

MEMORANDUM OF UNDERSTANDING
among
UNITED STATES DEPARTMENT OF AGRICULTURE,
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION and RESEARCH STATION,
USDI FISH AND WILDLIFE SERVICE,
and STATE OF CALIFORNIA RESOURCES AGENCY

This **MEMORANDUM OF UNDERSTANDING** (this “**MOU**”) is hereby entered into as of February __, 2005 by and among the United States Department of Agriculture (“**USDA**”) and the USDA Forest Service Pacific Southwest Region and Research Station, hereinafter referred to collectively as the “**Forest Service**,” the United States Department of the Interior Fish and Wildlife Service, Pacific Region, California/Nevada Operations Office, hereinafter referred to as the “**Fish and Wildlife Service**,” and the State of California, Resources Agency, hereinafter referred to as the “**State**.” The Forest Service, Fish and Wildlife Service and the State may be referred to individually as a “**Party**” and collectively as the “**Parties**.”

R E C I T A L S

- A. The purpose of this MOU is to take the first step toward development of a framework for cooperation among the Parties and other stakeholders that builds upon the collaborative principles and goals of the Western Governors Association (“**WGA**”) 10-Year Comprehensive Strategy and Implementation Plan to develop and apply a refined and active multiparty adaptive management and monitoring system consistent with the Sierra Nevada Forest Plan Amendment (“**SNFPA**”). This cooperation serves the mutual interest of the Parties and the public.
- B. In January 2004, the Regional Forester, Pacific Southwest Region, issued the SNFPA Final Supplemental Environmental Impact Statement, Record of Decision (“**ROD**”). The ROD selected Alternative S2 for implementation and adopted and initiated an assessment of the Monitoring Plan contained in the 2001 SNFPA Final Environmental Impact Statement Adaptive Management Strategy (Appendix E). Adaptive management is the process of adjusting management in response to new information, knowledge or technologies.
- C. In November 2004, the Chief of the Forest Service issued his SNFPA Appeal Decision affirming the Regional Forester’s decision with instructions to fully develop the adaptive management and monitoring strategy of Alternative S2, to clarify how the timing of treatments and the feedback and adjustment loops will occur and to clarify how continued collaborative involvement of other government agencies, the science community, native tribes, local governments, and other interested stakeholders would be conducted by the Forest Service.
- D. The Forest Service is interested in building stakeholder understanding and trust in the implementation of the ROD. The Forest Service and State recognize the value

- of using the University of California (“University”) as a neutral third party with expertise in projects of this sort to assist in developing a process with the Forest Service and interested stakeholders to refine an active adaptive management and monitoring system. This refined adaptive management and monitoring process will inform and contribute to the improvement in implementation of land management practices, as prescribed, that will restore and protect valued natural resources and reduce the threats to them and communities at risk.
- E. The Fish and Wildlife Service is interested in participating in the adaptive management process at both a technical and management level, in order to ensure that post-treatment and post-fire conditions offer multi-species habitat enhancement and the conservation of Federal threatened, endangered and candidate species. This process would include the development and review of individual project implementation monitoring and involve a feedback mechanism to ensure that appropriate changes are implemented when desired conditions and conservation goals are not being met at an individual project and landscape level.
- F. The State is interested in increasing progress across the Sierra Nevada to reduce the risk of catastrophic wildfire to the communities, and associated destruction of wildlife habitat, water quality and adverse impacts on air quality in the region. The State is also interested in ensuring that the technical and management activities of the Forest Service, currently managing 11.5 million acres in the Sierra Nevada on behalf of the public, are effectively achieving broadly agreed upon goals weighing wildlife habitat needs with reducing expected wildfire losses, and improving overall forest health and structure and protecting municipal water supplies on a watershed basis. This objective is best achieved by full engagement by the Forest Service in a collaborative adaptive management and monitoring process with interested federal, state, local stakeholders, government agencies, Native American Tribal representatives and the scientific community as full partners directed previously by Congress and consistent with the WGA 10-Year Comprehensive Strategy and Implementation Plan. This adaptive management approach can improve forest management practices on lands owned and managed by other entities, both public and private.
- G. There is mutual interest in understanding how various projects will look and function at the stand level as well as across larger landscapes. All Parties share the same general objective of balancing wildlife habitat needs and water quality considerations with reducing expected wildfire losses, and improving overall forest health and structure. A collaboratively developed and refined adaptive management strategy of annual monitoring, evaluation and accountability should inform management and interested stakeholders whether direction is being implemented as described, whether management practices are resulting in expected outcomes, and whether desired conditions are being met over appropriate timeframes. The adaptive management strategy should also offer a shared basis for designing and tracking changes or improvements at the stand and/or larger landscape levels. The refined SNFPA adaptive management and monitoring process will be coordinated with other monitoring processes under the Healthy Forests Initiative, the Wildland Fire Leadership Council, the December

23, 2004 NFMA planning regulations, and other ongoing SNFPA studies and research.

- H. In light of the long history and debate over land and resource management planning on public and private lands in the Sierra Nevada, both stakeholder and expert deliberation throughout the process of developing and applying a refined and active multiparty adaptive management and monitoring system consistent with the SNFPA is necessary to enhance the Parties' collective ability to find lasting solutions to these inherently difficult management decisions. In addition, the Parties' ability to find such lasting solutions will be improved by working with a neutral third party to assist in the development of an adaptive management and monitoring system, implement the system, and then use the information obtained through this development and implementation process to inform the implementation of adaptive management and monitoring processes for future projects involving different areas. The third party must have impeccable scientific credentials as well as the skill and experience to sort through often apparently contradictory data and trends. In addition to their technical expertise, the party must also have the trust and respect of a wide variety of stakeholders. By virtue of its diverse teaching, research, and extension responsibilities, the University is both qualified to provide the depth of technical expertise and is highly regarded as an institution in its own right.
- I. The Parties are entering into this MOU as a first step towards meeting the goals set forth above. The Parties contemplate that after the work required by this MOU is completed, the Parties will enter into two additional agreements. Specifically, the Parties desire to enter into a new agreement with the University by May 2, 2005, by which the Forest Service and University will agree that the University will start the process of developing the AMMP (as defined in Section I) and a work plan for implementing the AMMP. The Parties further contemplate that the University's report documenting the AMMP and the work plan for implementing the AMMP will be completed by September 23, 2005. Once the AMMP report and the work plan are completed, the Parties desire to enter into an agreement to implement the work plan by October 3, 2005.

I. Covenants of the Parties

In consideration of the above, the Parties agree as follows:

- 1) By February 23, 2005, the Forest Service and the University will jointly execute a brief statement of intent to participate in a process whereby the University will develop an adaptive management and project monitoring process designed to monitor the effects of a relevant range of ROD treatments (the "AMMP").
- 2) By April 15, 2005, the University will submit to the Parties a formal proposal outlining its role as third party in the AMMP. This proposal will include: (i) how stakeholder groups will be involved in the AMMP process; (ii) an overall explanation of how the University's recommended process will result in an AMMP that will meet the goals of the Parties set forth in the recitals; (iii) a timeline for completion of the

recommended process and a general work plan for the process; (iv) a description of a recommended phased approach for application of the AMMP to the Sierra Nevada Forest region covered by the ROD; and (v) the budget for completion of the recommended process. This proposal will be the basis for a written agreement (the "Agreement") between the Forest Service and the University, whereby the Forest Service and the University will agree that the University will implement a work plan that is based on the University's proposal and that is mutually acceptable to the Parties. .

- 3) The Agreement will be executed by the Forest Service and the University no later than May 2, 2005.

II. Miscellaneous Agreements

1. Freedom Of Information Act (FOIA) and Public Records Act . Any information furnished to the Forest Service and the Fish and Wildlife Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552) and any information furnished to the State under this instrument is subject to the Public Records Act, California Government Code Sec. 6251 et seq.
2. Participation in Similar Activities. This instrument in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
3. Commencement/Termination. This MOU takes effect upon the last date of any party to execute the MOU. This MOU will terminate thirty days after a Party sends a written termination notice to each of the other Parties.
4. Responsibilities of Parties. The parties and their respective agencies and office will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives, except as expressly set forth in this MOU.
5. Non-Fund Obligating Document. Nothing in this MOU shall require any of the parties to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
6. No Compensation to Participating Stakeholders. Nothing in this MOU includes or implies any payments or other compensation to participating non-governmental stakeholders by the signatory parties.
7. Establishment of Responsibility. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States or the State, or any of their respective agencies, officers, or any person.

8. No Partnership Or Fiduciary Relationship. Nothing in this MOU shall be deemed to create a partnership or any other trust relationship among the Parties, it being expressly understood and agreed that the Parties' obligations hereunder are not fiduciary in nature.

9. Counterparts. This MOU and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

THE PARTIES HERETO have executed this instrument:

STATE OF CALIFORNIA
RESOURCES AGENCY

UNITED STATES DEPARTMENT
OF AGRICULTURE

MIKE CHRISMAN
SECRETARY

MARK E. REY
UNDERSECRETARY FOR NATURAL
RESOURCES AND ENVIRONMENT

USDI FISH AND WILDLIFE SERVICE
CALIFORNIA/NEVADA OPERATIONS

USDA FOREST SERVICE

STEVE THOMPSON
MANAGER

DALE BOSWORTH
CHIEF

USDA FOREST SERVICE
PACIFIC SOUTHWEST STATION

USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION

JAMES SEDELL
STATION DIRECTOR

JACK BLACKWELL
REGIONAL FORESTER