

**California Regional Water Quality Control Board
North Coast Region**

13267 INVESTIGATIVE ORDER R1-2015-0042

**DIRECTING CALIFORNIA DEPARTMENT OF TRANSPORTATION
TO SUBMIT A TECHNICAL REPORT PERTAINING TO AN INVESTIGATION OF
UNAUTHORIZED DISCHARGE EVENT TO WATERS OF THE STATE AND UNITED
STATES AT ITS CONSTRUCTION SITE:**

**HIGHWAY 101 WILLITS BYPASS PROJECT
WDID Numbers 1_23C366419, 1B10019WNME
MENDOCINO COUNTY**

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

1. **Legal and Regulatory Authority:** This California Water Code (Water Code) section 13267 Investigative Order (Order) conforms to and implements policies and requirements of the *Porter-Cologne Water Quality Control Act* (Division 7, commencing with California Water Code section 13000) including section 13267, and the *Water Quality Control Plan for the North Coast Region* (Basin Plan) adopted by the Regional Water Board including beneficial uses, water quality objectives, and implementation plans. The Regional Water Board has the authority to investigate discharges of waste or suspected discharges of wastes to waters of the United States and waters of the state pursuant to Water Code section 13267. Any discharge of waste to waters of the United States is unlawful unless in compliance with the federal Clean Water Act (33 U.S.C. § 1311 et seq.). Such an unlawful discharge of waste may subject a person to up to \$10,000 a day and \$10 per gallon of discharge not cleaned up over 1,000 gallons pursuant to Water Code section 13385.
2. **Responsible Party and the Project:** The California Department of Transportation (Discharger) is currently constructing a highway expansion project of Highway 101 near Willits, California in Mendocino County, which begins approximately 0.8 miles south of Haehl Overhead and ends approximately 1.9 miles south of Reynolds Highway (the Project). The Project is within the Eel River Hydrologic Unit and includes the construction of two interchanges (Haehl Creek and Quail Meadows), a viaduct segment spanning the regulated floodway, and multiple creek, riparian corridor, street, and railroad crossings. The overall length of the bypass is 5.9 miles. The bypass will be constructed in two phases, with Phase I involving the construction of an interim two-lane facility and Phase II involving the construction of a four-lane bypass. The Discharger is regulated by the following permits administered by the Regional Water Board:

WDID Numbers 1_23C366419, 1B10019WNME

- A. Clean Water Act section 401 Water Quality Certification (WQC) associated with WDID No. 1B10019WNME; and
 - B. Water Quality Order No. 2009-0009-DWQ, the National Pollution Discharge Elimination System (NPDES) General Permit (No. CAS000002) for Storm Water Discharges Associated with Construction and Land Disturbance Activities (CGP).
3. **Unauthorized Discharges of Storm Water:** On January 22, 2015, at approximately 14:30, a section of viaduct framing and falsework collapsed between bents 3 and 4 during a concrete pour. Construction debris and wet concrete discharged into Haehl Creek as a result. Upstream flow was diverted away from the discharge area at approximately 18:35 on the same day. The material remained in the channel until January 29, 2015. Upstream flow was restored on February 4, 2015.
4. **Technical Report Pursuant to Water Code Section 13267:** This Order requires the Discharger to submit technical reports pursuant to Water Code section 13267. The technical reports are necessary for the Regional Water Board to evaluate the nature, extent, circumstances, and impacts from the discharges and/or threatened discharges emitted from the Project to waters of the state and United States. The technical reports required are needed to provide information to the Regional Water Board regarding (a) presence of contaminants of concern at the Project, and (b) the threat to public health and the environment posed by the potential contaminants of concern. The burden of providing the required reports is significantly outweighed by the need for the reports, the costs, and the benefits to be obtained from the reports.
5. **IT IS HEREBY ORDERED**, pursuant to California Water Code section 13267, that the Discharger shall submit the following technical report to the Regional Water Board in response to the above findings as follows:

A. **Discharge Volume Estimate**

Compliance Date: July 1, 2015

The Discharger shall submit a technical report estimating the volume and type of construction debris that entered the Haehl Creek channel as a result of the viaduct collapse.

6. **Provisions**

- A. **Use of Registered Professionals:** The Discharger shall provide documentation that its technical report was prepared under the direction of appropriately qualified professionals. In preparing the technical report required by this Order, any engineering or geologic evaluations and judgments must be performed by or

- under the direction of registered professionals pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. A statement of qualifications and registration numbers of the responsible lead professional shall be included in the report submitted by the Discharger. The lead professional shall sign and affix his or her registration stamp to the report.
- B. **Qualified Professionals:** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities.
- C. **Signatory Requirements:** The technical report shall be signed and certified by either a principal executive officer, ranking elected official, or the person with overall responsibility for environmental matters for the District. Additional reports submitted in support of the technical report must be signed by the principal author.
- D. **Certification Statement:** Any report submitted in response to this Order shall include the following perjury 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."*
- E. **Report Submittal:** The technical report shall be submitted electronically to:

Shin-Roei Lee, Assistant Executive Officer
North Coast Regional Water Quality Control Board
NorthCoast@waterboards.ca.gov

If the report cannot be sent by email, it shall be submitted electronically on a compact disc to the following address:

Ms. Shin-Roei Lee
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

7. **Notifications**

- A. **Enforcement Discretion:** The Regional Water Board and the State Water Board reserve their rights to take any enforcement action authorized by law for violations of the terms and conditions of this Order. Furthermore, compliance with this Order is wholly distinct from any possible enforcement that may follow from the discharges themselves, pursuant to violations of the California Water Code or other orders issued by the Regional Water Board or State Water Board.
- B. **Enforcement Notification:** Pursuant to California Water Code section 13268, failure to submit the required technical reports as required by Water Code section 13267(b), or falsifying any information provided therein, may result in the imposition of administrative civil liability up to \$1,000 per violation per day. Any actual unauthorized discharge to waters of the United States may subject the Discharger to up to \$10,000 for each day of discharge, and \$10 for each gallon over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board reserves its rights to take any further enforcement action authorized by law.
- C. **Cost Recovery:** Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to, Water Code section 13365, the Regional Water Board and/or State Water Board may seek reimbursement for all reasonable costs actually incurred to investigate illegal discharges of wastes and to oversee cleanup of such wastes, abatement of the effects thereof, or other necessary enforcement actions.
- D. **California Environmental Quality Act Compliance:** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. The submission of technical information does not constitute a project with environmental impacts.
- E. **Appeal Notification:** Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

It is hereby ordered.

Shin-Roei Lee
Assistant Executive Officer

June 12, 2015

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