consequences of activities that result in nonpoint source pollution, and inventory, monitor, and evaluate water quality data necessary for the proper management of the public lands. The BLM also coordinates all water quality programs with the local, state and federal agencies, affected public land users, adjoining land owners, and other affected interests.

IV. DEFINITIONS

Best management Practice (BMP) A practice or combination of practices determined by the state to be the most effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources. (IDHW, 1985. Idaho Water Quality Standards.)

Designated Management Agency: An agency identified by an Area Waste Treatment Plan or the Nonpoint Source Management Program and designated by the Governor as lead in implementing the program on lands which the agency administers.

Federal Lands: For this agreement only, lands administered by the USDA, Forest Service, and USDI, Bureau of Land Management.

Federal Land Management Agencies: For this agreement only, lands administered by the USDA, Forest Service, and USDI, Bureau of Land Management.

Nonpoint Source Pollution: Ground and surface water pollution that comes from many varied, non-specific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution (Title 39, Chapter 36, Idaho Code) .

V. NOW THEREFORE THE PARTIES MUTUALLY AGREE:

- 1 . To implement the feedback loop concept as described in the Idaho Water Quality Standards and Wastewater Treatment Requirements (Section 16.01.2050,06. and Section 16-01.2300,04). This standard is based on implementation of BMPs and use of a process to evaluate the effectiveness of BMPs in restoring and maintaining the beneficial uses of the waters of the state as designated in the Idaho water quality standards.

- 2 . To be consistent with the Idaho Nonpoint source Management Program, 1989, as required by Section 319 of the Clean Water Act. For federal agencies, criteria for federal consistency are contained as a checklist in the Nonpoint Source Management Program.
- 3 . To jointly coordinate monitoring activities as outlined in the Coordinated Nonpoint Source Water Quality Monitoring Program for Idaho, 1990 (IDHW). Included are development of standard monitoring techniques, cooperative monitoring programs, and sharing of water quality data.
- 4 . To provide information on water quality conditions and effectiveness of BMPs biannually to IDHW for inclusion in the Idaho Water Quality Status Report (Section 305-b) and updates of the Nonpoint Source Assessment (Section 319) of the Federal Clean Water Act.
- 5 . To participate in the Basin Area Meetings implementing the Antidegradation Policy.
6. To utilize a common data base, such as EPA's STORET and BIOS system or IDWR's Environmental Data Management System as the central repository for water quality data in the state and to coordinate the training to implement such a system.
- 7 . To develop and encourage interagency participation in water quality training programs.
8. To develop and implement specific agreements on topics such as agriculture, forestry, and mining nonpoint source water quality control programs. These agreements will be incorporated as appendices to this memorandum.

VI. IDAHO DEPARTMENT OF HEALTH AND WELFARE AGREES:

1. To coordinate water quality management planning and implementation efforts by the state with other state and federal agencies and keep them updated on any changes to state standards, regulations or guidelines.
- 2 . To invite other Idaho State and federal agency representation on policy or technical advisory committees that relate to water quality issues.
3. To review the federal agency's listing of proposed projects and activities scheduled for NEPA process, participate in those affecting water quality and provide timely review comments for finalizing the NEPA documents.
4. If a drainage has a significant acreage of mixed ownership, the Department shall take the lead in coordinating participation of various landowner, development of the monitoring plan and implementation of the field work.

VII. THE FEDERAL LAND MANAGEMENT AGENCIES AGREE

- 1 . That federal agencies will be subject to, and comply with, state requirements in the same manner and to the same extent as any other party to this agreement, or other nongovernmental entity.
- 2 . To annually, by May 1, develop or update water quality monitoring plans to meet the intent of the Antidegradation Policy and the NPS Water Quality Management Program, and provide to IDHW monitoring results information relative to the feedback loop.
3. To annually provide, to the designated IDHW and IDL offices, by May 1, a general schedule of proposed land-disturbing activities during the forthcoming year. Projects and programs for which the federal agencies specifically request assistance will be identified.
4. To involve the IDWR, IDHW and IDL at the appropriate time in the NEPA process for projects having significant potential to impact beneficial water uses.
5. To incorporate the ten items for Federal Consistency Review Criteria (pages 26-28 of the Idaho Nonpoint Source Management Program) into NEPA documents.
6. To insure that all new and renewed plans, leases, contracts, special use authorizations, easements, right-of-way documents and other agreements involving permitted activity on federal lands, contain provisions for compliance with all water pollution control statutes and regulations (federal and state) under the authority of the Clean Water Act.
- 7 . To provide in-house training to federal Personnel to increase employee awareness of, and sensitivity to, the importance of maintaining water quality, potential impacts to water quality, applicable state and federal law, and state-of-the-art techniques used to prevent water quality problems.

VIII. IT IS FURTHER AGREES:

1. That in cases of conflict between agency missions, the agencies will provide an opportunity for informal conflict resolution prior to taking other actions provided by law.
- 2 . That nothing in this agreement shall be construed as limiting or affecting in any way the legal authority of the federal agencies in connection with the proper administration and protection of federal lands in accordance with federal laws and regulations.
3. That nothing in this agreement shall be construed as obligating the signing parties to expend funds in any contract or other obligation for future payment of funds or services in any contract in excess of those available or authorized for expenditure.

4. To periodically (two-year interval) review this Memorandum of Understanding and make revisions and updates as necessary to meet the purpose of the agreement. Amendments shall become effective following written approval by all parties.
5. That this agreement shall become effective as soon as it is signed by the parties and shall continue in force unless terminated by mutual written consent or any party upon thirty days notice in writing to the other parties of intention to terminate upon a date indicated.
6. That no member of, or delegate of Congress, or Resident Commissioner of the United States, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom.
7. That each provision of this agreement is subject to the laws and regulations of the State of Idaho, and the laws and regulations of the United States.
8. The program or activities conducted under this agreement or memorandum of understanding will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.

They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR-15, Subparts A & B), which provide that no person in the United States shall on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap, to be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

That the Memorandum of Understanding of September 1, 1988, between the Forest Service and Department is replaced upon approval and execution of this Memoranda of Understanding and its appendices.

This Memorandum of Understanding is made between: U.S. Environmental Protection Agency (EPA); Idaho Department of Health and Welfare, Division of Environmental Quality (IDHW); Idaho Department of Lands (IDL); Idaho Department of Water Resources (IDWR); Idaho Soil Conservation Commission (SCC) ; Cooperative Extension Service, University of Idaho (CES); U.S. Department of Agriculture, Soil Conservation Service (SCS); U.S. Department of

Agriculture, Agricultural Stabilization and Conservation Service (ASCS); U.S. Department of Agriculture, Forest Service, Northern, Intermountain and Pacific Northwest Regions (Forest Service); U.S. Department of Interior, and the Bureau of Land Management (BLM).

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US Forest Service, Region 6

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Bureau of Land Management

Dr. W. G. Nelson
Idaho Department of Agriculture

APPENDIX A - 2

FORESTRY PRACTICES APPENDIX TO THE MEMORANDUM OF UNDERSTANDING IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM IN THE STATE OF IDAHO

I. PARTIES TO THE AGREEMENT

Idaho Department of Health and Welfare, Division of Environmental Quality, hereinafter referred to as IDHW. Idaho Department of Lands, hereinafter referred to as IDL. U.S. Department of Agriculture, Forest Service, Intermountain, Northern and Pacific Northwest Regions, hereinafter referred to as the Forest Service. Bureau of Land Management, Idaho State Office, hereinafter referred to as the BLM.

II. PURPOSE

The purpose of this appendix to the Memorandum of Understanding Implementing the Nonpoint Source Water Quality Program in the State of Idaho is to coordinate water pollution control activities on federal, state, and private forest lands in Idaho to protect, maintain and restore the beneficial uses, as defined in the Idaho water quality standards, of the waters of the state.

III. LEGAL AUTHORITIES

The legal authorities of the agencies participating in forest practices water quality management are listed in the Memorandum of Understanding Implementing the Nonpoint Source Water Quality Program in the State of Idaho.

IV. DEFINITION

Best Management Practice (BMP): For this appendix, means a practice or combination of practices determined by the Land Board, in consultation with the IDL and the Idaho Forest Practices Act (IFPA) Advisory Committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint source pollution generated by forest practices. BMPs at a minimum shall include those management practices included in the Rules and Regulations pertaining to the Idaho Forest Practices Act (IDAPA 20.02.01); and the Rules and Regulations pertaining to the Idaho Stream Channel Protection Act (IDAPA 37.I). IDHW has listed the practices in the rules and regulations as approved BMPs in the Idaho Water Quality Standards and Wastewater Treatment Requirements, as amended (IDAPA 16.01.02300,05). Site specific BMPs, above and beyond those listed in this definition, may be necessary to avoid an impairment of beneficial uses.

V. OBJECTIVES

The agencies party to this agreement mutually agree to implement the:

- A. Water quality protection provisions of the Rules and Regulations pertaining to the Idaho Forest Practices Act (IDAPA 20.02.01);
- B. Idaho Forest Practices Water Quality Management Plan, as revised (1988);

C. Forestry sections of the Idaho Nonpoint Source Management Plan Program, 1989.

VI. AGREEMENTS

Therefore, the parties agree as follows:

A. The IDHW agrees:

1. To coordinate water quality management planning and implementation efforts with the:
 - a. IDL, where state and private forest lands administered or regulated by IDL are involved;
 - b. Forest Service where National Forest Service lands are involved; and
 - c. BLM where public lands administered by the BLM are involved.
2. To coordinate and chair the statewide interagency Forest Practices Audit every fourth year and involve IDL, the Forest Service, private forest land owners, and the BLM on the Forest Practices Audit Team.
3. To provide technical support to and participate on the forest practices cumulative effects task force.
4. To request in writing the IDL conduct a timely evaluation and modification of the relevant forest practice rule(s) should monitoring and surveillance or other evidence indicate that a IFPA rule or regulation is not providing adequate protection of water quality to insure full protection of beneficial use as defined in the Idaho water quality standards.
5. To include the following information in a requested modification of an IFPA rule or regulation:
 - a. Reference to the rule to be modified on a statewide, geographic or watershed basis.
 - b. Reference to evidence which indicates the rule is not fully protecting beneficial uses.
 - c. Name(s) of IDHW staff who may be contacted for further information.
 - d. Recommended additions or modification to the forest practices rules.
6. In the event that beneficial uses are not protected, IDHW will pursue enforcement actions in cooperation with the appropriate agencies.

B. The IDL agrees:

1. To comply with the water quality protection provisions of the Idaho Forest Practices Act Rules and Regulations (IFPA) on state and private forest lands.
2. To provide training to IDL staff, forest landowners, and operators regarding potential impacts to water quality, applicable state and federal law and state-of-the-art techniques used to prevent water quality problems.

- 3.To review variance policies, developed by federal agencies, to assure that they meet the substantive and procedural requirements of the water quality protection provisions of the IFPA rules and regulations.
- 4.To provide training to federal agencies regarding interpretation and implementation of the water quality protection of the IFPA rules and regulations.
- 5.To provide federal agencies technical support in the administration and implementation of the water quality protection provisions of the IFPA rules and regulation on federal lands.
- 6.To conduct interim internal reviews of BMPs by annually examining a representative sample (10 per ownership category) of timber related projects and prepare written BMP evaluation reports. Summaries of these reports, and similar reports from the federal agencies, will be provided to IDHW for inclusion in the annual Forest Practices Water Quality Management Plan Report.
- 7.To participate in the statewide Forest Practices Audit Team, provide necessary information for selection of timber sales, and provide technical expertise in audit procedures.
- 8.To notify the Federal agencies of suspected non-compliance with water quality protection provisions of the IFPA rules and regulations on federally administered lands.
- 9.To notify IDHW of all suspected occurrences of beneficial use impairments on state and private forest lands, and to coordinate enforcement efforts with the appropriate agencies.
- 10.To conduct an evaluation of any request for an alternation of an IFPA rule or regulation and respond in writing within 30 days indicating action which will be taken. The IDL may deny the request, stating the reasons for denial, refer the request to the Forest Practices Act Advisory Committee, or initiate rule making procedures in accordance with section 67-5203, Idaho Code.
- 11.To involve the Forest Practices Act Advisory Committee in all requests for a modification of an IFPA rule or regulation by soliciting their technical advice and recommendations. The director of IDL will consider all factors involved when making recommendations for modifications of an IFPA rule or regulation to the State Board of land Commissioners.

C. The Federal Agencies Agree:

- 1.To comply with the water quality protection provisions of the IFPA Rules and Regulations.
- 2.To conduct interim internal reviews of best management practices (BMPs) by annually examining a representative sample (target 10%) of timber related projects on lands they administer and prepare written BMP evaluation reports. Summaries of these reports will be provided to IDL and IDHW, for inclusion in the annual Forest Practices Water Quality Management Plan Report.

- 3.To participate in the statewide Forest Practices Audit Team, provide necessary information for selection of timber sales and provide technical expertise in audit procedure.
- 4.To develop and implement a variance policy that assures that when a specialized BMP is used, instead of a specific IFPA rule or regulation, that the practice selected protects beneficial uses.
- 5.To provide technical support to IDL and participate on the forest practice cumulative effects tasks force.
- 6.To notify IDHW of any suspected occurrences of beneficial use impairment that occur on National Forest System lands and public lands administered by the BLM.
- 7.To notify IDL of all suspected non-compliance with water quality protection provisions of the IFPA rules and regulations on federally administered lands.
- 8.To provide technical support, to IDL, in the administration and implementation of the water quality protection provisions of the rules and regulations pertaining to the IFPA on federally administered lands.

D. It is mutually agreed:

- 1.The mechanism for implementing pollution control on forest practices is described in the State of Idaho *Forest Practice Water Quality Management Plan*, 1988, as revised.
- 2.That nothing in this appendix shall be construed as limiting, or affecting in any way, the legal authority of the participating agencies in connection with the proper administration and protection of affected lands in accordance with federal and state laws and regulations.
- 3.That nothing in this appendix shall be construed as obligating the participating agencies to expend funds in any contract, or other obligation, for future payments of funds or services in excess of those available or authorized for expenditure.
- 4.To periodically (two year interval) review this cooperative appendix, and make revisions and updates as necessary to meet the purpose of the appendix. Amendments shall be effective following written approval by all parties to the appendix.
- 5.That the appendix shall become effective as soon as it is signed by the parties, and shall continue in force unless terminated by mutual written consent, or by any party, upon sixty days notice in writing to the other parties of intention to terminate upon a date indicated.
- 6.That this appendix supersedes the MOU between: IDHW and IDL dated 1/8/88; IDHW and the Forest Service dated 9/1/88; and IDHW and BLM dated 9/21/79.

IN WITNESS THEREOF, the parties hereto have caused this cooperative appendix to be executed.

IDAHO DEPARTMENT OF HEALTH AND WELFARE

By _____ Date _____
Jerry L. Harris
Director, Idaho Department of Health and Welfare

IDAHO DEPARTMENT OF LANDS

By _____ Date _____
Stanley F. Hamilton
Director, Idaho Department of Lands

United States Forest Service

By _____ Date _____
Gray F. Reynolds
Regional Forester, Intermountain Region

By _____ Date _____
David F. Jolly
Regional Forester, Northern Region

By _____ Date _____
John E. Lowe
Regional Forester, Pacific Northwest Region

BUREAU OF LAND MANAGEMENT

By _____ Date _____
Delmar D. Vail
State Director, Bureau of Land Management

APPENDIX A - 3

APPENDIX TO THE MEMORANDUM OF UNDERSTANDING IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM . IN THE STATE OF IDAHO SPECIFYING IMPLEMENTATION OF THE MINING WATER QUALITY PROGRAM

I. AGENCIES TO THE AGREEMENT

This Appendix to the Memorandum of Understanding (MOU) is made between the Idaho Department of Lands (IDL), Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ), Idaho Department of Water Resources (IDWR), Idaho Department of Fish and Game (IDFG), U.S. Department of Agriculture, Forest Service, Northern, Intermountain and Pacific Northwest Regions (Forest Service); the United States Environmental Protection Agency (EPA); and the U.S. Department of Interior, Bureau of Land Management, Idaho State Director (BLM).

II. PURPOSE AND SCOPE

This is an appendix to the memorandum of understanding IMPLEMENTING the nonpoint source water quality program in the State of Idaho. The purpose of this agreement is to coordinate the implementation of the antidegradation policy of the state and the nonpoint source water quality management program for all mining operations. The Appendix also describes the relationship and supporting activities of the agencies with regard to nonpoint source discharges which have surface or ground water quality impacts, generated by mining activities under their jurisdiction. This Appendix is not intended to transfer any regulatory authorities or responsibilities from coordinating agencies to the lead agency.

III. LEGAL AUTHORITIES

The legal authorities of the agencies participating in water quality management, as it relates to mining, are listed in the Memorandum of Understanding IMPLEMENTING the Nonpoint Source Water Quality Program in the State of Idaho.

IV. DEFINITIONS

Best Management Practice (BMP): A practice or combination of practices determined by the state to be the most effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources (IDHW, 1985). Idaho Water Quality Standards and Wastewater Treatment Requirements). For the purpose of this Appendix, mining BMPS are listed in the Idaho Surface Mining Act, Dredge and Placer Mining Protection Act, and BMP Manual for Mining Operations in Idaho. BMPS may be comparable to soil and water conservation practices required by the USFS or BLM.

Coordinating Agency: An agency which is party to this agreement and which works with the lead agency to implement the nonpoint source surface and ground water quality programs for mining operations under its jurisdiction.

Coordination Meeting: A meeting of the lead and coordinating agencies with a mining project representative, usually conducted on the project site, to review progress and compliance with agency regulations and the approved plans. Frequency of meetings is dependent on project size and complexity.

Designated Uses: The designated uses for which waters of the State are to be protected include: agricultural and domestic water supplies; cold and warm water biota; salmonid spawning; primary and secondary contact recreation; industrial water supplies; wildlife habitat; and aesthetics. Special resource waters may be designated and listed in the Idaho Department of Health and Welfare Rules Sections 01.02110 - 01.02160. Modification of these rules can be made only through amendment, pursuant to Section 67-52, Idaho Code. Idaho water right law which prioritizes beneficial uses of water as those uses for mining, agriculture, domestic, commercial purposes and fish and wildlife does not supersede the Idaho Environmental Protection and Health Act which guarantees the protection of water quality for coexisting uses.

Field Inspection: A meeting or review conducted at the mine site by a regulatory agency to ensure compliance with that agency's specific laws, rules, plans or permits. Field inspections are conducted as deemed necessary by the regulatory agency for the proper administration of its laws, rules, plans or permits.

Lead Agency: An agency, either BLM, USFS, or IDL, which has the lead responsibility for coordinating the administration of the approved plan of operation, reclamation plan or permit, and inspecting the operation for compliance with the approved plan of operation or reclamation plan.

Nonpoint Source Pollution: Ground and surface water pollution that comes from many varied non-specific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution [Idaho Code title 39, chapter 36).

V. GENERAL

The agencies mutually agree that:

1. For operations on federal mining claims, the lead agency will be determined as outlined in the Memorandums of Understanding between the Idaho Department of Lands and the U.S. Department of Interior, Bureau of Land Management (January 28, 1987) and the U.S. Department of Agriculture, Forest Service, Regions 1 and 4 (November 27, 1985). These memoranda of understanding are intended to coordinate the administration by the Idaho Department of Lands and U.S. Forest Service or U.S. Bureau of Land Management of their respective authorities and regulations pertaining to mining operations on private, state, and federal lands under state and federal jurisdictions. These memoranda are also intended to achieve efficient use of manpower and appropriations by reducing unnecessary, duplicative, and overlapping applications, notices, and inspections by Department of Lands, U.S. Forest

Service, and Bureau of Land Management, and double bonding, to the extent legal and practicable.

2. The lead agency and the IDL will require and ensure that BMPS are designed, implemented and maintained at each operation for the purpose of protecting or maintaining the designated uses of the waters of the state, and for providing protection for public health and safety.
3. In cases of conflict between agency opinions, requests, or time frames, the agencies will provide an opportunity for informal conflict resolution prior to taking independent actions provided by law.
4. Project reviews and coordination for federal, state, and local permit evaluations will be scheduled concurrently with the National Environmental Policy Act (NEPA) process, when NEPA is applicable. The IDL is responsible for ensuring that mine operators implement and maintain their BMPS to protect designated uses of waters in Idaho.
5. The DEQ is responsible for monitoring water quality and notifying the IDL when mining operations may be degrading waters of Idaho.
6. Each managing agency should consider modifying existing mining regulations or policies as needed to incorporate the provisions of Idaho's Ground Water Quality Plan.

VI. AGENCY REVIEW AND PRE-PROJECT COORDINATION

The Idaho Department of Lands will:

This section will apply when a reclamation plan or placer mining permit is required by the IDL. Coordinating agencies should be aware that mining and milling on National Forest System lands and BLM administered lands, which do not require a placer permit or reclamation plan, are reviewed under the NEPA process.

- 1) Forward one copy of a complete dredge and placer mining permit application, plan of operation or reclamation plan to the coordinating state and federal agencies for review and comment. The application shall include information identifying foreseeable site-specific nonpoint sources of water quality impacts and a water management plan which outlines how ground and surface water quality will be protected during each phase of the mining operation.
- 2) When the director of the IDL determines, after consultation with DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface and ground waters, the director shall request, and the operator shall provide to the director, baseline pre-project water monitoring information and furnish specified ongoing monitoring data during the life of the project as required in the monitoring plan. When monitoring is required, IDL will forward a copy of the monitoring plan and information to the DEQ.

- 3) Specify the lead agency and their field contact and phone number.
- 4) Specify the IDL field contact and phone number.
- 5) Specify the date that all comments must be received by the IDL. Also, specify whether IDL will act as a clearinghouse for state agency comments or whether the state agencies should comment directly to the federal agency responsible for the NEPA process.
- 6) After coordinating schedules with the coordinating agencies, specify the date and time for a field review or the date by which a review must be requested.
- 7) Incorporate the coordinating agency's written comments, that are relevant to IDL's authorities, in the dredge and placer mining permit, or reclamation plan. Verbal comments will be accepted by the due date provided they are followed-up with written comments within specified time frames. Plans or I permits may be approved with conditions that address a coordinating agency's concerns. The IDL should notify an operator when a coordinating agency does not feel that the proposed BMPS are adequate to protect water quality.
- 8) The best management practices, initially proposed by an operator, shall be considered accepted at the time the IDL approves the reclamation plan or placer permit.

The U.S. Forest Service will:

- 1) Provide a scoping statement to the coordinating agencies for projects that require an Environmental Assessment or an Environmental Impact Statement on National Forest System lands.
- 2) Provide one (1) copy of the complete plan of operation to the IDL.

The Bureau of Land Management will:

- 1) Provide a scoping statement to the coordinating agencies for projects that require an Environmental Assessment or an Environmental Impact Statement on BLM land.
- 2) Provide one (1) copy of the complete plan of operations to the IDL.
- 3) Forward Notices to the IDL.

The US. Environmental Protection Agency will:

- 1) Administer and oversee the implementation of the Clean Water Act Sections 402 and 319, which require the states to address and control point and nonpoint source impacts to water quality.
- 2) Coordinate with IDL to complete a field review, when any portion of the operation falls under the administration of the EPA.

- 3) Coordinate with the IDL and DEQ to develop and establish any EPA required water quality monitoring programs.

The Division of Environmental Quality will:

- 1) Coordinate with the IDL to complete field reviews.
- 2) Review the dredge and placer mining permit application, plan of operation or reclamation plan with respect to the following areas:
 - C The need for a monitoring plan.
 - C The location of water quality monitoring sites.
 - C Identification and use of BMPS.
 - C Adequacy of wastewater impoundments under 30 feet in height, such as settling ponds and tailings ponds.
 - C Potential threats to surface and ground water quality.
 - C Handling and storage of hazardous and deleterious materials, such as fuels, chemicals, and toxic substances.
 - C Other laws and rules administered by DEQ.
- 3) Forward comments, verbally with written follow-up at a minimum, to IDL for a reclamation plan, plan of operation or placer permit by the time specified by IDL.
- 4) Consult with the IDL and the lead agency to determine if there is a reasonable potential for nonpoint source pollution. When pre-project baseline and ongoing water quality monitoring is necessary; request, through IDL, that the operator provide such water quality monitoring data. The DEQ will specify the general locations, frequency, parameters, duration and methods of sampling that need to be in the monitoring plan. The operator is responsible for submitting a site specific monitoring plan for approval.
- 5) Review and approve water quality monitoring plans for operations required to have them.
- 6) The DEQ has responsibility for permitting and administration of a cyanidation facility. They will provide notice to the lead and coordinating agencies of receipt of an application for a cyanidation permit.

The Department of Fish and Game will:

- 1) Conduct, review and approve, or provide fisheries monitoring when the operator is required by IDL, to monitor fisheries.
- 2) Provide information, to the IDL and the lead agency, regarding potential threats to fish, aquatic biota, avian and terrestrial wildlife, and recommend mitigation measures.

- 3) Provide information to the IDL regarding the need for permits required by the IDF&G, by the time specified by IDL.

The Department of Water Resources will:

- 1) Coordinate with IDL to complete a field review, when any portion of the operation falls under the administration of the IDWR.
- 2) Review and comment on the permit application, operation or reclamation plan with respect to the following regulatory functions of the IDWR:
 - a. The need for a Stream Channel Alteration Permit;
 - b. The need for dam or tailings dam construction approval;
 - c. The need for Well Construction Permits;
 - d. The need for Water Appropriation Permits;
- 3) Review and comment on the permit application, operation or reclamation plan with respect to:
 - a. Other laws, rules and regulations administered by the IDWR;
 - b. Identification and use of BMPS required for stream channel alteration permits;
 - c. Need for additional information from the operator required to evaluate the project.
- 4) Provide the lead agency and/or IDL with copies of all applications filed by the operator or his agents with the IDWR.

VII. INSPECTIONS (Mine Reviews)

This section applies to all mineral operations where inspections may be required for compliance with state and federal law. This section is not intended to limit or increase an agency's authority. All agencies that are party to this MOU recognize the need for voluntary cooperation. As referenced on page 2, paragraph 6 herein, there are two MOUs which determine the lead agency for each mining site. The lead agency designates one person to oversee operations at the site. All other agencies should coordinate with this lead agency coordinator. The lead agency is responsible for ensuring compliance with the plan of operation (USFS or BLM), placer permit or reclamation plan, whichever are applicable. If the lead agency/minerals administrator decides there is a compliance problem with a coordinating agency's permit, they should contact the appropriate coordinating agency. If a coordinating agency decides there is a compliance problem with the plan of operation, placer permit or reclamation plan, they should contact the lead agency's field representative, not the operator. Regional inter-agency coordination groups may develop site-specific MOUs to coordinate mine permitting and administration.

The lead agency will:

- 1) Conduct field inspections of mining operations on a regular basis, as determined by the lead agency, during which the operation is inspected for compliance with the plan of operation, dredge and placer mining permit or surface mine reclamation plan.

- 2) Ensure that the operator implements BMPS on the mine site in accordance with the approved plan of operation, placer mining permit or reclamation plan.
- 3) Inform the coordinating agencies of the lead agency's inspection schedule and provide an opportunity for participation by the coordinating agencies.
- 4) Forward copies of the field reports to the coordinating agencies, on request.

The Division of Environmental Quality will:

- 1) Participate in field inspections, as necessary.
- 2) Ensure that the mining operation is using correct water quality monitoring techniques and water quality assurance in implementing the approved monitoring plan. DEQ will conduct water quality monitoring and surveillance to assure compliance with Water Quality Standards.
- 3) Inform the lead agency in advance of water quality monitoring schedules, cyanidation facility inspections and field inspections being conducted for assuring water quality compliance.
- 4) Notify the lead agency, when a field inspection by DEQ is necessary due to a water quality complaint.
- 5) Notify the lead agency of existing or potential water quality violations on a mine site.
- 6) Document inspections of a water quality complaint with a field report and photos, and forward a copy of the report to the lead agency.

The U.S. Environmental Protection Agency will conduct inspections as necessary to fulfill its statutory obligations. The EPA will notify the lead agency of any planned inspections and of the inspection results.

The Department of Water Resources will inform the lead agency and/or IDL of monitoring schedules, compliance inspections and any enforcement actions taken or being considered against the operator and/or his agents.

The Department of Fish and Game will inform the lead agency of monitoring schedules planned by the department.

VIII. INTERAGENCY COORDINATION MEETINGS INSPECTIONS

This section applies to operations where a reclamation plan or a placer mining permit is required by IDL.

The lead agency will:

- 1) Conduct coordination meetings on mining operations when the lead agency determines, based on potential water quality impacts, size, or permitting logistics, that periodic interagency coordination is necessary.
- 2) Provide advance notice to the coordinating agencies of the time and place of the meeting.
- 3) Provide a written agenda for the meeting.
- 4) Will notify the operator, in advance, of the agencies who are attending the meeting.
- 5) Discuss BMP implementation and effectiveness.
- 6) Provide meeting notes from the coordinating agencies and operator, within 30 days.

The coordinating agencies will:

- 1) Attend coordination meetings or provide adequate prior notice of absence.
- 2) Provide information on issues within the agency's areas of authority and expertise.
- 3) Provide recommendations, as appropriate, on BMP design and implementation as they affect resources within that agency's jurisdiction and expertise; and
- 4) The DEQ will provide information on water quality conditions and documented water quality violations and impairment of designated uses.

IX. FEEDBACK LOOP PROCESS/ANTIDEGRADATION

This section applies to all mineral operations, regardless of size or permit requirements.

The lead agency or the Department of Lands will:

1. Require and ensure that the water management plan, as part of the reclamation plan, will be implemented and maintained for the purpose of providing full protection and maintenance of designated uses and providing for protection of the environment, public health, safety and welfare as identified in the state water quality standards.
2. Request that operators submit two copies of ongoing monitoring data, as required for the life of the project, and ensure that the DEQ receives one (1) copy of all monitoring data.
3. Notify DEQ and IDF&G as soon as possible of suspected impairment of designated or existing beneficial uses, and submit any available documentation of the problem, such as photos or field reports.

4. Notify DEQ and coordinating agencies as soon as possible after a plan or permit violation is identified.
5. Follow up on suspected plan of operation, reclamation plan or placer permit violations reported by a coordinating agency by inspecting the mine site as soon as possible and documenting any plan or permit violations.
6. Notify the operator when a water quality problem has been identified. If BMPS are being implemented properly but water quality criteria are not being met, or the designated and existing uses are being impaired, the lead agency, and IDL when requested by the lead agency, will conduct a timely evaluation and require BMP installations or modifications. No agency may design BMPS for an operator. However, the lead agency must ensure that an operator installs or modifies the BMPS when water quality is being degraded or designated uses are not being protected.
7. Review and confirm, based on a prearranged schedule that recommended BMP installations or modifications, needed to correct a water quality problem, have been implemented at the mine site. If they have not been implemented, the lead agency may initiate enforcement action pursuant to its authorities. The lead agency will notify DEQ and IDL of the intent to initiate an enforcement action and of any threat to water quality the plan or permit violation may impose. DEQ may then proceed as directed under Section IX, DEQ paragraph 5. If BMPS have been modified, DEQ shall proceed as outlined in Section IX, DEQ paragraph 1.

The Division of Environmental Quality will:

1. Determine, by water quality monitoring and surveillance, whether the BMPS are meeting water quality criteria or fully protecting designated uses and providing for protection of the environment, and the health, safety and welfare of the people of this state.
2. Follow up on suspected water quality violations by inspecting the site as soon as possible and documenting or sampling as necessary to verify water quality violations and identify source areas.
3. Notify the lead agency and IDL as soon as possible of suspected plan or permit violations of the plan of operation, reclamation plan or placer mining permit. When appropriate, provide written and photo documentation.
4. If water quality criteria are not being met, or designated uses are being impaired, provide the lead agency with a written report within ten days after a suspected water quality violation is discovered. The report should document the water quality violations, and contain recommendations for correcting the problems. Photographs should be used to document problems whenever possible. DEQ will request in writing that the lead agency evaluate the best management practices and modify those on-site practices to protect water quality and designated uses. The lead agency will then proceed as outlined in Section IX, lead agency or IDL paragraph 6.

5. If water quality criteria are not being met, or designated uses are being impaired, or water quality impairment results from a cyanide facility, and the operator refuses to modify or upgrade existing BMPS, as required by the IDL, the DEQ may initiate enforcement action by preparing a compliance schedule or instituting administrative or civil proceedings. DEQ shall notify the lead agency of the intent to initiate enforcement action. This shall not preclude the lead agency from taking its own enforcement action.
6. The director may seek injunctive relief to prevent or stop imminent and substantial danger to the public health or the environment as provided in Section 39-108, Idaho Code.

The Department of Fish and Game will,

1. Determine by monitoring and surveillance, whether the BMPS are effective in protecting fish and wildlife resources.
2. If fish and wildlife are being adversely impacted by mining, then IDF&G will provide the IDL with appropriate documentation and request that BMPS be modified.

X. *LIMITATIONS*

Nothing in this Appendix shall be construed as increasing, limiting or modifying, in any way, the authority or statutory or regulatory responsibilities of the State or the Federal Government, or bind either to perform beyond their respective authorities, or require any agency to assume or expend any sum in excess of available appropriations. Each and every provision of this Appendix is subject to the laws and regulations of the State of Idaho, the laws of the United States, and the regulations of the Secretary of Agriculture and Secretary of the Interior.

Xi. EFFECTIVE DATE

This Appendix shall become effective upon the signature of all agencies and will remain in force unless formally amended and approved by all agencies.

This Appendix may be formally terminated by any agency after sixty (60) days written notice to the other signators of his intention to do so.

Stanley F. Hamilton, Director
Department of Lands

Date

Jerry L. Harris, Director
Department of Health & Welfare

Date

R. Keith Higginson, Director
Department of Water Resources

Date

Jerry M. Conley, Director
Department of Fish & Game

Date

M. Lynn McKee, Director
Idaho Operations Office, EPA Region 10

Date

David F. Jolly, Regional Forester
USDA Forest Service, Region 1

Date

Gray F. Reynolds, Regional Forester,
USDA Forest Service, Region 4

Date

Delmar D. Vail, State Director
Bureau of Land Management

Date

APPENDIX A - 4

APPENDIX TO THE MEMORANDUM OF UNDERSTANDING IMPLEMENTING THE NONPOINT SOURCE WATER QUALITY PROGRAM IN THE STATE OF IDAHO SPECIFYING IMPLEMENTATION OF THE AGRICULTURAL POLLUTION ABATEMENT PLAN, 1991

I. AGENCIES TO THE AGREEMENT

Idaho Soil Conservation Commission (SCC); Idaho Department of Health and Welfare-Division of Environmental Quality (DEQ); U.S.D.A.-Soil Conservation Service (SCS); University of Idaho-Cooperative Extension System (CES); U.S. Environmental Protection Agency (EPA); U.S.D.A. - Agricultural Stabilization and Conservation Service (ASCS); U.S.D.I.-Bureau of Land Management (BLM); U.S.D.A.-Forest Service, Intermountain, Northern and Pacific Northwest Regions (Forest Service); Idaho Department of Lands (IDL); Idaho Department of Agriculture (IDA); Idaho Department of Water Resources (IDWR).

II. PURPOSE

This appendix to the Memorandum of Understanding Implementing the Nonpoint Source Water Quality Program in the State of Idaho is to identify roles and responsibilities for implementing the Idaho Agricultural Pollution Abatement Plan, 1991 (Ag Plan) that coordinates nonpoint source water pollution control activities on all federal, state and private agricultural lands in the state.

III. DEFINITIONS

Best Management Practice (BMP): (for this appendix) A *component practice* or *combination of component practices* determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. The Catalog of Component Practices is part of the Ag Plan and the listing of practices approved for use in the development of agricultural BMPs.

Coordinated Resource Management Planning (CRMP): A process by which natural resource owners, managers, and users, working together as a team, develop and implement plans for the management of all major resources and ownerships within a specific area and/or resolve specific conflicts.

Federal Land Management Agencies: (for this appendix) The U.S.D.A.-Forest Service, and the U.S.D.I.-Bureau of Land Management.

Soil Conservation Districts (SCDs): The Soil Conservation District Law, Idaho Code, Title 22, Chapter 27 establishes the organization and purposes of Soil Conservation Districts (SCDs). The 51 SCDs are governmental subdivisions of the state and include private, state and federal lands, with the exception of some incorporated cities and portions of the Idaho National Engineering Laboratory.

IV. AUTHORITIES

State agencies may enter into interagency cooperative agreements under authority of Title 67, Chapter 23, Idaho Code.

The legal authorities of the agencies to the agreement are listed in the Memorandum of Understanding Implementing the Nonpoint Source Water Quality Program in the State of Idaho.

V. NOW THE PARTIES MUTUALLY AGREE:

1. To implement the Idaho Agricultural Pollution Abatement Plan, as revised in 1991 and thereby is consistent with and meets the goals of the Idaho Nonpoint Source Management Program and the requirements of Section 319 of the federal Clean Water Act.
2. To establish a Best Management Practice (BMP) Technical Committee and to participate in the evaluation, modification and development of component practices through that committee.
3. To implement Coordinated Resource Management Planning (CRMP) as an instrument to accomplish agricultural water quality planning on a watershed basis when ownership is mixed public and private.
4. To implement and integrate the 1991 Idaho Ground Water Quality Plan agricultural chemical and nutrient management policy along with the supporting monitoring program.
5. To cooperate in the development of the Pesticides State Management Plan (SMP) as an integral part of agricultural chemical management.
6. To annually confirm or update the beneficial use status and pollutant magnitude of agricultural nonpoint source water quality priorities listed in **the Ag Plan**.
7. To provide information and education to agricultural land users and to the general public about agricultural nonpoint source pollution problems and the solutions and activities that address those problems.
8. To review proposed revisions of the Ag Plan that are either substantial or involve changes in policy, and which subsequently shall be effective following written approval by SCC and DEQ.

VI. IDAHO SOIL CONSERVATION COMMISSION AGREES:

1. To coordinate the implementation of the Ag Plan on all state and private agricultural lands in the state.
2. To organize, convene and chair the BMP Technical Committee.
3. To ensure that BMPs and component practices are evaluated by the BMP Technical Committee for effectiveness in providing water quality benefits for both surface and ground water.
4. To participate in BMP implementation and effectiveness evaluations through State Agricultural Water Quality Program (SAWQP).
5. To be lead agency for Coordinated Resource Management Planning within SAWQP.
6. To jointly (with DEQ) evaluate research needs identified by Soil Conservation Districts (SCDs) or technical agencies and to work with research agencies and groups to initiate needed research.
7. To provide leadership to SCDs in developing information and education programs that target local audiences.
8. To review jointly with DEQ) agricultural nonpoint source water quality priority lists (established in the SCDs' Five Year Programs) for completeness and consistency with Stream Segments of Concern, Outstanding Resource Waters and 319 Assessment information.
9. To update annually, with the concurrence of DEQ, the Catalog of Component Practices (Section VIII) and the List of Agricultural Nonpoint Source Water Quality Priorities (Section VI) of the Ag Plan.
10. To conduct periodic (two year interval) evaluations of the Ag Plan for compatibility with new legislation, policies, programs and plans and for responsiveness to local needs. Revisions that are either substantial or involve changes in policy will be submitted to all parties (including SCDs) for review and finally to DEQ for written approval.

VII. IDAHO DEPARTMENT OF HEALTH AND WELFARE - DIVISION OF ENVIRONMENTAL QUALITY AGREES:

1. To be the lead agency for water quality monitoring activities.
2. To participate in BMP implementation and effectiveness evaluations through the State Agricultural Water Quality Program (SAWQP).

3. To jointly (with SCC) evaluate research needs identified by Soil Conservation Districts (SCDs) or technical agencies and to work with research agencies and groups to initiate needed research.
4. To coordinate the distribution of agricultural nonpoint source water quality priority lists (established in the SCDs' Five Year Programs) to appropriate agencies for confirmation or updating of the beneficial use status and pollutant magnitude as listed in the 319 Assessment.
5. To review annual updates of the Catalog of Component Practices (Section VIII) and the List of Agricultural Nonpoint Source Water Quality Priorities (Section VI) of the Ag Plan.

VIII. FEDERAL LAND MANAGEMENT AGENCIES AGREE:

1. To coordinate the implementation of the Ag Plan on all federal agricultural lands in the state.
2. To ensure the technical adequacy of the design and installation of each BMP and component practice applied on lands they administer.
3. To coordinate with SCDs in the establishment of nonpoint source water quality priorities during development or revision of land use plans.

IX. UNITED STATES DEPARTMENT OF AGRICULTURE - SOIL CONSERVATION SERVICE AGREES:

1. To ensure the technical adequacy of the design and installation of each BMP and component practice applied on privately owned lands.
2. To participate in BMP implementation and effectiveness evaluations through the State Agricultural Water Quality Program (SAWQP).

X. IDAHO DEPARTMENT OF AGRICULTURE AGREES:

1. To be the lead agency in the development of the Pesticides State Management Plan (SMP) in consistency with the 1991 Idaho Ground Water Quality Plan agricultural chemical and nutrient management policy.
2. To participate in BMP and component practice effectiveness evaluations and water quality monitoring activities relating to the use of agricultural chemicals and nutrients.

XI. IT IS FURTHER AGREED:

1. That nothing in this appendix shall be construed as limiting or affecting in any way the legal authority of the participating agencies in connection with the proper administration and protection of affected lands in accordance with federal and state laws and regulations.
2. That nothing in this appendix shall be construed as obligating the participating agencies to expend funds in any contract or assume any other obligation for future payment of funds or services in excess of those available or authorized for expenditure.
3. That this appendix shall become effective upon an agency as soon as it is signed by that agency. This appendix shall continue in force unless terminated by mutual written consent, except that any agency shall have the right to terminate that agency's participation as a party to the agreement upon sixty days notice in writing to the other parties of their intention to terminate upon a date indicated.
4. That this appendix shall be administrated by the SCC.
5. That this appendix shall be reviewed periodically (two-year interval) so that revisions and updates necessary to meet the purpose of the appendix are made. Amendment shall be effective following written approval by all parties to the appendix.
6. That the program and activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964 as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.
7. That each provision of this agreement is subject to the laws and regulations of the State of Idaho, and the laws and regulations of the United States.

WITNESS THEREOF, the parties hereto have caused this cooperative appendix to be executed.

IDAHO DEPARTMENT OF HEALTH & WELFARE -
DIVISION OF ENVIRONMENTAL QUALITY

U.S. ENVIRONMENTAL PROTECTION AGENCY

Joe Nagel, Administrator

M. Lynn McKee, Asst. Regional Admin.

IDAHO SOIL CONSERVATION COMMISSION

U.S. D. A. –SOIL CONSERVATION SERVICE

Paul Calverley, State Conservationist

Wayne R. Faude, Administrator

IDAHO DEPARTMENT OF LANDS

U.S.D.I. - BUREAU OF LAND MANAGEMENT

Stanley Hamilton, Director

Delmar D. Vail, State Director

IDAHO DEPARTMENT OF AGRICULTURE

U.S.D.A. - FOREST SERVICE~ REGION 1

Dr. W. G. Nelson, Director

David F. Jolly, Regional Forester

IDAHO DEPARTMENT OF WATER RESOURCES USDA - FOREST SERVICE, REGION A

R. Keith Higginson, Director

Gray F. Reynolds, Regional Forester

UNIVERSITY OF IDAHO -
COOPERATIVE EXTENSION SYSTEM

U.S.D.A. AGRICULTURAL STABILIZATION AND
CONSERVATION SERVICE

Dr. LeRoy D. Luft, Director

Bruce Bradshaw, Act. State Exec. Director

U.S.D.A. FOREST SERVICE. REGION 6

John E. Lowe, Regional Forester

APPENDIX A - 5 DRAFT

**COORDINATED RESOURCE MANAGEMENT
MEMORANDUM OF UNDERSTANDING**

**Between
STATE OF IDAHO**

**Soil Conservation Commission (SCC)
Department of Fish and Game (IDFG)
Department of Agriculture (IDA)
Department of Lands (IDL)
University of Idaho, Cooperative Extension System (CES)
Department of Health and Welfare, Division of Environmental Quality (DEQ)**

and

**UNITED STATES DEPARTMENT OF AGRICULTURE
Natural Resources Conservation Service (NRCS)
Forest Service (FS)**

and

**UNITED STATES DEPARTMENT OF INTERIOR
Bureau of Land Management (BLM)**

and

**Idaho Cattle Association (ICA)
Idaho Wool Growers Association (IWGA)
Idaho Association of Soil Conservation Districts (IASCD)**

PURPOSE

The agencies and associations signatory to this Memorandum Of Understanding will cooperate with private landowners and natural resource users to foster Coordinated Resource Management (CRM).

THE PROCESS/ACTION (CRM) - CRM is a process that considers the resources and resource users within a geographical area. The process encourages active involvement and input from all interested parties, with management decisions made by a consensus of the group.

THE PRODUCT/PLAN - A CRMP is a management plan developed to document a resource management program that attempts to integrate and make provisions for all appropriate resource values and uses within a geographical area. The plan is developed by a group of individuals representing different interests concerned with the area. The plan is built upon the formulation of goals for the area through a consensus decision making process. These goals form the basis for all management alternatives considered for the area.

POLICY

The BLM, FS, IDFG, IDA, IDL, CES, NRCS, SCC, DEQ, ICA, IWGA, IASCD and private landowners and natural resource users, will cooperate to foster CRM. Techniques and procedures may be implemented through CRM where statutory authority, resource needs, public support, and financial capability exists.

In implementing the provisions of this memorandum, each agency's participation will vary depending upon the landownership and the land use and administrative responsibility within the area. Other agencies, associations, organizations, and individuals will be asked to participate as appropriate.

CRM is an approach for reaching decisions and resolving resource conflicts. It can complement any planning or management situation where mixed land ownership or multiple resource management use is involved. Some of the elements common to the CRM approach are:

- Cooperation and equitable voluntary participation of all affected interests, using a "team" approach.
- Open communication among all participants.
- Availability of technical expertise.
- Strong and effective local leadership.
- Agreement by consensus of the team.
- Commitment to monitoring, review and revision of plans, agreements and projects to ensure objectives are met.

OBJECTIVES

The objectives of CRM are to:

- A. Improve management of land resources while promoting cooperation among the agencies, associations, landowners, interest groups, and individuals responsible for or interested in these resources.
- B. Develop and implement resource management programs and activities to achieve compatible resource uses based on sound ecological and economic relationships.
- C. Achieve optimum sustained production of food, fiber, and other goods, services, and benefits from such lands, consistent with State and Federal policies.
- D. Increase efficiency and reduce resource management costs of public agencies, private landowners, communities, and the general public.

- E. Improve communications among those interested in and affected by land and resource management decisions.

RESPONSIBILITIES

The responsibilities of the participants in CRM are:

- A. The BLM and FS plan and conduct multiple use resource management and conservation programs on lands under their jurisdiction in accordance with their pertinent laws and authorities.
- B. The NRCS provides technical assistance to private operators for planning and applying conservation programs on private and other non-Federal lands.
- C. The SCC provides assistance to the Soil Conservation Districts (SCD) to develop long-range programs, and to secure and coordinate assistance from appropriate agencies and organizations.
- D. The SCD provides a means for determining local attitudes and objectives, and serve as a catalyst to develop and maintain local interest in and support for conservation and development of lands in Soil and Water Conservation Districts.
- E. The CES provides and conducts local educational activities which compliment research and assistance programs.
- F. The IDFG has responsibility for management of fish and wildlife resources within Idaho.
- G. The IDA will assist in the development and implementation of Best Management Practices and Resource Management Plans.
- H. The IDL plans and conducts multiple use resource management and conservation programs on lands under their jurisdiction and private operators for practices on private and other non-Federal lands.
- I. The DEQ is responsible for the administration of State Water Quality Standards.
- J. The ICA and IWGA encourage members to take full responsibility for rangeland stewardship and promote wise grazing use of the resource.

The signatory agencies and associations will cooperate with all owners, managers, and users of land and resources within each specific area, including Federal, State, counties, and private landowners. Other persons, agencies and organizations with interest in the CRM area will be involved as appropriate.

MODIFICATION

This MOU shall remain in effect until modification by the parties in writing and is renegotiable at the option of any one of the parties.

SIGNATORIES

Chairman, Idaho Soil Conservation Commission Date

Director, Idaho Department of Lands Date

Director, Idaho State Department of Agriculture Date

Director, Idaho Department of Fish and Game Date

State Director, Cooperative Extension System Date

Regional Forester, USDA Forest Service, R-1 Date

Regional Forester, USDA Forest Service, R-4 Date

State Conservationist, Natural Resources Conservation Service Date

Administrator, Idaho Department of Health and Welfare Date
Division of Environmental Quality

State Director Bureau of Land Management Date

President, Idaho Cattle Association Date

President, Idaho Wool Growers Association Date

President, Idaho Association of Soil Conservation Districts Date

APPENDIX A - 6

THE IDAHO DAIRY POLLUTION PREVENTION INITIATIVE MEMORANDUM OF UNDERSTANDING

OBJECTIVE

The objectives of this Memorandum of Understanding (MOU) are to define roles of the agencies in regulating the dairy industry in Idaho and to recognize the Idaho State Department of Agriculture's (ISDA's) lead role in ensuring dairy waste systems and practices in accordance with the provisions outlined in the Idaho Waste Management Guidelines for Confined Feeding Operations (CFO Guidelines), a 1993 publication by the Idaho Department of Health and Welfare's Division of Environmental Quality (IDEQ). This MOU sets forth a working arrangement between the agencies and the Idaho dairymen to reduce duplicative inspection efforts, increase the frequency of inspections of dairy waste management systems and to provide a sound inspection program, in order to prevent pollution and protect Idaho's surface and groundwater from dairy waste contamination.

BACKGROUND

This MOU has been developed because of the recognition by the Idaho Dairymen's Association (IDA), ISDA, the U.S. Environmental Protection Agency (EPA), IDEQ, and other interested parties for the need to formalize an ongoing effort to conserve resources, to more effectively and efficiently use personnel, to reduce duplicative inspection services, and to ensure Idaho dairymen comply with the Clean Water Act (CWA) and the Idaho Water Quality Standards and Wastewater Treatment Standards (IWQS). This approach will capitalize on the already frequent presence of ISDA dairy inspectors on dairy farms and is intended to enable IDEQ and the EPA to redirect and focus resources.

AGREEMENT

Whereas the ISDA routinely inspects dairies for milk sanitation issues, and;

Whereas the ISDA, the IDEQ, and the EPA conduct routine environmental inspections on these same dairy farms, and;

Whereas it is in the best interests of the people residing in the State of Idaho to support more efficient governmental programs, and;

Whereas the protection of water quality will be enhanced through a more cooperative and efficient approach, the undersigned agencies hereby acknowledge the ISDA as the lead agency for dairy waste

management inspections to ensure compliance with the CWA and the IWQS, and agree to the following:

GENERAL POLICIES

- 1) Inspections of dairies should generally include a visual inspection of the waste containment and runoff control facilities.
- 2) Inspections of dairies will be conducted so that reliable information concerning operating conditions applicable to water quality requirements will be documented.
- 3) Inspections may include the collection of discharge samples and photographs. Any sampling of discharges and subsequent analyses will be conducted according to procedures subsequently approved by ISDA, IDEQ, and EPA with consultation with IDA.
- 4) Meetings between the ISDA, the IDEQ, the EPA, and the IDA will be the primary method for discussion of program progress. The ISDA, IDEQ, and EPA may also identify those instances where enforcement action may be appropriate. An annual mid-year review meeting will be held each April between the ISDA, the IDEQ, the EPA, and the IDA to address issues regarding waste management and the environment relative to the dairy industry.
- 5) ISDA, IDEQ and EPA files will be mutually available under applicable law to the ISDA, IDEQ and EPA for inspection and copying. They shall respect the confidentiality of files or materials designated CONFIDENTIAL in accordance with federal and state regulations.

RESPONSIBILITIES

The ISDA will:

- 1) Promulgate and enforce rules for the purpose of carrying out the objective of this MOU. Non-compliance with these rules or discharge violations may result in revocation of authority to sell milk for human consumption.
- 2) Initiate appropriate dairy waste inspection protocols to prevent dairy waste releases.

- 3) Conduct periodic inspections of all dairies to include evaluation of waste collection, treatment, handling, disposal, and management procedures for compliance with the CWA and the IWQS. Respond to all complaints and information regarding dairy waste management.
- 4) Notify IDEQ immediately of all releases that cannot be stopped within 24 hours. All releases that present a substantial present or potential hazard to human health and the environment shall be immediately reported to the IDEQ.
- 5) Provide a written summary report of all observed releases from dairies that reach waters of the United States on a quarterly basis to the EPA and the IDEQ. The report will include, at a minimum, the number of releases by watershed, the number of inspections conducted, and a summary of the resolution actions taken.
- 6) Prepare and submit an annual report to the IDEQ and the EPA prior to the annual mid-year review. The report will include activities for the past year as well as planned and ongoing activities for the current year.
- 7) Not revoke a dairy facility's authorization to sell milk if there is a discharge from that facility if that facility has a National Pollution Discharge Elimination System (NPDES) permit and the discharge is not in violation of the NPDES permit.
- 8) Approve the design, construction, and location of dairy waste management systems for dairy farms, per the CFO Guidelines.

The IDEQ will:

- 1) Provide training, information, education, and technical assistance for waste handling and disposal to the ISDA, and/or to dairies upon request, to the extent of available resources.
- 2) Discontinue routine compliance inspections on dairies, consistent with the terms of this MOU.
- 3) Conduct inspections of dairies only when requested by the ISDA. However, the IDEQ retains the right to inspect in any situation it considers to present a substantial present or potential hazard to human health and the environment after due notification to ISDA.

- 4) Initiate enforcement actions under the authority of the Idaho Environmental Protection and Health Act, only upon request or referral by the ISDA or as a direct result of the investigation actions outlined in paragraph 3 above.
- 5) Evaluate ISDA inspection records annually, or at a frequency determined to be necessary by the parties to this agreement during the annual mid-year review. The IDEQ will prepare and submit a report of this review to the ISDA.

The EPA:

- 1) Will provide NPDES permit coverage for those dairy operations wishing protection afforded through the authority of the CWA.
- 2) Will discontinue routine compliance inspections on dairies during the term of this agreement.
- 3) Intends to conduct inspections of dairies only when requested by the ISDA. However, the EPA retains the right to inspect in any situation it considers to present a substantial present or potential hazard to human health and the environment after due notification of ISDA.
- 4) May initiate enforcement action under the CWA upon request or referral by the ISDA or the IDEQ, or as a direct result of investigations conducted as outlined in the preceding paragraph.
- 5) Will provide annual training, information, education, and technical assistance for waste handling and disposal to the ISDA and/or dairies upon request, to the extent of available resources.
- 6) Will review the ISDA inspection program twelve months after its initiation. A small number of dairies (not to exceed ten) across the state will be visited as part of the oversight review to determine program success. During the oversight review, these dairies will be visited by an ISDA inspector or field person and an EPA staff person for the following purposes: (1) to ensure that inspections are occurring as provided by this MOU and ISDA rules; and (2) to ensure inspections are conducted in a consistent manner across the state. Information collected by EPA during oversight visits will be for the purpose of providing feedback to ISDA. As ISDA will be the lead agency in Idaho for dairy inspections, EPA does not intend to use information resulting from the oversight visits to initiate independent enforcement actions except as provided in paragraph #3 above. EPA will submit a report of the review to the parties. This on-site

inspection process will be reviewed annually to determine if it is needed for the following year and be renewed, modified or canceled.

The IDA will:

- 1) Continue the concept of the "Dairy of Merit" program which acknowledges dairies that operate in an environmentally responsible manner.
- 2) Support continuing education of dairies concerning necessary waste management practices to protect surface and ground water from contamination.
- 3) Participate in the annual review with the signatory parties and work cooperatively with the signatory parties to achieve the objectives of this MOU.

GENERAL PROVISIONS

- 1) Nothing in this agreement shall be construed as surrendering existing statutory or regulatory authority of any party. However, the IDEQ and the EPA recognize the lead role of the ISDA in inspecting dairies as set forth in this MOU and will exercise their authorities accordingly.
- 2) Nothing in this agreement shall be construed to release a dairy from complying with applicable local, state, and federal environmental statutes, regulations, permits, or consent orders.
- 3) The term of this agreement shall be 5 years, unless otherwise revoked by any one of the signatory parties following 30 day notice to all parties. This agreement may be amended or extended through mutual agreement of the parties. This agreement, when accepted by each agency, will be effective from date of the last signature.

SIGNATORY PARTIES:

John Hatch, Director
Idaho Department of Agriculture
Date:

Wallace N. Cory, P.E.
Administrator
Division of Environmental Quality
Idaho Department of Health and Welfare
Date:

Chuck Clarke, Administrator
Region 10, U.S. EPA
Date:

Pete Lizaso
Chairman
Idaho Dairymen's Association, Inc.
Date: