

**FIELD LEVEL AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
AND
THE U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO FIELD OFFICE
CONCERNING INTERAGENCY COOPERATION
FOR REGULATORY PROGRAM ACTIVITIES**

The U.S. Army Corps of Engineers, Sacramento District and U.S. Fish and Wildlife Service, Sacramento Field Office, hereby establish local policy for implementing supplemental interagency cooperation procedures for activities requiring a Department of the Army permit under the Regulatory Program that may affect federally listed endangered and threatened species and designated critical habitat in the Central Valley and Western Sierra Nevada of California.

1. Background

The U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service share responsibility for coordinating fish and wildlife conservation and consulting on federally listed threatened and endangered species and critical habitat that may be affected by federal actions. The U.S. Army Corps of Engineers issues Department of the Army permits for activities under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Under Section 7 of the federal Endangered Species Act and its own regulations, the U.S. Army Corps of Engineers, in consultation with and with the assistance of the U.S. Fish and Wildlife Service, must ensure that any activity it authorizes is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The federal Fish and Wildlife Coordination Act requires the U.S. Army Corps of Engineers to consult with the U.S. Fish and Wildlife Service regarding impacts on fish and wildlife resources and measures to mitigate the impacts. Part II of the 1992 Memorandum of Agreement between the Department of the Interior and Department of the Army to implement Section 404(q) of the Clean Water Act encourages communication and consideration of each agency's views concerning proposed projects within the resource limits of each agency and the time constraints of the regulatory process.

In November 2008, representatives of the USFWS Sacramento Field Office (hereinafter "USFWS") and U.S. Army Corps of Engineers Sacramento District (hereinafter "Corps") conducted a "Value Stream Analysis" for the ESA Section 7 consultation process. The VSA resulted in the identification of a number of actions that could be taken by one or both agencies to increase coordination and reduce timelines.

2. Purpose and Scope

The purpose of this Field Level Agreement (FLA) is to enable the Corps and USFWS to more effectively and efficiently work together by establishing a framework to improve coordination and consistency and reduce review timeframes. This FLA incorporates many of the actions of the VSA conducted in November 2008, as well as other items identified during interagency meetings in August 2009 and February 2010.

3. Procedures:

a. Pre-Application/Pre-Consultation

1) To the maximum extent practicable, a USFWS representative will attend the Corps' monthly "pre-application meetings" day to provide input on proposed actions with potential effects to federally listed or proposed species and/or critical habitat, including suggesting modifications the applicant could implement to avoid adverse impact. At each pre-application meeting, the USFWS representative will provide to the Corps and project proponent the name of the USFWS branch chief and, if possible, the staff POC for the action.

2) To the maximum extent practicable, the Corps will invite a USFWS representative to attend any site visits for proposed projects, including verifications of wetland delineations. Attendance is intended to allow USFWS to assess the potential for suitable habitat for listed or proposed species, provide input on potential effects of the action and suggest modifications the applicant could implement to avoid adverse impact.

3) The Corps will ensure information about the project is sufficient to conduct an adequate analysis of effects to listed species and critical habitat. To the maximum extent practicable, the USFWS will provide input to Corps on sufficiency of information for analysis.

4) The Corps will ensure the biological assessment is prepared in accordance with the Corps' "Biological Assessment Template."

5) To reduce USFWS requests for additional information, the Corps will review all biological assessment information to ensure the information is complete. The biological assessment will clearly define the permit area, as determined by the Corps.

6) For those actions that may require formal consultation, the Corps may request USFWS review of the biological assessment before initiating consultation. To the maximum extent practicable, the USFWS will notify the Corps as soon as possible as to whether the initiation criteria are satisfied.

7) No Effect determinations will be made by the Corps. On occasion, the Corps may seek the input of USFWS in making the determination. Such assistance will be sought on an informal basis, generally via telephone, email or face-to-face meeting.

b. Informal Consultation

1) If the Corps determines the action is not likely to adversely affect listed species or critical habitat, the Corps will send a letter (hardcopy and electronic) to the USFWS requesting concurrence. The letter will provide sufficient information and detail for the USFWS to assess the effects of the action, including a biological assessment.

2) If not already determined, the USFWS will notify the Corps of the branch POC within five working days after receipt of consultation request.

3) The USFWS will concur/not concur with the Corps' determination of not likely to adversely affect by letter or email within 30 days of receipt of the letter.

4) The Corps and USFWS branch chiefs will meet every other month (six times per year on a regularly scheduled day) to review requests for concurrence of not likely to adversely affect. During the meeting, branch chiefs will discuss modifications that could be implemented to avoid adverse impact. Using a standard form, USFWS branch chiefs will concur/not concur with the Corps' determination for each action discussed. The meeting may include staff as necessary.

5) The Corps will not send "option" letters to USFWS that request concurrence of not likely to adversely effect determination or, if the USFWS does not agree, initiate formal consultation. The Corps will take a position regarding the appropriate consultation method based on the best scientific and commercial data available regarding effects to the species or critical habitat.

c. Formal Consultation

1) For major construction activities requiring an Environmental Impact Statement (EIS), the Corps will initiate formal consultation when the Draft EIS is published.

2) For other activities not requiring an EIS, the Corps will initiate formal consultation when the application is deemed complete based on the permit applicant's project description.

3) Within 30 days of initiating formal consultation, the USFWS will provide to the Corps PM by telephone or email the name and contact information for its POC, along with the reference number.

4) For major construction activities, the USFWS will to the maximum extent practicable provide a draft biological opinion to the Corps prior to issuance of the Final EIS (generally at the end of the 90-day consultation period, measured from receipt of the request for initiation).

5) For other activities, the USFWS will provide a biological opinion to the Corps within 135 days from receipt of the request for initiation.

6) For permit applications withdrawn by the Corps, the USFWS will be provided a copy of the withdrawal letter and will assume formal consultation is terminated by date of the letter.

7) The Corps and USFWS branch chiefs will meet every other month (six times per year on a regularly scheduled day) to review the status of formal consultations. This meeting should be done in combination with the meetings described in 3(b)(4) of this FLA.

4. Other

a. In coordination with the USFWS, the Corps will prepare and publish for applicants a Biological Assessment Template/Checklist. The template will assist applicants in providing the Corps information needed for consultation. The Corps will use the template to evaluate biological assessment information for consultation purposes.

b. The Corps will provide to the USFWS all consultation documents, including initiation request letters, biological assessments and Draft EISs, in both hardcopy and electronic formats at the appropriate time in the consultation process.

c. To the extent practicable, the Corps and USFWS will participate in an annual biological assessment “refresher” and engage in other training/team-building.

d. The USFWS Field Supervisor, Corps' Chief of Regulatory Division, and all branch chiefs will meet once a year to (i) review the status of informal and formal consultations; (ii) identify areas of special concern; (iii) evaluate the effectiveness of this FLA; and (iv) make modifications to the FLA, as necessary.

e. The USFWS will delegate signature authority for concurrence on NLAA to the branch chief level.

f. The Corps and USFWS will update and provide the other agency its organization chart once per year.

5. General Provisions

a. Nothing in this FLA is intended to diminish, modify or otherwise affect the regulations, policies or procedures for either agency.

b. Nothing in this FLA is intended to require an agency to obligate or expend funds in advance of or in excess of available appropriations. In addition, this FLA cannot be used to obligate or commit funds or as the basis for the transfer of funds. Any endeavor involving reimbursement or contribution of funds between the Corps and USFWS will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This FLA does not provide such authority.

c. This FLA shall take effect fifteen (15) days after the date of the last signature below and will continue until terminated.

d. This FLA is a living document and may be modified or amended, as necessary, by mutual agreement of both parties, by a written amendment signed and dated by an authorized representative of each party.

e. Either party may terminate this FLA, without cause, by providing thirty (30) days written notice to the other party.



Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service, Sacramento Field Office

3/24/10

Date



Michael S Jewell
Chief, Regulatory Division
U.S. Army Corps of Engineers, Sacramento District

3/26/10

Date