

Memorandum

*Serious drought.
Help save water!*

To: DISTRICT DIRECTORS

Date: March 30, 2017

From: PHILIP J. STOLARSKI
Acting Chief
Division of Environmental Analysis



Subject: **FHWA LIFTS SUSPENSION ON NEPA ASSIGNMENT AUTHORITY FOR CALTRANS**

Effective March 30, 2017, Caltrans is authorized to resume participation in the Surface Transportation Project Delivery Program.

On March 29, 2017, Governor Brown signed into law AB 28 (Frazier), which added Section 820.1 back to the California Streets and Highways Code, reinstating the waiver of immunity and consent to the jurisdiction of federal courts for actions taken by Caltrans in performing federal environmental responsibilities under the National Environmental Policy Act (NEPA.) The Legislature included a sunset clause to repeal Section 820.1 on January 1, 2020.

Since 2007, Caltrans has performed these duties under the program known as NEPA Assignment, pursuant to two Memoranda of Understanding (MOU) signed by the Federal Highway Administration (FHWA). The 23 USC 326 MOU allows Caltrans to approve 326 Categorical Exclusions (CE); the 23 USC 327 MOU allows Caltrans to approve Environmental Assessments (EA), Environmental Impact Statements (EIS), and any Categorical Exclusion that cannot be approved as a 326 CE.

On March 29, 2017, as required by both the 326 MOU and the 327 MOU, Caltrans Chief Counsel Jeanne Scherer signed certifications citing the new state law and stating that Caltrans consents to federal court jurisdiction and waives California's Eleventh Amendment immunity from citizens' suits brought in federal court, with regard to federal environmental responsibilities performed by Caltrans under the two MOUs.

On March 30, 2017, the FHWA acknowledged receipt of the certifications and that the waiver of immunity is adequate. As a result, Caltrans is once again authorized to participate in the NEPA Assignment Program.

This ends the period of suspension that began on January 1, 2017, when California Streets and Highways Code Section 820.1 was repealed and Caltrans had to stop performing federal responsibilities for environmental decisions and approvals under NEPA on all Federal-aid projects in California.

During the suspension period, the FHWA and Caltrans entered into a Programmatic CE (PCE) Agreement that allowed Caltrans to approve some 326 CE, which helped minimize the impact of

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the authority suspension. That PCE is no longer effective and, as stated above, Caltrans is now authorized to approve CE under the 326 MOU, as has been done since 2007.

Thank you for your efforts to move projects forward during this difficult three-month suspension period and for working with your local agency partners to ease the impacts. Today, all local agencies are receiving a letter similar to this memorandum.

If you have any questions, please contact Tammy Massengale, who is the NEPA Assignment Manager and GNEIS Office Chief, at (916) 653-5157 or at tammy.massengale@dot.ca.gov.

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