

Attachment A-1
MEMORANDUM OF UNDERSTANDING

BETWEEN

The California Department of Fish and Game

and

The Plumas National Forest

concerning preparation of an

Environmental Impact Report (EIR) and Environmental Impact Statement (EIS)

for a project to eradicate Northern pike from Lake Davis

I. INTRODUCTION AND PURPOSE

This Memorandum of Understanding (MOU) is made and entered into by and between the Plumas National Forest, USDA Forest Service, hereinafter referred to as "Forest Service" and the California Department of Fish and Game, hereinafter referred to as "CDFG", and collectively referred to as the "Parties".

CDFG is considering options for a project to eradicate Northern pike from Lake Davis and its tributary streams located on National Forest System Lands. The purpose of this MOU is to establish an agreement to coordinate and minimize duplication of effort as the Forest Service complies with the National Environmental Policy Act (NEPA) and CDFG complies with the California Environmental Quality Act (CEQA) with respect to the proposed project, the project proposal submitted to the Forest Service with a request for a special use permit and any other connected actions, such as forest closures. In order to facilitate the Parties compliance with their respective laws, the Parties have agreed to do a joint EIR/EIS.

IN CONSIDERATION OF THE ABOVE, THE PARTIES AGREE AS FOLLOWS:

II. AUTHORITY

This MOU is prepared under the authority of NEPA, CEQA, the Freedom of Information Act (FOIA), and the California Public Records Act (CPRA).

A. Federal Agencies must comply with NEPA, 43 USC 4321, *et seq.*, and related requirements under Council on Environmental Quality (CEQ) NEPA regulations 40 CFR 1500-1508 (CEQ regulations). In addition, the Forest Service must comply with Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook. The Forest Service will serve as the lead agency under NEPA.

Federal Agencies are subject to FOIA, 5 U.S.C. § 552, *et seq.* Under FOIA, the Forest Service may exchange otherwise confidential or privileged information and documents with CDFG without waiving the confidentiality or privilege over such information and documents in circumstances such as this where the Parties are acting for each other in their mutual interest, (5 U.S.C. § 552(b)(4) and (b)(5).); as long as CDFG agrees to treat the disclosed information as confidential. Only persons authorized in writing by the person in charge of CDFG shall be permitted to obtain the information. Any information obtained by CDFG shall only be used for purposes which are consistent with existing law.

B. State Agencies must comply with CEQA, Public Resources Code § 21000, *et seq.*, as amended, and related regulations contained in Title 14, California Code of Regulations, § 15000, *et seq.* (CEQA Guidelines). CDFG will serve as the lead agency for the preparation of any environmental analysis of the proposed project under CEQA.

State Agencies are subject to the CPRA, Government Code § 6250, *et seq.* Under the CPRA, CDFG may provide information and documents that are exempt from disclosure under the CPRA or that are otherwise confidential or privileged to the Forest Service without waiving the exemption, confidentiality or privilege over such information and documents if the Forest Service agrees to treat the disclosed information as confidential. Only persons authorized in writing by the person in charge of the Forest Service shall be permitted to obtain the information. Any information obtained by the Forest Service shall only be used for purposes which are consistent with existing law. (Cal. Gov. Code section 6254.5.)

III. RESPONSIBILITIES AND GENERAL PROVISIONS

A. The Parties agree to combine their efforts to prepare a joint environmental document (hereinafter referred to as the EIR/EIS) as set forth in this MOU and in accordance with their respective responsibilities under CEQA and NEPA. The Parties will direct, oversee, and participate in the preparation of the EIR/EIS pursuant to their respective responsibilities under those laws. It is understood that the EIR/EIS will be

used independently by the Parties in order to comply with their respective statutory requirements. The EIR/EIS will be used for each agency's independent, objective, and unbiased impact analysis.

B. The Forest Service, as lead Federal agency, shall be responsible for ensuring compliance with all requirements of NEPA and CEQ regulations, and shall be responsible for the scope and content of the EIS including, but not limited to, public review of the EIS, public hearings, analysis of public comments, and decision documentation.

C. CDFG, as lead State agency, shall be responsible for ensuring compliance with all requirements of CEQA, and shall be responsible for the scope and content of the EIR including, but not limited to, public review of the EIR, public hearings, analysis of public comments, and decision documentation.

D. With the mutual agreement of the Parties, CDFG will enter into a contract with an independent consultant or consultants, hereinafter referred to as "Consultant(s)". The contract(s) will be for the purposes of developing the joint EIR/EIS and associated documents. CDFG agrees that CDFG will administer the contract(s).

E. The Consultant(s) selected to assist in the preparation of the joint EIR/EIS will be mutually acceptable to both CDFG and the Forest Service. Consultant(s), and any subcontractors, will execute a disclosure statement prepared by CDFG and the Forest Service specifying that neither the Consultant(s) nor any subcontractor(s) has/have any financial interest in the outcome of the project or other conflict of interest with regard to this project. This selection constitutes permission to conduct all studies on National Forest System lands required by the Parties. No further permits will be issued to Consultant(s) and any subcontractor(s).

F. On termination of the contract between CDFG and Consultant(s), CDFG shall, upon request, deliver to the Forest Service all documents relevant to preparation of the EIR/EIS received by either CDFG or Consultant(s), and a copy of all written reports, appraisals, memoranda, notes, data, maps and photographs prepared or used in by Contractor(s) in preparing the EIR/EIS.

G. If required, the Forest Service shall be responsible for consulting with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) for a Section 7 Consultation. The CDFG shall be responsible for consulting with the California State Historic Preservation Officer for a Section 106 Consultation. At the discretion of the Forest

Service and CDFG the Contractor(s) shall furnish such data or information required for such consultation.

H. In order to prepare a joint EIR/EIS, the exchange between or among the Forest Service and CDFG, and any Consultants and subcontractors, of materials, documents, communications or other information which is exempt, privileged or confidential shall not waive any claim of exemption, confidentiality or privilege by either the Forest Service or CDFG including, but not limited to deliberative process. (5 U.S.C. Section 552(b)(5) (*NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975); Cal. Gov. Code sections 6254(a), 6254(k), and 6255.)

IV. SPECIFIC RESPONSIBILITIES

A. The Forest Service:

1. Will issue a Notice of Intent to Prepare an EIS in the *Federal Register*.
2. Will maintain the federal administrative record [Case File] for the proposed project.
3. Will ensure that any necessary Forest Plan amendments are completed in parallel with the EIR/EIS process.
4. May identify a preferred Forest Service alternative for the Draft EIR/EIS and Final EIR/EIS in accordance with the implementing regulations at 40 CFR 1500-1508 and FSH 1909.15.
5. Will file the Draft and Final EIR/EIS with the appropriate office that will publish a Notice of Availability in the *Federal Register*.
6. Will, after completion of the Final EIS, issue a Record of Decision.

B. The CDFG:

1. Will prepare a Notice of Preparation in accordance with Section 15082 of the CEQA Guidelines, and send it to the Office of Planning and Research, State Clearinghouse and responsible and trustee agencies.
2. Will maintain the State administrative record for the proposed project.
3. Will take the lead in preparing administrative and public drafts of the EIR/EIS.

4. Will prepare a Notice of Completion when the draft EIR/EIS is completed, and file it with the Office of Planning and Research, State Clearinghouse;
5. Will, after completion of the Final EIR, certify the EIR if it concludes that it meets all applicable legal requirements, and review and consider it prior to approving any project.

V. PROCEDURES

- A. The Parties will coordinate the exchange of information between Consultant and interested governmental agencies or persons.
- ~~B. Any and all media releases, public mail-outs, or formal/public discussions related to the development and preparation of the EIR/EIS shall be made with the approval of the Parties.~~
- C. Generally, joint meetings of the Parties shall be held to coordinate EIR/EIS preparation. CDFG staff may at times work with the Consultants and/or subcontractors without the participation of the Forest Service, but the Forest Service shall be informed of such meetings and be given the opportunity to attend. Upon request, all significant meetings or conversations will be summarized in writing for the benefit of the Forest Service.
- D. The Parties will determine the need for review by interested governmental agencies or persons, and solicit their comments as appropriate.
- E. As will be set forth in any agreement between CDFG and Consultants:
(1) the Parties will work with Consultant in preparing the EIR/EIS and associated documents, including but not limited to administrative and public review drafts; (2) The Parties will review and evaluate all data, environmental descriptions, and analyses, including drafts of the EIR/EIS prepared by Consultant and the Parties shall respond to Consultant with changes, comments or other guidance and direction; (3) Consultant will incorporate the Parties' comments and changes to the Parties' satisfaction; (4). The Parties are responsible for resolving any differences that Consultant is unable to reconcile.
- F. As will be set forth in any agreement between CDFG and Consultants:
(1) the Parties shall have final authority to determine the text of all drafts of the EIR/EIS and associated documents; (2) the Parties shall have final authority to determine release of any accepted and approved public review draft and final draft of the EIR/EIS; (3) Consultant shall be

responsible for printing and mailing any public review draft and final draft of the EIR/EIS, and keeping the mailing list current; (4) any and all documents prepared by Consultant related to, and including but not limited to, the EIR/EIS shall be the property of CDFG; (5) On termination of the contract, the Consultant(s) shall, upon request, deliver to CDFG all such documents, including without limitation, research materials, documents received by Consultant(s) in the course of its work under the contract with CDFG, and all documents, written reports, appraisals, memoranda, notes, data collected, maps and photographs prepared or used by Contractor in preparing the EIR/EIS.

G. Confidentiality of information, documents, and materials exchanged for the development of the EIR/EIS will be governed by the provisions of this MOU consistent with FOIA and CPRA. And as will be set forth in an agreement between CDFG and Consultants, Consultant shall not disclose or release any documents or information to anyone except to the Forest Service or CDFG, without the approval of the Parties.

1. The Forest Service agrees to treat any information disclosed by CDFG to the Forest Service relative to the preparation of the EIR/EIS as confidential to the extent permitted by law. The persons listed on Attachment 1 are authorized by Forest Service to obtain the information and such information shall only be used for purposes which are consistent with existing law. This list may be changed by the Forest Service by written notice to CDFG.

2. CDFG agrees to treat any information disclosed by the Forest Service to CDFG relative to the preparation of the EIR/EIS as confidential to the extent permitted by law. The persons listed on Attachment 2 are authorized by CDFG to obtain the information and such information shall only be used for purposes which are consistent with existing law. This list may be changed by CDFG by written notice to the Forest Service.

3. If the Forest Service receives a FOIA request or CDFG receives a CPRA request, or either party receives a subpoena or discovery request for any of the aforementioned confidential or privileged document or information generated by the other party, the party receiving the request shall promptly notify and transmit a copy of the request or subpoena to the party that generated the confidential or privileged document or information. The party receiving the request shall notify the party that generated the confidential document or information in advance as to whether the recipient party intends to release such document or information. If the generating party objects to such disclosure, the generating party shall immediately notify the recipient party. The Parties

shall act in good faith in providing such notice expeditiously and within time frames that enable the Parties to comply with applicable statutory deadlines. As such, notice may be provided orally or in writing. The Parties shall act in good faith to preserve the privileges that are asserted by one another.

4. Unless otherwise specifically provided, for any privileged document, each of the Parties shall be entitled to assert the privileged or confidential nature of any document covered under this MOU.

5. Confidential and privileged documents and information covered by this MOU shall be maintained in such a manner so that no intentional or unintentional disclosure is made which might compromise any asserted ~~privilege or immunity~~.

6. At the request and option of either party, privileged or confidential documents generated by that party shall be returned to that party by the receiving party, subject to any applicable federal and state laws.

7. This MOU is not intended to detract or derogate from the applicability of any privilege or immunity that would otherwise apply under the law. Nor is this MOU intended to create any rights of any kind in any person or entity which is not a party to this MOU.

8. Provisions of Sections III. D, E, and F, and V. C, E, F, and G, do not apply to any consultants selected by CDFG to prepare economic analyses or reports that are separate from the joint EIR/EIS, such as a local economic impact analysis or a cost-benefit analysis.

VI. MODIFICATION AND AMENDMENT

This MOU may be modified or amended in writing by the mutual agreement of the Parties.

VII. TERMINATION

This MOU and any amendments shall continue in force unless formally terminated by either party either after thirty (30) days' notice in writing to the other or five years from the date of execution. This MOU may be extended upon the written request of either party.

In the event of termination of the MOU, it is agreed as follows:

A. The EIR/EIS preparation process may terminate. The Parties may continue to prepare the EIR or EIS individually.

B. Preparation of the EIR/EIS may be re-initiated by the Parties in accordance with applicable federal and state laws and regulations.

VIII. PARTICIPATION IN SIMILAR ACTIVITIES

This MOU does not restrict either Party from participating in similar activities with other public or private agencies, organization, and individuals.

IX. NON-FUND OBLIGATING DOCUMENT

Nothing in this MOU shall obligate either the Forest Service or CDFG to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between the Parties will require execution of a separate agreement 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.

X. 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 of California, its agencies, its officers, or any person.

XI. PRINCIPAL CONTACT

The principal contacts for this MOU are:

FOREST SERVICE:

Judy Schaber, Assistant Resource Officer
Beckwourth Ranger District
P.O. Box 7
Blairsden, CA 96103
(530) 836-7126 (phone)
(530) 836-0493 (fax)

CDFG:


Sandra Morey, Regional Manager
Sacramento Valley – Central Sierra Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900 (phone)
(916) 358-2912 (fax)

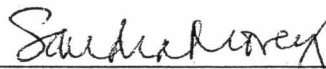
XII. EFFECTIVE DATE

This MOU may be executed in counterparts and shall become effective on the date of the last signatory.

For the Plumas National Forest:

For CA Department of Fish and Game:


for ROBERT G. MACWHORTER Date 8/3/05
Acting Forest Supervisor


Sandra Morey, Manager, Date 07/22/05
Sacramento Valley-Central Sierra
Region

ATTACHMENT 2

Zeke Awbrey
Martin Amezcua
Angela Barlow
Helen Birss
Ryan Broddrick
Vada Camacho
Scott Cantrell
Mike Carion
Sam Castillo
Pat Coulston
Stephanie Tom Coupe
Dave Crane
Julie Cunningham
Dave Decker
Jennifer DeLeon
Suzanne DeLeon
Ken DeVore
Simone Dumas
Candace Ehler
Richard Engelson
Joe Ferreira
Brian Finlayson
Scott Flint
Nancy Foley
Bob Ford
Bruce Foreman
Patrick Foy
Loren Freeman
David Grant
Mike Grima
Paul Hamilton
Robert Vincik
Betsey Magladry

Steve Hampton
James Harrington
George Heise
Janna Herren
Kathy Hill
Bronwyn Hogan
Sherry Howell
Ivan Jackman
Diana Jacobs
Joe Johnson
RonJurek
Jery Karnow
Randy Kelly
Stafford Lehr
Bud Leland
Emmett Lenihan
Jim Lindbert
Ann Malcom
Steve Martarano
John Mattox
Ken Mayer
Heather McIntire
John McCamman
Mike Meinz
Gary Miller
Danny Moraga
Sandra Morey
Mike Morrison
Nancee Murray
Alan Nack
Jim Nelson
Jason Roberts

Blaine Nickens
Bob Orange
Carol Oz
Steve Parmenter
Ivan Paulsen
Ed Pert
Treva Porter
Lori Powers
Stephen Puccini
Terry Roscoe
Glenn Sibbald
Barbara Simpson
Bill Somer
Jim Starr
Paul Stein
Stan Stephans
Lisa Stone
Joel Trumbo
John Turner
Steve Ulrich
Nick Villa
Richard Vincent
Larry Week
Frank Wernette
Jeff Westervelt
Jim White
Scott Williams
Michael Wintemute
Matt Zafonte
Jim Banks
Jeff Rodzen
Patrick Moeszinger

ATTACHMENT 1

Jim Pena
Rob MacWhorter
Angela Dillingham
Judy Schaber
Rose Miksovsky
Kitty Gay
Dan Elliot
Barbara Drake
Joel Schultz
Terry Miller
Tina Hopkins
Crispin Holland
Patti Millet
Ralph Phipps
Russell Nickerson
Terry Simon-Jackson
Lee Anne Taylor
Michelle Jimenez-Holtz
Jane Beaulieu
Alec Lane
Patti Krueger
Craig Snider
Chris Kopp
Scott Lus

ATTACHMENT 2

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Jim Banks
Angela Barlow
Helen Birss
Ryan Broddrick
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RonJurek
Jery Karnow
Randy Kelly
Stafford Lehr
Bud Leland
Emmett Lenihan
Jim Lindbert
Betsey Magladry
Ann Malcom
Steve Martarno
John Mattox
Ken Mayer
Heather McIntire
Nick Villa
John McCamman
Mike Mainz
Gary Miller
Patrick Moeszinger
Danny Moraga
Sandra Morey
Mike Morrison
Nancee Murray

Alan Nack
Jim Nelson
Blaine Nickens
Bob Orange
Carol Oz
Steve Parmenter
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Jeff Rodzen
Terry Roscoe
Glenn Sibbald
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