MEMORANDUM OF AGREEMENT ON
FOSTERING COLLABORATION AND EFFICIENCIES TO ADDRESS WATER QUALITY IMPAIRMENTS ON NATIONAL FOREST SYSTEM LANDS
between the
U.S. Forest Service
and the
U.S. Environmental Protection Agency

A. PURPOSE: To establish greater coordination and collaboration between the United States Forest Service (Forest Service or FS) and the Environmental Protection Agency's Office of Water (EPA/OW) to foster efficient strategies to address water quality impairments by maintaining and restoring National Forest System (NFS) watersheds.

B. STATEMENT OF MUTUAL BENEFITS AND INTERESTS: The mission of the FS is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. To help achieve this mission, the FS provides leadership in protection, management, and use of the Nation's forests and grasslands, including aquatic ecosystems. The FS ecosystem approach to management integrates ecological, economic, and social factors to maintain and enhance the quality of the environment to meet current and future needs. The EPA's mission is to protect human health and the environment. To help achieve this mission, EPA/OW seeks in part to restore and maintain watersheds and aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants, and wildlife. The compatibility of our missions with respect to protecting the environment and water resources forms the basis for jointly developing the concepts presented in this Memorandum of Agreement (MOA).

C. BACKGROUND: Under Section 303(d) of the Clean Water Act (CWA or Act), states, territories, and authorized tribes (hereafter referred to as "jurisdictions") are required to develop lists of impaired waters every two years (i.e., Section 303(d) list). Impaired waters are those that do not meet applicable water quality standards (WQS). The CWA further requires jurisdictions to establish a priority ranking for waters on the Section 303(d) list and develop Total Maximum Daily Loads (TMDL) for them. A TMDL is the maximum amount of a pollutant that a waterbody can receive and still meet applicable WQS with a margin of safety, and an allocation of that amount to the pollutant's point and nonpoint sources. The CWA requires EPA to approve or disapprove the Section 303(d) lists and TMDLs. If EPA disapproves the jurisdiction's submission, then EPA must establish the Section 303(d) list and/or TMDL for that jurisdiction.

TMDLs are one of many tools in the CWA to help achieve the Act's main objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (CWA Section 101(a)). EPA regulations also recognize that alternative pollution control requirements may obviate the need for a TMDL. Specifically,

waterbody segments are not required to be included on the Section 303(d) list if jurisdictions demonstrate that "[o]ther pollution control requirements (e.g., best management practices) required by local, State, or Federal authority" (see 40 CFR 130.7(b)(1)) are stringent enough to achieve applicable state WQS within a reasonable period of time. These alternatives to TMDLs are commonly reported to EPA as Category 4b waters as described in EPA's Integrated Reporting Guidance (IRG) for Sections 303(d), 305(b), and 314 of the CWA.

The FS manages more than 193 million acres in the National Forest System. Although most forested watersheds are in satisfactory condition, some waterbodies on NFS lands do not meet state WQS. Year 2005 data show that over 4,300 water quality impairments (in 2,600 waterbodies on NFS lands) are included on the Section 303(d) lists in 41 states, representing about 8 percent of all water quality impairments nationally. Leading causes of the impairments on NFS lands include elevated temperature, excess sediment, and habitat modification.

The FS has already coordinated and collaborated with states and EPA on many activities to maintain and restore water quality in the National Forest System. For example, the FS has supported states and EPA in development of more than 300 TMDLs in more than 30 National Forests. For several National Forests, the FS has also assisted states' efforts to develop a record that supports placement of waters in Category 4b.

In addition to these activities, the FS uses a variety of watershed management techniques to address water resource impairments. The FS Watershed Management Program includes guidance to inventory and assess watershed conditions; identify and prioritize improvement needs; restore ecosystem components and functions; apply best management practices (BMP); implement pollution prevention design strategies; monitor project success; and adapt management measures. For example, the FS is in the process of updating national BMP guidance for administering its nonpoint pollution control strategy on NFS lands. This new FS National BMP Program is intended to meet or exceed all state BMP objectives as well as simplify and standardize water quality protection measures and monitoring on NFS lands.

D. GOALS AND OBJECTIVES: The FS and EPA/OW intend to work to advance a suite of water quality related actions that are expected to build partnerships between our organizations and among states, thereby improving NFS watershed conditions and accelerating the attainment of the objectives in our statutory programs and strategic plans.

The objectives of this MOA are as follows:

- Identify streamlined approaches for the FS to support the jurisdictions' development of TMDLs and Category 4b submissions that will accelerate attainment of state WQS on NFS lands.
- Identify opportunities to implement the FS National BMP Program on NFS lands

to protect and maintain water quality in impaired watersheds.

- Identify monitoring efforts and approaches that enhance and further our understanding of conditions and processes in NFS watersheds.
- Identify opportunities to promote development, use, and sharing of watershed data and information among agencies and the public.
- Foster regional or state level MOAs that advance the objectives of this MOA on a regional or state scale, where mutually desirable.

E. THE FOREST SERVICE AND ENVIRONMENTAL PROTECTION AGENCY: will strive to achieve the above goals and objectives and, where appropriate, do so in partnership with interested jurisdictions and other government entities. To that end, the FS and EPA/OW plan to meet within 90 days of signing this MOA and at least annually thereafter (annual meeting), to develop joint action items that support achieving the goals and objectives stated in this MOA. Such action items may include, but are not limited to, the following:

1. Develop checklists, templates, and documents in cooperation with jurisdictions to facilitate the use of Category 4b (consistent with EPA's regulations and the agency's IRG) for impaired waters on NFS lands. Such mechanisms would be intended to provide straightforward application of EPA's 4b guidance to individual projects.
2. Develop a simplified "decision tree" process in cooperation with jurisdictions for determining the most desirable course of action for addressing water quality impairments (e.g., TMDL, other actions that support using Category 4b) on NFS lands. The purpose would include increasing the resources applied to water quality improvement and creating an incentive for use of Category 4b in appropriate circumstances.
3. Identify and implement projects in cooperation with jurisdictions for impaired waters that promote innovative and cost effective approaches for achieving WQS on NFS lands.
4. Compile and discuss the agencies' descriptions of the role BMPs play in meeting state WQS and the intent of the CWA.

F. GENERAL PROVISIONS:

1. <u>RELATIONSHIP WITH STATES, TERRITORIES, TRIBES AND OTHER PARTNERS</u>**.** Both parties recognize the important role states, territories, authorized tribes and other partners play in maintaining and restoring water quality of the Nation's waters within NFS lands. The goals and objectives of this partnership are intended to complement collaborative efforts already underway between and among both parties, states, territories, authorized tribes and other partners as well as provide a platform for fostering further collaboration with these entities for maintaining and restoring water quality. This MOA is designed to support states, territories, and authorized tribes in carrying out CWA Section 303(d) activities. This MOA does not remove any existing authority provided to states, territories and

authorized tribes under the CWA, nor is it intended to supersede any existing MOAs between these entities and the Forest Service.

2. FREEDOM OF INFORMATION ACT (FOIA). The agencies will comply with the Freedom of Information Act (5 U.S.C. 552).

3. PARTICIPATION IN SIMILAR ACTIVITIES. This MOA in no way restricts the Forest Service or the Environmental Protection Agency from participating in similar activities with other public or private agencies, organizations, and individuals.

4. COMMENCEMENT/EXPIRATION/TERMINATION. This MOA takes effect upon the signature of the Forest Service and EPA. This MOA may be amended upon written request of either the Forest Service or EPA and the subsequent written concurrence of the other. The MOA will remain in effect until one or both parties terminate it. Either party may terminate this MOA by providing written notice to the other party. The termination will be effective upon the sixtieth calendar day following notice, unless a later date is set forth. The parties agree to evaluate the sufficiency of the MOA during the annual meeting, at which time the parties may agree to continue, modify, or withdraw the MOA. This MOA may be modified only through written mutual agreement.

5. RESPONSIBILITIES OF PARTIES. The Forest Service and EPA and their respective offices will administer their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing the objectives set forth in this MOA. Each party will carry out its activities in a coordinated and mutually beneficial manner.

6. DESIGNATING PRINCIPAL CONTACTS. The two agencies intend to establish a framework for coordination and communication pertaining to this MOA and to promote staff exchange, as appropriate, for improved interagency communications. Principle contacts will be designated and are expected to participate in regular meetings to facilitate implementation of this MOA, coordinate research and technology issues, and avoid unnecessary duplication in order to increase efficiency.

7. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOA requires either the Forest Service or EPA 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 Forest Service and EPA 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 MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. The activities, initiatives, or pilot projects contemplated in this MOA will be carried out in accordance with existing statutory authorities and nothing in this

MOA will, in any way, alter the specific statutory or regulatory authorities, rights, requirements, or responsibilities assigned to the FS, EPA/OW, or other agencies.

8. ESTABLISHMENT OF RESPONSIBILITY. This MOA 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. This MOA does not direct anyone outside of the Forest Service and EPA.

9. AUTHORIZED REPRESENTATIVES. The individuals listed below are designated as representatives of their respective agencies and are authorized to act in their respective areas for matters related to this agreement.

Benjamin H. Grumbles Assistant Administrator U.S. Environmental Protection Agency	Abigail R. Kimbell Chief U.S. Forest Service
September 28, 2007 Date	September 28, 2007 Date