

**MEMORANDUM OF AGREEMENT BETWEEN**  
**THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR)**  
**AND**  
**THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

1. **PARTIES:** The parties to this Agreement are the Idaho Department of Water Resources (IDWR) and the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security.
2. **AUTHORITY:** This Agreement is authorized under the provisions of The National Flood Insurance Act, as amended, 42 U.S.C. § 4001 *et seq.*
3. **PURPOSE:** The purpose of this Agreement is to formalize the consensus between the Parties regarding current inconsistencies between certain provisions of the Idaho Code and FEMA regulations, and to identify the Parties' respective commitments and responsibilities regarding the implementation of the Administrative Memorandum.
4. **BACKGROUND:** FEMA is the federal agency charged with administration of the National Flood Insurance Program (NFIP) under the National Flood Insurance Act, as amended, 42 U.S.C. § 4001 *et seq.* The IDWR is the agency designated by the State of Idaho under Executive Order No. 2015-06 as responsible for implementing and administering the NFIP within the State. NFIP implementing regulations require all communities participating in the NFIP to permit all proposed construction or other development within the community. To support the NFIP in Idaho, Idaho Code §§ 46-1020 through 46-1023 encourages and authorizes local governments to regulate floodplains within their jurisdiction.

In 2010, the definition of development in Idaho Code § 46-1021(1) was amended to exclude "operation, cleaning, maintenance, or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works" and Idaho Code §46-1022 was amended to prohibit regulation of "operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works." In November 2016, FEMA alerted IDWR that Idaho Code §§ 46-1021(1) and 46-1022 were non-compliant with NFIP implementing regulations 44 CFR §§ 59.1 and 60.3 due to the exclusions of operation, cleaning, maintenance, or repair of irrigation and drainage works. Since November 2016, FEMA has warned IDWR that FEMA may suspend the State of Idaho from the NFIP unless the State of Idaho either 1) amends Idaho Code §§ 46-1021(1) and 46-1022 to remove the exclusions, or 2) develops a guidance document that defines the exclusions and the criteria in which the exclusions apply. In May 2018, IDWR and FEMA finalized a Guidance Document that defines operation, cleaning, maintenance and repair of irrigation and drainage works, and distinguishes the types of irrigation and drainage activities that meet the definition and those that require a floodplain development permit. The Guidance Document also describes a General Irrigation Floodplain Development (GIFD) permit which covers qualified irrigation and drainage development over a specified period of time. To formalize the Guidance Document IDWR has

incorporated it into an Administrative Memorandum that guides IDWR floodplain management staff when advising local communities working with irrigation entities.

5. AGREEMENT OF THE PARTIES:

5.1. Upon execution of this Agreement, IDWR will post a copy of this Agreement and the Administrative Memorandum to the Floodplain Management page of the IDWR website.

5.2. IDWR will send a copy of this Agreement and the attached Administrative Memorandum to all Idaho communities participating in the NFIP by April 1, 2019. A cover letter accompanying the Agreement and Administrative Memorandum will encourage local communities to adopt the definitions and GIFD permit into their floodplain management regulations.

5.3. IDWR will send a copy of this Agreement and the attached Administrative Memorandum to all irrigation districts, canal companies, and other irrigation entities in Idaho by May 1, 2019. IDWR will send a copy of this Agreement and Administrative Memorandum to the Idaho Board of Professional Engineers and Professional Land Surveyors (IBPEPLS) and the Idaho Water Users Association (IWUA) to request publication of the Guidance Document in IBPEPLS' and IWUA's next available newsletters.

5.4. IDWR will coordinate with FEMA to host five (5) training opportunities prior to September 1, 2019. The training opportunities and schedule shall be announced in cover letters accompanying this Agreement and Administrative Memorandum that are sent to NFIP communities and Idaho irrigation entities. Those training opportunities shall include two (2) webinar(s) and three (3) workshop(s) held in Idaho. IDWR will request that the IWUA include training on the Administrative Memorandum at its Water Law & Resource Issues Seminar in June 2019.

5.5. IDWR will incorporate the requirements and expectations outlined in the Administrative Memorandum at all regular floodplain management training workshops and classes, or other training events sponsored by IDWR or FEMA in Idaho for as long as this Agreement is in effect.

5.6. FEMA agrees to support IDWR, the State of Idaho, Idaho NFIP communities, and Idaho irrigation entities with ongoing training and educational opportunities in Idaho, and in addressing questions from NFIP communities, IDWR floodplain management staff, and Idaho irrigation entities.

5.7. FEMA agrees not to suspend the State of Idaho from the NFIP due to inconsistencies between Idaho Code §§ 46-1021(1) to 46-1022 (as amended in 2010) and 44 CFR §§ 59.1 and 60.3 as long as this Agreement is in effect and IDWR executes the actions identified in sections 5.1-5.5 of this Agreement.

6. GENERAL PROVISIONS:

6.1. Points of Contact

6.1.1. For IDWR: Tim Luke

6.1.2. For FEMA: John Graves

6.2. Nothing in this Agreement is intended to restrict the authority of either party to act as provided by statute or regulation, or conflict with current law or regulation or the directives of FEMA or IDWR. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

7. EFFECTIVE DATE: The terms of this Agreement will become effective on the date the Agreement is signed by both Parties. This Agreement will remain in effect for a period of 26 months.

8. MODIFICATION: This Agreement, upon execution, contains the entire agreement of the Parties and no amendment, change, or modification of any term of this Agreement is valid unless it is in writing and signed by both Parties.

9. TERMINATION: This Agreement may be terminated or extended by either party upon thirty (30) days' written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date following their respective signatures.

State of Idaho  
Idaho Department of Water Resources  
322 East Front Street  
PO Bo 83720  
Boise, ID 83720-0098

Federal Emergency Management Agency  
Federal Insurance and Mitigation  
400 C Street SW  
Washington, DC 20472



Gary Spackman  
Director  
Idaho Department of Water Resources



David Maurstad  
Deputy Associate Administrator  
for Insurance and Mitigation  
Federal Emergency Management Agency

2/28/2019  
Date

04/09/19  
Date