



United States Department of the Interior  
FISH AND WILDLIFE SERVICE  
Mountain-Prairie Region



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**MEMORANDUM OF AGREEMENT**

for Cooperative Law Enforcement  
between the  
U.S. Fish and Wildlife Service  
and

Montana Department of Fish, Wildlife and Parks

RECEIVED  
AUG 04 2010  
LAW ENFORCEMENT

This Memorandum of Agreement is a cooperative agreement entered into under authority of the Fish and Wildlife Revenue Enhancement Act of 1998, 16 U.S.C. Section 742l (b) and Montana Fish, Wildlife & Parks between the U.S. Fish and Wildlife Service, hereinafter "Service" or "Chief, Office of Law Enforcement," and the Montana Fish, Wildlife and Parks, hereinafter "Department" or "Director of Law Enforcement".

Whereas, the Congress of the United States and the Montana State Legislature have found that the protection and conservation of fish, wildlife, and other natural resources is in the best interest of the public and have enacted various laws to provide for the protection and conservation of wildlife and native plants.

Whereas, the United States Congress has given the Secretary of the Interior the authority to enforce certain laws dealing with the protection and conservation of fish, wildlife, and other natural resources and this authority has been delegated to the Director of the Service and to certain qualified individuals.

Whereas, the Service and the Department recognize that mutual benefits will accrue to the law enforcement efforts of each by entering into a Memorandum of Agreement to share law enforcement expertise, training, intelligence information, specialized equipment, funding, and facilities, and to designate law enforcement officers to efficiently enforce all laws administered by the Service and the Department relating to fish, wildlife, and other natural resources.

Whereas, the Service has determined that it is necessary and appropriate to utilize certain officers, services, and facilities of the Department to assist in providing effective enforcement of Federal and Department laws on the lands and waters within the jurisdiction of Department.

Whereas, the Department has determined that it is necessary and appropriate to utilize certain officers, services, and facilities of the Service to assist in providing effective enforcement of Federal and State laws on the lands and waters within the jurisdiction of the State of Montana.

Therefore, the parties agree that:

A. Delegation of Federal Authority

(1) The Chief, Office of Law Enforcement hereby delegates to the Department the authority to enforce the following Federal laws dealing with the protection and conservation of fish, wildlife, and natural resources of the United States and regulations that are issued pursuant thereto and are within the limitations of and subject to the jurisdiction of the laws of the United States, and occurring within the State of Montana.

African Elephant Conservation Act (16 U.S.C. 4201-4246)

Airborne Hunting Act (16 U.S.C. 742j-1)

Antarctic Conservation Act of 1978 (16 U.S.C. 2401; 2412)

Archaeological Resources Protection Act (16 U.S.C. 470aa-11)

Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d)

Endangered Species Act (16 U.S.C. 1531-1544)

Fish and Wildlife Recreation Act (16 U.S.C. 460k-460k-4)

Lacey Act and Lacey Act Amendments of 1981 (18 U.S.C. 42, 16 U.S.C. 3371-3378)

Marine Mammal Protection Act (16 U.S.C. 1361-1384, 1401-1407)

Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718k)

Migratory Bird Treaty Act (16 U.S.C. 703-712)

National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee)

Recreational Hunting Safety Act of 1994 (16 U.S.C. 5201-5207)

Rhinoceros and Tiger Conservation Act (16 U.S.C. 5301-5306)

Wild Bird Conservation Act (16 U.S.C. 4901-4916)

This Agreement does not delegate authority to enforce the import and/or export provisions of the statutes above unless the designee is accompanied by or under the direct supervision of a Service special agent or wildlife inspector.

(2) The Chief, Office of Law Enforcement specifically delegates to the Department the same authority to search, seize, arrest, and exercise other law enforcement functions under the laws specified in paragraph A(1) of this Agreement as if the Department were employed by the Department of the Interior and authorized by the Secretary of the Interior to enforce those laws.

(3) This Agreement between the Service and the Department may not be used to delegate Federal law enforcement authority to any person convicted of a misdemeanor crime of domestic violence or otherwise prohibited from possessing firearms, within the meaning of 18 U.S.C. § 922 (g).

#### B. Re-delegation of Federal Authority

(1) The Department may designate individuals to exercise the authority to enforce the conservation laws and regulations of the United States as specified above. This designation may only be to a person who meets all the following criteria:

(a) The officer is employed as a full-time law enforcement officer of the Department

(i) whose principal law enforcement duty is the enforcement of conservation laws or native plant protection,

(ii) and who has successfully completed all the required Department law enforcement training to meet full certification as a Montana conservation law enforcement officer,

(iii) and has successfully completed a probationary period (minimum of 1 year).

(b) The officer must be proficient in the use of firearms and other weapons as demonstrated by meeting the firearms qualification, re-qualification, and other training standards required by the Department. The officer will only utilize the firearms and weapons he or she is authorized to carry and use according to the firearms and weapons policies of Department.

(c) The officer agrees to follow the Service's Use of Force policy when acting under this Agreement. The Service recognizes that the officer may be authorized to carry and use a chemical spray and/or impact weapon that differs from the weapons authorized by the Service. In these situations, the officer can continue to carry and use the chemical spray and/or impact weapon that is authorized by the Department, but the officer must adhere to the levels of control/force for the use of these weapons as outlined in the Service's Use of Force policy. The Service's Use of Force policy is attached and will be transmitted to all officers so delegated under this Agreement.

(2) The Department shall notify the Service of the full name, address and date of birth of each designee. This designation shall become effective upon the filing of such information with the Service; such delegation of authority shall not constitute a commission or office within the meaning of the laws of the Department. The chief law enforcement official for the Department shall issue a Service identification card (Form 3-522a) to each designee, along with a copy of this Agreement and the Service Use of Force and Firearms policies.

(a) If at any time, any person designated to exercise authority under this Agreement fails to meet any of the criteria set forth in paragraph B, the Department shall not approve or shall immediately terminate the designation when the Department becomes aware of such failure and shall immediately notify the Service.

(b) Information about the addition or deletion of designated officers should be provided to the Service within 30 days. The Department will provide a complete up-to-date list of officers holding authority under this Agreement to the Service by January 15 of each year.

(3) Officers of the Department who have been delegated authority under this Agreement may only exercise such authority within the normal jurisdiction of the Department, except as provided for in 3(a), (b), and (c) below.

(a) An officer of the Department may exercise such authority anywhere within the jurisdiction of the United States when accompanied by a Service special agent or when under the direct supervision of a Service special agent.

(b) Officers of the Department may exercise such authority outside of their normal jurisdictions when exigent circumstances so require and such actions will be immediately reported to a Service special agent.

(c) This agreement does not include authority to enforce conservation laws and regulations of the United States on Federal tribal lands unless such authority is already conferred by an existing law or agreement. However, an officer of the Department may exercise such authority on tribal lands, when accompanied by and under the direct supervision of a Service special agent.

(4) An employee of the Department who has been delegated authority under this Agreement must comply with Public Law 103-272, 49 U.S.C. 46505(b) and the pertinent regulations (49 CFR 1544.219) regarding carrying firearms on commercial aircraft. Prior to carrying a firearm on a commercial aircraft, officers of the Department must obtain specific written authorization from the chief law enforcement officer of the Department as well as follow the requirements of the regulations issued by the United States Department of Homeland Security.

The law specifically states that this prohibition does not apply to law enforcement officers of the Federal government who are authorized or required to carry firearms in their official capacity.

(5) The Service may, by written notice to the Department, terminate any designation made by the Department.

(6) The Department and officers to whom the Service has designated authority under this Agreement shall, while acting under this Agreement, agree that:

(a) The designees are not to be deemed Federal employees by virtue of their designation and shall not be subject to Federal law relating to hours of work, competitive examination, rates of compensation, and Federal employee benefits, except those individuals who already qualify as Federal employees under their current position.

(b) The Department shall continue to provide compensation under the current Department coverage for work-related injuries while the designees are acting under this Agreement. Designated individuals may be considered eligible for compensation under subchapter III of chapter 81 of Title 5, if activities are initiated and approved by the Service.

(c) While performing duties under this Agreement, the designees shall be considered investigative or law enforcement officers of the United States for the purposes of the tort claim provisions of 28 U.S.C. and 5 U.S.C. 8401(17).

(d) While performing duties under this Agreement, the designees shall be considered officers or employees of the Department of the Interior within the meaning of 18 U.S.C. sections 111 and 1114.

(7) The Department must recall and cancel any designation of authority upon termination of employment or reassignment of the officer concerned to non-law enforcement duties or upon notice that the person no longer meets all of the criteria for issuance of such authority. Notice of such recall or cancellation shall immediately be given to the Service.

### C. Delegation of Department Authority

(1) The Service has the authority to assist in State wildlife law enforcement. Service special agents are authorized to accept commissions to enforce State conservation laws if provided by the State under their authority and under authority of 16 U.S.C. 661 and 742f(a)(4).

(2) The Department delegates the authority to enforce all State laws and regulations administered by the State dealing with protection and conservation of wildlife and natural resources to all special agents of the Service designated by the Chief. Such delegation of State authority shall be in accordance with specific State law.

(3) The Service will provide the Department an annual list, including the full name, address and date of birth, by January 15 of all personnel deemed to be qualified as law enforcement officers within the meaning of this Agreement, and shall promptly notify the Department of any terminations, changes in duty station, or transfers by any person processing delegations of authority under this Agreement. The Service will advise the Department of any personnel to be added to, or removed from, the list during the year.

- (4) The Service will not initiate any investigation, either overtly or covertly, into activities that are solely violations of the laws of the Department that are subject to this Agreement without the concurrence of the Department.
- (5) The Service will submit in a timely manner appropriate investigative or other reports to the Department on law enforcement activities conducted under authority of this Agreement. The Service will not refer any violations of State laws to State prosecuting attorneys.
- (6) Only the Department will act as liaison and conduct case handling and referral to State prosecutors and courts.
- (7) The Service will confer with the Department concerning procedures for reporting and prosecuting violations of State conservation laws. Such procedures shall become effective and binding upon the Service and its employees when acting under the authority of this Agreement.
- (8) The interpretations and policies of the Department will be followed by Service special agents when exercising State enforcement authority under this Agreement.
- (9) Either the Service or the Department may, by written notice, terminate any designation made by the Service.
- (10) Service special agents are not to be deemed State employees and are not subject to State law relating to hours of work, competitive examination, rates of compensation, and State employee benefits. The Service will continue to provide compensation under Federal law for work-related injuries while Service special agents are acting under this Agreement.

#### D. Procedures for Investigating Federal Offenses

The following procedures shall govern any investigations or prosecutions of Federal offenses under this Agreement:

- (1) Officers of the Department who are delegated authority under this Agreement may take necessary enforcement actions for violations of the Federal laws that are subject to this Agreement that occur in their presence or view. Where illegal activities may constitute violations of both the laws of the Department and laws enforced by the Service, the Department will determine whether to investigate and/or prosecute under applicable Department law.

The Department will refer appropriate violations of the Federal laws listed in A(1) or their accompanying regulations for which they decide not to prosecute under their law to the Service.

- (2) The Department will not initiate any investigation, either overtly or covertly, into activities that are solely violations of Federal laws identified in section A(1) without the concurrence of the Service.
- (3) All potential investigations that may result in a felony prosecution for violations of any of the

Federal laws identified in section A(1) must be coordinated with the Service. All investigations involving potential Federal charges against any person who may claim Native American rights must be coordinated with the Service.

(4) The Department will submit in a timely manner appropriate investigative or other reports to the Service on law enforcement activities conducted under authority of this Agreement.

(5) Referral for Federal prosecution of any violation of the laws identified in section A(1) may not occur without prior approval of the Service. Only a Service special agent shall act in liaison and conduct case handling and referral to Federal prosecutors and the Federal courts.

(6) Service law enforcement policies, as well as the Federal Rules of Criminal Procedure, will be followed by the Department law enforcement officers when enforcing Federal laws and their accompanying regulations identified in A(1).

#### E. Coordination

The Special Agent in Charge, Office of Law Enforcement, in Lakewood, Colorado, or his/her designee and the chief wildlife law enforcement officer of the Department shall confer within 45 days after the signing of this Agreement, and as necessary, for the purpose of:

(1) Identifying enforcement problems in areas of concurrent jurisdiction that may require joint enforcement operations or investigations;

(2) Identifying enforcement problems that may require covert investigation;

(3) Identifying the need for specialized law enforcement equipment;

(4) Discussing new techniques and methods for the detection and apprehension of violators of conservation laws and the exchange of law enforcement information in general; and

(5) Reviewing training programs and identifying the need for additional instruction in Department and/or Federal laws, policies, interpretations, or other appropriate subjects.

#### F. Cooperative Agreements

The Service and the Department may enter into an investigation specific cooperative agreement detailing operational aspects and the sharing of resources between the parties, including, but not limited to: funding, personnel, equipment, intelligence, investigative reports, prosecution of cases, media releases, handling and care of evidence, and disposition of assets.

#### G. Actions to be taken by the Parties

(1) The Service will provide to the Department, subject to available resources and manpower,

copies of Federal laws and regulations and pertinent Service policy and interpretations and the assistance of special agents and the use of equipment for specific, high-priority enforcement operations.

(2) The Service and the Department will jointly confer with designees to ensure they understand the elements of this Agreement and responsibilities of accepting conferral of authority to enforce Federal laws and regulations.

(3) The Department will provide the Service, subject to available resources and manpower, copies of State laws and regulations and pertinent policies and interpretations and the assistance of Department officers and the use of equipment for specific, high-priority enforcement operations.

(4) The Department will make officers available, upon request by the appropriate Federal authority, to appear as witnesses in connection with any action brought with which they have an involvement.

(5) The Service may reimburse Department officers who appear in Federal court for cases related to this Agreement for travel expenses and per diem at rates authorized by the Federal Travel Regulations for travel incurred while providing direct services to the Federal government as a witness, or for other related activities, in accordance with applicable Federal law.

#### H. Amendment, Effective Date and Termination

(1) This Agreement shall become effective on the date signed by both parties and filed with the Department and shall continue in effect until terminated.

(2) The Agreement may only be revised or amended by consent of both parties. Such revisions or amendments shall not be effective until reduced to writing and signed by both parties.

(3) This Agreement may be terminated by either party upon giving thirty (30) days advance written notice.

#### I. Contacts and Designee

For the purpose of this Agreement, contact or coordination with the Service means contact or coordination with the Special Agent in Charge in the region where the Agreement has been signed.

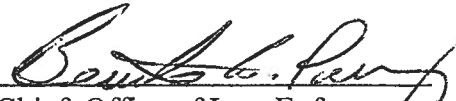
#### J. Third Party Claims

Nothing in this Agreement is intended to create any right, privilege, or benefit not otherwise recognized by law for persons, organizations, or entities not party to this Agreement.



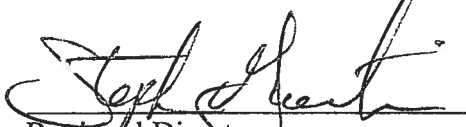
K. Delegation of State Authority

In accordance with Section C of this Agreement, does this Agreement delegate State authority to Service special agents. (circle one): Yes No



Chief, Office of Law Enforcement  
U.S. Fish and Wildlife Service

Date: 7/26/2010



Regional Director  
U.S. Fish and Wildlife Service

Date: 7/26/10



Department Director Joe Maurier  
MT Fish, Wildlife & Parks

Date: July 6, 2010

\_\_\_\_\_  
Other signers, as deemed appropriate

Date: \_\_\_\_\_

Attachments

- U.S. Fish and Wildlife Service Use of Force Policy
- U.S. Fish and Wildlife Service Firearms Policy
- U.S. Fish and Wildlife Service Regional Law Enforcement Office Contact Information

