



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

September 13, 2013

VIA E-MAIL & CERTIFIED MAIL

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[via U.S. mail and email]

Mr. Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Matt.St.John@waterboards.ca.gov

Dear Ms. Zazzeron and Messrs. Jensen, Hungerford and St. John:

PETITIONS OF (a) CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS); and, (b) MCM CONSTRUCTION, INC. (MCM) (ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R1-2012-0034 IN THE MATTER OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, CONFUSION HILL BYPASS PROJECT), NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD (NORTH COAST WATER BOARD): REQUEST FOR STIPULATED AGREEMENT AMONG THE PARTIES RE: TIME EXTENSION FOR STATE WATER RESOURCES CONTROL BOARD REVIEW
SWRCB/OCC FILES A-2208(a) and (b)

Enclosed is a copy of the proposed order in the above-entitled matter. The State Water Resources Control Board (State Water Board) will consider this order at its meeting that will be held on *Tuesday, September 24* commencing at *9:00 a.m.* in the Coastal Hearing Room, Second Floor of the Cal/EPA Building, 1001 I Street, Sacramento, California. You will separately receive an agenda for this meeting.

At the meeting, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The petitioners, Caltrans and MCM, will each be allowed five minutes for oral comment, with additional time for questions by the State Water Board members. Other interested persons will be allotted a lesser amount of time to address the State Water Board. At the meeting, the State Water Board may adopt the draft order as written or with revisions, it may decide not to adopt the order, or it may continue consideration until a later meeting.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

Ardine Zazzeron
Douglas C. Jensen
Mr. Matthews St. John
Sean K. Hungerford

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All comments shall be based solely upon evidence contained in the record or upon legal argument. Supplemental evidence will not be permitted except under the limited circumstances described in California Code of Regulations, title 23, section 2050.6. Written comments on the draft order must be received by **September 23, 2013 at noon**. Please indicate in the subject line, "comments to A-2208—September 24 Board Meeting". Those comments must be addressed to:

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620
(email) commentletters@waterboards.ca.gov

If there are any questions or comments, please contact Bethany Pane, Senior Staff Counsel, in the Office of Chief Counsel, at (916) 341-5173 or email Bethany.pane@waterboards.ca.gov.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

Enclosure

Ardine Zazzeron
Douglas C. Jensen
Mr. Matthews St. John
Sean K. Hungerford

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September 13, 2013

cc: **All w/enclosure and w/o ip list**

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**ORDER WQ 2013-**

CALIFORNIA DEPARTMENT OF TRANSPORTATION AND MCM CONSTRUCTION, INC.

For Review of
Administrative Civil Liability Order No. R1-2012-0034
California Department of Transportation, Confusion Hill Bypass Project

Issued by the
California Regional Water Quality Control Board,
North Coast Region

SWRCB/OCC FILE A-2208(a) and (b)

BY THE BOARD:

On March 15, 2012, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted Administrative Liability Order No. R1-2012-0034 (ACL Order) to the California Department of Transportation (Caltrans) for activities related to the construction of the Confusion Hill Highway Bypass Project (Project) near the South Fork of the Eel River in Mendocino County. Both Caltrans and its construction contractor for the Project, MCM Construction, Inc. (MCM), filed timely petitions seeking review of the ACL Order with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on November 7, 2012.¹

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete.² In this case, the petitioners agreed to extend that 270-day period by 60 days, to October 3, 2013, to accommodate the State Water Board's request for additional time to review the large volume of evidentiary and other issues raised in the petitions.³ If the State Water Board has not made a formal disposition within this time frame, the regulations deem the petition denied. The denial of a petition for review would

¹ Cal. Code Regs., tit. 23, § 2054.

² Cal. Code Regs., tit. 23, § 2050.5, subd. (a).

³ See Petitioners' Stipulation to Time Extension, dated July 9, 2013.

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Date Mailed

ordinarily require a petitioner to file any judicial challenge within 30 days of the denial.⁴ When the State Water Board anticipates addressing a petition on the merits after the review period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation.

The State Water Board anticipates issuing an order addressing all of the issues raised in the petitions, including the numerous evidentiary issues, but not by October 3, 2013. Therefore, the State Water Board has decided to review the ACL Order on its own motion.⁵

ORDER

IT IS HEREBY ORDERED that the State Water Board will review Administrative Liability Order No. R1-2012-0034 on its own motion.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 24, 2013.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board

⁴ Wat. Code, § 13330, subd. (b).

⁵ See Wat. Code, § 13320, subd. (a); Cal. Code Regs., tit. 23, § 2050.5, subd. (c).