

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND THE
U.S. FISH AND WILDLIFE SERVICE

A. PURPOSE

The purpose of this Memorandum of Understanding is to establish procedures for the early and continuous coordination of transportation project development activities between the California Department of Transportation, hereinafter referred to as CALTRANS, and the U.S. Fish and Wildlife Service, hereinafter referred to as the SERVICE. A significant number of CALTRANS projects involve Federal funds or other Federal approvals. This Memorandum is to insure that California transportation projects are planned, designed and constructed in conformance with applicable Federal laws, policies, and guidelines relating to the protection of fish and wildlife resources, including but not limited to Executive Orders 11988 and 11990, Section 404 of the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the Migratory Bird Treaty Act.

Specifically, this Memorandum is intended to:

- 1) enable CALTRANS to reduce project delivery time and to save staff time and resources by improving and providing more predictable coordination,
- 2) enable CALTRANS to fully incorporate fish and wildlife resource concerns early into the development of project alternatives,
- 3) avoid conflict at the later permit application stages by coordinating more closely during the earlier project plan formulation stages,
- 4) provide sufficient information to the SERVICE for the analysis of project effects and development of appropriate mitigative measures,
- 5) conserve personnel resources by focusing SERVICE attention on projects that would most affect fish and wildlife resources,
- 6) provide a mechanism to expedite project coordination when necessary,

- 7) provide procedures for resolving disputes, and
- 8) set up a mechanism for development of planning guidelines.

CALTRANS MISSION AND NEED

CALTRANS' principal mission is to provide and support safe, efficient, and effective transportation facilities and services that meet in a timely manner, the social, economic and environmental needs of California. As part of this mission, CALTRANS plans, designs, constructs, operates, and maintains the transportation system for which it is statutorily responsible. In the development of the State's transportation programs and projects, all environmental, social, and economic effects are to be considered along with the technical issues, and final transportation decisions are to be made in the best overall public interest. CALTRANS selects alternatives that serve the essential transportation needs while causing the least overall environmental damage. CALTRANS mitigates, to the extent socially and economically feasible, or as required by law, any unavoidable adverse environmental impacts associated with the selected alternative. In fulfilling this mission, CALTRANS must provide transportation solutions within a reasonable timeframe.

SERVICE MISSION AND NEED

The Fish and Wildlife Service mission is to protect, conserve and, where possible, enhance fish and wildlife and their habitats for the continuing benefit of the public. The goal of SERVICE involvement with land and water resource development activities is to ensure that fish and wildlife resources receive equal consideration in the planning process through effective and harmonious planning. The SERVICE maintains a cadre of experts in the fish and wildlife disciplines and is often in a position to develop information and/or provide technical assistance to development entities to aid them in meeting their environmental requirements. Data developed by the SERVICE are also used in the project decision-making process. As used here and elsewhere in this document, the term fish and wildlife resources is intended to include fish, wildlife, listed threatened or endangered species (including plants), and their habitats.

CALTRANS and the SERVICE recognize a mutual responsibility to prevent or mitigate significant adverse effects on fish and wildlife resources in the planning and construction of transportation facilities, and to pursue opportunities for the enhancement of those resources insofar as the constraints of each agency (funding, authority, etc.) permit.

B. IN EFFECTING THIS UNDERSTANDING

1. CALTRANS will:

- a. be responsible for the overall planning, design and construction of transportation projects;
- b. request input from the SERVICE in the early development of project alternative solutions, in the evaluation of environmental impacts of alternatives, and in the development of recommended mitigation measures;
- c. incorporate SERVICE input received into the applicable environmental documents, as appropriate, and will fully consider such input in selecting a transportation solution;
- d. request and fund the SERVICE as needed to provide technical assistance, undertake technical studies of project impacts, prepare mitigation concepts, etc., on a reimbursable basis;
- e. seek the prior input of the SERVICE concerning design and construction changes made after the finalization of the applicable environmental documents whenever fish and wildlife resources may be affected.

2. The SERVICE will when requested:

- a. Assist CALTRANS in the timely development of transportation projects that will avoid, minimize and/or mitigate adverse effects on fish and wildlife resources. Such assistance may include, but not be limited to:
 - i). participating as a project study team member,
 - ii). responding to formal project notices,
 - iii). providing technical input on project alternatives,
 - iv). participating as a cooperating agency under the National Environmental Policy Act when mutually agreeable,
 - v). conducting or reviewing technical studies of biological resources potentially affected by project alternatives,
 - vi). reviewing Scopes of Work or proposed contracts for the development of environmental and fish and wildlife resource information,

- vii). analyzing impacts or reviewing assessments of impacts to fish and wildlife resources for various project alternatives,
- viii). providing technical assistance in mitigation design,
- ix). attending project meetings and field reviews,
- x). preparing project fish and wildlife resource reports, and
- xi). commenting on project environmental documents.

C. GENERAL PROVISIONS

1. All coordination, assistance and services rendered under this Memorandum will be carried out in full compliance with the objectives, policies and responsibilities of both agencies. Nothing in this Memorandum shall abrogate the responsibilities of either agency as defined by Federal or State law, statute or regulation. Further, nothing in this Memorandum shall abrogate the need for both agencies to coordinate with the California Department of Fish and Game on fish and wildlife resource matters under various statutes, procedures, and agreements.
2. The extent to which the SERVICE will be able to participate, undertake technical studies, or provide expedited reviews falling within the terms of this Memorandum will depend upon the availability of funds and personnel. By mutual agreement, funds may be transferred by CALTRANS to the SERVICE on a reimbursable basis for work performed for this purpose. Technical assistance undertaken under this provision will be implemented after a mutually agreeable work plan is developed which sets forth the work to be accomplished, level of funding, personnel requirements and respective agency responsibilities. In order to staff and plan for substantial SERVICE efforts, it is essential that work be programmed as far in advance as possible.
3. Irrespective of No. 2. above, personnel of both agencies are expected to provide project and planning information, routine advice and assistance to one another in keeping with their regularly funded programs insofar as possible. Advance programming or a transfer of funds between CALTRANS and the SERVICE shall generally not be required for this purpose.
4. The parties to this Memorandum agree to exchange information and consult with each other prior to implementing plans, programs or activities that may affect the ability of the other agency to perform under this Memorandum.

5. Technical information reports prepared by the SERVICE under contract to CALTRANS will be provided to CALTRANS for publication or public release purposes. The SERVICE may release such reports with CALTRANS approval or after notifying CALTRANS of SERVICE intent to do so. Other formal, draft and final review or comment reports or documents prepared on CALTRANS projects by the SERVICE under the authority of the various Federal laws encompassed by this Memorandum, irrespective of funding source, will be released or published under the editorial review and release policies of the SERVICE.

D. SPECIFIC COORDINATION POLICIES AND PROCEDURES

1. CALTRANS uses a staged approach in its planning process which fits well into the SERVICE standard environmental impact/environmental review process. This staged approach and the role the SERVICE would play in the process under ideal conditions of funding and staffing are described in Appendix A. It should be recognized, however, that not all of the planning and construction activities of CALTRANS fit neatly into this mold. For example, not all CALTRANS projects will involve the preparation of an EIS/EIR yet SERVICE involvement will still be warranted. It should also be recognized that not all CALTRANS projects warrant the attention of the SERVICE either because of minimal resource values being involved or because project impacts are expected to be insignificant. Flexibility will be required to ensure the smoothest possible coordination of agency interests. SERVICE involvement will depend on the level of resource concern and/or the needs of CALTRANS for SERVICE assistance.

As can be seen from the procedure described in Appendix A, the level of detail in information exchanged will be tailored to the needs of the specific project planning stage.

2. Generally, the approach used to evaluate projects will be based upon habitat values to an array of the fish and wildlife resources that would be impacted. Implementation of the SERVICE's Habitat Evaluation Procedures (for other than threatened or endangered species issues) is highly recommended in areas where appropriate species models are available or can be readily developed, and if otherwise warranted. However, other evaluation approaches that are mutually agreeable may also be used when appropriate.
3. Mitigation measures for project impacts should be implemented as close to the project impact area as practicable. Mitigation measures will be maintained and lands set aside generally in perpetuity. The SERVICE's

Mitigation Policy will be used as a guide for mitigation determinations.

4. Backlog of Projects: As soon as practical after this Memorandum becomes effective, CALTRANS will prepare a package of information for each project with potential fish and wildlife concerns for which planning has proceeded beyond initiation of the first planning stage described in Appendix A. The SERVICE and CALTRANS will agree on the appropriate interaction between the agencies for each of these projects to best fulfill the intent of the Memorandum. The SERVICE and CALTRANS will strive to resolve all resource concerns on these projects in order to avoid delaying the project schedule.

E. ROUTINE COORDINATION

1. The signatories agree to meet at least once annually to review progress under this Memorandum, to consider possible improvements of its provisions, and to discuss policy issues.
2. There shall be established a work group that will meet at least quarterly. The group shall consist of agency representatives appointed by the signatories. Other non-signatory agencies may be asked to participate in the work group as appropriate. The purposes of the work group are to seek more efficient ways to accomplish the objectives of each agency, to initiate long-term conceptual planning, to develop better understanding and communication between agency staffs, and to attempt to resolve issues and answer questions which might arise during specific project planning. Specific charges to the work group will include:
 - a) development of best management and construction practices and planning criteria;
 - b) investigation of possible Regional or General Permits for CALTRANS work;
 - c) development of a list of project types which are below the threshold of SERVICE interest;
 - d) investigation of standard approaches to mitigation; and
 - e) serving as staff to the signatories in implementing provisions of this Memorandum.
3. Either the signatories or the work group can and should meet more often if the need arises. Either agency should feel free to request such meetings but should provide as much advance notice to the other party as possible.

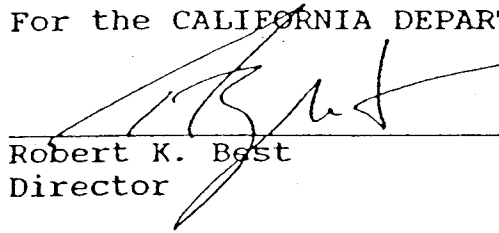
F. ISSUE RESOLUTION

Primary contacts for carrying out provisions of this Memorandum will reside with the CALTRANS District project manager or environmental staff and the SERVICE field biologist. Where consultations between CALTRANS and the SERVICE at the field level identify areas of disagreement over potential project alternatives, project impacts or appropriate mitigation measures, the CALTRANS District Director will consult with the SERVICE Field Supervisor to seek resolution. If agreement cannot be reached, the issue will be referred to the CALTRANS Director and the SERVICE Regional Director for resolution. It is recognized that, for projects which receive Federal funding, the Federal funding agency will be a party to issue resolution.

G. EFFECTIVE DATE, TERMINATION OR MODIFICATION

This Memorandum of Understanding will become effective when approved by the CALTRANS Director and the SERVICE Regional Director and shall continue in force and effect until terminated by either party. This Memorandum may be amended by mutual consent of the signatory parties.

For the CALIFORNIA DEPARTMENT OF TRANSPORTATION



Robert K. Best
Director

11/7/88

Date

For the UNITED STATES
FISH AND WILDLIFE SERVICE



Acting Regional Director

1 November 1988

Date

SERVICE INVOLVEMENT IN CALTRANS PLANNING ACTIVITIES

CALTRANS PLANNING ACTIVITY

SERVICE EFFORT

1. Project Study Report Stage.
Potential project is under consideration. CALTRANS District office will prepare a report that displays the perceived need and an array of alternatives to meet that need. There is no determination of feasibility. A proposed plan of study and planning schedule is included. CALTRANS will provide a copy of the Project Study Report to the SERVICE.

Reconnaissance Level Studies.
Generally, SERVICE input is not required until the Project Study Report is received. At that time, the SERVICE would provide a reconnaissance report that describes in general terms the fish and wildlife resources that may be involved, a cursory screening of the alternatives under consideration, and recommendations for needed studies. Notification of threatened and endangered species that might occur in the area or affected by the action will also be included. SERVICE input will be based on existing available data. The SERVICE will attempt to provide comment within 30 days of receipt of the Project Study Report.

- II. Environmental Documentation Stage (Project Planning). This is the major planning stage for CALTRANS projects. It generally begins with some form of notice of initiation of the planning study. If an EIS/EIR is going to be required, this stage begins with a NEPA Notice of Intent and a scoping meeting and culminates in a draft EIS/EIR. The SERVICE will be advised of study commencement. At the onset a project study team is formed, necessary studies are conducted, impacts of the various alternatives are evaluated, conceptual mitigation plans developed, and the draft EIS/EIR prepared and circulated. The SERVICE's draft detailed project impact

Feasibility Level Studies.
The SERVICE could, at its discretion, participate as a member of the project study team and/or become a Cooperating Agency upon request. This will generally be the case when significant fish and wildlife resources are involved. During this stage, the SERVICE will provide detailed information on project area fish and wildlife resources (or will review detailed resource information developed by others for CALTRANS), and will provide an analysis of project effects, and recommendations for mitigation of impacts to fish and wildlife resources. The

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report will be included in the draft EIS/EIR. CALTRANS will request a list of threatened/endangered species that may be affected by the proposed project and will prepare a Biological Assessment pursuant to Section 7 (c) of the Endangered Species Act.

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SERVICE may be funded by CALTRANS to conduct such studies themselves, or may utilize data gathered by others. If CALTRANS elects to contract with others for development of environmental data, the SERVICE will be afforded prior opportunity to review the Scope of Work and proposed contract. The final product of the SERVICE in this planning stage will be a draft detailed project impact report (equivalent to a draft Fish and Wildlife Coordination Act report); this should be provided at least 60 days prior to the scheduled release of the CALTRANS draft EIS/EIR. However, prior to release of the formal draft report, a working draft will be provided to CALTRANS for a 30 day informal review and comment. The SERVICE will provide a list of threatened/endangered species that may occur in the project area or be affected by the proposed project and will review any Endangered Species Biological Assessment during this stage.

III. Final Documentation Stage.

CALTRANS will, after receiving comments on the draft EIS/EIR and Endangered Species Biological Assessment, select the alternative to be implemented, formally respond to SERVICE recommendations, finalize their mitigation plan concept and prepare the Final EIS/EIR. CALTRANS will finalize the Endangered Species Biological Assessment and forward it to the Federal funding or regulatory agency as appropriate. Formal consultation must be requested by the

The SERVICE will, after receiving the CALTRANS response to its recommendations, prepare a final detailed project impact report with complete and specific mitigation recommendations. If there are unresolved differences, the issue resolution process should be initiated prior to release of the final report. The final report should be provided at least 60 days prior to the release of the CALTRANS Final EIS/EIR. Formal Endangered Species Biological Opinions

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responsible Federal agency if listed species may be adversely affected. The SERVICE's final detailed project impact report and Endangered Species Biological Opinion will be included in the final EIS/EIR.

IV. Final Design Stage

Plans, specifications and cost estimates are prepared by CALTRANS at this stage and any final design changes are made. CALTRANS screens design changes for potential impacts to fish and wildlife resources and advises SERVICE when impacts are expected. Plans and specifications will be provided to the SERVICE upon request. If necessary, Corps of Engineers permits are applied for at this stage.

V. Project Construction Stage.

CALTRANS will construct the project and implement the project mitigation plan. Any changes in the project that may affect fish and wildlife resources or any proposed changes in the mitigation plan will be coordinated fully with the SERVICE.

VI. Post Project Construction Stage.

CALTRANS will monitor the impact of the project as constructed and the success of the project mitigation plan as required. Reports will be provided to the SERVICE and remedial measures implemented per SERVICE recommendations should the need arise.

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under Section 7 of the Endangered Species Act will be provided to CALTRANS and the responsible Federal funding and/or regulatory agency at this time consistent with Service release guidelines.

The SERVICE will continue its coordination in the event final design changes are required. The SERVICE will review and comment as appropriate on subsequent Corps of Engineers permit applications.

The SERVICE will provide timely technical advice as necessary on the mitigation plan or on project changes.

The SERVICE will review the monitoring reports on the impacts of the project as constructed to ascertain if impacts were as predicted. The SERVICE will also review the monitoring reports on the mitigation plan to determine if the plan is meeting its intended objectives. The SERVICE will recommend remedial measures as warranted.