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May 26, 2009

The Honorable Mike Eng
California State Assembly
State Capitol, Room 4140
Sacramento, CA 95814

Dear Assembly Member Eng:

Thank you for your letter requesting that the California Department of Transportation (Caltrans) administratively adopt the fish barrier remediation requirements presented in Assembly Bill (AB) 1189 (Skinner, 2009). As you are aware, Caltrans bears a serious commitment to integrate transportation responsibilities and the stewardship of California's natural resources, particularly fish resources, which are an important component of California's heritage and economy. To this end, Caltrans has put forth significant effort assessing the remediating migratory fish barriers on the State Highway System. To date, Caltrans has conducted more than 6,000 fish passage assessments, retrofitted 17 culverts, and incorporated remediation into the project design of roughly 40 projects that are in project development. Caltrans continues to work closely with the California Department of Fish and Game (DFG) to locate, prioritize, and remediate critical barriers in an effort to protect and enhance migratory fish populations in California.

Caltrans will adopt the following requirements contained in AB 1189 (Skinner, 2009) and agrees to:

1. Revise Caltrans' annual report provided pursuant to Senate Bill 857 (Kuehl, 2006) to include projects programmed between January 1, 2006, and the date covered by the annual report, the location of remediations, and a schedule for the remediation of existing fish barriers to the extent that project programming and funding allows.
2. Use the definition of a "project," for the purposes of remediating fish passage barriers, to include any programmed construction action that is State or federally funded, including new construction, rehabilitations, repairs, retrofits, alterations, or maintenance projects programmed for funding through either the State Transportation Improvement Program or the State Highway Operation and Protection Program.
3. Use the definition of a "barrier," for the purpose of fish barrier remediation, to mean a complete or partial anadromous fish passage barrier to any life stage, as defined in the DFG manual, "Fish Passage Evaluation at Stream Crossings."

4. Assess culverts directly affected by projects for potential fish passage barriers and provide relevant remediation data to project design for any project, when the project directly affects a stream crossing on a stream where anadromous fish are or were historically found.
5. Submit the results of project-related fish passage barrier assessments to DFG so it can enter the data into the Passage Assessment Database (PAD).
6. Develop remediation plans in consultation with DFG.
7. Design remediation elements during the project design phase.
8. Construct remediation elements.
9. Provide notice to DFG when barriers are remediated.
10. Continue assessing nonproject-related culverts through the use of grant funding to assist long-range planning efforts.
11. Work with DFG to jointly identify high-priority, transportation-related fish barriers by July 1, 2010, and annually thereafter.
12. Use available federal funds received pursuant to the American Recovery and Reinvestment Act of 2009 to remediate fish barriers, to the extent permitted under federal law.

Caltrans conducts fish passage barrier assessments using the DFG assessment protocol with adjustments, as needed, to obtain rights of entry (ROE) on private lands. ROEs typically take significant time to obtain and often delay assessments due to legal requirements needed to secure and adhere to ROE permits. It is not uncommon for ROEs to be denied by the property owner. Where complete redesign of a culvert is desired, detailed assessment of the old culvert is unnecessary, because the new culvert will be designed to current standards. This ensures that it does not present a barrier to fish passage for all relevant species and life stages according to Caltrans' design manual, "Fish Passage Design for Road Crossings." Specific knowledge of the problems created by the removed culvert is then irrelevant.

Caltrans will continue working with DFG to develop administrative procedures to assure that early notification of programmed projects is provided to DFG and reaches relevant DFG fisheries management staff. Caltrans will provide the data to DFG so that DFG can enter the fish passage assessment data into PAD along with fish passage remediation completion data.

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Caltrans appreciates the opportunity to work with you and Assembly Member Skinner on this important issue. If you have any questions, or need additional information, please contact me at (916) 654-5267, or Jay Norvell, Chief, Division of Environmental Analysis at (916) 653-7136.

Sincerely,



WILL KEMPTON
Director

- c: The Honorable Nancy Skinner, Assembly Member, 14th District
Assembly Transportation Committee
Assembly Natural Resources Committee
Don Koch, Director, Department of Fish and Game
Jay Norvell, Chief, Division of Environmental Analysis ✓