

MEMORANDUM OF UNDERSTANDING

Between the

USDA Forest Service, Umpqua National Forest (Forest Service),
US Fish and Wildlife Service (USFWS),
US Environmental Protection Agency (EPA),
Oregon Department of Fish and Wildlife (ODFW),
Oregon Department of Environmental Quality (ODEQ),
Oregon Water Resources Department (OWRD),
Oregon Economic and Community Development Department (OECDD),
Oregon Division of State Lands (DSL),
State Representative Susan Morgan (Representative Morgan), and
Douglas County (County)

This **MEMORANDUM OF UNDERSTANDING (MOU)** is hereby entered into by and between the above named parties.

A. **PURPOSE:**

The purpose of this Memorandum of Understanding is to provide a framework for cooperation to achieve the common goal of returning Diamond Lake to a fishable and swimmable condition. Each party to this MOU has provided representative(s) to participate as member(s) of the Diamond Lake Project Working group to facilitate cooperation and coordination among the parties. This cooperation serves the mutual interest of all the parties to this MOU and the public.

B. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

1. Forest Service

Diamond Lake is located on the Diamond Lake Ranger District of the Umpqua National Forest, thus the Forest Service is responsible for managing the land and resources surrounding it.

Diamond Lake is identified in the Forest Land and Resource Management Plan as a special management area (MA-2) that is to be administered for concentrated developed recreation. Recreation management at the lake is to favor activities such as resort use, camping, picnicking, visitor information services, boating, fishing, interpretation and developed and dispersed winter sports. The Forest Service is obligated to meet Standards and Guidelines identified in the Forest Plan for the management area and must comply with all laws, policies, and regulations surrounding management of the lake.

The Clean Water Act (CWA), which the Forest Service also adheres to, establishes a national goal of restoring fishable and swimmable waters.

2. USFWS

The USFWS is the only agency of the federal government whose primary responsibility is fish, wildlife, and plant conservation. The USFWS's major responsibilities are for migratory birds, endangered species, certain marine mammals, and freshwater and anadromous fish.

The USFWS's origins date from 1871 when Congress established the US Fish Commission to study the decrease of the nation's food fishes. Today one of the USFWS's most important duties is to conserve populations of fish and aquatic species. This is accomplished by providing technical assistance to other federal agencies, States, and Tribes.

Two federal laws administered by the USFWS, the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act, provide federal grant money to support specific projects carried out by state fish and wildlife agencies. These funds are used to acquire land for wildlife habitat and for fishing and other recreation activities.

3. EPA

The EPA implements Section 303(d) of the CWA by reviewing, and either approving or disapproving the Total Maximum Daily Loads (TMDLs) developed by ODEQ. By achieving the TMDL goals in Diamond Lake, not only will the lake benefit, but the watershed and waterbodies downstream also benefit from the improved water quality conditions.

(In Oregon, the ODEQ has the responsibility, under Section 303(d) of the CWA to develop TMDLs for waterbodies not meeting state water quality standards. The TMDLs are written to identify how the pollutant loadings need to be reduced to improve water quality in those waterbodies so they meet state water quality standards and thus protect the beneficial uses for those waters.)

Additionally, EPA provides technical support and other resources, when available, to assist the state in the TMDL development process, and encourages the state and others to take a holistic watershed approach for restoring and protecting its waters and the surrounding landscape.

4. ODFW

It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of citizens of the state. In furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management (ORS 496.012).

- 1) To maintain all species of wildlife at optimum levels
- 2) To develop and manage the lands and waters of the state in a manner that will enhance the production and public enjoyment of wildlife
- 3) To permit an orderly and equitable utilization of available wildlife
- 4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon
- 5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with the primary uses of the lands and waters of the state
- 6) To provide optimum recreational benefits
- 7) To make decisions that effect wildlife resources of the state for the benefit of the wildlife resource and make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups.

ODFW is a lead agency for implementing the Oregon Plan for salmon and watersheds. The Department is mandated to comply with state agency measures on water quality, population monitoring and habitat. Also, ODFW is mandated to comply with the Diamond Lake Management Plan (OAR 635-500-703), which sets forth management goals and objectives for the fishery at Diamond Lake.

5. ODEQ

ODEQ has state responsibility under the CWA to develop TMDLs for Oregon waterbodies included on the 303d list of Water Quality Limited Waterbodies. TMDLs are identified to meet water quality standards in the listed water body so that beneficial uses identified for that waterbody can be protected. The standards are identified to protect the beneficial use. Diamond Lake is included on the 1998 303d list for Aquatic Weeds or Algae, and pH. Beneficial uses affected by the current listings in Diamond Lake include: Water Contact Recreation, Aesthetics, Fishing, and Aquatic Life.

Under its TMDL authority, ODEQ is responsible for identifying the causes of the listings and developing Load Allocations for sources contributing to the listing, as well as a margin of safety for the listed parameter(s). Upon completion of the TMDL, developed in conjunction with the various Designated Management Agencies (DMAs), ODEQ oversees the implementation of Water Quality Management Plans developed by the respective DMAs to address their contribution to the listed parameter, and meet the load allocation assigned to them.

6. OWRD

The Oregon Water Resources Department mission “to serve the public by practicing and promoting wise long-term water management,” coupled with its purpose statement “to restore and protect streamflows and watersheds in order to ensure the long-term sustainability of Oregon’s ecosystems, economy and quality of life”, have a direct bearing on the efforts of restoring Diamond Lake to a fishable and swimmable resource.

One of the tenets of Oregon’s Water rights system is “public interest”. In carrying out this tenet, the OWRD has been designated the lead State agency dealing on the Oregon

Plan for water quantity issues and has taken a very proactive role in working with sister Natural Resource Agencies, watershed councils and other interests to further the goals of the Oregon Plan.

The Oregon Legislature has specifically called out the unique qualities and values associated with Diamond Lake through ORS 538.140.

7. OECDD

The Oregon Economic and Community Development Department is committed to assisting the larger community in eastern Douglas County create economic opportunity and a quality community. The goal of this memorandum is directly compatible with that mission so the Department will participate in those activities within its authority that will lead to a swimmable fishable condition for the lake.

8. DSL

DSL has both a proprietary and a regulatory interest in Diamond Lake. DSL's proprietary interest arises in that a portion of the lake was meandered in 1883. Oregon State Statute (ORS) 274.430 provides that all lakes that were meandered by the federal government are "declared to be navigable and public waters." Therefore, DSL believes that at least a part of the submerged and submersible land underlying Diamond Lake is subject to management by DSL. From a regulatory standpoint, DSL administers Oregon's Removal-Fill Law. Therefore, any removal, fill, or alteration to the bed and banks of Diamond Lake of over 50 cubic yards will require a Removal-Fill Permit issued by DSL.

Given DSL's proprietary and regulatory responsibilities regarding Diamond Lake, they support the restoration of this waterbody to a fishable and swimmable condition.

9. Representative Morgan

As a legislative representative of the people of Oregon, Representative Morgan is responsible for acting within her realm of influence to positively affect the economic, recreational, and natural resource values of this state. In the context of Diamond Lake, Representative Morgan is resolved to facilitate coordination, and timely and meaningful action by and between the multiple agencies involved in this MOU with an ultimate goal of returning the lake to a fishable, swimmable condition.

10. County

The County's goal is for Diamond Lake to be restored in a manner that provides for its historic fishable, swimmable, and recreational conditions.

All of the above parties have a legal mandate or a compelling interest in restoring water quality at Diamond Lake. Due to the complexity of issues and the predicted high financial investment associated with water quality restoration, a cooperative effort between all interested parties is considered to be the most efficient and effective management approach available to attain this common goal. All parties would benefit from the combination of human and financial resources.

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

C. FOREST SERVICE SHALL:

1. Convene and finance an Interdisciplinary Team responsible for completion of an Environmental Impact Statement (EIS) to analyze potential treatment options for Diamond Lake. Jim Caplan (Forest Supervisor) will sign a Record of Decision based on the EIS findings that will identify the selected alternative, disclose resultant effects, and present rationale for selection.
2. Implement an extensive public involvement process as a critical and integral component of the EIS process.
3. Finance and oversee collection of the following ecological data necessary to support the EIS process: algae and toxin monitoring, limnocorral aeration study, benthic invertebrate sampling, and aquatic macrophyte sampling.
4. Finance and manage an Incident Team to support protection of the public from potential health hazards related to toxic algae blooms at Diamond Lake.

D. USFWS SHALL:

1. Provide technical and financial assistance, where and when appropriate and within available resources, to the Diamond Lake Project Working Group regarding natural resource issues.
2. Participate in the public outreach and educational efforts addressing potential solutions and options for the rehabilitation of Diamond Lake's water quality and fish resources.
3. Participate in Diamond Lake Project Working Group meetings as appropriate.

E. EPA SHALL:

1. Within available resources, provide technical assistance on water quality issues to the Diamond Lake Workgroup.
2. Participate in public outreach and educational efforts regarding the Diamond Lake project and the Diamond Lake TMDL process.
3. Within available resources, support ODEQ in its development of the Diamond Lake TMDLs.

F. ODFW SHALL:

1. Continue as the lead agency on the Diamond Lake Project Working Group to develop biological information on Diamond Lake as well as possible solutions to water quality and fishery issues.
2. Manage the fishery resource and recreational fishery at Diamond Lake.
3. Pending legislative budgetary approval, implement and monitor the "experimental fish stocking program" at Diamond Lake to evaluate the success and survival of different stocks of fish.

4. Finance and oversee the collection of the following ecological data necessary to support the EIS process, including: tui chub population monitoring, rainbow trout population monitoring, collect fish stomach contents for analysis, and recreational fish creel surveys.

G. OWRD SHALL:

1. Provide technical assistance within available resource limitation on Oregon Water Law as it pertains to the purpose of the MOU.
2. Participate in public outreach and education efforts as called for.
3. Process necessary water use/management permits under the authority of OWRD.
4. Participate in Diamond Lake Project Working Group meetings as appropriate.

H. ODEQ SHALL:

1. Provide technical assistance on water quality issues to the Diamond Lake Project Working Group.
2. Participate in public outreach and educational efforts regarding the Diamond Lake project.
3. Provide for consideration water quality data collected and/or processed by DEQ.
4. Identify TMDLs for nutrient input to Diamond Lake to address water quality limited parameters of pH, aquatic weeds, and algae.
5. Develop a model of nutrient dynamics for Diamond Lake.
6. Process appropriate water quality permits or certifications necessary for implementation of selected actions for the restoration of Diamond Lake.

I. OECDD SHALL:

1. Provide technical assistance within available resource limitations to the Diamond Lake Project Working Group.
2. Participate in public outreach and educational efforts.
3. Participate in Diamond Lake Project Working Group meetings as appropriate
4. Participate financially in projects that create economic opportunities for the East Douglas County Community within programmatic limitations.

J. DSL SHALL:

1. Provide technical assistance to return Diamond Lake to a fishable and swimmable condition.
2. Expedite within the constraints of the law the issuance of any permits or other forms of authorization needed in order to restore Diamond Lake to a fishable and swimmable condition.

K. REPRESENTATIVE MORGAN SHALL:

1. Continue to play a leadership role in the organization and activities of the Diamond Lake Project Working Group.
2. Participate in public outreach and educational efforts regarding the Diamond Lake project.

L. COUNTY SHALL:

1. Provide technical assistance within available resource limitations.
2. Participate in public outreach and educational efforts.
3. Participate in Diamond Lake Workgroup meetings as appropriate.
4. Coordinate with the Oregon Health Division relative to Diamond Lake public health issues.

M. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. **WORKING AGREEMENT.** Each of the a forenamed parties agree to work and take action collaboratively rather than independently with regard to the resolution of Diamond Lake water quality issues, meet as needed with cooperating partners, and assist in the preparation of an annual work plan and progress report.
2. **FREEDOM OF INFORMATION ACT (FOIA).** Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
3. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or the Cooperators from participating in similar activities with other public or private agencies, organizations, and individuals.
4. **COMMENCEMENT/EXPIRATION/TERMINATION.** This MOU takes effect upon the signature of all the parties and shall remain in effect for 5 years from the date of execution. This MOU may be extended or amended upon written request of any of the parties and the subsequent written concurrence of the others. Any of the parties may terminate this MOU with a 60-day written notice to the others.
5. **RESPONSIBILITIES OF PARTIES.** The parties to this MOU 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. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

6. PRINCIPAL CONTACT. The principal contacts for this instrument are:

Forest Service Project Contact	USFW Project Contact
Jim Caplan	Craig Tuss
Umpqua National Forest	US Fish & Wildlife Service
PO Box 1008	2900 Stewart Parkway
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EPA Project Contact	ODFW Project Contact
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US Environmental Protection Agency	OR Department of Fish & Wildlife
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ODEQ Project Contact	OWRD Project Contact
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Oregon Dept. of Environmental Quality	Oregon Water Resources Department
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OECD Project Contact	Representative Project Contact
Ed Wait	Susan Morgan
Oregon Economic and Community Development Department	Oregon State Representative
125 Central, St 300	R-Myrtle Creek
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	E-Mail: morgan.rep@state.or.us

County Project Contact	DSL Project Contact
Ron Yockim	John Lilly/Jeff Kroft
Douglas County	Oregon Division of State Lands
P.O. Box 2456	775 Summer Street, NE, Suite 100
Roseburg, Oregon 97470	Salem, Oregon 97301-1279
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FAX: 541-957-5923	FAX: 503-378-4844
E-Mail: ryockim@mcsi.net	E-Mail: john.lilly@dsl.state.or.us jeff.kroft@dsl.state.or.us

7. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Department of Agriculture or 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 Department of Agriculture and parties to this MOU 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.

8. 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, its agencies, its officers, or any person.

THE PARTIES HERETO, have executed this instrument.

USDA FOREST SERVICE
Umpqua National Forest

/s/ James A. Caplan
JAMES A. CAPLAN
Forest Supervisor

US FISH & WILDLIFE SERVICE
Roseburg Field Office

/s/ Craig Tuss
CRAIG TUSS
Field Supervisor

US ENVIRONMENTAL PROTECTION AGENCY, REGION 10
Office of Ecosystems and Communities

/s/ Elbert Moore
ELBERT MOORE
Director

OREGON DEPARTMENT OF FISH & WILDLIFE
Southwest Region

/s/ Steve Denney
STEVE DENNEY
Regional Director

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ Stephanie Hallock
STEPHANIE HALLOCK
Director

OREGON WATER RESOURCES DEPARTMENT
Southwest Region

/s/ Alan Cook
ALAN COOK
Regional Manager

OREGON ECONOMIC & COMMUNITY DEVELOPMENT DEPARTMENT
Southwest Team

/s/ Ed Wait
ED WAIT
Regional Development Officer

REPRESENTATIVE SUSAN MORGAN
House of Representatives

/s/ Susan Morgan
SUSAN MORGAN
State Representative-District 2

OREGON DIVISION OF STATE LANDS

/s/ Ann Hanus
ANN HANUS
Director

DOUGLAS COUNTY

/s/ Doug Robertson
DOUG ROBERTSON
County Commissioner

DOUGLAS COUNTY

/s/ Joyce Morgan
JOYCE MORGAN
County Commissioner

DOUGLAS COUNTY

/s/ Mike Winters
MIKE WINTERS
County Commissioner

Signed MOU Distributed to All Parties: February 24, 2003
Date