



RESOLUTION NO. 5034

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, SUBMITTING COMMENTS ON THE CUSTER GALLATIN NATIONAL FOREST DRAFT FOREST PLAN.

WHEREAS, The Custer Gallatin National Forest has released the Custer Gallatin National Forest Draft Forest Plan for public review and comment with a comment deadline of June 6, 2019;

WHEREAS, one-hundred percent of City of Bozeman drinking water supplies originate on lands managed by the Custer Gallatin National Forest;

WHEREAS, the City of Bozeman owns roughly 4,000 acres of land in checkerboard with the Custer Gallatin National Forest within the Sourdough Creek Municipal Watershed;

WHEREAS, the City of Bozeman and Custer Gallatin National Forest enjoy a positive working relationship founded on principles of shared stewardship to cooperatively maintain, in the long-term, a high quality, predictable water supply for the City;

WHEREAS, the City of Bozeman and Custer Gallatin National Forest have entered into a Memorandum of Understanding expressing and memorializing its cooperative intent, in the spirit of shared stewardship, to cooperatively maintain, in the long term, a high quality, predictable water supply for the City;

WHEREAS, the existing Forest Plan for the Gallatin side of the Custer Gallatin National Forest was completed in 1987;

WHEREAS, forest plans generally set forth a 20-year planning horizon, thus opportunity for public review and comment of forest plans occurs infrequently;

WHEREAS, the Custer Gallatin National Forest Draft Forest Plan sets forth various management area designations with related desired conditions, goals, objectives, standards and guidelines;

WHEREAS, upon review of the Custer Gallatin National Forest Draft Forest Plan, City Staff have identified three issues deserving attention for comments prior to rendering a final plan decision: 1) Compatibility of the draft forest plan with relevant plans of other public agencies; 2) land use restrictions within Key Linkage Area designations; 3) Recreational Emphasis Areas within City of Bozeman municipal watersheds;

WHEREAS, the official comment letter to the Custer Gallatin National Forest has been prepared addressing the three issues identified above and is attached to this Commission Resolution 5034 as Exhibit A, and by this reference is made a part hereof;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Bozeman, Montana, that the comment letter attached as Exhibit A to this Commission Resolution 5034 is officially endorsed by the City Commission and that the City Commission hereby releases City Staff to submit same to the Custer Gallatin National Forest as its official comments to the Custer Gallatin National Forest Draft Forest Plan.

PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, at a regular session thereof held on the 3rd day of June, 2019.



CYNTHIA L. ANDRUS
Mayor

ATTEST:



ROBIN CROUGH
City Clerk

APPROVED AS TO FORM:



GREG SULLIVAN
City Attorney



June 6, 2019

Ms. Mary Erickson, Forest Supervisor
Custer Gallatin National Forest
PO Box 130
Bozeman, MT 59771

**RE: City of Bozeman Comments
Custer Gallatin National Forest Draft Forest Plan**

Dear Ms. Erickson:

The City of Bozeman is writing to provide the Custer Gallatin National Forest (CGNF) its official comments on the Draft CGNF Forest Plan. We respectfully bring three issues to your attention: 1) Compatibility of the draft forest plan with relevant plans of other public agencies; 2) land use restrictions within Key Linkage Area designations; 3) Recreational Emphasis Areas within City of Bozeman Municipal Watersheds.

The City of Bozeman and CGNF enjoy a long-standing positive and collaborative working relationship based on principles of shared stewardship of critical municipal watershed lands at the northern end of the Gallatin Range largely managed by CGNF. The CGNF also manages land within the Lyman Creek municipal watershed at the southern end of the Bridger Range. The criticality of these municipal watersheds cannot be understated as they sustain the quality of life not only enjoyed, but expected, by residents and visitors of the City of Bozeman and the Greater Yellowstone Ecosystem.

As the CGNF is aware, the City of Bozeman owns and manages, under principles of shared stewardship, roughly 4,000 acres of land in checkerboard with the CGNF within the Sourdough Municipal Watershed. The City and CGNF have long worked together in good faith to cooperatively maintain, in the long term, a high quality, predictable water supply for the City through cooperative efforts in implementing sustainable land management practices. This cooperative intent is memorialized in a Memorandum of Understanding between the CGNF and City of Bozeman dated March 27, 2017 (USFS Agreement No. 17-MU-11011100-036, attached to this letter and hereby made a part of these comments). We respectfully ask that the final CGNF Forest Plan duly consider the spirit and content of this MOU and that final plan designations be consistent and complement the same.

1) Compatibility of the Draft Forest Plan with Relevant Plans of Other Public Agencies

The City of Bozeman is a public agency that owns land within the Sourdough Municipal Watershed wholly surrounded by the CGNF and has invested substantial time and monetary resources to proactively plan for its future water supply needs. The City of Bozeman has long planned to develop additional water supplies in the Sourdough Municipal Watershed. Mystic Lake Dam, situated on CGNF lands near the headwaters of Sourdough Creek, was breached in 1984 due to safety concerns. Mystic Lake was a source of municipal water supply for the City of Bozeman prior to the breach of the dam.

Since the Mystic breach, the City has conducted multiple planning studies to replace the lost water storage in a geologically suitable location to perfect the City's interests in its Mystic Lake water rights. The City also holds a water reservation to store water in the Sourdough municipal watershed as well as interests in Mystic Lake water rights. The most recent of these planning studies is the Integrated Water Resources Plan (IWRP)¹. The IWRP identifies the City's projected water supply needs over a 50-year period by comparing the reliable yield of existing water supplies to the projected 50-year water demand. It then identifies water supply alternatives to fill the projected supply gap.

A technical advisory committee (TAC) consisting of a diverse stakeholder group was convened to help review technical information and shape plan recommendations. The USFS was a member of the TAC convened for the IWRP through the membership and participation of Frank Cifala, USFS Lands and Uses Specialist. The IWRP was adopted by the City Commission in 2013 and is an integral and relevant plan shaping the future of the City of Bozeman. The adopted IWRP contains a recommended supply alternative for 'Sourdough Impoundment(s)' at a volume of 915 acre-feet.

Consideration of compatibility with other relevant adopted plans of the City of Bozeman must be given. The adopted Bozeman Community Plan² is the overarching planning document for the City of Bozeman. It contains germane references to City of Bozeman water supply planning efforts in Sourdough municipal watershed at Appendix H, page H-3. The City's 2017 Water Facility Plan Update³, which replaces the 2005 Water Facility Plan, is also relevant as it sets forth the master plan for the City's water supply and distribution system. Chapter 10 of the 2017 Water Facility Plan Update contains tables listing short-term, near-term and long-term capital improvements projects necessary to

¹ <https://www.bozeman.net/home/showdocument?id=836>

² <https://www.bozeman.net/Home/ShowDocument?id=1074>

³ <https://www.bozeman.net/home/showdocument?id=4977>

ensure continued safe and dependable drinking water supplies for the City. Multiple projects are identified to occur within Sourdough and Hyalite municipal watersheds. Lastly, the City of Bozeman has prepared a Forest Management Plan⁴ for its timbered landholdings within the Sourdough municipal watershed. This plan identifies fuels and timber stand treatments to reduce the risk of catastrophic wildfire in the watershed. The plan complements the proposed Bozeman Municipal Watershed fuels reduction project on CGNF lands within Sourdough and Hyalite watersheds.

The City respectfully requests that 'Appendix E – Compatibility of the Revised Forest Plan with Relevant Plans of Other Public Agencies' as contained in the Draft Environmental Impact Statement (EIS) document be amended to consider and include the above relevant plans of the City of Bozeman to develop future water supplies and maintain forest health in municipal watersheds.

2) Land Use Restrictions within Key Linkage Area Designations

Key Linkage Areas (KLA) are designated in Alternatives B, C, and D for both the Bridger, Bangtail and Crazy Mountains Geographic Area and the Madison, Henrys Lake and Gallatin Mountains Geographic Area. Draft CGNF Forest Plan Guideline FW-GLD-WL-02 places significant limitations and barriers to the construction of new permanent facilities or structures within these key linkage areas. The gross application of KLA restrictions for new permanent facilities or structures must be revisited to consider the compatibility of this proposed forest plan element with relevant plans of other public agencies (Comment 1 above).

Due to the significant implications that the Gallatin KLA presents upon the City's long-standing plans to develop water supply in Sourdough municipal watershed, the draft Forest Plan restrictions on new permanent facilities and structures in the KLA must be reconsidered. These restrictions conflict with the spirit of the Memorandum of Understanding between CGNF and the City and prevent the City from implementing a significant element of its Integrated Water Resources Plan.

The City does not disagree in concept about the overarching importance of sustaining ecological conditions that provide landscape-scale linkages promoting dispersal and genetic interchange between otherwise disparate wildlife populations. We do, however, question the efficacy of a KLA designation given the significant barriers to

⁴ <https://www.bozeman.net/home/showdocument?id=9021>



connectivity already present within the CGNF (Highway 86, Highway 10, Interstate 90, BNSF Railway Mainline, growing population center).

The City desires certainty with respect to its ability to implement its Integrated Water Resources Plan by pursuing water projects in the Sourdough Municipal Watershed and proposed Gallatin KLA. As written in its draft, the KLA appears to negate 35 years of municipal water supply planning – planning that the CGNF has participated in – and significantly hampers the City's ability to serve a growing a population with a safe and dependable municipal drinking water supply, which is contradictory to the spirit of the MOU between CGNF and City of Bozeman.

The CGNF is encouraged to review the 2017 Water Facility Plan Update as it is instructive as to the general approach the City is taking to implement water storage in Sourdough municipal watershed (see Table 10.4.2, Project IDs WFP_23 and WFP_51). The storage concept is to develop a series of low-head impoundments to gain the 915 acre-foot storage target in the Integrated Water Resources Plan by mimicking natural storage areas created by beavers. Montana State University, in partnership with the City of Bozeman, recently completed a feasibility-level analysis of beaver mimicry in Sourdough municipal watershed and has determined that the 915 acre-foot storage target can be achieved by constructing a series of low-head beaver dam analog structures. This 'naturalized storage' concept is inherently low impact, would fit naturally into the landscape, and enhances habitat diversity with minimal overall impact to the ecosystem.

Moreover, should the KLA remain in the final plan, we respectfully request the City of Bozeman be granted an exception to KLA limitations for new permanent facilities, structures, or active management programs (e.g. fuels treatments) benefitting the City of Bozeman that are water quality or water quantity related. The City seeks certainty with respect to its ability to implement its Integrated Water Resources Plan by developing low impact naturalized storage areas and water conveyance infrastructure in Sourdough municipal watershed.

3) Recreation Emphasis Areas within City of Bozeman Municipal Watersheds

The City of Bozeman respectfully requests that the CGNF manage and place priority watershed status designations in the final forest plan for Hyalite Creek, Sourdough Creek, and Lyman Creek municipal watersheds. We ask that the final version of the forest plan contain language highlighting the priority status of these municipal watersheds and that the priority designation eclipse, yet complement, recreational

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emphasis area management decisions. It is imperative that any project or programmatic decisions made by CGNF within the Recreational Emphasis Areas recognize the critical function these watersheds have as high quality drinking water supply sources for the City of Bozeman. In the spirit of shared stewardship, and following the expressed intent of the MOU between the CGNF and City of Bozeman, it is critical that any management decisions made in these municipal watersheds always err towards sustaining water quality and quantity to maintain, in the long-term, the City's drinking water supply.

Respectfully submitted,



Andrea Surratt
City Manager

cc: Bozeman Mayor and Commissioners

FS Agreement No. 17-MU-11011100-036
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
CITY OF BOZEMAN, MONTANA
And The
USDA, FOREST SERVICE
CUSTER GALLATIN NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the City of Bozeman, Montana, hereinafter referred to as "The City," and the United States Department of Agriculture (USDA), Forest Service, Custer Gallatin National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: Due to the increasing pressure on the City of Bozeman's source watersheds from rapid growth and dry years, there is a need for a collaborative partnership between The City and the U.S. Forest Service to manage and provide water resiliency throughout The City's Sourdough and Hyalite watersheds.

Title: MUNICIPAL WATERSHED PROJECT

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to maintain (in the long term) a high quality, predictable water supply for The City through cooperative efforts in implementing sustainable land management practices. This framework of cooperation serves the mutual interest of the parties and the public in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Whereby the public water supply for The City comes primarily from watersheds south of Bozeman that are largely National Forest System lands, the U.S. Forest Service and The City share a role in ensuring the long-term quality and quantity of water to city residents. Each party brings resources to the collaborative process. The parties to this MOU acknowledge that ensuring a reliable water supply from these source watersheds is not the sole responsibility of one entity, but is a shared goal of both parties. The following objectives are in the mutual interest of the parties in order to meet this responsibility:

- Implement vegetation management projects that will begin to reduce the severity and extent of wildland fires in the Bozeman and Hyalite Municipal Watersheds.
- Focus on treatments that will begin to reduce the risk of excess sediment and ash reaching the municipal water treatment plan in the event of a severe wildland fire.



- Provide for firefighter and public safety by beginning to modify potential fire behavior.
- Reduce fuels in the wildland/urban interface (WUI) to reduce potential fire spread and intensity between National Forest system lands and adjacent private lands.
- Support the investigation and development of projects, programs, or other activities that serve to enhance or protect water quality and/or augment water quantity.

The parties to this MOU acknowledge that any one party may participate in local activities or implement decisions related to watershed management as part of their site-specific obligations, responsibilities and authorities within their own jurisdiction. This MOU is not meant to supplant any party's discretionary authority to make decisions about watershed management associated with their individual jurisdictions. Nor is it meant to impose rulings or requirements on private lands. This MOU is intended to provide a framework for the parties to integrate their local, site-specific decisions, activities and resources into a collaborative landscape scale approach to watershed management.

In consideration of the above premises, the parties agree as follows:

III. THE CITY SHALL:

- A. Assign staff to the Bozeman Municipal Watershed project.
- B. Coordinate regularly with the U.S. Forest Service in the development, planning and implementation of any projects in the municipal watersheds.
- C. Share information in City databases regarding City lands and water treatment facilities relevant to planning and implementation of projects outlined in Section II above, within the municipal watershed.
- D. Work with the U.S. Forest Service to hold public meetings or share information with the public regarding management activities within the municipal watershed.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Assign staff to the Bozeman Municipal Watershed project.
- B. Coordinate regularly with The City in the development, planning and implementation of any projects in the municipal watersheds.
- C. Develop maps and share information in Forest Service databases for vegetation, fire history, wildlife habitat, road systems and other relevant national Forest Source material for the planning and implementation of projects outlined in Section II above, within the municipal watershed.



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- D. Work with The City to hold public meetings or share information with the public regarding management activities within the municipal watershed.

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

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

The City Program Contact	The City Administrative Contact
Brian Heaston P.O. Box 1230 Bozeman, MT 59771 Telephone: 405-582-2282 FAX: 406-582-2263 Email: bheaston@bozeman.net	Craig Woolard P.O. Box 1230 Bozeman, MT 59771 Telephone: 406-582-2280 FAX: 406-582-2263 Email: cwoolard@bozeman.net

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Jake Chaffin P.O. Box 130 Bozeman, MT 59771 Telephone: 406-587-6734 FAX: 406-587-6848 Email: jakechaffin@fs.fed.us	Charlie Boucher 3710 Fallon Street, Suite C Bozeman, MT 59718 Telephone: 406-624-3767 FAX: 406-522-2528 Email: cboucher@fs.fed.us

- B. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or The City is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To The City, at The City's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.



- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or The City from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. ENDORSEMENT. Any of The City's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of The City's products or activities and any of the U.S. Forest Service's contributions made under this MOU do not by direct reference or implication convey The City's endorsement of U.S. Forest Service products or activities.
- E. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- F. USE OF U.S. FOREST SERVICE INSIGNIA OR THE INSIGNIA OF THE CITY. In order for The City to use the U.S. Forest Service insignia or for the U.S. Forest Service to use the insignia of The City on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the respective agency. A written request must be submitted and approval granted in writing by the respective agency prior to either agency's use of the other's insignia.
- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.



- H. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- I. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- M. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The City is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:
- "Watershed Programs of the U.S. Forest Service, Department of Agriculture, fully supports the Municipal Watershed project."
- The City may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The City is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.
- N. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The City shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- O. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The City shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis



of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

- P. **TERMINATION.** Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- Q. **DEBARMENT AND SUSPENSION.** The City shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should The City, or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- R. **MODIFICATIONS.** Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- S. **COMMENCEMENT/EXPIRATION DATE.** This MOU is executed as of the date of the last signature and is effective through March 31, 2022 at which time it will expire.
- T. **AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU.

In witness whereof, the parties hereto have executed this MOU as of the last date written below.



USDA, Forest Service

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FS-1500-15

CHRIS KUKULSKI, City Manager
City of Bozeman

3-20-17

Date

MARY C. ERICKSON, Forest Supervisor
U.S. Forest Service, Custer Gallatin National Forest

03/27/17

Date

The authority and format of this agreement have been reviewed and approved for signature.

March 6, 2017

CHARLENE BOUCHER
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.