Will Kempton, Director  
California Department of Transportation  
P.O. Box 942874  
Sacramento, CA 94274

Attention: Jay Norvell, Chief, Division of Environmental Analysis  

Dear Mr. Kempton:

SUBJECT: Transmittal of Signed Final Dispute Resolution Process Flowchart

The Federal Highway Administration (FHWA) in cooperation with California Department of Transportation, and U.S. Fish and Wildlife Service is pleased to distribute the final version of the dispute resolution process flowchart and elevation ladder. The dispute resolution flowchart has been signed by all parties and is now effective. FHWA thanks you for your participation and effort in developing and refining this project streamlining tool. Please find enclosed an original signed copy for your records. In addition an electronic version including signatures will be distributed via email.

If you have any questions, please contact Dave Tedrick, Environmental Program Coordinator at (916) 498-5024 or via email to david.tedrick@fhwa.dot.gov

Sincerely,

For  
Gene K. Fong  
Division Administrator

Enclosure # S49567

BUCKLE UP AMERICA
SUBJECT: Joint Memorandum for the Dispute Resolution Process (DRP)

Attached is the flow chart and elevation ladder for the DRP that staffs from the three signatory agencies have been working on for several months. It is believed that this process will expedite Section 7 consultations pursuant to the Endangered Species Act.

Once all signatory parties have signed this memorandum, this process will be effective immediately.

Gene K. Fong  
California Division Administrator  
Federal Highway Administration  

[Signature]  
Date 9/6/06

Acting  
Steve Thompson  
California/Nevada Operations Manager  
U.S. Fish and Wildlife Service  

[Signature]  
Date 10/23/06

Will Kempton  
Director  
California Department of Transportation  

[Signature]  
Date 10/3/06

Attachment
FWS agrees to incorporate substantial comments.

FHWA provides FWS a Response on Draft BO (consultation timeframe is extended proportional to FHWA review time).

90 Day Milestone - Complete Basic Consultation

Final BO is issued by FWS.

**** Begin Dispute Resolution

FHWA agrees that the BO relied on the best scientific information available, and that the Terms and Conditions in the Incidental Take Statement comply with the minor change provision, and are implementable under FHWA’s legal authority and jurisdiction.

FHWA requests draft Biological Opinion to FHWA Caltrans.

Continuing from Page 1.

45 Days

FHWA provides a Response on Draft BO.

FWS agrees to incorporate substantial comments.

FHWA agrees that the BO relied on the best scientific information available, and that the Terms and Conditions in the Incidental Take Statement comply with the minor change provision, and are implementable under FHWA’s legal authority and jurisdiction.

Final BO is issued by FWS.

**** Begin Dispute Resolution

FHWA agrees that the BO relied on the best scientific information available, and that the Terms and Conditions in the Incidental Take Statement comply with the minor change provision, and are implementable under FHWA’s legal authority and jurisdiction.

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Reinitiate upon new Information (if necessary).
Dispute Resolution Process for ESA Section 7 Consultations
Elevation Ladder and Decision Points*

Begin Dispute Resolution

FHWA, Caltrans or FWS inform (email or letter) each other of specific disagreement needing elevation

Issue Clarified and Informal Solutions Sought within 7 calendar days

Informal Solution Found

No

Yes

Staff Prepare a Joint/ Separate Issue Memo to Clarify positions and any timeline concerns **

1st level management Reviews and seeks Solution within 14 calendar days

1st Level Management Decision Found

No

Yes

1st Level Mgrs Prepare a Joint Issue Memo to Clarify Issues, document timeline agreements, and Brief 2nd Level Managers

2nd level management Reviews and seeks Solution within 14 calendar days

2nd Level Management Decision Found

No

Yes

2nd Level Mgrs Prepare a Joint Issue Memo to Clarify Issues and Brief 3rd Level Managers

3rd level management Reviews and Makes Decision in 14 calendar days

Solutions Documented (i.e. meeting minutes) including decisions, action items, and timelines

Resume Consultation

The positions of responsibility for each level of management decision-making in this resolution page are referenced in the dispute resolution ladder.

** Once the dispute resolution process reaches 1st level management, the time taken to resolve any outstanding issues will not be counted against the overall 135 day timeframe to complete the biological opinion. The biological opinion timeframe will be extended proportional to the time required during the dispute resolution process.
FHWA California Division - USFWS California Nevada Operations Office - California Department of Transportation
Dispute Resolution Process for ESA Section 7 Consultations

This elevation process is not a substitute for the proper interaction and proactive resolution of issues by staff at the working level. However, if the parties cannot agree on the level of information needed to resolve a consultation at the 30 day letter stage, or if consultation deadlines are exceeded - 135 days* for formal consultations, 60 days for appending to a programmatic B.O., or 60 days for an informal consultation -- then disputes should be quickly and automatically elevated.

* Or extended time agreed to by FHWA.

### Dispute Resolution Ladder

<table>
<thead>
<tr>
<th>Levels</th>
<th>USFWS</th>
<th>Caltrans</th>
<th>FHWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Assistant Field Supervisor or Designee</td>
<td>Office Chief or Project Manager</td>
<td>Team Leader</td>
</tr>
<tr>
<td>1</td>
<td>Field Supervisor</td>
<td>District Director or District Environmental Division Chief</td>
<td>Director, Project Development &amp; Environment</td>
</tr>
<tr>
<td>2</td>
<td>CNO Assistant Manager followed by the CNO Operations Manager or Designee</td>
<td>Chief Environmental Planner or Designee</td>
<td>Division Administrator or Designee</td>
</tr>
<tr>
<td>3</td>
<td>Assistant Director, Endangered Species or Designee</td>
<td>Director or Designee</td>
<td>Associate Administrator for Planning, Environment and Realty or Designee</td>
</tr>
</tbody>
</table>

#### Assumptions:

1) This is not intended to be a communication process or replace problem-solving and communications at project team level.
2) Staff are expected to communicate in an open and timely fashion, and do their best to resolve issues before escalating.
3) It is envisioned that most issues will be resolved at the first two levels.
4) Discussion Papers will be prepared for all issues that are elevated to the next level. The papers should clearly communicate positions of all sides, present all the alternatives identified, and discuss advantages and disadvantages of each. Agreement of any extension of time for consultation or information gathering should also be expressed in the Issue Memo.
5) Time to elevate is from the day one party concludes (and notifies the others) there is a disagreement which cannot be reconciled at their level and includes the time to prepare brief issue paper(s) on the matter. The issue paper(s) should state both sides and others must have a chance to review.
6) As necessary, each agency may call upon experts to assist with resolution of any issue.
7) At the 1st level alternative resolution options or solutions could be employed. If an impasse at the 2nd level occurs, the process recognizes the need to elevate to Washington D.C.
8) Resolution must be documented and available for future reference.

* The CNO Assistant Manager will first review and seek to resolve issues prior to elevation up to CNO Operations Manager. This will not affect the set timeframes established for the dispute resolution process.