

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**  
**Consent**

**AGENDA ITEM: 5 – M (2)**  
**DATE: October 4-5, 2023**

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**SUBJECT**

**Timber Transport Surveillance Joint Powers Agreement – SDSU & SD Department of Agriculture & Natural Resources**

**CONTROLLING STATUTE, RULE, OR POLICY**

[BOR Policy 5:3](#) – Agreements and Contracts

**BACKGROUND / DISCUSSION**

The South Dakota Department of Agriculture and Natural Resources (SDDANR) desires to enter into a Joint Powers Agreement (JPA) with South Dakota State University to conduct timber transport surveillance tasks such as trapping and detection of pine wood borers and bark beetles in transported logs. The JPA set forth in Attachment I would span April 1, 2023 until September 30, 2026. SDDANR will provide up to \$105,828 over the course of the three-year JPA. SDSU is not required to provide matching funds under this JPA, as noted in Exhibit A to Attachment I.

BOR Policy 5:3 (“Contracts Requiring Board Action...D. Joint powers agreements”), requires Board approval of Joint Powers Agreements (JPA). As such, Board of approval of the JPA set forth in Attachment I is necessary.

**IMPACT AND RECOMMENDATION**

The attached JPA will allow SDSU to receive funding from SDDANR to conduct timber transport surveillance services.

Staff recommends approval.

**ATTACHMENTS**

Attachment I – Timber Transport Surveillance JPA (w/Exhibit A– Work Plan)

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**DRAFT MOTION 20231004\_5-M(2):**

I move to approve the Joint Powers Agreement set forth in Attachment I.

ATTACHMENT I 2

JOINT POWERS AGREEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL  
RESOURCES  
RESOURCE CONSERVATION & FORESTRY DIVISION  
AND  
SOUTH DAKOTA STATE UNIVERSITY

This Joint Powers Agreement ("Agreement" hereinafter) made and entered into by and between the South Dakota Department of Agriculture and Natural Resources, Resource Conservation and Forestry Division, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "DANR") and the South Dakota State University, 1015 Campanile Ave, SAD 200, Box 2201, Brookings, SD 57007 (hereinafter "SDSU").

I.  
GENERAL PROVISIONS

A. DANR and SDSU hereby enter into this Agreement in consideration of and pursuant to the terms and conditions set forth herein.

SDSU and DANR will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

1. This Agreement shall commence on April 1, 2023 and end on October 31, 2026, unless sooner terminated pursuant to the terms hereof.

2. DANR will make payment for services as provided in Exhibit A. The total contract amount will not exceed \$105,828. The contract amount is comprised of up to \$105,828 to be paid by DANR for activities in Exhibit A. Payments will be made upon submission of non-cash vouchers from SDSU. Documentation of expenditures is necessary to show that the required match for federal funds has been met by SDSU.

3. SDSU may charge an administrative fee or indirect charge equal to the indirect rate allowed by the United States Forest Service for federal grants provided to DANR. The difference between the SDSU's administrative fee and the allowed indirect rate for DANR may be used as in-kind match upon written agreement between DANR and SDSU.

4. SDSU agrees to report to DANR any event encountered during performance of this Agreement which results in injury to a person or property of third parties, or which may otherwise subject SDSU or DANR to liability. SDSU shall report any such event to DANR immediately upon discovery. SDSU's obligation under this section shall only be to report the occurrence of any event to DANR and to make any other report provided for by their duties or applicable law. SDSU's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to DANR under this section shall not excuse or satisfy any obligation of SDSU to report any event to law enforcement or other entities under the requirements of any applicable law.

5. This Agreement may be terminated by DANR or SDSU hereto upon thirty (30) days written notice. In the event SDSU breaches any of the terms or conditions hereof, this Agreement may be terminated by DANR at any time with or without notice. If termination for such default is affected by DANR, any payments due to SDSU at the time of termination may be adjusted to cover any additional costs to DANR because of SDSU's default. Upon termination DANR may take over the work and may award another party an agreement to complete the work under this Agreement. If after DANR terminates for a default by SDSU it is determined that SDSU was not at fault, then SDSU shall be paid for eligible service rendered and expenses incurred up to the date of termination.

6. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by DANR. Termination for any of these reasons is not a default by DANR nor does it give rise to a claim against DANR.

7. This Agreement may not be assigned without the express prior written consent of DANR. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

8. This Agreement shall be governed by and construed in accordance with the laws of South Dakota without regards to any conflicts of law principles, decisional law, or statutory provision that would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

9. SDSU will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

10. SDSU may not use subcontractors to perform the services described herein without the express prior written consent of DANR. SDSU will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify DANR, and to provide insurance coverage for the benefit of DANR in a manner consistent with this Agreement. SDSU will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

11. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Marcus Warnke on behalf of the DANR, Dianne Nagy on behalf of SDSU, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

12. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

13. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

## II. JOINT POWERS

DANR and SDSU agree to the following provisions pursuant to the Joint Powers Act (SDCL 1-24):

1. This Agreement does not establish a separate legal entity as contemplated by SDCL 1-24-5. The cooperative undertaking described herein will be financed and conducted under the provisions of this agreement by DANR and SDSU respectively. Each party has responsibilities under the terms of this Agreement and no joint board or joint administrator will be used. Purchase and maintenance of

equipment used to fulfill the agreement will be undertaken by the respective agencies as described herein. No real property will be purchased to use for this Agreement.

2. A copy of this Agreement will be filed by DANR, with the Attorney General and Legislative Research Council not more than 14 days after the execution as required by SDCL 1-24-6.1.
3. All parties must comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C 2000d) and, in accordance with Title VI of that act, no person in the United States shall, on the grounds of race, color, or national origin, be exclude from participating in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediate take any measures necessary to effectuate this agreement.
4. Nothing in this Agreement shall be construed as an indemnification by one party or the other for liabilities of a party or third party for property loss, or damage, or death, or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property loss, or death, or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during this agreement shall be determined according to applicable law.
5. The parties signify their agreement to this work plan by the signatures affixed below.

IN WITNESS WHEREOF, the parties signify their agreement effective the date first written by the signatures affixed below.

SDSU

STATE OF SOUTH DAKOTA

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print/ Signature)

\_\_\_\_\_  
Hunter Roberts  
Secretary  
South Dakota Department of Agriculture  
and Natural Resources

\_\_\_\_\_  
(title)

EXHIBIT A THE  
JOINT POWERS AGREEMENT  
BETWEEN  
SD DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES  
RESOURCE CONSERVATION AND FORESTRY DIVISION  
AND  
SOUTH DAKOTA STATE UNIVERSITY

WITNESSETH:

WHEREAS, the South Dakota Department of Agriculture and Natural Resources, Resource Conservation and Forestry Division (DANR) and South Dakota State University (SDSU) entered into the Joint Powers Agreement April 1, 2023 to provide an annual work plan for the Timber Transport Surveillance; and

WHEREAS, Paragraph 1 of the Agreement provides: “DANR and SDSU will perform those services attached hereto as Exhibit A and by this reference incorporated herein. The Work Plan will be reviewed and approved annually by the above mentioned parties”; and

WHEREAS, DANR and SDSU have mutually agreed that the annual Work Plan for the extension forestry position assigned to Dr. John Ball is in effect from April 1, 2023 until September 30, 2026; and

WHEREAS, DANR and SDSU have mutually agreed that this Work Plan supersedes any previous work plans or addendums to the JPA between DANR and SDSU; and

WHEREAS, DANR and SDSU have mutually agreed that the annual Work Plan addresses the financial assistance that will be provided by DANR in support of the extension forestry efforts provided by SDSU within the parameters listed below.

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Financial Assistance to be Provided By DANR**

- a. DANR agrees to provide an amount not to exceed \$105,828 in federal funds to SDSU.
- b. DANR will make payments only on a reimbursement basis.
- c. DANR will make quarterly reimbursements upon receipt of an appropriate reimbursement claim with supporting documentation.

2. **Requirements for SDSU**

- a. SDSU must provide quarterly progress and accomplishment reports before reimbursement claims will be paid.
- b. SDSU must submit final reimbursement claims by no later than October 31, 2026.

## **Work Plan for the Timber Transport Surveillance**

### **3. Trapping plan for 2023 - 2026 field seasons**

Trapping will begin in April of each year at three locations in the Black Hills region; Upton, Wyoming where the logs will be initially brought by rail cars and the two Neiman mill locations in Hulett and Spearfish. The initial delivery of green logs will be to the mill in Hulett, but Spearfish is being considered for future shipments so will be included in this surveillance plan.

Surveillance for an accidental introduction of target insects will be through trapping at all three sites: Hulett, Spearfish and Upton. Lundgren 12-funnel traps will be used for the California fivespined ips and western pine beetle monitoring. California flatheaded borer monitoring will use black panel traps. The collection cups for all traps will contain a liquid preservative. The funnels and panel traps will have attached the appropriate lure for each of the target insects with traps assigned to each specific lure.

The traps will be set in a shade on 3 m tall t-posts with the top of each trap is approximately 2 m high and the collection cups no closer than 40 cm from the ground. The traps for each target species will be placed in sets of three. The three traps will be placed in a triangle with the traps set approximately 10 to 12 m apart.

The traps will be set within sight of the yarding areas at each site and within 30 m of an adjacent pine forested area if one is available. The prevailing winds from March through August at the three sites are from the south and west. One set of traps for each target insect will be placed to the south of the yarding area of a site and one to the west.

The cups will be checked and emptied every two weeks from April through August. The content of the cups will be cleaned of debris then filtered to remove all the insects. The insects will be strained into quart zip-lock bag. One bag will be used for each trap content. Each bag will also have paper towels drench with alcohol to reduce the amount of liquid in the bags. The bags will be labeled with the site location, the trap number, and date. The bags will be shipped on a Monday to Wednesday via two-day UPS to South Dakota State University (SDSU) in Brookings, South Dakota.

The bags will be delivered to the SDSU plant diagnostic lab and stored in a cooler at 2 to 3°C until processed. The goal is to have all processing for the target insects completed within the two-week period between collections. All the insects collected in the bags will be stored for further identification during the winter. The results of each collection will be communicated to the forest health staff in Wyoming and South Dakota as well as the USDA Forest Service Mystic District office in Rapid City.

### **4. Expanded Surveillance Plan for Detecting Pine Wood Borers and Bark Beetles in Green Logs Shipped from Western States to the Interior West 2024 and 2025**

Every site will have funnel traps containing lures for California fivespine ips, western pine beetle, and the California flatheaded borer. Trapping for each insect will be with three funnel traps set about 25 feet from one another as a triangle with a gap between the grouping for each insect. This means 12 funnel traps per site.

Assuming two sites in Idaho, Montana, and Wyoming (Upton and Hulett), one site in South Dakota (Spearfish) and another in Oregon at the debarking location for a total of eight (8) sites.

If trapping results in the capture of a target insect, a survey will be made at all three sites, regardless of the specific location of the positive trap. The number of traps for the specific target insect will be expanded to a radius of 0.4 km from each site. The traps will be placed in sets of three near wooded area that permission to access can be obtained. Trap sets will be located approximately 300 m apart within the 0.4 km radius and involved placing another 15 to 18 traps.

Trapping may fail to detect additional adult insects of the target insect as the population may be very low. The trapping will be augmented by creating two trap trees within 0.4 km of the sites, if possible, but at least no farther than 0.8 km. The two trees will be selected from healthy ponderosa pines at least 24 cm dbh. The two trees will be from the south and west of the sites, if possible, and felled into light shade. The trap trees will not be bucked or limbed. Ponderosa pine trees within 2 km of the trapping at all three sites will be surveyed to look for symptoms of a possible attack. The presentation of a tree infested by wood borers or bark beetles is not always a reliable indicator of an attack. Drought stress may present in very similar ways. Stressed trees are also attractive to wood borer and bark beetles so the two stress agents may work together.

Infested trees may slowly decline over several years with a gradual change to the canopy so symptoms may not be apparent during the initial survey. This survey will require sampling specific trees to inspect for signs of a recent attack by the target insect. Pines within 200 m of the site where the target insect was found will be included in this sampling. Since the signs may only be present in the upper canopies, climbing or aerial lift will be necessary to complete this survey. Any climbing will be completed by International Society of Arboriculture Certified Arborists utilizing equipment and procedures that meet the standards of the ANSI Z133 Safety Requirement for Arboricultural Operations.

Suspected attacks will be further examined by removing bark to inspect for galleries and the presence of any life stages of wood borer or bark beetles. All insects will be collected and placed in labelled vials of 70% ethanol for further identification.

##### **5. Public outreach effort**

There is the possibility that an accidental introduction of a target insect may not be detected through trapping. The symptoms of an infested tree may not present for a year or more following colonization, additional surveillance efforts will be undertaken. The public and tree-related professionals such as arborists, foresters and landscapers may be the first to notice an infested tree as has often been the case with Asian longhorned borer and emerald ash borer. An outreach effort will be made to educate people within the greater area of

possible insect attacks on pines. The effort will be general, focusing on forest health and identifying unhealthy trees that could be from bark beetle/wood borer species and not solely on the three target insects.

A four-page color brochure covering forest health and resilience will be published. This will be hosted on the forest health websites for South Dakota and Wyoming. The brochure will cover symptoms and signs associated with insect attacks as well as who to contact if any attacks are suspected.

## 6. **Budget**

### **Personnel cost for monitoring the South Dakota and Wyoming sites**

Initial placement of the traps, servicing the traps every two weeks (replenishing preservative) and collection insects to mail at all three locations, 160 hours at \$25.00 per hour totaling \$3,750.

The cost for placement and monitoring three years: **\$11,250.**

### **Personnel for Identification of target insects for all sites**

Sorting to Buprestidae, *Dendroctonus*, *Ips*, screening for the three target insects of interest, and identification of all collected insects to order and family will require approximately 120 hours per site (eight sites) at \$25.00 per hour totaling \$24,000.

Total for identification: **\$24,000**

### **Fringe**

Fringe is 28% of personnel cost.

Total fringe: **\$9,870**

### **Travel**

Estimated mileage for travel to/from trap locations to office, 2,500 miles @ \$0.53/mile = \$1,325.00

Annual cost of travel of \$1,325.00 for three years: \$3,975

Travel to Oregon site for initial setup: \$3,000

Total travel: **\$6,975**

### **Supplies**

Assuming two sites in Idaho, Montana, and Wyoming (Upton and Hulett), one site in South Dakota (Spearfish) and another in Oregon at the debarking location for a total of eight (8) sites.

*California fivespine ips* trapping

6 traps per location with 6 locations using a 12-funnel traps with a wet cup @ \$84.50 each for 36 traps = \$3,042

Lures \$9.80 each, 6 traps per location with 6 locations, lure replaced mid-season so 72 lures = \$705.60

*Western pine beetle* trapping

6 traps per location with 6 locations, using a 12-funnel trap with a wet cup @ \$84.50 each for 36 traps = \$3,042



Lures \$10.60 each, 6 traps per location, with 6 locations, lures replaced mid-season  
so 72 lures = \$763.20

*California flatheaded borer trapping*

6 traps per location with 6 locations using a black panel trap with a wet cup @\$35.00

for 36 traps = \$1,260

Lures \$9.50 each, 6 traps per location with 6 locations, lures replaced mid-season, 72

lures = \$684

3 m tall metal T-posts 108 @\$17 = \$1,836

Total cost of traps and lures = \$23,742

Miscellaneous supply costs for maintenance of trap sites (replacing damaged or missing): \$8,110.72

*Mailer/package*

UPS package mailer will be provided to each state so the bi-weekly contents of each trap can be mailed to South Dakota State University, Brookings SD. The cost for all

the mailers over a twenty-four-week (24) trapping season is \$6,000.

Total cost of \$12,000.

Total supply cost for 2023-2025: **\$45,688.72**

**Contractual**

Layout and printing of four-page public education brochure, 1,500 printed @\$2.00 a copy: **\$3,000.00**

**Total direct costs: \$100,783.72**

**Total indirect rate 14.31 percent (charged to Personnel only): \$5,044.28**

**Total grant request: \$105,828**

**7. Recognition**

SDSU agrees to provide recognition of the contribution DANR and USFS has made to the extension forester position within SDSU by acknowledging all work accomplished through this work plan. SDSU must acknowledge DANR and USFS support in all published media including written, video, audio, electronic or other media developed as a result of this award. Work performed by SDSU outside of the work plan is not to be attributed to DANR without prior authorization.