

FS Agreement No. 17-MU-11052007-096

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between
SIERRA PACIFIC INDUSTRIES,
AND
CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION,
AND
NATIONAL FISH AND WILDLIFE FOUNDATION,
AND THE
USDA, FOREST SERVICE
PACIFIC SOUTHWEST REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between Sierra Pacific Industries, hereinafter referred to as "SPI," California Department of Forestry and Fire Protection referred to as "CAL FIRE," the National Fish and Wildlife Foundation referred to as "NFWF," and the United States Department of Agriculture (USDA), Forest Service, Pacific Southwest Region, hereinafter referred to as the "U.S. Forest Service."

Background: Large scale, high-severity fire poses a risk to California spotted owls and their habitat. Increased California spotted owl habitat resilience and resistance to multiple disturbances is needed to promote California spotted owl persistence.

The U.S. Forest Service, SPI, a private corporation, and CAL FIRE manage forest lands in California that are frequently adjacent to each other, and have ongoing programs to protect and enhance habitat for fish and wildlife and also manage forest fuels to reduce fire risk and its potential impacts on wildlife species. Under State law, SPI has the authority to participate in fire suppression on its own lands while CAL FIRE, contract counties, the U.S. Forest Service, and other government agencies have primary fire suppression responsibility for all federal, State, and private wildlands in California. The parties also have responsibilities and interests in the inventory of their respective lands for federally- and State-recognized threatened, endangered, proposed, candidate, and sensitive species and in the development of appropriate protection measures for these species.

Due to these natural resources challenges, we believe it is important to establish a coordinated, multi-stakeholder agreement to help protect and enhance our forest



resources. This will involve establishing a strategic conservation framework to help restore and protect areas where sensitive species – particularly the California Spotted Owl – are threatened by habitat degradation due to uncharacteristically extensive and severe adverse fire effects.

Roles: The U.S. Forest Service, under the laws of the United States and regulations of the Secretary of Agriculture, is responsible for the protection of fish, wildlife, and plant habitats on National Forest lands and for providing special attention to Federally-recognized threatened, endangered, proposed, and candidate species and U.S. Forest Service sensitive species and species of conservation concern, including the California spotted owl.

The U.S. Forest Service is also a cooperating agency under the National Environmental Policy Act (NEPA) in the development of an Environmental Impact Statement by the U.S. Fish and Wildlife Service's concerning SPI's application for an Endangered Species Act (ESA) Section 10 permit for California Spotted Owl that may occur on SPI lands.

SPI is responsible under the laws of the United States and the State of California for the assessment of wildlife and plant resources on its lands when developing timber harvest plans. SPI is developing an application for an ESA Section 10 permit for California Spotted Owl that may occur on SPI lands.

Under the laws of the State of California, CAL FIRE must consider the public need for watershed protection, consider fish, wildlife, and plant habitats on nonfederal lands, and provide special attention to federal and State-recognized threatened and endangered species.

NFWF is an independent 501(c) (3) nonprofit organization that is governed by a Board of Directors appointed by the Secretary of the Interior. NFWF works with public and private sectors to protect and restore fish, wildlife, plants and habitats. NFWF has invested tens of millions of dollars in conservation projects throughout California. This includes a California-wide fuels management program to protect valuable natural resources, post-fire restoration programs in Southern California, wet meadow restoration in the Sierra Nevada, Klamath Basin watershed restoration, in-stream flow, and watershed habitat improvement in Northern California, and efforts to recover select declining, threatened, and endangered species.

Many of NFWF's existing programs and projects are threatened by the deteriorating conditions resulting from forest fires and untreated post-fire sites. As a result, NFWF has a vested interest in working with the U.S. Forest Service, CAL FIRE and SPI to maximize the health of California's forests. NFWF also has extensive experience serving as a grant maker or fiduciary to assist federal agencies in identifying, awarding, and managing projects that achieve mutually beneficial outcomes. This includes the development of, or update to, implementation documents that guide investments to achieve targeted outcomes.



Title: Forest Fuels Reduction and Species Conservation in California.

- I. PURPOSE:** The purpose of this MOU is to document the agreement between the parties to coordinate on certain actions that may contribute to Forest Fuels Reduction and species conservation in accordance with the provisions of the MOU.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

U.S. Forest Service benefits and interests: The U.S. Forest Service will have more information and be able to make better decisions regarding the management of forest fuels on lands adjacent to SPI in California, and conservation, with a focused priority on California Spotted Owl, in these areas.

SPI benefits and interests: SPI will have more information regarding the management of forest resources and fuels on its lands, and important to the conservation of California Spotted Owl when meeting its responsibilities with respect to developing and implementing its timber harvest plans and land management objectives.

CAL FIRE benefits and interests: CAL FIRE will be able to make better decisions regarding the management of forest resources and fuels on lands adjacent to SPI in California that may contain habitat important to the conservation of California Spotted Owl.

NFWF benefits and interests: As a grant maker that leverages public and private resources to implement conservation projects, NFWF will have more information regarding the management of forest resources and fuels important to the conservation of California Spotted Owl.

Mutual benefits and interests: The U.S. Forest Service, SPI, CAL FIRE, and NFWF will be better able to fulfill their respective obligations and goals to manage resources and increase effectiveness of management to contribute to the conservation of California Spotted Owl and its habitat by considering data and information applicable to whole landscapes, regardless of ownership.

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

III. SPI SHALL:

- A. Provide the U.S. Forest Service, CAL FIRE, and NFWF with:
 - a. Information concerning SPI's forest fuels management plans near U.S. Forest Service timber lands and CAL FIRE Demonstration State Forests.



- b. Information that may contribute to the conservation of California Spotted Owl and other sensitive species.
 - c. Other data and information requested by the U.S. Forest Service, CAL FIRE, and NFWF, if agreeable to SPI.
- B. Meet and coordinate regularly with the U.S. Forest Service and CAL FIRE, or as otherwise mutually agreed by the parties, regarding forest fuels management actions on the parties' respective lands.
- C. Upon the request of the U.S. Forest Service, CAL FIRE, or NFWF, meet with the requesting party and the U.S. Fish and Wildlife Service to discuss California Spotted Owl conservation strategies and conservation measures on SPI lands identified through the implementation of this MOU.

IV. CAL FIRE SHALL:

- A. Provide the U.S. Forest Service, SPI, and NFWF with:
- a. Information concerning CAL FIRE's forest fuels management plans near SPI timber lands and U.S. Forest Service timber lands.
 - b. Information that may contribute to the conservation of California Spotted Owl and other sensitive species.
 - c. Other data and information requested by the U.S. Forest Service, SPI, and NFWF that is not exempt pursuant to the California Public Records Act.
- B. Meet and coordinate regularly with the U.S. Forest Service and SPI, or as otherwise mutually agreed by the parties, regarding forest fuels management actions.
- C. Upon the request of the U.S. Forest Service, SPI, or NFWF, meet with the requesting party and the U.S. Fish and Wildlife Service to discuss California Spotted Owl conservation strategies identified through the implementation of this MOU.

V. NFWF SHALL:

- A. Provide the U.S. Forest Service, CAL FIRE, and SPI with:
- a. Information concerning NFWF's conservation programs and grant funding opportunities that may support conservation opportunities for the California Spotted Owl and other sensitive species.
 - b. Information that may contribute to the conservation of California Spotted Owl and other sensitive species.
 - c. Other data and information requested by the U.S. Forest Service, CAL FIRE, and SPI, if agreeable to NFWF.
- B. Meet and coordinate regularly with the U.S. Forest Service, CAL FIRE, and SPI, or as otherwise mutually agreed by the parties, regarding conservation



programs and grant funding opportunities for California Spotted Owl and other sensitive species.

- C. Upon the request of the U.S. Forest Service, CAL FIRE, or SPI, meet with the requesting party and the U.S. Fish and Wildlife Service to discuss California Spotted Owl conservation strategies on lands identified through the implementation of this MOU.

VI. U.S. FOREST SERVICE SHALL:

- A. Provide SPI, CAL FIRE, and NFWF with:
- a. Information concerning the U.S. Forest Service's forest fuels management plans near SPI timber lands and CAL FIRE Demonstration State Forests.
 - b. Information that may contribute to the conservation of California Spotted Owl and other sensitive species.
 - c. Other data and information requested by SPI relating to these subjects if agreeable to the U.S. Forest Service.
- B. Meet and coordinate regularly with SPI and CAL FIRE, or as mutually agreed by the parties, regarding forest fuels management actions on U.S. Forest Service lands.
- C. Implement applicable conservation measures as identified in the applicable Forest Plans and/or finalized California Spotted Owl Conservation Strategy on National Forest System lands identified through the implementation of this MOU.
- D. Coordinate with SPI and the U.S. Fish and Wildlife Service to discuss California Spotted Owl conservation strategies and conservation measures on National Forest System lands identified through the implementation of this MOU.
- E. Encourage direct coordination between the National Forests of Pacific Southwest Region with the parties to this MOU regarding its implementation.

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

- A. Nothing in this MOU shall modify any other agreements between the parties.
- B. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

**Principal Cooperator Contacts:**

Cooperator Program Contact	Cooperator Administrative Contact
Name: Dan Tomascheski, SPI Address: P.O. Box 496028 City, State, Zip: Redding, CA 96049-6028 Telephone: (530) 378-8000 FAX: (530) 378-8109 Email: DTomascheski@spi-ind.com	Name: Ed Murphy, SPI Address: P.O. Box 496028 City, State, Zip: Redding, CA 96049-6028 Telephone: (530) 378-8000 FAX: (530) 378-8109 Email: EMurphy@spi-ind.com

Cooperator Program Contact	Cooperator Administrative Contact
Name: Jonathan Birdsong, NFWF Address: 90 New Montgomery Street, Suite 1010 City, State, Zip: San Francisco, CA 94105 Telephone: 415-778-0999 FAX: 415-778-0998 Email: Jonathan.Birdsong@nfwf.org	Name: Grants Department, NFWF Address: 1133 Fifteenth St. NW, Suite 1000 City, State, Zip: Washington, D.C. 20005 Telephone: 202-857-0166 FAX: 202-857-0162 Email: info@nfwf.org

Cooperator Program Contact	Cooperator Administrative Contact
Name: Helge Eng, CALFIRE Address: 1416 9th Street, PO Box 944246 City, State, Zip: Sacramento, CA 94244 Telephone: 916-653-5000 FAX: 916-651-1435 Email: Helge.Eng@fire.ca.gov	Name: Director, CALFIRE Address: 1416 9th Street, PO Box 944246 City, State, Zip: Sacramento, CA 94244 Telephone: 916-653-5000 FAX: 916-651-1435

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: John Exline Address: 1323 Club Drive City, State, Zip: Vallejo, CA 94590 Telephone: 707-562-8689 FAX: 707-562-9229 Email: jexline@fs.fed.us	Name: Constance Zipperer Address: 1323 Club Drive City, State, Zip: Vallejo, CA 94590 Telephone: 707-562-9120 FAX: 707-562-9144 Email: czipperer@fs.fed.us

- C. **ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES.** This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement, the signatory



acknowledges that it: (1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the USDA has considered suspension or debarment is not necessary to protect the interests of the Government. If SPI, CAL FIRE, or NFWF fails to comply with these provisions, the U.S. Forest Service will annul this agreement as to the violating party, and may recover any funds expended in violation of sections 433 and 434.

- D. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or SPI 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 SPI, at SPI's address shown in the MOU or such other address designated within the MOU.

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

To NFWF, at NFWF'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.

- E. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service, SPI, CAL FIRE, or NFWF from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. ENDORSEMENT. Any of SPI's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service, CAL FIRE, or NFWF endorsement of SPI's products or activities.
- G. 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.

- H. USE OF A PARTY'S INSIGNIA. In order for any party to use another party's insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted in writing, and in the case of the U.S. Forest Service or CAL FIRE, from the U.S. Forest Service's or CAL FIRE's Office of Communications. In the case of the U.S. Forest Service, a written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- I. 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.
- J. FREEDOM OF INFORMATION ACT (FOIA). Public access to this 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) or the California Public Records Act (California Government Code Section 6250, et seq).
- K. 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.

L. TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO). The U.S. Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638).

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. SPI, CAL FIRE, and NFWF are 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:

"Pacific Southwest Region of the U.S. Forest Service, Department of Agriculture, "

SPI, CAL FIRE, and NFWF may call on the U.S. Forest Service's or CAL FIRE's Office of Communication for advice regarding public notices. SPI, CAL FIRE, and NFWF are requested to provide copies of notices or announcements to the U.S. Forest Service and CAL FIRE Program Manager and to The U.S. Forest Service's and CAL FIRE's Office of Communications as far in advance of release as possible.

N. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. SPI, CAL FIRE, and NFWF 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. SPI, CAL FIRE, and NFWF 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.

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. SPI, CAL FIRE, and NFWF 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 SPI, CAL FIRE, or NFWF, 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 **December 31, 2019**, 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.

MARK EMMERSON, Chairman and CFO
Sierra Pacific Industries

8.16.17

Date

RANDY MOORE, Regional Forester
U.S. Forest Service, Pacific Southwest Region

8/16/17

Date

CHIEF KEN PIMLOTT, Director
California Department of Forestry and Fire Protection

8/30/17

Date

JEFF TRANDAH, Executive Director
National Fish and Wildlife Foundation

8.21.17

Date

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

CONSTANCE ZIPPERER
Supervisory Lead Grants Management Specialist
U.S. Forest Service, Pacific Southwest Region

14 August 2017



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.

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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.