

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403-1072

In the matter of:)
) Order No. R1-2012-0054
The State of California,) **Administrative Civil Liability Order**
Department of Transportation,) **On Stipulation and Settlement Agreement**
Confusion Hill Bypass Project)
_____)

This Stipulated Administrative Civil Liability Order (hereafter “Stipulated Order”) is issued in reference to alleged reporting violations committed by the California Department of Transportation with respect to its Confusion Hill Bypass Construction Project. The parties to this proceeding are the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region, and his Prosecution Team (“Prosecution Team”) and the California Department of Transportation (“Caltrans”) (Collectively “Parties”). This Stipulated Order is presented to the California Regional Water Quality Control Board, North Coast Region (“Regional Water Board”) for adoption as an Order by settlement under Government Code section 11415.60 and all applicable law.

The Regional Water Board is hereby presented with a proposed settlement of the Prosecution Team’s claims, which are summarized below. The proposed Settlement Agreement, a true and correct copy of which is enclosed hereto as Enclosure A, has been developed during negotiations between the Parties’ representatives, and represents a mutually agreed-upon resolution of the Prosecution Team’s claims by the payment of an administrative civil liability in the amount of Four Hundred Thousand Dollars (\$400,000) to the State Water Resources Control Board Cleanup and Abatement Account within thirty (30) days of issuance of this Order by the Regional Water Board.

The Parties have determined that the terms of this Order are appropriate, and recommend that the Regional Water Board issue this Order to effectuate the proposed Settlement Agreement. Having provided public notice of the proposed Settlement Agreement and an opportunity for public comment, the Regional Water Board finds the following:

1. The California Department of Transportation contracted to construct the Confusion Hill Bypass Project (“Project”), located on Highway 101 in Mendocino County. In the area of the Project, Highway 101 crosses an active landslide area known as Confusion Hill. The purpose of the Project was to provide a reliable transportation route around the landslide area by permanently relocating the highway from the east side of the South Fork of the Eel River to the west side. Relocating the highway required the construction of two new bridges and a new section of highway connecting the bridges. The Eel River is a water of the United States and of the State of California.

2. Clean Water Act Section 301 prohibits discharging pollutants without a National Pollutant Discharge Elimination System (NPDES) Permit. Clean Water Act Section 401(a)(1) requires every applicant for an NPDES Permit for any activity that may result in a discharge of pollutants to a water of the United States to obtain a State Water Quality Certification that the proposed activity will comply with State water quality standards, or to obtain a waiver from such Certification.
3. The State Water Resources Control Board issued Order No. 99-06-DWQ, and NPDES Permit No. CAS000003 for Storm Water Discharges and Waste Discharge Requirements for the State of California, Department of Transportation Properties, Facilities, and Activities (the "Permit"). The Permit regulates storm water discharges associated with Caltrans' construction activities, including those at the Confusion Hill Bypass Project. In relevant part, the Permit specifically requires that Caltrans notify the Regional Water Board of noncompliance within 5 working days of a discharge, and in writing within 30 days.
4. On February 16, 2006 (as amended on April 18, 2006), the Regional Water Board issued a Clean Water Act, Section 401 Water Quality Certification (the "Certification") for the Project. The Certification prohibits discharges into and/or that threaten the Eel River. The Certification further requires that the Eel River be monitored for turbidity, and that the Regional Water Board be notified within 1 hour if turbidity levels in the Eel River are greater than 20% above background 100 feet downstream of the source of the turbidity.
5. The Prosecution Team contends that between August 2006 and March 2007, Caltrans experienced at least 160 separate unpermitted discharge violations that were not reported as required by the Permit and/or the Certification ("Reporting Violations"). The Prosecution Team further contends that the Reporting Violations resulted in a total of 516 cumulative days of violation, and a concomitant maximum administrative civil liability under California Water Code sections 13385(a)(4) and 13385(a)(5) of Fifty-One Million, Six Hundred Thousand Dollars (\$51,600,000). A detailed description of the alleged Reporting Violations is included with Enclosure A and is incorporated herein by this reference. Caltrans denies some or all of the alleged Reporting Violations and/or denies that the Permit and/or Certification require reporting of some or all of the alleged discharge violations.
6. Under California Water Code Section 13385, the minimum liability the Regional Water Board may impose is recovery of the economic benefit (if any) derived from the Reporting Violations. The economic benefit, if any, derived by Caltrans solely from the Reporting Violations does not exceed the recommended Four Hundred Thousand Dollar (\$400,000) administrative civil liability.

7. Neither this Stipulated Order, nor any payment pursuant to the Order, shall constitute evidence of, or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability against Caltrans, nor shall either be construed as an admission of violation of any law, rule, permit, or regulations by Caltrans. However, this Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order.
8. In accepting the proposed Settlement Agreement, the Regional Water Board has considered, where applicable, each of the factors prescribed by Water Code section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the Reporting Violations, information otherwise provided to the Regional Water Board, and information located in the Regional Water Board files.
9. Notice of the proposed Settlement Agreement and proposed Four Hundred Thousand Dollar (\$400,000) administrative civil liability was published on the North Coast Regional Board website on or before March 26, 2012 notifying the public of the review period and soliciting public comments on the terms of the proposed settlement.
10. Based on the nature, circumstances, extent and gravity of the violations, and Caltrans' history of violations, culpability and economic benefit, as well as the uncertainties of civil prosecution and appeals, and the costs and delays attendant to administrative adjudication, the Settlement Agreement is a fair settlement of the Reporting Violations, as set forth in Enclosure A, and supports the assessment of administrative civil liability as set forth in this Order. This settlement and assessment of administrative civil liability serves the public interest and provides for the full and final resolution of each and all of the Reporting Violations for the Project that could have been alleged by the Prosecution Team in an Administrative Civil Liability Complaint.
11. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Sections 15061(b)(3) and 15321(a)(2) of Title 14 of the California Code of Regulations.
12. Subject to the terms of the Settlement Agreement, any person affected by this action of the Regional Water Board (other than the Parties hereto) may petition the State Water Resources Control Board to review the action in accordance with Section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. Any such petition must be received by the State Water Resources Control Board within thirty (30) days of the date of this Order. Copies of the laws and regulations applicable to filing such a petition will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code section 13385(c), Government Code section 11415.60 and all applicable law, that:

1. The Settlement Agreement is **approved**;
2. Caltrans shall pay an administrative civil liability of **Four Hundred Thousand Dollars (\$400,000)**, as agreed to under the Settlement Agreement in accordance with its terms;
3. The Executive Officer of the Regional Water Board is hereby authorized to refer this matter directly to the Attorney General for judicial enforcement if Caltrans fails to perform any of its obligations under the Settlement Agreement;
4. Fulfillment of Caltrans' obligations under the Settlement Agreement constitutes full and final satisfaction to the Regional Water Board for any and all liability for each Reporting Violation claim that is or could have been set forth concerning the Confusion Hill Bypass Project; and
5. Caltrans is ordered to submit payment in the form of a check, payable to the *State Water Resources Control Board Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Caltrans shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Luis Rivera, Assistant Executive Officer, North Coast Regional Water Quality Control Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403-1702, and Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, North Coast Region on April 26, 2012.

Catherine Kuhlman
Executive Officer