



Agreements Citing Wyden Authority

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Background

The Wyden Amendment authorizes the Forest Service (FS) to enter into cooperative agreements with willing participants for the protection, restoration, and enhancement of fish and wildlife habitat and other resources on non-National Forest Service lands and for the reduction of risk from natural disaster where public safety is threatened. All agreements citing this authority must provide a benefit to natural or cultural resources on national forests lands within the watershed.

Agreements may be entered under the Wyden authorities provided funds are available within existing appropriations for the type of activity to be implemented. For example, a unit must have wildlife funds to complete a wildlife project, fire funds for a fire project, and so forth.

Agreements may be either: (a) directly with a willing landowner or (b) indirectly through an agreement with a state, local, or tribal government or other public entity, educational institution, or private nonprofit organization. There is no mandated cost share requirement.

When is the Wyden Authority Appropriate?

Projects that protect, enhance, or restore resources within a watershed and provide tangible benefits to Forest Service lands. For example, projects could include stream gabion installation, check dam construction, fish habitat restoration, or culvert cleaning. Watershed analysis studies, habitat surveys, and wildlife species monitoring, depending on the benefit to resources within the watershed, are also permissible under Wyden.

Any project carried out under Wyden authorities must comply with all applicable federal, state, and local laws and regulations, policies, and permit requirements (National Environmental Policy Act, Clean Water Act, Endangered Species Act, etc.).

Questions to consider before deciding to use Wyden authorities include:

- Does the project achieve Forest Service objectives?
- Is the principle objective restoration, protection, and enhancement of NFS resources?
- Does the project result in tangible and demonstrable benefits to resources on public lands administered by the Forest Service?
- Is the expenditure in the public interest?

Access and Liability for Projects on Non-NFS lands

The FS should not perform or have work performed on non-National Forest System (NFS) lands without clear, written permission to do so. Ensure that the person providing this permission has the requisite signatory authority or power of attorney. Liability, both to person and property, must be spelled out in

writing: The preferred method is that the non-Federal party holds the Forest Service harmless for any damage to persons or property. An alternative is that all parties agree they will be responsible for their own acts and results thereof.

Funding

Generally, the FS and the cooperator(s) must contribute resources to perform the work, share mutual interests, and benefit in the same qualitative way. The cooperator's contributions may include cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. The cooperator may not use funds from other Federal agencies for its contribution to the FS unless specifically provided by the Federal statute authorizing those funds.

Matching Contributions. There is no set formula for determining the amount each party contributes, though cooperator contributions should always be calculated and commensurate with benefits gained. There is no minimum matching requirement tied to the Wyden Authority.

Advance and Reimbursable Payments. The FS may provide reimbursable or advance payments. Cooperator cash advances are limited to the minimum amount needed to perform anticipated activities or no more than is needed for a 30-day period, whichever is less.

Formatting Agreements Citing the Wyden Authority

Each agreement must include terms and conditions that are mutually agreed upon by the Forest Service and the participants as well as the terms and conditions required by the agreement type used. Work with regional or local grants and agreement specialists to determine the appropriate agreement type. This will depend on the project location, the type of work, contributions, and other related factors.

- If the project includes work by the Forest Service and mutual benefit, the format of the agreement will likely be a partnership agreement, typically a Participating Agreement. Standard agreement clauses would be used except there may not be a need for a match requirement in the cost reimbursement clause.
- If other parties are going to perform the work for public benefit, then the appropriate format may be Federal Financial Assistance instrument, such as a Cooperative Agreement.