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Date: **AUG 28 2015**

Dr. Dennis D. Murphy  
c/o Paul S. Weiland  
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Irvine, CA 92612

Dear Dr. Murphy:

This letter acknowledges receipt of your request to correct information in the following publications:

1. USDA Forest Service, Lake Tahoe Basin Management Unit of El Dorado County, CA, Decision Memo – Upper Echo Lakes Hazardous Fuels Reduction (November 15, 2012).
2. United States Department of Agriculture-Forest Service Lake Tahoe Basin Management Unit, Biological Assessment/Biological Evaluation Terrestrial Species (April 23, 2012).

Your petition, postmarked July 13, 2015, has been accepted by the Forest Service under the United States Department of Agriculture's Information Quality Guidelines. It has been forwarded to the appropriate office within the Agency, where the information you suggested for correction will be reviewed, and if appropriate, the correction will be made. We will provide a response to you by September 12, 2015.

If you should have any additional questions, please contact Sharon Parker, Data Quality Officer, at [sparker01@fs.fed.us](mailto:sparker01@fs.fed.us).

Sincerely,

CYNTHIA WEST  
Associate Deputy Chief R&D

cc: Parker, Sharon



## INFORMATION QUALITY ACT REQUEST

This request for correction of information is submitted under USDA's Information Quality Guidelines.

### **A. Requestor Contact Information:**

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### **B. Name and date of the USDA publications for which a correction is being sought:**

1. *USDA Forest Service, Lake Tahoe Basin Management Unit of El Dorado County, CA, Decision Memo – Upper Echo Lakes Hazardous Fuels Reduction* (November 15, 2012).
2. *United States Department of Agriculture-Forest Service Lake Tahoe Basin Management Unit, Biological Assessment/Biological Evaluation Terrestrial Species* (April 23, 2012).

### **C. Detailed Description Of The Specific Information That Needs To Be Corrected:**

The following information should be corrected in the Decision Memo – Upper Echo Lakes Hazardous Fuels Reduction ("Decision Memo").

1-1. The statement on the second page of the Decision Memo that, as a result of implementation of the Upper Echo Lake Hazardous Fuels Reduction Project, "Condition Class within the treated landscape will change from a Condition Class 2 or 3 toward Condition Class 1 or 2."

1-2. The statements on the fourth page of the Decision Memo that "[t]he potential effects of this action on listed wildlife, fish, and plant species have been analyzed and documented in Biological Assessment (BA) and Biological Evaluations (BE)," and "[e]ffects to aquatic and terrestrial species are discussed in the Aquatic and Terrestrial Species BA/BE found in the project record."

1-3. The statement on the sixth page of the Decision Memo that, with respect to wetlands, “[t]he effects from this project have been evaluated and will result in no impacts.”

1-4. The statement on the seventh page of the Decision Memo that “[n]o listed historic properties occur within the project area.”

The following information should be corrected in the Terrestrial Species Biological Assessment/Biological Evaluation (“Terrestrial Species BA/BE”).

2-1. The notation in table 1 on page 7 of the Terrestrial Species BA/BE “[n]o” with respect to whether Northern Goshawk is known to occur in the project area.

2-2. The notation in table 1 on page 7 of the Terrestrial Species BA/BE “[n]o” with respect to whether American marten is known to occur in the project area.

#### **D. Explanation of Noncompliance with OMB and/or USDA Information Quality Guidelines:**

In the preamble to its guidelines published in the Federal Register, OMB states “agencies should not disseminate substantive information that does not meet a basic level of quality.” 67 Fed. Reg. 8452 (Feb. 22, 2002). OMB goes on to state “[t]he more important the information, the higher the quality standards to which it should be held.” *Id.* The information described above and included in USDA publications is important and properly characterized as influential because it was the basis for a Forest Service decision to proceed with a project that is funded by the taxpayers through the Forest Service, and it has substantive adverse effects on the human environment.

The OMB guidelines explain that all federal agencies, including the Forest Service, must “adopt a basic standard of quality (including objectivity, utility, and integrity) as a performance goal,” and should also “take appropriate steps to incorporate information quality criteria into agency information dissemination practices.” 67 Fed. Reg. at 8458. The OMB guidelines define objectivity to have two distinct elements. The second of these “involves a focus on ensuring accurate, reliable, and unbiased information.” 67 Fed. Reg. at 8459. Thus ensuring the accuracy of information disseminated is one of the explicit requirements set out in the OMB guidelines.

The USDA criteria for objectivity include the following: “USDA agencies and offices will strive to ensure that the information they disseminate is substantively accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner.” This is wholly consistent with the OMB guidelines and reinforces the requirement that information disseminated should be substantively accurate.

The Decision Memo and Terrestrial Species BA/BE fail to meet the OMB and USDA information quality guidelines' basic standard of quality because the portions of those documents described above are substantively inaccurate and thereby violate the "objectivity" criterion. Explanations of the specific inaccuracies are detailed below.

1-1. The Decision Memo for the Upper Echo Lake Hazardous Fuels Reduction Project includes the following statement: "This project will help attain the recommendations outlined in the Lake Tahoe Basin Multi-Jurisdictional and Wildfire Prevention Strategy for the project area (2007; p.9, 13-15). . . . This is expected to improve the overall Fire Regime Condition Class on all [of] 100 treatment acres in the project. Condition class within the treated landscape will change from a Condition Class 2 or 3 toward Condition Class 1 or 2." This assertion is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. According to the 2007 *Lake Tahoe Basin Multi-Jurisdictional and Wildfire Prevention Strategy* (available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsm9\\_046334.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm9_046334.pdf)) – see the map on page 33 – the project area is in Condition Class 1 and 2 already.

1-2. In its Decision Memo, the Forest Service states "[t]he potential effects of this action on listed wildlife, fish, and plant species have been analyzed and documented in Biological Assessment (BA) and Biological Evaluations (BE)." In a footnote, the Forest Service further states that "[e]ffects to aquatic and terrestrial species are discussed in the Aquatic and Terrestrial Species BA/BE found in the project record." This assertion is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. The Forest Service prepared a Terrestrial Species BA/BE (attached as Exhibit 1), but it did not prepare an Aquatic and Terrestrial Species BA/BE. Nor did the agency prepare an Aquatic Species BA/BE or an equivalent document evaluating the effects of the proposed project on aquatic species.

1-3. The Decision Memo states, with respect to wetlands, "[t]he effects from this project have been evaluated and will result in no impacts." The Decision Memo includes a definition of wetlands as follows: "areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." The Forest Service's assertion that the project will result in "no impacts" is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. Photographs and documents exchanged with the Regional Water Quality Control Board (attached as Exhibit 2) establish that the project has resulted in obvious impacts on wetlands as defined in the Decision Memo.

1-4. The Decision Memo states that “Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register.” It also states “[n]o listed historic properties occur within the project area.” This assertion is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. Listed historic properties encompass those included in, or eligible for inclusion in, the National Register. The special use permits for dozens of recreation residences within the project area state “[u]ntil the Section 106 Historical Evaluation is completed and a determination has been made, the [tract] will be managed as historical in accordance with the Regional 5 Recreation Residence Programmatic Agreement and the Region 5 Residence Forest Service Handbook 2709.11 Supplement.” (See, for example, Exhibit 3.)

2-1. The Terrestrial Species BA/BE indicates that Northern Goshawk is not known to occur in the project area. This assertion is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. The Northern Goshawk is known to occur in the project area.

The presence of Northern Goshawk in the Upper Echo Lake project area is confirmed by observations by trained wildlife biologists, residents, and members of the visiting public, which indicate continuous presence of at least one nesting pair over the past two decades, with nesting adjacent to the project area and observed use of the project area for roosting and foraging (resident prey including yellow-bellied marmots, Douglas squirrel, golden-mantled squirrel, and chipmunks). The north facing slopes of the project area meet all criteria for providing habitat for the Northern Goshawk as described for that management-indicator species.

Evidence presented in *Northern Goshawk population monitoring in the Lake Tahoe basin. Monitoring plan and development protocol. Final report. 24 October 2008.* (available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5150417.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5150417.pdf)) shows detection of Northern Goshawk in Forest Inventory and Analysis hexagonal grid cell number 38 (figures 1 and 5) and a nested 601-hectare (survey) rectangle (Figure 8) -- the survey grid cell and nested rectangle in which the fuels project is located. Given the documented suitability of habitat and closely adjacent documented presence of the species, its occupancy of the project area is highly likely. This reinforces the sightings described above.

2-2. The Terrestrial Species BA/BE indicates that American marten is not known to occur in the project area. This assertion is inaccurate; as a consequence, it is inconsistent with the objectivity requirement in the OMB and USDA guidelines. The American marten is known to occur in the project area.

American marten denning has been recorded in out buildings in the project area. Break-ins and property damage have been credited to American marten in multiple

cabins in the project area. Anecdotal observations and reports indicate continuous occupancy of the Echo Lakes basin, on the higher elevation fringe of the species' distribution for the past 80 years. Observations include sightings on west end of the North Shore Tract, areas around Tamarack Creek and the entirety of Hemlock Tract around Upper Echo Lake, which with reported denning on the south shore of Lower Echo Lake indicates three or more pairs of American martens in the lower Echo Lakes basin, including at least two pairs that may reside in the fuels reduction project areas.

The Forest Service's own (and only) comprehensive surveys for American marten in the Lake Tahoe basin recorded the presence of the species in both 2.5 and 3.0 square kilometer hexagonal sampling units that include the project area. (see Figure 8 in *American Martin population monitoring in the Lake Tahoe basin. Monitoring plan development and protocol. Final Report. 1 August 2008.*) (available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5150416.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5150416.pdf)) The habitat assessment for American marten status in the same document predicts "habitat suitability" for the species in the fuels project area at the highest end of habitat (landscape) quality conditions and the highest probability of occurrence for the species in the Lake Tahoe basin (Figure 2). This reinforces the sightings described above.

#### **E. Explanation of the Effect of the Errors:**

1-1. The misrepresentation of the project area as Condition Class 2 or 3 created a false rationale for the fuels reduction project and is used to justify treatment prescriptions that are destructive of existing environmental attributes of the project area. It also contributed to an inaccurate understanding of the need for the project, both on the part of agency decision-makers and the public.

1-2. The Forest Service represented that impacts to aquatic species, including the endangered Sierra Nevada yellow-legged frog, were considered and evaluated. In fact, the agency did not generate a Biological Assessment/Biological Evaluation for aquatic species. This error therefore contributed to an improper understanding of the effects of the proposed project by agency decision-makers and the public. It likely led to approval of the project without adequate measures to avoid or mitigate its environmental impacts on aquatic species.

1-3. The practical implications of the false statement that the project will have "no impacts on wetlands" are that the actual impacts were not considered or evaluated in the Forest Service's decision to proceed with the project. Thus, the statement gives the public and agency decision-makers an improper understanding of the project and reflects that adequate measures were not taken to avoid or mitigate the project's potential impacts on wetlands.

1-4. The Service's misrepresentation of the status of buildings in the project area allowed the agency to avoid the requirement that a project-specific analysis

accompany the project plan. As a result, the Decision Memo reflects an improper understanding of the proposed project by agency decision-makers and the public. Additionally, it led to the approval of the project without adequate consideration of the project's impacts on the environment or measures to mitigate or avoid such impacts.

2-1. The false statement that Northern Goshawk is absent from the project area means that the actual impacts were not considered or evaluated in the Forest Service's decision to proceed with the project. As a consequence, agency decision-makers and the public were misinformed regarding the effects of the project. *The Northern Goshawk is an old-growth, late seral forest obligate; the current forest structure and composition in the project area provides near optimal habitat for the goshawk. Notably, the species is extremely sensitive to human-generated disturbances, which was not taken into account as a consequence of the fact that the species was improperly declared absent from the project.*

2-2. The false statement that American marten is absent from the project area means that the actual impacts were not considered or evaluated in the Forest Service's decision to proceed with the project. As a consequence, agency decision-makers and the public were misinformed regarding the effects of the project.

#### **F. Recommendation and Justification for How the Information Should Be Corrected:**

1-1. We recommend that the Forest Service delete the inaccurate language in the Decision Memo, make other revisions necessary in light of such deletion, and evaluate whether to re-visit the decision reflected in the memo in light of the changes. These recommendations are the minimum steps necessary to correct the inaccurate statement.

1-2. We recommend that the Forest Service delete the inaccurate language in the Decision Memo, make other revisions necessary in light of such deletion, and evaluate whether to re-visit the decision reflected in the memo in light of the changes. These recommendations are the minimum steps necessary to correct the inaccurate statement.

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1-4. We recommend that the Forest Service delete the inaccurate language in the Decision Memo, make other revisions necessary in light of such deletion, and evaluate whether to re-visit the decision reflected in the memo in light of the

changes. These recommendations are the minimum steps necessary to correct the inaccurate statement.

2-1. We recommend that the Forest Service delete the inaccurate language in the Terrestrial Species BA/BE, make other revisions to both the Terrestrial Species BA/BE and the Decision Memo necessary in light of such deletion, and evaluate whether to re-visit the decision reflected in the memo in light of the changes. These recommendations are the minimum steps necessary to correct the inaccurate statement.

2-2. We recommend that the Forest Service delete the inaccurate language in the Terrestrial Species BA/BE, make other revisions to both the Terrestrial Species BA/BE and the Decision Memo necessary in light of such deletion, and evaluate whether to re-visit the decision reflected in the memo in light of the changes. These recommendations are the minimum steps necessary to correct the inaccurate statement.