MEMORANDUM OF UNDERSTANDING

by and between

Landowner and

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

This California Endangered Species Act Memorandum of Understanding ("CESA MOU") is made and entered into by and between [illegible] *(Landowner) and the California Department of Fish and Wildlife (hereinafter called the "DFW").*

The purpose of this CESA MOU is to provide a framework for cooperative activities and studies that involve or address issues of importance to the Scott River coho salmon (*Oncorhynchus kisutch*). This CESA MOU provides for take associated with actions taken by the DFW to rescue and relocate coho salmon as a management activity under authority of Section 2081(a) of the California Fish and Game Code.

WITNESSETH

WHEREAS, the DFW has jurisdiction over the conservation and protection of fish, wildlife, and native plants and their habitats, and holds those resources in trust for the people of California (California Fish and Game Code Section 1802).

WHEREAS, coho salmon are classified as a threatened species by the State of California Fish and Game Commission pursuant to the California Endangered Species Act (CESA, California Fish and Game Code section 2050 et seq.).

WHEREAS, Fish and Game Code section 2080 prohibits the import, export, take, possession, purchase or sale of any species, in whole or in part, that has been listed as threatened or endangered by the California Fish and Game Commission. Take is defined in Fish and Game Code section 86 as 'hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." However, Fish and Game Code section 2081(a) allows DFW to authorize take and other acts prohibited by Fish and Game Code section 2080 for scientific, educational, or management purposes. This CESA MOU authorizes a limited level of take of coho salmon for management purposes.

WHEREAS, on January 17, 2014, Governor Brown issued a proclamation declaring the state to be in an emergency due to the ongoing severe drought conditions.

WHEREAS, on April 25, 2014, Governor Brown issued an Executive Order directing state agencies to, in part, work with landowners in priority watersheds to protect certain species and maximize the beneficial uses of scarce water supplies, including

employment of voluntary agreements to secure instream flows, relocate members of those species or take other measures.

WHEREAS conditions on the Scott River and its tributaries are poorer than is typical for this time of year and may deteriorate such that listed juvenile coho salmon will need to be relocated to areas with more suitable conditions in the watershed to prevent mortality of those CESA-listed fish.

WHEREAS, Landowner owns real property in the Scott River watershed more particularly described as (Real Property) *Add parcel number and river mile here*

WHEREAS, the Real Property is adjacent to the Scott River, which has suitable habitat for listed coho salmon. Landowner is willing to participate with the DFW in fish rescue and relocation activities, by allowing access to the Real Property for the purposes of capturing and removing, or relocating juvenile coho salmon on or to Scott River adjacent to the Real Property.

WHEREAS, NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Methods**

A. DFW, or its agent, will carry out all monitoring and fish capture and relocation activities in accordance with standard fishery practices. DFW, or its agent, will notify Landowner, at least 24 hours in advance, to the telephone number listed below, of all planned monitoring and fish rescue/relocation activities it will carry out on the Real Property. Those activities may include:

1) Monitoring of habitat conditions in the Scott River and salmonid abundance, size, and condition prior to relocation of salmonids at risk, including coho salmon;

2) Upon determination that stream flow and temperature conditions for salmonids, including coho salmon, are deteriorating in the Scott River watershed, or upon reasonable projections of same, DFW will capture and remove salmonids, including coho, from the Scott River adjacent to Landowner's Real Property and relocate those salmonids to suitable habitat elsewhere in the watershed;

3) Relocating juvenile salmonids, including coho salmon, captured from elsewhere in the Scott River watershed, to the Scott River adjacent to Landowners Real Property if suitable aquatic habitat for summer rearing conditions are then occurring in those waters; or

4) Monitoring stream depth and temperature at relocation site(s) post-relocation to determine if conditions remain adequate to keep salmonids alive and provide for salmonid passage.

2. **Landowner Commitments Regarding Fish Management Activities on the Real Property**

A. Landowner agrees to provide reasonable access to DFW and its agents, including equipment access, to the Real Property to carry out any of the management activities listed in Section 1 of this CESA MOU for the purposes of:

1) Monitoring habitat conditions and coho salmon abundance, size, and condition prior to any management activities;

2) Capturing and removing coho salmon from and/or relocating fish to suitable habitat, and for monitoring conditions post-relocation; or

3) Monitoring stream flow conditions post-rescue/relocation to determine if conditions remain adequate to keep fish alive and provide for passage.

B. Landowner agrees to perform Best Management Practices (BMPs) as outlined in Attachment 1 as a condition of this MOU, according to the type of diversion activities conducted at a particular site.

C. Landowner agrees to provide reasonable access over the Real Property to allow DFW and its agents to either capture coho salmon or allow captured coho salmon to be placed in the Scott River, adjacent to the Real Property. Landowner also grants access to the Real Property to DFW and its agents to carry out the management activities described in this CESA MOU for the purposes of monitoring habitat conditions, possibly later capturing and removing fish from and/or relocating fish to suitable habitat, and for monitoring conditions post-relocation.

DFW agrees that DFW and its agents will conduct all rescue/relocation activities only after DFW has provided the advance notice to Landowner, as provided in Section 1 above.

3. **Authorized Take Level**

Coho salmon: The number of coho salmon which may die in the course of fish capture and relocation activities conducted by DFW is typically small (less than 10%) and is much-reduced from levels of mortality that will potentially occur in absence of carrying out this activity. As such, fish mortalities related to, or occurring in the course of, fish rescue activities is authorized.

4. **Federal Endangered Species Act**

The Southern Oregon Northern California coho salmon is listed as a threatened species under the federal Endangered Species Act (ESA) of 1973. DFW has a permit from the National Marine Fisheries Service (NMFS) that allows DFW, its employees and its

designees to perform the rescue activities listed in Section 1 above. Landowner is not expected or authorized to assist in the handling of coho salmon as a part of the fish rescue effort. Nothing in this CESA MOU authorizes any action pursuant to the federal ESA.

5. **Effective Date and Termination**

Unless terminated sooner by either party of the CESA MOU by giving thirty (30) days prior written notice of earlier termination, this CESA MOU shall commence on the date of execution and will terminate on **December 31, 2014,** both days inclusive.

6. **Amendments**

Amendments to this CESA MOU may be proposed by either party and shall become effective when both parties sign a written modification to this document.

7. **Disclaimer**

The DFW shall incur no fiscal obligation under this CESA MOU.

8. **Authority**

The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this CESA MOU.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CESA MOU TO BE IN EFFECT AS OF THE DATE LAST WRITTEN BELOW.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By _____

NEIL MANJI, Regional Manager, Northern Region

Date: 5/14/14

_____

Landowner

P# 023-130-210-000
P# 023-130-220-000

Date: 5/15/14

Phone Number:

Street address:

- RANCH → SPAWNING HABITAT, POTENTIAL REARING POOLS
- FARMERS DITCH → MIGRATION, REARING
- FRENCH CREEK → MIGRATION, REARING (#17, #43, #47A)

Note that there are 3 Attachments here, each on a separate page- but only the one that applies to your diversion activates will be attached to your CESA MOU.

Attachment 1

CESA MOU

CDFW (Department) and 7.11.77

- RANCH PROPER
- FARMERS DITCH
- FRENCH CREEK

The following are Best Management Practices (BMPs) for landowners in locations where fish stranding may occur and landowners who are willing to allow fish relocation to occur on their property in order to facilitate the survival of juvenile coho in the Scott River watershed, Siskiyou County, CA. Specific BMP requirements applicable to an individual landowner/cooperator will be determined based on the diversion activities occurring at a particular fish rescue and/or relocation site:

Landowner Best Management Practices

The following Best Management Practices shall apply if the landowner is actively diverting, or has plans to divert water, at a site where coho salmon are known to have spawned in Fall/Winter 2013-14:

1. All water diversion facilities that the landowner owns, operates, or controls associated with the property where juvenile fish may need to be removed and relocated to more suitable habitats shall be operated and maintained in accordance with current law and applicable water rights, including any specified in the following court decree: Shackleford Creek #13775 (April 10, 1950), French Creek #14778 (July 1, 1958), and Scott River #30662 (January 30,1980), and Shasta River #7035 (December 29, 1932).
2. Diversions shall be operated, and potentially reduced, such that sufficient stream flow is maintained in areas of the Scott River where salmon have spawned in fall and winter 2013-14 to ensure the survival of eggs and emergent fry, which could hatch out over a period of several months. This could be provided by a reduction in the amount of water diverted as conditions deteriorate, potentially including participation with the Scott River Water Trust.
3. For all activities performed in, or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up of all spills shall begin immediately, and the landowner shall notify the California Emergency Management Agency at 1-800-852-7550, as well as the Department immediately after any spill occurs. The operator shall consult with the Department regarding clean-up procedures.
4. The Landowner shall prevent the discharge of sediment and/or muddy, turbid, or silt-laden waters into the stream channel.
5. The Landowner shall notify the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days prior to any significant changes in operation of the diversion and associated screen and bypass and other structures.

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Attachment 1

CESA MOU

CDFW (Department) and 7-11-77-C
- FARMERS DITCH
- FRENCH CREEK

The following are Best Management Practices (BMPs) for landowners in locations where fish stranding may occur and landowners who are willing to allow fish relocation to occur on their property in order to facilitate the survival of juvenile coho in the Scott River watershed, Siskiyou County, CA. Specific BMP requirements applicable to an individual landowner/cooperator will be determined based on the diversion activities occurring at a particular fish rescue and/or relocation site:

Landowner Best Management Practices

The following Best Management Practices shall apply if the landowner is actively diverting or has plans to divert water at a site where salmonids are deposited for summer rearing:

1. All water diversion facilities that the Landowner owns, operates, or controls associated with the property where fish may be relocated to shall be operated and maintained in accordance with current law and applicable water rights, including any specified in the following court decree: Shackleford Creek #13775 (April 10, 1950), French Creek #14778 (July 1, 1958), and Scott River #30662 (January 30, 1980), and Shasta River #7035 (December 29, 1932).
2. All water diversion facilities shall be maintained so they do not prevent, impede, or tend to prevent or impede the passing of fish upstream or downstream. This includes, but is not limited to, maintaining or providing a supply of water at an appropriate depth and velocity to facilitate upstream and downstream migration of salmonids consistent with the criteria described in the Department's (*Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (*DFG-IFP-001, October 2012; attached). This could be provided by a reduction in the amount of water diverted as conditions deteriorate, potentially including participation with the Scott River Water Trust.
3. The Landowner shall notify the Department prior to closing a headgate or valve when fish stranding may occur in the diversion conduit as a result of that activity.
4. The Landowner shall regularly inspect all fish screens and bypass pipes or channels to verify that they are effectively protecting salmonids and other fish species in accordance with Department and NMFS fish screening criteria. When necessary, the Landowner shall clean and repair all fish screens and bypass pipes or channels. If a fish screen is removed for cleaning or repair, the Landowner shall ensure either that a replacement screen is installed immediately, or water is not flowing through the area where the screen is removed. In cases where Department is currently maintaining the existing fish screen, and in the instance a landowner identifies a malfunction to a screen , the landowner shall notify the Department as soon as possible of such

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circumstances affecting the screen and its ability to meet Department and NMFS screening criteria. Sufficient flow will be supplied from the diversion into a fish bypass to safely and efficiently return fish back to the stream.

5. Water diversion locations shall be accessed using existing roads and access ramps.
6. The Landowner shall prevent the discharge of sediment and/or muddy, turbid, or silt-laden waters into the stream channel.
7. Significant fish habitat, such as pools, spawning sites, large woody debris structures, and riparian shade shall not be disturbed.
8. The Landowner shall notify the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days prior to any significant changes in operation of the diversion and associated screen and bypass and other structures.
9. For all activities performed in or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up of all spills shall begin immediately, and the landowner shall notify the California Emergency Management Agency at 1-800-852-7550, as well as the Department immediately after any spill occurs. The operator shall consult with the Department regarding clean-up procedures.