

MEMORANDUM OF UNDERSTANDING
BETWEEN
SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
BLACK HILLS NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the South Dakota Department of Game, Fish and Parks, hereinafter referred to as SDGFP, and United States Department of Agriculture Forest Service, Black Hills National Forest, hereinafter referred to as Forest Service. This agreement supersedes Memorandum of Understanding 04-MU-11020300-052 executed on October 15, 2004.

- A. **PURPOSE:** The purpose of this document is to establish procedures and responsibilities regarding the management and monitoring of the Norbeck Wildlife Preserve. Specifically, the objectives are to adopt procedures to: (1) monitor the effects of forest management activities on game animals, birds and their habitats, (2) consult on habitat management, (3) concur on program areas of responsibility, and (4) review and recommend as needed any changes to the Norbeck Wildlife Preserve direction contained in the 1997 Revised Black Hills National Forest Plan and future Plan amendments and revisions. This MOU is intended to meet the mandate set forth in P.L. 107-206, Sec. 706(i) Norbeck Memorandum of Understanding. The basis of the MOU will be specific to the Norbeck Wildlife Preserve that occurs within the Black Hills National Forest System Lands and will employ the guidelines set forth in the May 21, 2002 memo by SDGFP summarized in Section E.2.
- B. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** Whereas SDGFP has been created under the laws of the State of South Dakota with regulatory authority to provide an adequate and flexible system of protection, propagation, and control of fish and wildlife in South Dakota, and the discharge of its policies and programs is the responsibility of the Secretary of that Department, and

Whereas the Forest Service, through the Norbeck Organic Act and other related legislation, is responsible for managing that portion of the Norbeck Wildlife Preserve that occurs on National Forest System Lands specifically “*for the protection of game animals and birds and to be recognized as a breeding place therefor*”, and

Whereas the Forest Service is responsible, under the laws of the United States and the regulations of the Secretary of Agriculture, for the establishment, development, and maintenance of proper habitat conditions for populations of native and desired non-native fish and wildlife in accordance with the standards, guidelines, and prescriptions contained in the approved Forest Land and Resource Management Plan and other applicable mandates, and

Whereas, the Forest Service recognizes that as a matter of law, the National Forest Management Act is supplemental or subordinate to the specific mandate of the Norbeck Organic Act and may not diminish (through balancing) the more specific mandate of the Norbeck Organic Act (Sierra Club-Black Hills Group et al. vs. United States Forest Service, et al., 259 F.3d 1281 (10th Cir. 2001)).

It is therefore of mutual benefit and interest for the SDGFP and Forest Service to work cooperatively and share information for the common purpose of establishing procedures and responsibilities in the management and monitoring of the Norbeck Wildlife Preserve.

C. FOREST SERVICE SHALL:

1. Recognize that SDGFP is responsible for establishing the regulations and programs under which fish and wildlife populations are managed in South Dakota, provided that nothing in this agreement modifies or changes existing state and federal laws.
2. Consult with and consider the guidance provided by SDGFP in the planning, implementation and funding of management programs and projects, land adjustments (exchanges, disposals and/or acquisitions), and/or when National Environmental Policy Act (NEPA) is invoked (including Categorical Exclusions).
3. Keep the SDGFP informed of changes in Forest Service policies, laws, legislation, programs, projects and/or funding opportunities which may have impacts on game animals, birds and their habitats within the Norbeck Wildlife Preserve.
4. Offer and grant cooperating agency status (according to FS policies, laws and regulations, including 40 CFR 1500-1508) to SDGFP on projects within the Norbeck Wildlife Preserve when NEPA is invoked and when SDGFP appropriately agrees to participate since not all management and/or projects involve wildlife and wildlife habitat concerns.
5. Coordinate periodic joint reviews as necessary with SDGFP to evaluate adequacy of existing and future Forest Plan direction, other mandates and SDGFP programs as they pertain to game animals, birds and their habitats within the Norbeck Wildlife Preserve. Develop recommendations for future management that is responsive to review findings.

D. SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS SHALL:

1. Recognize the Forest Service as the agency responsible for the final decision and determination of occupancy, use, and management of the land, water and habitat within the Norbeck Wildlife Preserve, provided that nothing in this agreement modifies or changes existing state and federal laws.
2. Provide input on Forest Service management projects within the boundaries of the Norbeck Wildlife Preserve.
3. Keep the Forest Service informed of changes in SDGFP policies, laws, legislation, programs, projects and/or funding opportunities which may have impacts on game animals, birds and their habitats within the Norbeck Wildlife Preserve.

4. Consult with and consider the guidance provided by the Forest Service in SDGFP's regulation of fish and wildlife populations and harvests within the Norbeck Wildlife Preserve in order that game animals, birds and their habitats will be maintained consistent with existing and future management plans.
5. Participate in a joint review with the Forest Service to evaluate the adequacy of existing and future Forest Plan direction, other mandates and SDGFP programs as they pertain to game animals, birds and their habitats with the Norbeck Wildlife Preserve. Develop recommendations for future management that is responsive to review findings.

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

1. CONSISTENCY. Management activities in the Norbeck Wildlife Preserve must be designed to first and foremost improve conditions for game animals, birds and their habitats. Exceptions include projects designed to mitigate imminent human health and safety concerns, provide access to private property, and other non-discretionary actions. Where exceptions are necessary, earnest attempts will be made to minimize or prevent negative effects to game animals, birds and their habitats. All actions must be consistent with the Norbeck Organic Act, other applicable legislation, Forest Plan direction, court rulings and legal interpretations which may result. This includes both land and wildlife management activities.
2. GUIDELINES. Projects within the Norbeck Wildlife Preserve will emphasize objectives of the SDGFP May 21, 2002 Memo (P.L. 107-206, Sec. 706(i)), when and where deemed necessary, by cooperative agreement:
 - a. Small and large-scale diversity.
 - b. Early and late successional stages including but not limited to meadows, forest openings, and old growth.
 - c. Goshawk territory/habitat needs.
 - d. Snags and down woody material.
 - e. Minimal temporary and permanent road construction, reconstruction, improvements, maintenance levels and density.
 - f. Road (Forest Service System and user-created) inventory after project completion.
 - g. Obliterate and re-seed unnecessary roads (Forest Service System and user-created).
 - h. Maintain and enhance hardwood communities.
3. MANAGEMENT TOOLS. The Secretary of Agriculture acting through the Supervisor of the Black Hills National Forest is authorized to use the full spectrum of management tools including prescribed fire and silvicultural treatments to benefit game animal and bird habitat in meeting the purposes of the Norbeck Organic Act (per P.L. 107-206, Sec. 706(h)).

4. **FUNDING.** Both the Forest Service and SDGFP may initiate and fund projects in the Norbeck Wildlife Preserve. Joint funding is encouraged when possible in order to demonstrate the cooperative nature of projects and to facilitate project completion in a timely manner.
5. **JOINT MONITORING PLAN.** A plan for monitoring the effects of management activities on game animals, birds and their habitats in the Norbeck Wildlife Preserve will be developed and implemented with cooperation of both parties, as funding allows.
6. **PUBLICATIONS AND AUDIOVISUALS.** Both agencies will be given the opportunity to co-author publications and/or audiovisuals in which joint efforts have been demonstrated. The Forest Service and SDGFP shall be mutually acknowledged in publications and/or audiovisuals developed as a result of joint efforts.
7. **DEFINITIONS:** The following definitions will be used in order for the Forest Service to properly manage the NWP in accordance with its original spirit and intent.
 - a. **Protection:** The controlled use, skill and systematic conservation and management of game animals and birds and their habitats; to protect game animals and birds and their habitats from depletion or the need to preserve individuals.
 - b. **Game animals:** Wild *mammals* or birds which breed in and/or occupy habitat within the Norbeck Wildlife Preserve that are legally hunted for food or sport.
 - c. **Birds:** Wild members of the class Aves which breed in and/or occupy habitats within the Norbeck Wildlife Preserve.
 - d. **Focus species:** those game animals and birds that will guide management in Norbeck Wildlife Preserve.
8. **FOCUS SPECIES**
 - a. **NORBECK-MAIN SECTION:** The following game animals and birds will be Focus Species for the main portions of NWP (includes the Stockade Lake Parcels):
 - i. Mountain Goat (*Oreamnos americanus*)
 - ii. Bighorn Sheep (*Ovis canadensis*)
 - iii. Rocky Mountain Elk (*Cervus elaphus*)
 - iv. White-tailed Deer (*Odocoileus virginianus*)
 - v. Merriam's Turkey (*Meleagris gallopavo merriami*)
 - vi. Mountain Bluebird (*Sialia currucoides*)
 - vii. Golden-crowned Kinglet (*Regulus satrapa*)
 - viii. Brown Creeper (*Certhia americana*)
 - ix. Ruffed Grouse (*Bonasa umbellus*)
 - x. Song Sparrow (*Melospiza melodia*)
 - xi. Northern Goshawk (*Accipiter gentilis*)
 - xii. Black-backed Woodpecker (*Picoides arcticus*)
 - b. **NORBECK- SECTION 2:** The following game animals and birds will be Focus Species for Section 2 of NWP (located adjacent to Custer State Park and Wind Cave National Park).

- i. Mule Deer (*Odocoileus hemionus*)
 - ii. Rocky Mountain Elk (*Cervus elaphus*)
 - iii. Black-tailed prairie dog (*Cynomys ludovicianus*)
 - iv. Merriam's Turkey (*Meleagris gallopavo merriami*)
 - v. Mountain Bluebird (*Sialia currucoides*)
 - vi. Grasshopper Sparrow (*Ammodramus savannarum*)
 - vii. Song Sparrow (*Melospiza melodia*)
 - viii. Black-backed Woodpecker (*Picoides arcticus*)
9. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
10. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
11. RESPONSIBILITIES OF PARTIES. The Forest Service and SDGFP and their respective agencies and office will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
12. PRINCIPAL CONTACTS. The principal contacts for this instrument are:
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| <i>Forest Service Project Contact</i> | <i>Cooperator Project Contact</i> |
| Kerry Burns | Shelly Deisch |
| USDA Forest Service | Wildlife Biologist |
| Black Hills National Forest | SD Game, Fish and Parks |
| 1019 N 5 th Street | 3305 West South Street |
| Custer, South Dakota | Rapid City, South Dakota 57702 |
| Phone: 605-673-9200 | Phone: 605-394-2391 |
| FAX: 605-673-9350 | FAX: 605-394-1793 |
| E-Mail: kburns@fs.fed.us | E-Mail: shelly.deisch@state.sd.us |
-
- | |
|--|
| <i>Forest Service Administrative Contact</i> |
| Dave Graham |
| Agreements Coordinator |
| USDA Forest Service |
| 1019 N 5 th Street |
| Custer, SD 57730 |
| Phone: 605-673-9294 |
| FAX: 605-673-9350 |
| E-Mail: dgraham@fs.fed.us |
13. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and SDGFP and shall remain in effect for 5 years from the

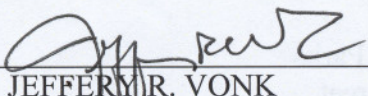
date of execution. This MOU may be amended upon written request of either the Forest Service or SDGFP and the subsequent written concurrence of the other(s). Either the Forest Service or SDGFP may terminate this MOU with a 60-day written notice to the other(s).

- 14. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or SDGFP to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and SDGFP will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
- 15. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person
- 16. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

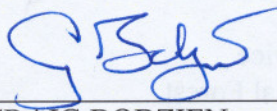
THE PARTIES HERETO have executed this instrument.

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS

USDA FOREST SERVICE
BLACK HILLS NATIONAL FOREST


 10/15/09

 JEFFERY R. VONK DATE
 Secretary of the Department

 10-20-09

 CRAIG BOBZIEN DATE
 Forest Supervisor

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

 10-07-09

 David Graham DATE
 FS Grants & Agreements Specialist