

In Reply Refer To:  
FWS/R4/BA/CGS

August 3, 2010

Mr. Bernie Andersen  
Kentucky Division of Forestry  
627 Comanche Trail  
Frankfort, KY 40601

Dear Mr. Andersen:

Enclosed please find an executed copy of Mutual Aid Agreement No. 40181AK017.

If you have any questions concerning this action, please contact me at the above address, Suite 310, or at telephone number (404)679-4058.

Sincerely,

Don Calder   
Chief, Contracting and  
Grant Services Division

Enclosure

## MUTUAL AID AGREEMENT

U.S. Department of the Interior  
Fish and Wildlife Service

and

Commonwealth of Kentucky  
Energy and Environment Cabinet  
Department for Natural Resources  
Division of Forestry

This Mutual Aid Agreement is entered into by and between all parties:

### SECTION 1: Recitals

WHEREAS, the State and local jurisdictions have the primary responsibility for its Citizens and will coordinate first response during a natural or man-caused disaster; AND

WHEREAS, the Parties recognize natural or man-caused disasters can and do threaten the people and communities located within the Region to damage, injury, and loss of life and property resulting from a disaster event, and recognize that these events may present equipment and manpower requirements beyond the capacity of each individual Party; AND

WHEREAS, these natural or man-caused disasters often strike with little or no advanced warning requiring advance planning to reduce lag time in emergency response and aid in recovery operations; AND

WHEREAS, the Parties recognize that in the past, mutual aid has been provided between or among the Parties have a long history of positive cooperation in the form of personnel, supplies and equipment during disasters and/or civil emergencies and during cleanup periods; AND

WHEREAS, the governing officials of the Parties desire to secure for each Party the benefits of mutual aid and protection of life and property in the event of a disaster and/or civil emergency; AND

WHEREAS, the Service administers lands and waters located within the administrative jurisdiction of the cooperating agency; the Service has employees that are trained in water craft operations, heavy equipment operations, chain saw operation, wild-land fire control, and other specialized operations or services; AND

WHEREAS, immediate action is often required to protect and/or secure the safety of citizen life and property, and/or wildlife and its habitat; AND

WHEREAS, the Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, ensure that adequate equipment is available, and ensure that mutual aid is accomplished in the minimum time possible; AND

NOW, THEREFORE, the Parties hereto agree as follows:

## **SECTION 2: Agreement**

The Parties hereby mutually agree to assist each other in the event of a natural or man-caused disaster that is beyond their respective ability to alleviate the result of the disaster on their own. This Agreement may be activated in the event of a natural or man-caused disaster may be activated in the event of either:

- (a) A Presidential, State, or other local emergency declaration; or
- (b) the finding of an emergency by the Emergency Management Coordinator or other duly authorized agent of the State or County/City governing body of a Party; or
- (c) A significant event impacting Homeland Security.

Upon activation of the Agreement, the Fish and Wildlife Service agrees to respond as delineated in the Department of the Interior, Departmental Manual - 900 OM 1.1 -1.10, (see Attachment 1), and shall continue, whether or not the disaster event is still active, until the services of the Party rendering aid are no longer required or when the officer in charge of the forces of the Party rendering aid determines, in his/her sole discretion, that further assistance should not be provided.

## **SECTION 3: Requests for Mutual Aid**

(A) LOCAL DISASTER. In the event of a local disaster declaration, the Emergency Management Coordinator or other duly authorized agent of the Party seeking mutual aid shall make the request directly to the Authorized Representative of the Assisting Party from whom aid is sought. A Party from whom mutual aid is sought shall furnish mutual aid to cope with the disaster to the requesting Party, subject to the terms of this Agreement. In the event of a widespread disaster affecting more than one Party, each affected Party shall utilize its respective coordinating group for the provision of mutual aid.

(B) DISASTER THREAT. In the event of an imminent threat of an emergency such that local capabilities are or are predicted to be exceeded, the Emergency Management Coordinator or other duly authorized agent of the Party seeking mutual aid shall make the request directly to the Authorized Representative of the Assisting Party from which assistance is sought. As all Parties will likely be involved in preparations for a known disaster, requests for mutual aid of this type are optional and it is inherent that the requesting Party will have exhausted all local capabilities prior to making a request from the Assisting Party.

(C) CONDITIONS. The furnishing of resources under this Agreement is subject to the following conditions:

- (a) Requests for assistance must be made in writing;
- (b) A request for aid shall specify the amount and type of resources being requested, the location where the resources are to be dispatched, and the specific time such resources are needed;
- (c) The Assisting Party shall take such action as is necessary to provide and make available the resources requested, provided however, that the Assisting Party, in its sole discretion, shall determine what resources, if any, it has available to respond to the request; and

- (d) The Assisting Party shall report to the officer in charge of the Requesting Party's forces at the location to which the resources are dispatched.
- (e) When providing assistance under the terms of this Agreement, the personnel, equipment, and resources of any Assisting Party will be under the operational control of the Requesting Party, the response effort to which SHALL be organized and functioning within an Incident Command System (ICS) or Unified Command System (UCS). Direct supervision and control of personnel, equipment and resources shall remain with the designated supervisory personnel of the Assisting Party. The designated supervisory personnel of the Assisting Party shall maintain daily personnel time records, material records, and a log of equipment hours; be responsible for the operation and maintenance of the equipment and other resources furnished by the Assisting Party; and shall report work progress to the Requesting Party. The Assisting Party's personnel and other resources shall remain subject to recall by the Assisting Party at any time, upon reasonable notice to the Requesting Party.
- (f) At least twenty-four hour advance notification of intent to withdraw personnel or resources shall be provided to the Requesting Party unless such notice is not practicable, in which case such notice as is reasonable shall be provided;
- (g) Unless specifically instructed otherwise, the Requesting Party shall have the responsibility of providing food and housing for the personnel of the Assisting Party from the time of their arrival at the designated location to the time of their departure. However, Assisting Party personnel and equipment should be, to the greatest extent possible, self-sufficient while working in the emergency or disaster area. The Requesting Party may specify only self-sufficient personnel and resources in its request for assistance;
- (h) Unless specifically instructed otherwise, the Requesting Party shall have the responsibility for coordinating communications between the personnel of the Assisting Party and the Requesting Party. Assisting Party personnel should be prepared to furnish communications equipment sufficient to maintain communications among their respective operating units;
- (i) Whenever the officials, employees and volunteers of the Assisting Party are rendering aid pursuant to this Agreement, such persons shall have the powers, duties, rights, privileges, and immunities of the requesting party and shall receive the compensation, incidental to their employment or position;
- (j) The initial duration of a request for assistance will be specified by the Requesting Party, to the extent possible by the situation.
- (k) Within ten (10) days of the return of all personnel deployed under this Regional Mutual Aid Agreement, the Requesting Party will prepare a Summary Report of the event, and provide copies to each Assisting Party. The report shall include a chronology of events and description of personnel, equipment and materials provided by one party to the other.

#### **SECTION 4: Reimbursable Expenses**

The terms and conditions governing reimbursement for any assistance provided pursuant to this Agreement shall be in accordance with the following provisions, unless otherwise agreed upon by the Requesting and Assisting Parties and specified in the Event Agreement.

A. **PERSONNEL:** During the period of assistance, the Assisting Party shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. The Requesting Party shall reimburse the Assisting Party for all direct and indirect payroll costs and expenses, as outlined in the Southern Area Interagency Mobilization Guide Chapter 100 (including regular salaries, overtime, travel expenses, benefits, workers' compensation claims and expenses) incurred during the period of assistance, unless agreed to otherwise by the parties in the Event Agreement.

B. **EQUIPMENT:** The Assisting Party shall be reimbursed by the Requesting Party for the use of its equipment, as outlined in the Southern Area Interagency Mobilization Guide, during the period of assistance. For those instances in which some costs may be reimbursed by the Federal Emergency Management Agency, the eligible direct costs shall be determined in accordance with 44 CFR 206.228, or other regulations in effect at the time of the Disaster Event:

(a) Each Party shall maintain its own equipment in safe and operational condition.

(b) At the request of the Assisting Party, fuels, miscellaneous supplies, and minor repairs may be provided by the Requesting Party, if practical. If the equipment charges are based on a pre-established local or state hourly rate, then these Charges to the Requesting Party shall be reduced by the total value of the fuels, supplies, and repairs furnished by the Requesting Party and by the amount of any insurance proceeds received by the Assisting Party.

C. **MATERIALS AND SUPPLIES.** The Assisting Party shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel, maintenance materials, labor and supplies, which shall be included in the equipment rate established above, unless such damage is caused by gross negligence, or willful and wanton misconduct of the Assisting Party's personnel. The measure of reimbursement shall be determined in accordance with 44 CFR 206.228 or other regulations in effect at the time of the disaster. In the alternative, the Parties may agree that the Requesting Party will replace, with like kind and quality as determined by the Assisting Party, the materials and supplies used or damaged.

D. **RECORD KEEPING,** The Assisting Party shall maintain records and submit invoices for reimbursement by the Requesting Party in accordance with existing policies and practices. Upon the declaration of a state or federal disaster, the Requesting Party and Division of Emergency Management personnel shall provide information, directions, and assistance for record keeping to Assisting Party personnel.

E. **PAYMENT.** Unless otherwise mutually agreed, the Assisting Party shall bill the Requesting Party for all reimbursable expenses with an itemized statement as soon as practicable after the expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with applicable federal or State regulations. The Requesting Party shall pay the bill, or advise of any disputed items, not later than sixty (60) days following receipt of the statement, unless otherwise agreed upon.

#### **SECTION 5: Term**

This Agreement will be effective upon the day each party signs the agreement. Upon date of last signature, the Agreement shall remain in effect for five calendar years (January 1 - December 31).

#### **SECTION 6: Modification Procedures**

This Agreement may be revised and/or modified as necessary, by mutual consent of both parties, by written amendment signed and dated by both Parties.

#### **SECTION 7: Resolving Disagreements**

If a dispute should arise between the parties that cannot be settled by the designated project managers, then it will be referred first to the level of the appropriate Assistant Regional Director for the Fish and Wildlife Service and to the appropriate supervisor within the State or local government, for further fact-finding and efforts at resolution. If those efforts should also fail, then the dispute will be referred to the Regional Director or Deputy Regional Director of the Fish and Wildlife Service and to the appropriate elected or appointed official for State or local government. At any stage, third party mediators or arbitrators may be brought in if agreed by both Parties. The parties may also decide to terminate the agreement at any stage of the dispute in accordance with the Termination clause herein.

#### **SECTION 8: Termination Provisions**

This agreement may be terminated by either party by giving notification in writing thirty (30) days in advance. Termination of the agreement will then occur after all debts (if any) which have been identified by either Party are paid and/or resolved. Both parties will sign a Termination Agreement that is acceptable to both parties before the agreement is fully terminated.

#### **SECTION 9: Expending Funds**

Each Party that performs services or furnishes aid pursuant to this Agreement shall do so with funds available from current revenues of the Party. No Party shall have any liability for the failure to expend funds to provide aid hereunder. In addition, nothing contained in this Agreement shall be construed as binding the Fish and Wildlife Service to expend in anyone fiscal year any sum in excess of appropriation made by Congress, for the purpose of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations. Nor does anything contained in this Agreement obligate the State or County/City to expend funds not appropriated and administratively allocated to support the purposes of this agreement.

#### **SECTION 10: Required Clauses**

A. During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

B. No member or delegate to Congress, or resident Commissioner shall be admitted to any share or part of this Agreement, or any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

**SECTION 11: Liability Clause**

Pursuant to 42 U.S.C. 5148 the Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal Agency or an employee of the Federal Government in carrying out the activities authorized hereunder. The extent of any nonfederal liability shall be governed by the laws of state government.

**SECTION 12: Other Mutual Aid Agreements**

It is understood and agreed that certain signatory Parties may have heretofore contracted or may hereafter contract with each other for mutual aid in civil emergency and/or disaster situations, and it is agreed that, to the extent there is a conflict between this Agreement and any other such Mutual Aid agreement, the provisions this Agreement shall be superior to any such individual contract.

Specifically, the existence of this Agreement shall not prevent a municipality, county, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity from providing mutual aid assistance on request from another municipality, county, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity.

Additionally, the existence of this Agreement shall not prevent any Party hereto from providing immediate emergency assistance.

**MUTUAL AID AUTHORIZATION AGREEMENT**

EXECUTED by the Parties hereto, each respective entity acting by and through its duly authorized official as required by law, on multiple counterparts each of which shall be deemed to be an original, on the date specified on the multiple counterpart executed by such entity.

**Contact Information for Kentucky Division of Forestry**

Primary:

Contact Name: Bernie Andersen

Office Number: 502-564-4496

24 Hour Contact No. (502) 330-0223

E-mail address: bernie.andersen@ky.gov

Alternate:

Contact Name: Michael Harp

Office Number: 502-564-4496

24 Hour Contact No. (502) 330-4995

E-mail address: [mike\\_harp@ky.gov](mailto:mike_harp@ky.gov)

**Contact Information for U.S. Department of the Interior Fish and Wildlife Service**

Primary:

Contact Name: Bob Eaton

Office Number: 404-679-7190

24 Hour Contact No. (404) 386-1872

E-mail address: [Robert.Eaton@fws.gov](mailto:Robert.Eaton@fws.gov)

Alternate:

Contact Name: Pete Kubiak

Office Number: 404-679-7244

24 Hour Contact No. (404) 661-4819

E-mail address: [Pete\\_Kubiak@fws.gov](mailto:Pete_Kubiak@fws.gov)

U.S. DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

BY: [Signature]

TITLE: ~~Chief Contracting & Grant Services Division~~

DATE: 8 3 2010

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ENERGY AND ENVIRONMENT CABINET

*Leonard K. Peters*  
Leonard K. Peters, Secretary

Date: 7/27/10

*Henry A. List, Deputy Secretary*

APPROVED AS TO FORM AND LEGALITY:

ENERGY AND ENVIRONMENT CABINET

*C. Michael Haines*  
C. Michael Haines, General Counsel  
Office of Legal Services

Date: 7-23-10

APPROVAL RECOMMENDED BY:

ENERGY AND ENVIRONMENT CABINET

*Carl E. Campbell*  
Carl E. Campbell, Commissioner  
Department for Natural Resources

Date: 7/22/10

*Leah W. MacSwords*  
Leah W. MacSwords, Director  
Division of Forestry

Date: 7/19/2010

**Attachment 1 ~ Department of the Interior, Departmental Policy Manual**

**900 OM 1.10 Immediate Emergency Response.** When an imminently serious condition occurs in the immediate vicinity of Departmental resources, local field personnel of the Department's bureaus or offices are authorized, in response to the request of local governmental authorities, to take necessary action to protect human life, property, or the environment if the response would be impaired by the delay required to seek the approval of senior officials.

- A. Immediate Emergency Response means necessary action taken by local field personnel in response to the imminently serious condition.
- B. For this purpose, local governmental authorities include Federal, State, local or tribal entities in the immediate vicinity affected by the imminently serious condition.
- C. Field personnel that have undertaken an Immediate Emergency Response must promptly advise their bureau or office management and the Department's Watch Office of the actions taken.
- D. Immediate Emergency Response to local governmental authorities should be provided on a cost-reimbursable basis whenever possible. However, such response should not be delayed or denied because of the inability or unwillingness of the local governmental authority to make a commitment to reimburse the Department, bureau, or office for such response.
- E. Examples of Immediate Emergency Response assistance to local governmental authorities are:
  - (1) Rescue, evacuation, and emergency medical treatment of persons; maintenance or restoration of emergency medical capabilities; and safeguarding the public health.
  - (2) Emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel).
  - (3) Emergency clearance of debris or rubble from public facilities and other areas to permit rescue or restoration of essential services.
  - (4) Safeguarding, collecting, and distributing, food and essential supplies.
  - (5) Damage assessment.
  - (6) Interim emergency communications.