

MEMORANDUM OF UNDERSTANDING

AMONG

**U.S. DEPARTMENT OF AGRICULTURE- NATURAL RESOURCE CONSERVATION
SERVICE AND
OREGON WATERSHED ENHANCEMENT BOARD AND
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

PARTIES:

The MEMORANDUM OF UNDERSTANDING (MOU) is hereby entered into by and between the USDA-Natural Resources Conservation Service (USDA-NRCS), Oregon Watershed Enhancement Board (OWEB) and Oregon Department of Environmental Quality (DEQ).

RELATIVE TO:

The effectiveness of cumulative conservation and restoration actions in achieving natural resource outcomes through collaborative monitoring, evaluation and reporting.

AUTHORITY:

USDA-NRCS Conservation Technical Assistance Program (CTA), 16 U.S.C. 590a-590f, 590q, 7 CFR Part 610 (CFDA 10.902).

PURPOSE:

USDA-NRCS, OWEB and DEQ have the following missions that provide a basis for this partnership. The missions for each agency are:

- USDA-NRCS' mission is to help people conserve, maintain, and improve our natural resources and environment.
- OWEB's mission is to help protect and restore healthy watersheds and natural habitats that support thriving communities and strong economies.
- DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

As part of these missions, USDA-NRCS, OWEB and DEQ have a need for monitoring and evaluating the effectiveness of conservation and restoration activities from their collective technical and financial assistance programs. This type of cumulative effectiveness monitoring can play a key role in demonstrating the accountability, success, and value of restoration investments by our agencies. This information will also allow the agencies to be more strategic with implementation of programs and resources.

However, each agency alone does not have the resources to effectively achieve the goal of monitoring, evaluating and reporting their cumulative conservation effectiveness. It is therefore necessary to work together to further each agency's missions through partnership and

coordination of resources. This partnership will facilitate sharing information, data and data analysis of natural resource actions and monitoring data in Oregon.

Therefore, the USDA-NRCS, OWEB, and DEQ deem it mutually advantageous to cooperate in this undertaking.

IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. USDA-NRCS, OWEB and DEQ will work together to share information and technical expertise to monitor, evaluate and report the effectiveness of cumulative conservation and restoration actions in achieving natural resource outcomes.
2. Nothing herein shall be construed as obligating the parties to expend or as involving the parties in any contract or other obligation for future payment of money in excess of funds authorized by law and administratively made available.
3. The parties will develop appropriate agreements under this MOU to further define this partnership by identifying specific geographic areas within Oregon to focus our collaborative monitoring and evaluation efforts.
4. Privacy of personal information relating to USDA-NRCS Programs will be in accordance with Section 1619 of Title II of the Food, Conservation, and Energy Act of 2008, PL 110-246; 122 Stat. 1751. The “Acknowledgement of Section 1619 Compliance” document will be signed by each agency and attached to this MOU. Any staff using NRCS data must be made aware of the protection of private personal information.
5. This collaboration and the information shared will not be used for enforcement actions by DEQ or actions by DEQ, OWEB or NRCS unrelated to the intent of the effort to monitor, evaluate and report the effectiveness of cumulative conservation and restoration actions in achieving natural resource outcomes.
6. This agreement takes effect upon the signature of USDA-NRCS, OWEB and DEQ and shall remain in effect until September 30, 2015. This memorandum can be modified or terminated at any time by mutual consent of the parties, thereto or can be terminated in whole, or in part by either party alone by giving 30 days notice in writing to the other.
7. By signing this agreement the recipients assure the USDA-NRCS that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

PRINCIPAL CONTACTS FOR EACH AGENCY:

USDA-NRCS, Oregon
Tom Makowski
Leader for Oregon Water
Resources Planning Team

OWEB
Greg Sieglitz
Manager, Monitoring and
Reporting Program

DEQ
Eugene Foster
Manager, Watershed
Management, WQ Division

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(503) 414-3106
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775 Summer St. NE, #360
Salem, OR 97301
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greg.sieglitz@state.or.us

DEQ Headquarters Office
811 SW 6th Ave
Portland, OR 97204
(503) 229-5325
foster.eugene.p@deq.state.or.us

APPROVED BY:

USDA – Natural Resources Conservation Service (NRCS)

Name: Ron Alvarado

En 7/26/10

Signature: 

Title: Oregon, State Conservationist

Date: 09/29/10

Oregon Watershed Enhancement Board (OWEB)

By: Tom Byler _____

Signature: _____

Title: Director, OWEB

Date: _____

Oregon Department of Environmental Quality (DEQ)

By: Dick Pederson _____

Signature: _____

Title: Director, DEQ

Date: _____

ATTACHMENTS:

- A. OWEB - Acknowledgement of Section 1619 Compliance
- B. DEQ - Acknowledgement of Section 1619 Compliance

APPROVED BY:

USDA – Natural Resources Conservation Service (NRCS)

Name: Ron Alvarado

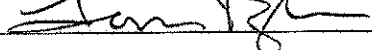
Signature: _____

Title: Oregon, State Conservationist

Date: _____

Oregon Watershed Enhancement Board (OWEB)

By: Tom Byler _____

Signature: 

Title: Director, OWEB

Date: 9/27/10

Oregon Department of Environmental Quality (DEQ)

By: Dick Pederson _____

Signature: _____

Title: Director, DEQ

Date: _____

ATTACHMENTS:

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- B. DEQ - Acknowledgement of Section 1619 Compliance

APPROVED BY:

USDA – Natural Resources Conservation Service (NRCS)

Name: Ron Alvarado

Signature: _____

Title: Oregon, State Conservationist

Date: _____

Oregon Watershed Enhancement Board (OWEB)

By: Tom Byler _____

Signature: _____

Title: Director, OWEB

Date: _____

Oregon Department of Environmental Quality (DEQ)

By: Dick Pederson _____

Signature: *Dick Pederson*

Title: Director, DEQ

Date: 9-27-10

ATTACHMENTS:

- A. OWEB - Acknowledgement of Section 1619 Compliance
- B. DEQ - Acknowledgement of Section 1619 Compliance

**NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)**

ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

Purpose and Background

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter “Acknowledgment”) is to require acknowledgment by Oregon Watershed Enhancement Board (OWEB) of the requirements of Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. OWEB assists NRCS in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Memorandum of Understanding (MOU) 120-13-2010-MOU-01-OWEB-DEQ. Those individuals or organizations (governmental or nongovernmental) that assist NRCS with providing conservation-related services are known as NRCS Conservation Cooperators.

NRCS Conservation Cooperator

As an NRCS Conservation Cooperator, OWEB is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for OWEB to perform monitoring, assessing, or evaluating of conservation benefits. Disclosure to OWEB can include receiving the protected information either 1) directly from NRCS; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer’s permission.

Any record in the custody of OWEB is subject to Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410-.505 as a public record. Generally, that law gives any person the right to inspect any nonexempt public record in the Department’s custody. However, ORS 192.502(8) exempts from disclosure “any public records or information the disclosure of which is prohibited by federal law or regulations.”

Section 1619 of the 2008 Farm Bill

Section 1619 of the Food, Conservation, and Energy Act of 2008 (Exhibit 1) (hereinafter “section 1619”) provides that USDA, or any “contractor or cooperator” of USDA, “shall not disclose—(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in the programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.” USDA may disclose protected information to a USDA cooperator when such cooperator is “providing technical or financial assistance with

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respect to the agricultural operation, agricultural land, or farming or conservation practices” if USDA determines that the protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. OWEB is a “contractor or cooperator” of USDA within the meaning of Section 1619. Accordingly, OWEB may not subsequently disclose any information protected by section 1619. By signature on this Acknowledgment, OWEB is certifying future compliance with the statutory obligations under Section 1619. Upon execution of this Acknowledgment, NRCS may continue to provide to OWEB the protected information provided under Memorandum of Understanding (MOU) 120-13-2010-MOU-01-OWEB-DEQ.

Responsibilities

OWEB (hereinafter the “Conservation Cooperator”) certifies that:

- Signature on this Acknowledgment indicates acknowledgment and understanding that the Conservation Cooperator is legally bound by Federal statute to comply with the provisions of Section 1619 and that, unless required by law or court order, the Conservation Cooperator will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this Acknowledgment. If a person submits a request under Oregon’s Public Records Law for the disclosure of such information, the Conservation Cooperator will assert any and all exemptions from disclosure that it believes apply. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Conservation Cooperator will be held responsible should disclosure of the protected information occur.
- Signature on this Acknowledgment legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the Conservation Cooperator to comply with the provisions in Section 1619. The Conservation Cooperator must consult with NRCS prior to providing protected information to an entity or individual outside of the Conservation Cooperator and as necessary to implement the program to ensure that such release is permissible.
- The Conservation Cooperator will use the protected information only to perform work that is directly connected to perform monitoring, assessing, or evaluating conservation benefits. Use of the protected information to perform work that is not directly connected to perform monitoring, assessing, or evaluating conservation benefits is expressly prohibited.
- The Conservation Cooperator must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information in order to perform monitoring, assessing, or evaluation of conservation benefits.
- The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer an NRCS Conservation Cooperator, or when individuals currently affiliated with the Conservation Cooperator become no longer so affiliated,

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every person having been provided access to the protected information will continue to be legally bound to comply with the provisions of this Acknowledgment.

- The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives that are performing work directly related to the work or that have access to the data about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) for those that are performing work directly related to the work or that have access to the data to remind all about the ongoing and continuing requirements.
- When the Conservation Cooperator is unsure whether particular information is covered or protected by Section 1619, the Conservation Cooperator must consult with NRCS to determine whether the information must be withheld.
- This Acknowledgment is nontransferable and may not be bought, sold, traded, assigned, extended to, or given free of charge to any other individual or organization not directly covered by this Acknowledgment.
- Use of the protected information for any purpose is expressly prohibited when an individual or organization is no longer an NRCS Conservation Cooperator. Subject to records retention requirements under Oregon law, when the Conservation Cooperator is no longer an NRCS Conservation Cooperator, any protected information provided under this Acknowledgment must be immediately destroyed or returned to NRCS. The Conservation Cooperator must provide to NRCS written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.

Protected Information

An example of the type of information prohibited by disclosure under Section 1619 includes, but is **not limited to**, the following:

- State identification and county number (where reported and where located).
- Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
- Farm, tract, field, and contract numbers.
- Production shares and share of acres for each Farm Serial Number (FSN) field.
- Acreage information, including crop codes.
- All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
- Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
- Location of conservation practices.

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Section 1619 allows disclosure of “payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*” (emphasis added). The names and payment information of producers generally may be provided to the public; however the Conservation Cooperator shall consult with NRCS if there is any uncertainty as to the provision of such information.

Section 1619 also allows disclosure of otherwise protected information if “the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite.” The Conservation Cooperator must consult with NRCS as to whether specific information falls within this exception prior to relying on this exception.

Violations

The Conservation Cooperator will be held responsible for violations of this Acknowledgment and Section 1619. A violation of this Acknowledgment by the Conservation Cooperator may result in action by NRCS, including termination of the underlying Memorandum of Understanding (MOU) **120-13-2010-MOU-01-OWEB-DEQ**.

Effective Period

This Acknowledgment will be in effect on the date of the final signature and continues until NRCS notifies the Conservation Cooperator that the Acknowledgment is no longer required based on changes in applicable Federal law.

Signature of the NRCS Conservation Cooperator and the Date Signed

Name: 

Title: Executive Director

Executed this 27th day of September, 2010

SEC. 1619. INFORMATION GATHERING.

(a) **GEOSPATIAL SYSTEMS**—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

(b) **LIMITATION ON DISCLOSURES**—

(1) **DEFINITION OF AGRICULTURAL OPERATION**—In this subsection, the term “agricultural operation” includes the production and marketing of agricultural commodities and livestock.

(2) **PROHIBITION**—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

(A) Information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department; or

(B) Geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) **AUTHORIZED DISCLOSURES**—

(A) **LIMITED RELEASE OF INFORMATION**—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) When providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) When responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

(4) **EXCEPTIONS**—Nothing in this subsection affects—

(A) The disclosure of payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law;

(B) The disclosure of information described in paragraph (2) if the information has been transformed into a statistical or aggregate form without naming any—

(i) Individual owner, operator, or producer; or

(ii) Specific data gathering site; or

(C) The disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

(5) **CONDITION OF OTHER PROGRAMS**—The participation of the agricultural producer or owner of agricultural land in, or receipt of any benefit under, any program administered by the Secretary may not be conditioned on the consent of the agricultural producer or owner of agricultural land under paragraph 4(c).

(6) **WAIVER OF PRIVILEGE OR PROTECTION**—The disclosure of information under paragraph (2) shall not constitute a waiver of any applicable privilege or protection under Federal law, including trade secret protection.

**NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)**

ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

Purpose and Background

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter “Acknowledgment”) is to require acknowledgment by *Oregon Department of Environmental Quality (DEQ)* of the requirements of Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. *DEQ* assists NRCS in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Memorandum of Understanding (MOU) **120-13-2010-MOU-01-OWEB-DEQ**. Those individuals or organizations (governmental or nongovernmental) that assist NRCS with providing conservation-related services are known as NRCS Conservation Cooperators.

NRCS Conservation Cooperator

As an NRCS Conservation Cooperator, *DEQ* is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for *DEQ* to perform monitoring, assessing, or evaluating of conservation benefits. Disclosure to *DEQ* can include receiving the protected information either 1) directly from NRCS; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer’s permission.

Any record in the custody of *DEQ* is subject to Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410-.505 as a public record. Generally, that law gives any person the right to inspect any nonexempt public record in the Department’s custody. However, ORS 192.502(8) exempts from disclosure “any public records or information the disclosure of which is prohibited by federal law or regulations.”

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Attachment B – MOU#: 120-13-2010-MOU-01-OWEB-DEQ

USDA cooperator when such cooperator is “providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices” if USDA determines that the protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. DEQ is a “contractor or cooperator” of USDA within the meaning of Section 1619. Accordingly, DEQ may not subsequently disclose any information protected by section 1619. By signature on this Acknowledgment, DEQ is certifying future compliance with the statutory obligations under Section 1619. Upon execution of this Acknowledgment, NRCS may continue to provide to DEQ the protected information provided under Memorandum of Understanding (MOU) **120-13-2010-MOU-01-OWEB-DEQ**.

Responsibilities

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- The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer an NRCS Conservation Cooperator, or when individuals

Attachment B – MOU#: 120-13-2010-MOU-01-OWEB-DEQ

currently affiliated with the Conservation Cooperator become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with the provisions of this Acknowledgment.

- The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives that are performing work directly related to the work or that have access to the data about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) for those that are performing work directly related to the work or that have access to the data to remind all about the ongoing and continuing requirements.
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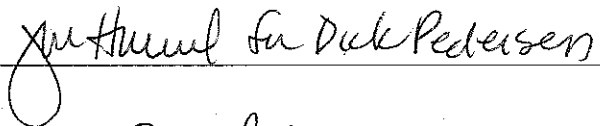
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Effective Period

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Signature of the NRCS Conservation Cooperator and the Date Signed



Name: Duak Pedersen

Title: Director

Executed this 27 day of Sept, 20 10

SEC. 1619. INFORMATION GATHERING.

(a) GEOSPATIAL SYSTEMS—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

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(2) PROHIBITION—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

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(B) Geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) AUTHORIZED DISCLOSURES—

(A) LIMITED RELEASE OF INFORMATION—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) When providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) When responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

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(i) Individual owner, operator, or producer; or

(ii) Specific data gathering site; or

(C) The disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

(5) CONDITION OF OTHER PROGRAMS—The participation of the agricultural producer or owner of agricultural land in, or receipt of any benefit under, any program administered by the Secretary may not be conditioned on the consent of the agricultural producer or owner of agricultural land under paragraph 4(c).

(6) WAIVER OF PRIVILEGE OR PROTECTION—The disclosure of information under paragraph (2) shall not constitute a waiver of any applicable privilege or protection under Federal law, including trade secret protection.