Index for Response to Comments; Letter #46				
Commenter	Comment Number	Representative Comment	Major Category Number	Major Category
Department of Transportation (Caltrans)	46.1	1.5	4	Alternatives Analysis Requirement
Department of Transportation (Caltrans)	46.2	41.16	44	Waters of the State Definition/Delineation
Department of Transportation (Caltrans)	46.3	3.7	38	Scope of Procedures
Department of Transportation (Caltrans)	46.4	46.4	26	Legal, Procedural, Process Obligation
Department of Transportation (Caltrans)	46.5	14.5	48	Wetland Definition (Jurisdictional)
Department of Transportation (Caltrans)	46.6	46.6	49	Wetland Definition (Technical)
Department of Transportation (Caltrans)	46.7	46.7	44	Waters of the State Definition/Delineation
Department of Transportation (Caltrans)	46.8	46.8	30	Other
Department of Transportation (Caltrans)	46.9	46.9	26	Legal, Procedural, Process Obligation
Department of Transportation (Caltrans)	46.10	41.15	50	Wetland Delineation Procedures
Department of Transportation (Caltrans)	46.11	37.10	44	Waters of the State Definition/Delineation
Department of Transportation (Caltrans)	46.12	46.12	11	Complete Application (case-by-case basis)
Department of Transportation (Caltrans)	46.13	46.13	7	Climate Change Analysis
Department of Transportation (Caltrans)	46.14	46.14	3	Alternatives Analysis Exemption
Department of Transportation (Caltrans)	46.15	46.15	8	Compensatory Mitigation (General)
Department of Transportation (Caltrans)	46.16	41.27	10	Compensatory Mitigation (Hierarchy)

Index for Response to Comments; Letter #46				
Commenter	Comment Number	Representative Comment	Major Category Number	Major Category
Department of Transportation (Caltrans)	46.17	46.17	46	Watershed Plan
Department of Transportation (Caltrans)	46.18	12.21	10	Compensatory Mitigation (Hierarchy)
Department of Transportation (Caltrans)	46.19	46.19	8	Compensatory Mitigation (General)
Department of Transportation (Caltrans)	46.20	46.20	9	Compensatory Mitigation (Ratio)
Department of Transportation (Caltrans)	46.21	46.21	8	Compensatory Mitigation (General)
Department of Transportation (Caltrans)	46.22	46.22	27	Monitoring and Assessment
Department of Transportation (Caltrans)	46.23	46.23	37	Restoration Plan for Temporary Impacts
Department of Transportation (Caltrans)	46.24	41.16	44	Waters of the State Definition/Delineation
Department of Transportation (Caltrans)	46.25	24.22	4	Alternatives Analysis Requirement
Department of Transportation (Caltrans)	46.26	46.26	10	Compensatory Mitigation (hierarchy)
Department of Transportation (Caltrans)	46.27	46.27	21	Final Compensatory Mitigation Plan
Department of Transportation (Caltrans)	46.28	3.56	14	Definitions
Department of Transportation (Caltrans)	46.29	46.29	30	Other
Department of Transportation (Caltrans)	46.30	46.30	1	State Supplemental Dredge or Fill Guidelines
Department of Transportation (Caltrans)	46.31	46.31	23	General Orders
Department of Transportation (Caltrans)	46.32	46.32	30	Other

Index for Response to Comments; Letter #46				
Commenter	Comment Number	Representative Comment	Major Category Number	Major Category
Department of Transportation (Caltrans)	46.33	46.33	17	Economic Impacts & Potential for New Regulation

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS
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SACRAMENTO, CA 94273-0001
PHONE (916) 653-7136
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TTY 711
www.dot.ca.gov

Serious Drought.
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Public Comment
Statewide Dredged or Fill Procedures
Deadline:8/18/16 12:00 noon

August 17, 2016

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RECEIVED
8-16-16
SWRCB Clerk

Dear Ms. Townsend:

The California Department of Transportation (Caltrans) appreciates the current opportunity to comment on the "Preliminary Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Procedures)," as an ongoing part of our participation as stakeholders. In furtherance of our agencies' collaborative relationship and respective goals of environmental stewardship, we have also commented on past draft proposals such as: October 16, 2012, we provided comments on the updated "Water Quality Control Policy for Wetland Area Protection and Dredge and Fill Permitting;" on April 27, 2011, we commented on the Initial Study for the "Wetland Area Protection Policy and Dredge and Fill Regulations;" on July 15, 2010, we provided comments on the draft policy of "Phase One of the Wetland and Riparian Protection Policy;" on September 8, 2008, we provided comments on the "Policy to Protect Wetlands and Riparian Areas;" and on April 9, 2007, we provided comments on the scope and content of the environmental analysis that will be used to support the policy development.

As owner-operator of the State Highway System (SHS), Caltrans works to avoid, minimize, and mitigate impacts to waters of the State as part of our project development process. As a State agency, our actions must comply with state and federal regulations including the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), Federal Clean Water Act (CWA), the Porter-Cologne Act, and their implementing regulations. We respect the efforts of the State Water Resources Control Board (Water Board) to maintain high standards in California for the protection of wetlands and the authority to regulate all waters of the State under the Porter-Cologne Act. We are, however, concerned with the effect this policy will have on project delivery due to the increased time and cost required to complete our environmental analysis of transportation projects. Please consider the following comments: 46.1

1) The Procedures cover discharges for dredged or fill materials into waters of the State, however they only discuss the wetland delineation procedures and values of wetlands. Please clarify if these procedures apply to all waters of the State, or only to wetlands. If the Procedures apply to all waters of the State, please include a definition and delineation method for non-wetland waters of the State. We recommend the Ordinary High Water 46.2

Mark delineation manuals developed by the United States Army Corps of Engineers (USACE) for the Arid West and Western Mountains and Valleys regions. These manuals are available on the USACE website: http://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/486085/ordinary-high-water-mark-ohwm-research-development-and-training/. 46.2 cont.

2) The Procedures do not clearly set forth what their intent or purpose are. A statement between "I. Introduction" and "II. Wetland Definition" about the purpose of the Procedures, and the problem(s) they are intended to solve, would greatly assist applicants to understand the context and intent of the proposed revisions. 46.3

3) The proposed Procedures are characterized as supplements to existing regulations. To carry out the augmentation/revision of the affected regulations, will the Procedures progress through the rulemaking process of the Administrative Procedures Act? If so, what is the proposed time line for filing and publication? 46.4

4) While the Procedures provide a definition for California wetlands, the proposed language is very ambiguous with regard to which, and to what the extent California wetlands will be subject to the Water Board's jurisdiction over waters of the State. Please provide guidance or criteria that Water Board staff will use to determine the extent of jurisdiction, to provide Caltrans and the rest of the regulated public with guidelines to follow during project development. This will help Caltrans to plan for avoidance and minimization measures earlier in the project development process, as well as increase the number of complete applications we can submit, as Section IV.A(1)(b) requires submittal of a delineation of wetlands and waters of the State, if they exist within the project. We do appreciate that the Procedures recommend to contact the Water Boards when there is a question over jurisdiction; however, we are concerned that this will cause delays to projects, as it will cause an increase in workload for Water Board staff. 46.5

   a. With respect to the wetland definition set forth in the proposed Procedures, please define the term "recurrent" by either quantifying the term in a temporal sense, or tying it to another objective measure. 46.6

   b. In what manner, if any, will California wetlands that are deemed 'waters of the State' be treated differently in the application process than other 'waters of the State?' 46.7

5) The term "permitting authority" is used throughout the Procedures, however it is unclear who this is referring to and if it is referring to a specific party. While it is defined in the Definitions, for clarity, we request that you define it when it is first introduced in the Procedures, and that you capitalize the term throughout the Procedures as it is a defined term. 46.8

6) Section III of the Procedures:
   a. This section states that "The permitting authority shall rely on any wetland area delineation approved by the United States Army Corps of Engineers (Corps) for the purposes of determining waters of the U.S.A." This produces a procedural issue where we often will not receive approval of a wetland area delineation from the USACE until we receive our CWA Section 404 permit, however the USACE cannot issue a CWA Section 404 permit prior to the Water Board issuing a CWA Section 401 Water Quality Certification. We appreciate that you are accepting the USACE wetland delineation methodology, but request that you accept wetland area delineations completed under that method and verify the acreage of waters of the State independently of the USACE verification process. This comment also applies to Section IV.B(2). 46.9

   b. Please clarify how the USACE wetland delineation methods should be modified to allow for lack of vegetation allowed in the proposed definition for California wetlands, and who is responsible for this modification. We recommend that instead of leaving this to the applicant, that you require that applicants follow the "Problem Areas" delineation procedures provided in the USACE Wetland Delineation Manual (ERDC 1987) in areas with less than five percent cover of vegetation. 46.10

7) Section IV.A(1)(b) – Please clarify whether a delineation is only required for wetland areas, or if waters of the State that are not wetlands should also be identified and mapped. 46.11

8) Section IV.A(2):
   a. Please update the title of this section to reflect that this is information that may be required for a complete application, on a case-by-case basis. 46.12

   b. (b) – We request that climate change analysis be completed in the basin plans, not through the permitting process. If climate change analysis is required on a per-project basis, we request that you accept the analysis included in the CEQA document for the project. 46.13

   c. (c) – Please reference that exemptions to providing the alternatives analysis are located in Section IV.B(3)(d). 46.14

   d. (d) – We request that you include a statement that if a project proposes to purchase mitigation credits from an approved mitigation bank or in-lieu fee program (ILF) to fulfill its mitigation requirement, that a draft compensatory mitigation plan will not be required. This is addressed in Appendix A, Subpart J, §230.94(c)(1)(i) and §230.94(c)(1)(ii) (lines 1282-1286 and 1295-1300, 46.15

respectively), however, including this in the main text of the Procedures will provide substantial clarity for applicants. 46.15 cont

e. Please also provide the mitigation preference included in Appendix A Subpart J §230.93(b) in the main text of the Procedures to clearly state that the Procedures continue the mitigation priority established by the U.S. EPA and USACE of: 1) Mitigation Banks, 2) ILF programs, and 3) Permittee Responsible Mitigation. 46.16

f. (d)(i) – The information required here would be contained in an approved watershed plan, please include the option to reference an approved watershed plan instead of duplicating the information provided in those plans. We also request that you indicate what scale of watershed should be considered by applicants when proposing a watershed approach for mitigation. Most of the information required here can be found on EcoAtlas.org. As EcoAtlas was developed using funding provided, in part, by the Water Board, and is under the oversight of the California Wetland Monitoring Workgroup, which is chaired by the Water Board, we recommend that you reference this tool here. 46.17 46.18

g. (d)(ii) – This subsection allows for mitigation that is located outside of the impacted watershed to be proposed; however, it also requires that the applicant describe how the proposed mitigation "does not cause a net loss of the overall abundance, diversity, and condition of aquatic resources, based on the watershed profile." While we appreciate that this allows for a fuller range of mitigation options, we request clarification as to how mitigation proposed outside of a watershed would be able to meet the needs of the profiled watershed. 46.19

h. (d)(v) – We request that buffers included in a mitigation plan also provide compensatory mitigation credits to the project, consistent with Appendix A, Subpart J §230.93(h)(2)(i). 46.20

i. (d)(vi) – This requirement is addressed in the Caltrans Statewide Stormwater Permit (Orders 2012-0011-DWQ, WQ 2001-006-EXEC, WQ 2014-0077-DWQ, WQ 2015-0036-EXEC, and 2015-0036-DWQ). We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement. 46.21

j. (e) – This requirement is included in Caltrans Statewide Construction General Permit (2012-006-DWQ), which covers all Caltrans construction activities. We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement. 46.22

k. (f) – We request that nursery or seed purchase locations be included as options to seed collection locations. 46.23

9) Section IV.B(2) – In addition to comment 4(a) above, we request clarification on the delineation and approval process for waters of the State that are not wetlands, such as those with an ordinary high water mark. 46.24

10) Section IV(B)(3) – We request that the least environmentally damaging practicable alternative (LEDPA) analysis requirement be waived for any project that meets the same criteria for a CWA 404 nationwide permit under the USACE's permitting program. The USACE only requires LEDPA-level analysis on projects that require a standard CWA 404 permit. Approximately 91% of Caltrans projects with impacts to waters of the United States, and therefore waters of the State as well, are permitted under the CWA 404 nationwide permit program and do not include a LEDPA analysis. The exemptions included in IV.B(3)(d) will only apply to Caltrans' emergency work as we do not utilize any of the nationwide permits that the Water Board has issued general orders for, with the exception of Nationwide Permit 6, for the initial surveys for projects. 46.25

Please note that an alternatives analysis under CEQA is only required for Environmental Impact Reports (EIR) and that most of Caltrans projects are lower level environmental documents [rather than an EIR] that only evaluate a build and no-build alternative. The additional requirement for a LEDPA and alternatives analysis on the 91% of projects that are not currently required to complete this level of analysis under the CWA would require a substantial increase in staff time and costs for transportation projects that have already gone through regional planning analysis, NEPA alternative analysis, and CEQA alternative analysis.

11) Section IV.B(5)(c) – We request that restoration and enhancement of aquatic resources to historic conditions be given equal weight as creation of new aquatic features in regions where conversion and degradation of aquatic resources, rather than loss, has caused a loss of functions and values of waters of the State. 46.26

12) Section IV.B(f) – Caltrans requests to be exempted from the financial security provision. Furnishing the forms of financial security identified in this section of the Procedures could conflict with Article XVI of the California Constitution, section 6, and Government Code section 16305.3. We request that you include an option for documenting financial security that governments can provide, such as a letter committing to payment, and documenting that funds are set aside for the purpose of completing mitigation. We have attached our current interim policy for providing similar financial assurances to the California Department of Fish and Wildlife to meet their requirements under California Fish and Game Code sections 2080.1 and 2081. 46.27

13) Section V – Definitions:
   a. Project Evaluation Area – The statement that "the size and location of the ecologically meaningful unit shall be based on a reasonable rationale" is subjective. We request that you provide rationale that applicants should use to determine an appropriate Project Evaluation Area to reduce the confusion and need to re-work. 46.28

14) Appendix A, Subpart A, §230.3 –
   a. (n) – Please change reference from "Policy" to "Procedures" to reflect the title of the Procedures for Discharges of Dredged or Fill Materials to Waters of the State. 46.29

   b. (q1) – We request that the definition of special aquatic sites be removed and replaced with the definition of waters of the State, including wetlands. Special aquatic sites are not included or otherwise identified as waters of the State, so it adds confusion to solely reference them in the appendices without identifying how they relate to waters of the State. 46.30

15) Appendix A, general – Please change all references to "General permits" to reflect that the board issues "General Orders." 46.31

16) Line 581 – There appears to be a typo where the word "nor" was used in place of the word "not." 46.32

We urge the Water Board to consider the costs of the proposed regulation on Caltrans, other state agencies, local partners, taxpayers, and other stakeholders. Please consider incorporating our recommendations and evaluate the anticipated benefits to aquatic resources in comparison with additional costs to implementing agencies. 46.33

If you have questions regarding these comments, please contact James Henke at (916) 651-8166.

Sincerely,

Katrina C. Pierce

Katrina C. Pierce
Chief, Division of Environmental Analysis

Enclosure
1) Interim Policy for Establishing Funding Assurance for Mitigation Requirements

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
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To: DISTRICT DEPUTY DIRECTORS
Environmental

Date: November 14, 2008

From: JAY NORVELL
Chief
Division of Environmental Analysis

Subject: Interim Policy for Establishing Funding Assurance for Mitigation Requirements

Effective immediately, the following interim policy is to establish funding assurance for mitigation requirements. This interim policy defines the procedures that provide an assurance of adequate funding to implement mitigation and monitoring measures as required by consistency determinations under California Fish and Game Code section 2080.1 (Consistency Determination) or for incidental take permits under California Fish and Game Code section 2081(Permit) or Streambed Alteration Agreements under California Fish and Game Code section 1602 (also referred to as Permit). This provides direction and guidance on how to communicate and document the Departments intent and assurance that the fiscal support to implement commitments made as part of our agreements with DFG are in fact available and programmed.

The attached guidance, "CALTRANS' programming and funding procedures" and the project specific procedures are to be followed when an application is submitted by CALTRANS for either a Consistency Determination or for a Permit. A template (Exhibit A) documents the intent to fully fund and execute the obligations agreed to in the Consistency Determination or Permit associated with the proposed project is also provided. Also attached are examples of letters that have been used to satisfy funding assurance purposes (Exhibit B).

We are currently working with DFG to develop a formal Memorandum of Understanding (MOU) between the two departments to formally recognize and adopt the process for providing assurances as described above. Until that MOU is complete, this interim policy shall guide funding assurance procedures.

Attachments

Guidance for Establishing Funding Assurance for Mitigation Requirements

I. BACKGROUND

When a proposed project will result in take of an endangered species, CALTRANS is required to obtain a Consistency Determination or a Permit from DFG pursuant to California Fish and Game Code sections 2080.1 and 2081. The Determination or Permit authorizes limited take as Caltrans constructs projects per its authority subject to the inclusive limitations and conditions including compensatory mitigation and monitoring to ensure anticipated take is not exceeded and actual take is fully mitigated. Streambed Alteration Agreements can also result in compensatory mitigation and monitoring requirements.

One of the requirements for obtaining either a Consistency Determination or a Permit is that the "applicant shall ensure adequate funding to implement the measures required . . ., and for monitoring compliance with, and effectiveness of, those measures", per Fish and Game Code §2081(b)(4). In the past, DFG has requested that this requirement be met by the issuance of an irrevocable letter of credit, a pledged savings account, an escrow account or another form of security. CALTRANS has not been able to meet this requirement based on the belief that the specific forms of security requested would violate Article XVI of the California Constitution, section 6, and Government Code section 16305.3. Although no project has failed to go forward because of this issue, the lack of timely issuance of the Consistency Determination or Permit has resulted in higher support costs by both Departments and threatened project funding and construction schedules.

II. PURPOSE OF INTERIM POLICY

The purpose of this guidance and policy is to set forth the programming and funding procedures used by CALTRANS as demonstrative of its commitment and accountability for the funding of conditions set forth in either a Consistency Determination or Permit. As to each specific application for a Consistency Determination or Permit, CALTRANS will provide DFG, by memorandum, the following information: brief project description and Expenditure Authorization (EA) number, program funding source, and the estimated cost of the mitigation and monitoring associated with the Consistency Determination or Permit (the estimated costs do not include costs associated with avoidance or minimization efforts). Exhibit A is the template memorandum to be transmitted to DFG with each application for a Consistency Determination or Permit and Exhibit B includes example letters.

Thus, this interim guidance and policy, along with the project specific memorandum, will provide DFG the assurance of adequate funding necessary for the timely issuance of either a Consistency Determination or a Permit.

III. CALTRANS PROJECT PROGRAMMING AND FUNDING

Each capital project begins by CALTRANS preparing a Project Initiation Document (PID) that contains a project scope, a capital and support cost estimate for each alternative, and a project work plan. The cost estimate includes the anticipated costs of environmental studies, mitigation, and monitoring. Once the project is programmed, the California Transportation Commission (CTC) allocates project environmental analysis and preliminary project design funds based upon the project scope and cost estimates in the PID that include anticipated mitigation and monitoring costs. As the project develops and is further evaluated during the Environmental Document Phase and PS&E, commitments to avoid, minimize, mitigate and monitor are made in consultation with DFG and documented in the Consistency Determination or Permit. These commitments are then to be carried out as part of construction of the project. As the project moves through the development process, the PDT should communicate and measure the obligations and cost estimate to make sure the appropriate funding is allocated/programmed for mitigation activities.

If programming and/or funding adjustments are necessary during the life of a project, the project change control process must be followed. A request for change is reviewed by CALTRANS Headquarters Management and the Environmental Division Chief for consistency with environmental commitments. If the proposed change request includes changing environmental commitments, it must be documented with the consultation and concurrence of the applicable resource agencies, and, if necessary, additional environmental studies and documentation.

In addition to the above outlined CALTRANS project development process, on non-delegated projects, the Federal Highway Administration (FHWA) reviews, approves and periodically audits CALTRANS environmental and fiscal commitments. Any failure to meet these obligations may result in the loss of federal funds.

CALTRANS' project development process, along with the programming allocations of the CTC and the oversight role of FHWA, ensures that projects are constructed in their entirety, including environmental mitigation, and that the projects are adequately funded for those purposes.

IV. IMPLEMENTATION OF INTERIM Guidance and POLICY

CALTRANS will provide DFG the following information (See exhibit A & B) for each project that requires a Consistency Determination or Permit: brief project description and Expenditure Authorization (EA) number, program funding source, and the estimated cost of the mitigation and monitoring associated with the Consistency Determination or Permit (the estimated costs do not include costs associated with avoidance or minimization).

A formal Memorandum of Understanding (MOU) between the two departments to formally recognize and adopt the process for providing assurances as described above is

under development. Until that MOU is complete, this interim guidance and policy shall guide funding assurance procedures.

Exhibit A

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-5266
FAX (916) 654-6608
TTY 711

Flex your power!
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Date

Address

Dear :

Subject: Funding assurance for the (Insert Project Name Here) Proposed Compensatory Mitigation

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted for the Streambed Alteration Agreement/Incidental Take Permit (2080.1 and 2081 CFGC) proposed compensatory mitigation associated with the construction of the Insert Project Name.
Caltrans acknowledges its obligation to comply with requirements of the Streambed Alteration Agreement/Incidental Take Permit which will be issued pursuant to Fish and Game Code section 1602/2080.1/2081 by the DFG.. As set forth therein, in order to mitigate for impacts to describe resource(s) that may be associated with the construction of the project name, Caltrans proposes to provide funding, up to insert dollar amount, to implement describe mitigation.

The _____ Project is programmed in the identify funding source/program in fiscal year XX/XX. For SHOPP projects, include the following: The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2008 SHOPP is a four-year program of projects for Fiscal Years 2008/09 through 2011/12.
Describe the status of authorized or obligated funds for the project

Caltrans looks forward to working with DFG to further plan, design and implement the measures necessary in order to satisfy Caltrans mitigation obligations and thereby mitigate our impacts to sensitive resources that may be associated with the construction of the Project Name. (this may not apply to all projects, especially, if it works out w/ CWF)

This letter is intended to formally acknowledge our legal obligation to comply

with the proposed mitigation described above. Caltrans kindly request that DFG provide written acknowledgement that this letter meets the required funding assurance obligations and provide the Consistency Determination/Streambed Alteration Agreement/Incidental Take Permit in a timely manner.

Sincerely,

CURRENT DIRECTOR
Director

c: (These names appear on the original letter and all copies of the original letter.)

bc: (These names do not appear on the original but only on copies of the original.)

Author's name/typist's initials (only show on file copies)

Exhibit B

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: Scott Wilson, Senior Environmental Scientist
California Department of Fish & Game
P.O. Box 47
Yountville, CA 94599

Date: June 26, 2006

File: 1-MEN-1-PM 69.4/70.1
Ten Mile River Bridge
01 - 385701

Original signed by

From: CHARLES C. FIELDER
District Director

Subject: Funding assurance for the CESA consultation for the Ten Mile River Bridge Seismic Project

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted as well as allocated to mitigate for the take of the State listed endangered coho salmon that may be associated with the construction of the Ten Mile River Bridge Seismic Project in Mendocino County. In fact, Four Hundred Thousand Dollars ($400,000) has been set aside under a separate expenditure authorization number in the State Highway Account for a separate mitigation project to meet our mitigation obligations described herein.

Caltrans acknowledges its legal obligation to mitigate for take of the State listed endangered coho salmon that may result from construction of the Ten Mile River Bridge Seismic Project. As required by the June 9, 2006, National Marine Fisheries Service's (NMFS) biological opinion No: 151422SWR2004SR8263:GRS, in order to fulfill DFG's mitigation requirements under the California Endangered Species Act, Caltrans proposes to provide funding, up to Four Hundred Thousand Dollars ($400,000), to facilitate a fish passage project at one of the following three locations on route 1 in Mendocino County:

- Dunn Creek at Post Mile 92.83
- An unnamed tributary to Cottaneva Creek at Post Mile 89.20
- An unnamed tributary to Cottaneva Creek at Post Mile 88.71

In addition to placing the Four Hundred Thousand Dollars ($400,000) under a separate expenditure authorization account number, Caltrans has also programmed a mitigation project to facilitate fish passage at one of the above-noted locations on Route 1 in Mendocino County. The mitigation project has been programmed in Fiscal Year 2009/10 in the 2006 State Highway Operation and Protection Program (SHOPP). The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2006 SHOPP is a four-year program of projects for Fiscal Years 2006/07 through 2009/10 and is being updated to include the mitigation project.

Caltrans remains committed to fulfill our legal obligations and thereby satisfy the requirements of DFG's Consistency Determination. Furthermore, Caltrans looks forward to working with DFG to select one of three locations described above on Route 1 in Mendocino County to implement a mitigation project which will facilitate fish passages that will satisfy our obligation to mitigate for the take of the State listed endangered coho salmon that may be associated with the construction of the Ten Mile River Bridge Seismic Project. Furthermore, should the funding which has been allocated for this obligation become unavailable due to circumstances beyond Caltrans' control, Caltrans will consult with DFG and continue to seek funding within our statutory authority.

The Ten Mile River Bridge Seismic Project is of great importance to Caltrans and we kindly request that DFG provide written acknowledgement that this memo meets the required funding assurance obligation.

c: Alan Escarda, Project Manager
Lena Ashley, Chief, North Region Environmental Services - North

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23360
OAKLAND, CA 94612
PHONE (510) 286-5900
FAX (510) 286-5903
TTY (800) 735-2929

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July 6, 2006

Robert W. Floerke, Regional Manager
Department of Fish and Game, Central Coastal Region
P. O. Box 47
Yountville, CA 94599

Subject: Funding assurance for the Russian River Bridge Replacement at Geyserville

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville and thereby satisfy the requirements of the Streambed Alteration Agreement, issued by the DFG on March 14, 2006, amended on May 24, 2006 and amended again on June 30, 2006, specifically Condition #5 of the Streambed Alteration Agreement Amendment #2, issued June 30, 2006.

Caltrans acknowledges its obligation to comply with requirements of the Streambed Alteration Agreement which was issued pursuant to Fish and Game Code section 1602 by the DFG on March 14, 2006, amended on May 24, 2006 and amended again on June 30, 2006. As set forth therein, in order to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville, Caltrans proposes to provide funding, up to Two Million and Five Hundred Thousand Dollars ($2,500,000), to implement fisheries enhancement projects in the Russian River Basin.

The Russian River Bridge Project is programmed in the 2006 State Highway Operation and Protection Program (SHOPP) in fiscal year 06/07. The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2006 SHOPP is a four-year program of projects for Fiscal Years 2006/07 through 2009/10. The Russian River Bridge Project will be funded with Emergency Relief Funds.

Caltrans has submitted a Damage Assessment Form to Federal Highway Administration for Emergency Relief Funds for the Russian River Bridge Replacement Project. Of the Emergency Relief Funds requested, Two Million and Five Hundred Thousand Dollars ($2,500,000.00) was included to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge project.

On February 17, 2006, Caltrans received the Federal Highway Administration's authorization to proceed which thereby obligates and commits Federal funds to the Russian River Bridge Project. Therefore, up to Two Million and Five Hundred Thousand Dollars ($2,500,000.00) will be committed to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville as required by the Streambed Alteration Agreement issued by the DFG on March 14, 2006, amended May 24, 2006 and amended again June 30, 2006.

Caltrans looks forward to working with DFG to select the the fisheries enhancement projects that will be planned, designed and implemented in order to satisfy Caltrans mitigation obligations and thereby mitigate our impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge. Due to statutory requirements and other constitutional limitations, the Department is unable to issue a check in the amount of Two Million and Five Hundred Thousand Dollars ($2,500,000.00) directly to DFG by July 14, 2006. However, the Department does look forward to entering into an agreement with DFG to define the role of each agency in implementing the fisheries enhancement projects to satisfy Caltrans' mitigation obligations.

Caltrans acknowledge our legal obligation to comply with California Fish and Game Code section 1600 et. seq.
Caltrans kindly request that DFG provide written acknowledgement that this letter meets the required funding assurance obligations required pursuant to the Streambed Alteration Agreement issued by the DFG on March 14, 2006, amended May 24, 2006 and amended again June 30, 2006, specifically Condition 5 of that second amendment.