
North Coast Regional Water Quality Control Board

September 19, 2013

California Regional Water Quality Control Board
North Coast Region

DRAFT ORDER NO. R1-2013-XXXX

REQUIRING TECHNICAL INFORMATION PURSUANT TO
WATER CODE SECTION 13267

California Department of Transportation
CDOT – Highway 101 Willits Bypass Project
WDID No. 1B10019WNME
Mendocino County

and

DeSilva Gates Construction

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. The California Department of Transportation (Caltrans), as project applicant for the Highway 101 Willits Bypass (Project), is regulated by the following permits administered by the Regional Water Board:
 - a) Clean Water Act section 401 Water Quality Certification (Certification) as WDID No. 1B10019WNME;
 - b) Order No. 2009-0009-DWQ, the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (CGP); and
 - c) Order No. 2012-0011-DWQ, the National Pollutant Discharge Elimination System (NPDES) Statewide Storm Water Permit Waste Discharge

Requirements (WDRs) for State of California Department of Transportation
(Storm Water Permit).

2. Regional Water Board staff have been informed by Caltrans that DeSilva Gates Construction (DeSilva Gates) has a contractual agreement with Caltrans to construct some or all of the Project. Within the General Conditions portion of the Certification (page 17), it is stated: "All conditions of this order apply to Caltrans (and all its employees) and all contractors (and their employees), sub-contractors (and their employees), the land manager, and any other entity or agency that performs activities or work on the project (including the off-site mitigation lands) as related to this Water Quality Certification."
3. Provision E.2.f of the Storm Water Permit requires Caltrans to file a CGP Notice of Intent for each construction project with disturbed soil areas exceeding one acre. Caltrans has filed a Notice of Intent for the Project and is subject to the requirements of the CGP.
4. Regional Water Board staff have been informed that DeSilva Gates has removed several thousand cubic yards of excavated soil material from 25500 Highway 101, Willits, a former Louisiana-Pacific sawmill site (a.k.a., "old Apache Sawmill," hereinafter "Old Sawmill Site") currently owned by Mendocino Forest Products Company, LLC, to place as fill within the northern segment of the Willits Bypass Project. Three closed landfills and an open clean-up site that is under oversight by the Regional Water Board (Cleanup File: "Mendocino Forest Products, Willits" Case Numbers - 1TMC449, 1NMC449) currently exist within the limits of the Old Sawmill Site. The Regional Water Board is concerned that contaminated material may have been removed from the Old Sawmill Site and used as fill on the Project site. Caltrans has accepted and incorporated the fill material into the Project. Contaminated material discharged in the Project limits could have potentially adverse impacts on water quality.
5. Certification condition number 47 requires: "All imported fill material shall be clean and free of pollutants. All fill material shall be imported from a source that has the appropriate environmental clearances and permits. The reuse of low-contaminated solids as fill on-site shall be performed in accordance with all State and Federal policies and established guidelines and must be submitted to the Regional Water Board for review and concurrence." To date, the Regional Water Board has not received documentation that the imported fill material was clean and free of pollutants, or a proposal to reuse low-level contaminated solids on-site as fill. The Regional Water Board cannot determine at this time whether the appropriate environmental clearances and permits were obtained before excavation and fill activity commenced.

6. Regional Water Board staff asked Caltrans on August 21 and 26, 2013, for information to demonstrate compliance with condition number 47, but have not received acceptable information to date. The Regional Water Board is concerned that the imported fill material may contain levels of contaminants that could adversely impact water quality.
7. For dust control purposes, Caltrans has applied, and continues to apply, thousands of gallons of groundwater and/or surface water to the Project site. The Regional Water Board understands that the groundwater and/or surface water is being pumped by DeSilva Gates Construction from various private sources throughout Little Lake Valley.
8. There are several known areas of groundwater contamination within Little Lake Valley. Accordingly, this groundwater and/or surface water may contain elevated levels of constituents of natural or anthropogenic origin that could impact water quality if discharged to the Project site. Groundwater and/or surface water could also be withdrawn in quantities that impact hydraulic gradients and allow discharge of pollutants from one aquifer to another, or exacerbate areas of contaminated soil and/or groundwater in the vicinity of withdrawal.
9. CGP Provision III.C includes requirements that water used for dust control does not: cause or contribute to a violation of any water quality standard; contain toxic constituents in toxic amounts; or, does not contain other significant quantities of pollutants. Regional Water Board staff asked Caltrans on August 2, 2013, and August 5, 2013, whether they had conducted water quality analysis of the dust control water to ensure its quality is in compliance with this provision of the CGP. To date, Caltrans has not responded to those two inquiries or otherwise provided water quality data to demonstrate it is in compliance with this provision of the CGP. DeSilva Gates staff told the Regional Water Board Caltrans liaison during a telephone conversation on August 21, 2013, that groundwater water quality data had not been obtained, but could be obtained. This information has yet to be provided.
10. The Regional Water Board does not know where groundwater and/or surface water is being pumped from or at what volumes. Provision of this information would help Regional Water Board staff determine if there is a water quality threat to State waters associated with groundwater and/or surface water withdrawal and application activities. Regional Water Board staff requested this information from Caltrans on August 1, 5, 22, and 30, 2013. DeSilva Gates staff told the Regional Water Board Caltrans liaison during a telephone conversation August 21, 2013, that well locations could be sent by DeSilva Gates directly to the Regional Water Board. To date, this information has not been submitted.

11. The Regional Water Board has received public inquiries, concerns and complaints related to the removal and placement of groundwater and fill material, including concerns that heavy groundwater pumping has impacted nearby wells. Despite attempts to obtain relevant information required by the Certification and CGP as stated above, Regional Water Board staff has been unable to sufficiently address these concerns.
12. Technical reports required by this Order are necessary to ensure that any threats to water quality created by the discharges or potential discharges described above are properly identified and controlled and to further determine compliance with the Certification and CGP. Therefore, the burden of the costs associated of the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
13. This request for information related to groundwater and/or surface water and soil removal and application is made pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Water Code Section 13267 may subject you to administrative civil liability of up to \$1,000 per day for each day in which a violation occurs.
14. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. Information on the petition process may be found at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13267, Caltrans and DeSilva Gates Construction shall provide the following technical reports:

1. Report the number of cubic yards removed from the Old Sawmill Site and placed as fill within the Project limits;
2. Submit a precise map depicting exactly where excavated material from the Old Sawmill Site was placed within the Project limits. Depth of fill placement and separation depth from groundwater shall be reported. Samples to adequately characterize soil removed from the Old Sawmill Site shall be taken in sufficient numbers from the soil placed within the Project limits. These discrete soil samples shall be analyzed for any potential constituents of concern/contaminants that have

previously been detected at the Old Sawmill Site, and at a minimum shall include the following constituents: petroleum products including gasoline, diesel and motor oil; chlorophenols; solvents; metals; and PCBs. This sampling shall be implemented to fully characterize the excavated material placed as fill within the Project limits. Sampling locations shall be precisely measured horizontally and vertically, recorded and reported; sample location must be able to be repeatable in the future. Sample location shall include boundaries of all fill deposited, both vertically and horizontally, and of the interior body of the filled area. Photos of sampled areas and samples, and proper chain of custody forms shall be submitted to Regional Water Board immediately after sampling and submittal to a laboratory for analysis. Laboratory detection limits and reporting limits shall be at the lowest levels possible, and the proper analytical methods shall be used. If new material was placed on top of the fill material from the Old Sawmill Site, appropriate sampling methodology should be implemented to include only samples from the Old Sawmill Site fill material.

3. Report the quantity, depth, and origin of any material placed on top of Old Sawmill Site fill material;
4. Provide all data and methodologies used to characterize the fill material. Include pre-screening as well as on-site quality control activities. Include an account of all considerations made to avoid existing contamination and landfills when materials were excavated from the Old Sawmill Site.
5. Provide a map showing exact locations of all wells and/or other water sources used for dust control, or other construction water application activities employed during the 2013 construction season. Provide dates of extractions for each location and volume of water extracted. If pumping rates and/or volumes are not available, provide the number of trucks and their volumes that filled-up at each water source location during the period of time that water was being removed.
6. Provide any existing water quality data from each water source used as a source to support Project operations. After receiving information about water source locations and evaluating risk of potential contamination, the Regional Water Board may require additional laboratory analytical testing from any of the sources.
7. For the duration of Project construction, reports shall be submitted to the Regional Water Board every two weeks if pumped groundwater or other previously unauthorized water source is used for Project construction. The reports shall detail the exact location of the water source, the amount pumped, and if not already provided, water quality data (as described in number 6, above).

Items 1-6, above, shall be submitted not later than September 30, 2013. The first report required per item 7 shall be submitted not later than October 14, 2013.

If Caltrans and/or DeSilva Gates Construction are unable to perform any activity or to submit any documentation in compliance with the deadlines in this Order, Caltrans may submit a written request to the Executive Officer for an extension of the time schedule. The written extension request shall explain the delay is beyond the reasonable control of Caltrans and must be received by the Regional Water Board no less than 5 calendar days prior to the respective deadline. An extension may be granted by the Executive Officer, for good cause, in which case this Order will be accordingly revised.

All information provided in response to this Order shall include the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The foregoing report is needed to address the potential water quality threats associated with groundwater and/or surface water withdrawal and application, and excavation and placement of soil. The report required by this Order will allow Regional Water Board staff to determine the measures that may be needed to protect water quality and ensure that similar actions do not reoccur. In addition, the information within the required report may be used to determine if Waste Discharge Requirements, a Waiver of Waste Discharge Requirements or, further enforcement actions such as Cease and Desist Order, Cleanup and Abatement Order, or Administrative Civil Liability Order are necessary.

Ordered by _____

Matthias St. John
Executive Officer

September 19, 2013