

MCM CONSTRUCTION, INC.

Confusion Hill Bypass Project

VIOLATION EVIDENCE

ACL COMPLAINT NO. R1-2009-0095

ORIGINAL



FILE COPY



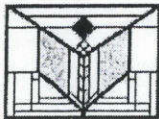
Terry
Davis/D01/Caltrans/CAGov
08/28/2006 07:44 AM

To Walt Dragaloski/D01/Caltrans/CAGov@DOT
cc
bcc

Subject Re: SWPPP issues at Confusion Hill

Good report!

Walt Dragaloski/D01/Caltrans/CAGov



Walt
Dragaloski/D01/Caltrans/CAGov
08/25/2006 01:07 PM

To Ron Den Heyer/D01/Caltrans/CAGov@DOT, Gene
Leo/D01/Caltrans/CAGov@DOT
cc Terry Davis/D01/Caltrans/CAGov@DOT, Alex
Arevalo/D01/Caltrans/CAGov@DOT, Melinda L
Molnar/D01/Caltrans/CAGov@DOT
Subject SWPPP issues at Confusion Hill

Ron,

On Tuesday, August 22, 2006, I performed a site inspection for SWPPP compliance. The following deficiencies were observed:

1. Equipment is being fueled on the riverbar at the north bridge. Our permit with the Regional Water Quality Control Board explicitly states that fueling must only occur outside of waters of the United States. At the PDT James Hamm acknowledged that they were fueling a compressor, generator, man-lift and backhoe.
2. A discharge of oil occurred from the backhoe directly onto the riverbar. Equipment that has even minor leaks must not be allowed to operate in sensitive areas such as the riverbar. This discharge should have been reported to the RE and cleanup up immediately. There were no BMP's in place to prevent the discharged oil from reaching the riverbar.
3. Careless discarding of welding rods is occurring onto the riverbar.
4. A temporary sedimentation basin has been constructed and used within 100 feet of the live stream channel. Page 144 of the Special Provisions states, "temporary sedimentation basins for dewatering...shall be located a minimum of 32 meters away from the live stream channel."
5. Fueling is occurring in the TCE near the RE's office without use of ANY BMP's. Ladd personnel were fueling the tracked hoe and claimed they had no training or knowledge of required fueling practices and have been fueling their equipment for weeks in such a manner.
6. There is no stabilized construction entrance at the south bridge approach where dirt is tracking onto the highway due to trucks entering and leaving the work site. The stabilized entrance should be constructed prior to dirt hauling activities in the area.
7. Linear sediment barriers should be constructed along highway 271 where disturbed soil areas exist.

In addition to the above described deficiencies, please consider the following requests and recommendations:

1. The Water Pollution Control Manager (WPCM) should amend the SWPPP by submitting the information described on Page 144 of the Special Provisions to graphically depict the dewatering process that the contractor is using to construct the temporary trestle at the north bridge. The graphic needs to show a sectional and plan view that details the removal techniques for pumping





Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

I will be filing reports specific to these sediment plumes, their believed origin/causes and what might be done to even further contain these relatively minor events during the future activities, if further pumping and pouring is necessary at the sites.

Table 2. "Fine sediment Plumes" Observed by the Biological Monitor, during the week of 28 August – 1 Sept. 2006.

Date:	Location:	Origin:	Duration:
29 August.	Immediate area adjacent to Blast Zone. from coffer dams set in bar to Isolated Pool B of Norman's notes.	Seeping through bar.	After 8 hours of pumping
30 August	Immediate area adjacent to Blast Zone pumping from coffer dams set in bar to Iso. Pool B.	Seeping through bar.	After 8-10 hours of
1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in. ca. 2 minutes post pour.	

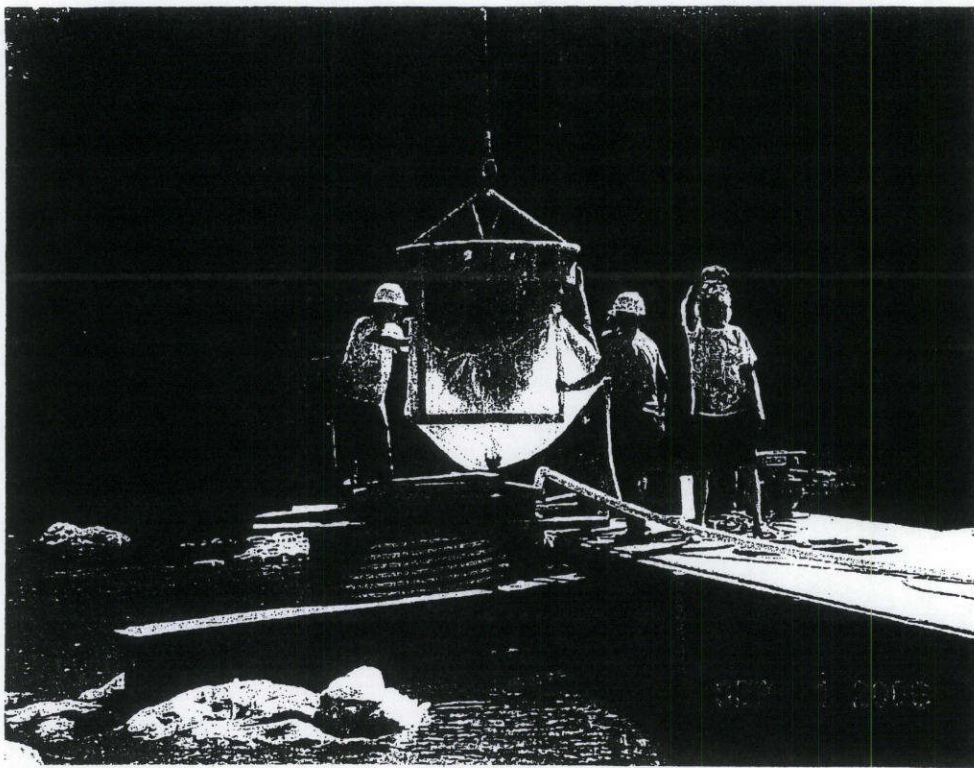


Figure 4c. Setting cement seal pour in culvert pipe coffers. Note plastic sheet at bottom to minimize cement introduction to mainstem .

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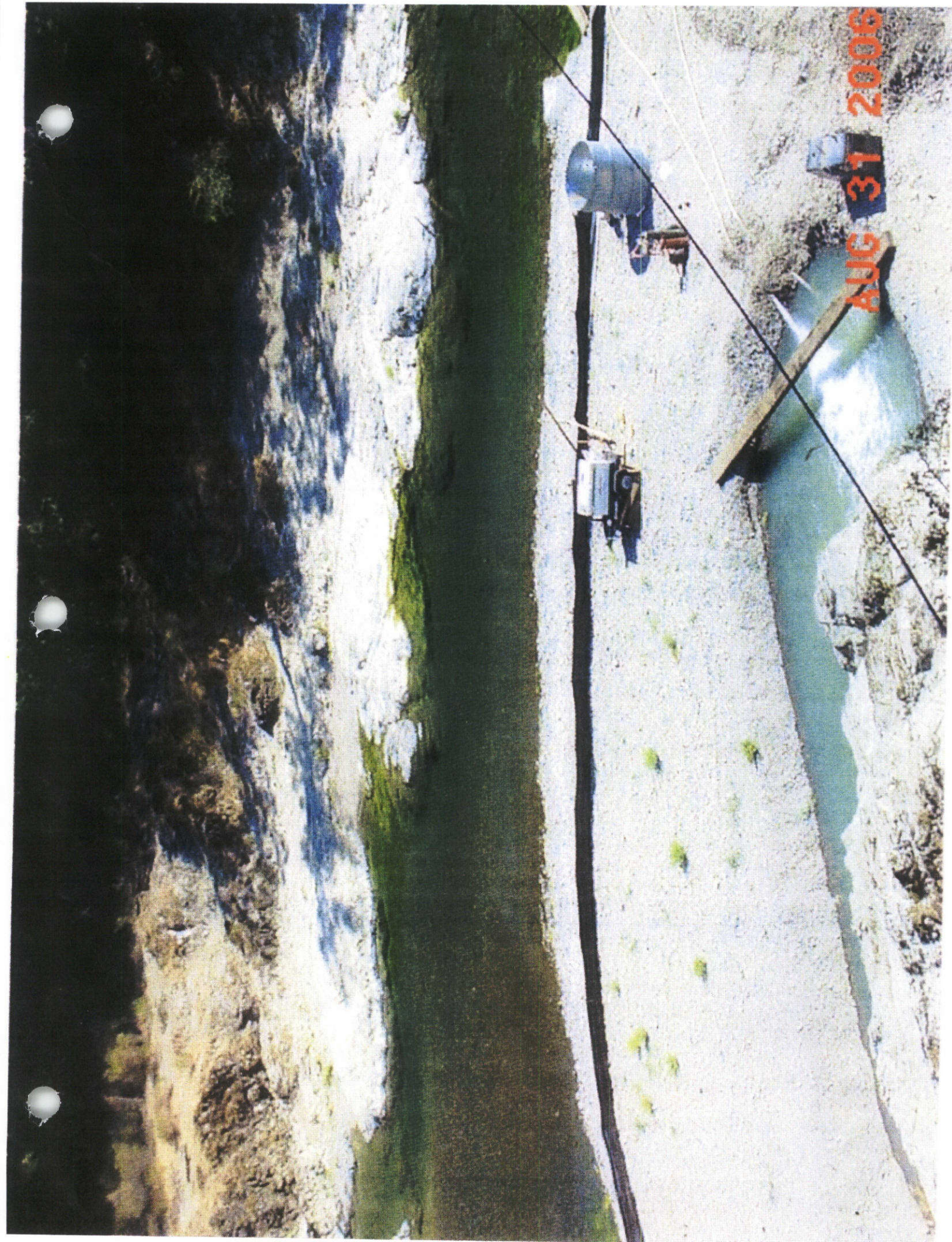
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	pumping from coffer dams set in bar to Iso. Pool B.		
1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in.	ca. 2 minutes post pour.

Completed
10/1/06

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AUG 31 2006



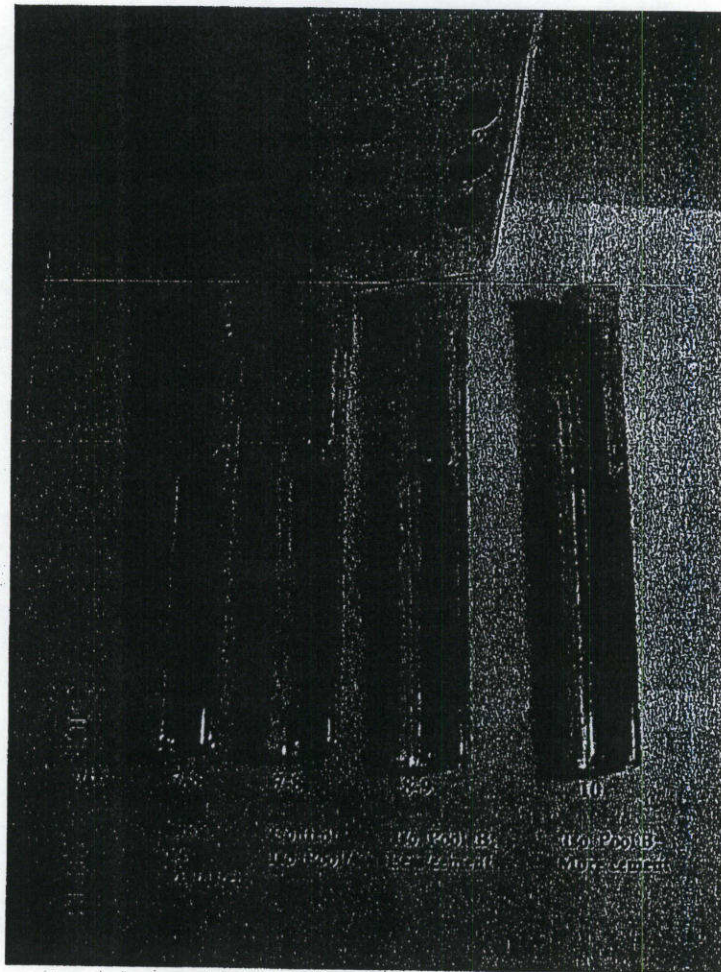


Figure 36. Results of some LaMotte Kit (Model #5886) tablet indicator pH tests collected to monitor water quality on site, late September 2006 (Note: although photo was taken two days later, no color change takes place while samples are sealed).

6.4 MONITORING CONSTRUCTION DE-WATERING

Methods. Biological monitors were on site during all de-watering events. The only de-watering events that took place were during the cofferdam installations (see 4.6 above).

A record of these activities and the observations has been presented in the weekly biological monitoring reports (Page 2006; Norman 2006). Further documentation of these activities is presented in the Digital Photographic Record Set of Digital Photo CDs, Appendix B.

Proactive Measures. Having the biological monitors in place was the main pro-active measure. Monitors were able to inspect the cofferdams and ensure that no salmonids were harmed during these de-watering operations.

Problems Encountered and Actions Taken. Isolated Pool B on the gravel bar (BZ/North Trestle area) was used as a de-watering settling basin for the trestle and false work cofferdam

footings (Figure 37). This resulted in the temporary filling of the pool with loose rocks, gravels, and river water. When Isolated Pool B was filled in with water, a slight amount of silt would form in the adjacent mainstem from hydrostatic pressure created from about 8-10 hours of continuous pumping (at the pump rates used by the MCM crew; See Discharge Table 5, August 29 to 31).

Toward the end of this dewatering activity the dewatering rate was reduced in magnitude which reduced the plume in the mainstem. After this event the water was not pumped into the isolated pool but was pumped directly onto the gravel bar adjacent to the cofferdams. The gravel bar was at a minimum about 15 feet from the river, but the plume did not appear to go into the river. This problem did not appear again.

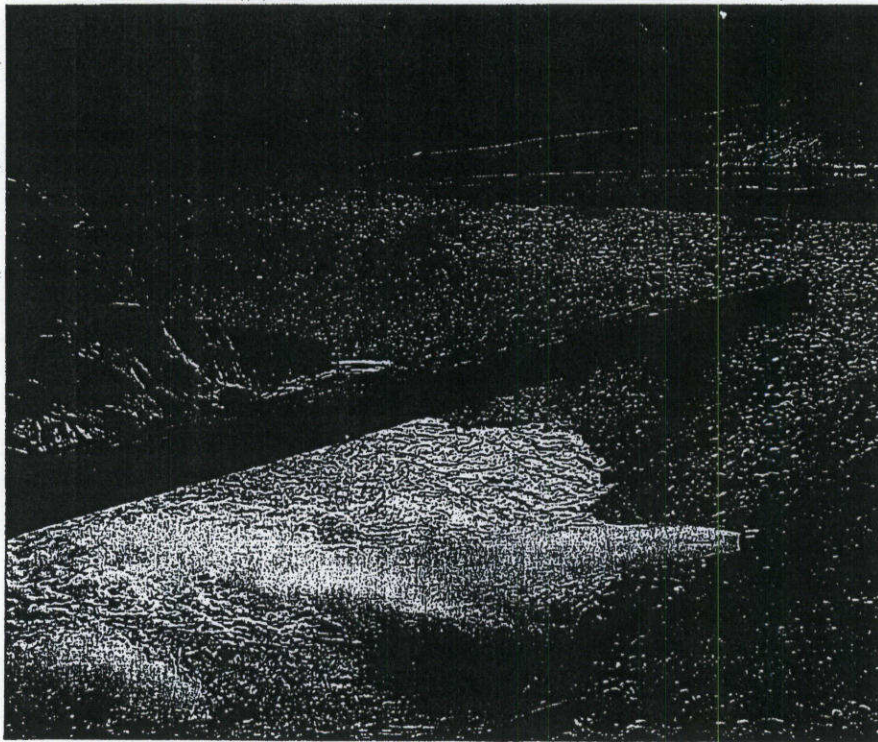


Figure 37. Isolated Pool B on the gravel bar being used as a de-watering settling basin from the cofferdams installation - maximum pumping rates (Note sediment retention fencing on edge of gravel bar in background).

Foothill yellow-legged frog metamorphs inhabited this pool throughout the summer. They were intermittently removed to the mainstem, out of the work area by biological monitors during construction activities that impacted their specific pools. They regularly returned to these same isolated pools. In fact juvenile frogs colonized one pool created along one trestle footing and were not removed because they were no longer in danger.

Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.377
Sheet 3 of 3
Date Sept 5, 2006
Circle Day S M T W T F S
Shift Hours Start 0630 Stop 1700

STRUCTURES

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

Location and Description of work See page 1.

verified to be 1G, FCAW (Lincoln NR-232 electrode wire) processes. CONTR also began fresh heading 1/2" walled 30" ϕ casings and placed backing plates. While this portion of the work was in progress, CONTR also worked on the concrete (3) buckets. No welding inspector was on site during this shift as required on their submittal (Per AWS D1.1.). THIS PORTION OF THE WORK IS NOT COMPLETE.

ASR NOTE: While the CONTR was placing seal coarse concrete for B5's left side FTG. I was watching the drilling for anchors @ B4. As I walked over to B5, I overheard Project Superintendent James Ham tell his employee to "shut off the pump, your pumping out to much water." When I looked to see where the pump was discharging to, I found the end of the hose at Mr. Hams feet on the outside of B5 cofferdam with the rock saturated and no standing water. I also did not see any equipment to verify PH levels or any muratic acid to lower PH levels.

Acting Structure Representative's
Daily Report

Report No. 379

Date: As Noted

M T W T F S S

#379 Thursday, Sept 7th, 2006 clear, wind calm to 6 mph, 57°-90°, high 90°
Controlling operation still considered P-3 N Br overburden excavation.

-0830 went to the river bar with Mitch Shands to talk to Supt. James Ham about his plan for grouting the trestle foundation anchor bolts due to water in the holes. He was going to place a standpipe in the holes to above water level to obtain static water then tremie pump grout and insert the HS rods which sounded like a reasonable plan.

-0900 returned to the office and found Claudio Avila and Bill Bertucci, Strs Geotechs. We talked about my concerns at A-1 S Br and reviewed the plan contour sheet and test borings. We then walked to the A-1 ftg excavation, then walked down the access road to below the A-1ftg. They expressed their concerns about the depth of rock in front of the abut and Claudio said he'd probably lower the pile tips and he would talk to designer Kevin Harper about lowering the bottom of footing and perhaps moving the abut back a few meters. I said I'd send the photos I'd sent Claudio, which he was unable to view with a dial-up connection, to Kevin. We then walked to the P-2 S Br excavation. I told them Ladd had an engineer looking at the work and would be submitting an Engr prepared plan soon. They were comfortable with the exc slopes and said they would be happy to review the plan when submitted. We returned to the office then drove to the N Br access road. We walked to P-3 exc site, then down to the river bar. They were comfortable with that excavation. We returned to the office a little before noon. Dan Van, 01 Geologist, stopped in and they talked for a while. About 1215 they headed for P-3 S Br and to find the survey crew to request a resurvey of the rock outcrop in front of A-1 S Br.


Shortly after 1230 there was a blast at the P-2 S Br exc. It seemed loud and shook our office. Gene Leo and I headed down the access road. We came across Harlan Davis, licensed blaster, who was leaving the site. He said they didn't fly any rock and the loud noise was from the bounce back from the opposite bank. We went down to the P-2 exc and viewed the blast area. We found no fresh rock on open ground around the blast area.

-1440 Ed Yarbrough came into the office. We discussed ramp safety issues. I told Ed that Claudio had measured 24° and 25° angles on 2 of the ramp sections. He said the Safety Orders were not real clear on ramps but Tim Strahan had emailed a contact at CalOSHA with questions on ramps, stairs, and hand railing. Tim came in -1450 and confirmed the inquiry and was said he was expecting an answer Monday.

Called Phil Gundlach, MF batch plant operator, he'll come down on Mon P.M. to talk about concrete.

#47 Late this afternoon, Gene Leo was talking to Walt Dragaloski about the reports he had from biologist Brad Norman about discharges into the river at the N Br const area. One was from dewatering into a settlement basin and after about 8 hrs of pumping some turbidity was noticed emanating from the gravel bar. Walt asked to talk to me. I told Walt I hadn't seen the discharge from dewatering but Brad mentioned it once when I was on the gravel bar. My recollection was that it was mentioned to MCM and the pumping was stopped and the discharge ceased shortly thereafter. #48 (The other) was during the seal course placement within the two CSP's for the trestle bent 3 foundations. I told Walt that bags filled with river bar gravel were placed outside the CSP's which had been cut to approximate the contour of the bedrock in the river, filter fabric was placed inside the CSP's and pushed into the gap between the CSP and the rock, then sandbags were placed inside and against the CSP's. A pump was running to lower the water level inside the CSP's, which was ineffective until the water level rose due to the placement of the concrete seal course. Pumping was halted after the conc placement started. The water was pumped to a settlement basin against the river bank. The conc was placed with a tremie pipe and during the first half yard of conc placement a small discharge was noticed. It could not be determined whether the cloud was from displaced water forcing silt out of the gravel bags on the outside of the CSP's or cement mortar leaking past the sandbags, filter fabric and gravel bags, but Sacramento pike minnows (per Brad) swimming outside the CSP's were unaffected. The discharges dissipated quickly within about 50 (Rt CSP) to 100' (Lt CSP) as near as I could tell. Although there was some discussion of measuring the turbidity, Brad mentioned that it didn't appear to him that there was a 20% increase at 100'. RE Ron den Heyer was also present during the conc seal placement. The next day the water was tested for pH, treated with muratic acid then pumped into the settlement basin. I estimate about 25 gal was pumped from the Lt CSP and perhaps 50 gal pumped from the Rt CSP based on the conc placed.

RWT 0700-1630 1 hr OT, office; MShands 0630-1700, 2 hrs OT, insp;
JRailey no OT


Rich Thompson, Asst. Str. Rep.

Job Stamp

EA 01-397514
ER-37B3(004)E
Realign HWY with 2 Bridges
Bridge Nos. 10-0299 and 10-0300
MEN-101-159.6/162.0 KP

Sheet	of
Report No.	381
Date	9/11/2006

Shift HRS	
Start	6:30 AM
Stop	5:30 PM

Circle Day
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday

Assistant Resident Engineers Daily Structures Report

Controlling Operation: Pier 3 Br.No. 10-0300

ITEM #161 MOBILIZATION "TRESTLE"

LOCATION/OPERATION: NORTH BRIDGE BR.NO. 10-0300 CONTINUED ERECTION OF TRESTLE - MCM "PRIME CONTRACTOR" WORKS ON SPAN 5 AND ON PIER 4 FOOTING "LEFT". WORK PERFORMED @ PIER 4 - PLACEMENT OF 1 1/2" DIA WILLIAMS RODS - PREVIOUSLY DRILLED - SEE MITCH SHANDS DIARYS FOR DETAILS. RODS WERE GROUTED USING TYPE I-II CEMENT. HOLES HAD H2O IN THEM. H2O WAS BROUGHT TO THE LEVEL OF EXISTING CHANNEL PRIOR TO GROUTING. WITHIN THE 6' Ø CMP. A 15 TO 16 FOOT FLEXIBLE TUBE WAS PLACED INTO THE DRILLED HOLES & GROUT WAS POURED INTO FUNNEL CONNECTED TO THE TUBE TO TREMIE H2O OUT OF THE DRILLED HOLES. ~ 6 GALLONS OF GROUT WAS USED @ EACH HOLE - WASTING GROUT @ TOP OF HOLE PRIOR TO PLACEMENT OF THE WILLIAMS RODS. OBSERVED GROUT FLOWING OUT OF HOLE WHEN RODS WERE PLACED. LOOSE CONCRETE FROM PREVIOUS SEAL COARSE CHIPPED OUT WITH RIVER BUSTERS & CLEANED OFF - "AIR PRESSURE HOSE" MATERIAL WAS DISPOSED OF BY PLACING IN BUCKETS & DISPOSING IN TRASH CONTAINER - NO GROUT/CEMENT MATERIAL WAS DISPOSED OF ON EXISTING GRAVEL BAR. (NOTE - CLEANING UP/CHIPPING OF CONCRETE WAS DONE PRIOR TO GROUTING BARS) #5 BAR REIN STEEL MAT WAS PLACED IN CMP PER PLANS - PRIOR TO PLACEMENT OF CONCRETE DOBIES PLACED BAR REIN STEEL ~ 4" FROM BOTTOM OF PLATE. CONCRETE WAS DELIVERED THIS AFTERNOON @ 4:00 P.M. ~ 1.2 TO 1.5 YARDS WERE PLACED INTO THE CMP. BASE PLATE WAS LEVELED. THE ROD LOCATIONS WERE PLACED INTO THE CMP. BASE PLATE WAS LEVELED. THE ROD LOCATIONS WERE NECESSARY. NOTE: DEPTH OF DRILLED HOLES WERE APPROX 10 FEET DEEP FROM THE TOP OF THE SEAL COARSE - ALL HOLES WERE CLEANED OUT BY BLOWING OUT THE HOLES W/ AIR PRESSURE. NO SIGNIFICANT DEBRIS ENTERED THE ACTIVE CHANNEL - CALL PAGE ON SITE THIS MORNING. "BIOLOGIST - CONSULTANT" - NOTE: MITCH SHANDS ON SITE INTERMITTANTLY SOME PUMPING OF H2O OUT OF CMP WAS DONE. THIS WATER WAS TESTED WITH FOR PH PER MITCH - WAS ~ SAME PH AS THE ACTIVE CHANNEL. // WORK @ SPAN # 5, WELDING OF DIAGONAL BRACING PER MCM "TRESTLE PLAN SUBMITTAL PERFORMED THIS DAY - BRACING WAS COMPLETED THIS DAY - ~ 8' OF 12x12 DECKING WAS PLACED.

ITEM #42 SLOTT X ABOVE PIER COLUMN

LOCATION/OPERATION: NORTH BRIDGE BR.NO. 10-0300 PIER 3 PIER COLUMN. LADD "SUB CONTRACTOR" CONTINUES EXCAVATION OF OVER BURDEN ROCK ABOVE PIER COLUMN THIS DAY. BLASTING @ EL = 189 ± ± 5 FEET REMOVED @ THE N.W. COR. REMOVED (~ 1/2 TO 1/2) OF THE WIDTH OF COLUMN. SAT ~ 9 ft ±. BLASTING WAS PERFORMED @ 1415 THIS DAY. CALL PAGE ON SITE WITH ME @ THE TIME BLASTING WAS PERFORMED.

Signed

John Railey

John Railey

ASR

Hrs for John Railey on Time Card

	REG
	OT6

AM

Job Stamp

EA 01-397514
ER-37B3(004)E
Realign HWY with 2 Bridges
Bridge Nos. 10-0299 and 10-0300
MEN-101-159.6/162.0 KP

Sheet	of
Report No.	381
Date	9/11/2006

Shift HRS	
Start	6:30 AM
Stop	5:30 PM

Circle Day
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday

Assistant Resident Engineers Daily Structures Report

Controlling Operation: Pier 3 Br.No. 10-0300


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Signed


Hrs for John Railey on Time Card

John Railey

ASR

REG
OT6



#396 Monday, Oct 2nd, 2006 clear, wind calm to 4 mph, 48°-68°, high 75°

-0715-0745 attended staff meeting. Afterwards Garry Tolen and I disc'd cementitious requirements for piling conc. We reviewed Standard Specifications and Special Provisions for piling conc specs. Found 400 kg min cementitious material for conc placed under slurry but couldn't find a reference to CIDH piling conc not allowing the 5% reduction in cementitious material for the optional use of chemical admixtures.

-0900 Garry Tolen and I met with Phil Gundlach and Mark Benzinger of Mercer Fraser to discuss conc mix designs. Confirmed their 25 MPa mix designs invalid due to needing 25% min fly ash as theirs has >2% calcium oxide—Sec 90-4.08, and their 25 MPa (Wet Hole) mix needs min 400 kg cementitious material—Sec 10-1.47 PILING, and their 42 MPa mixes needing cementitious material reduction to 475 kg—Sec 90-1.01. We requested SMARA number for their aggregate source and re-requested mix designs be submitted in metric. Mark said he would revise the 25 MPa mixes today and fax to Garry and hoped to deliver the remaining ones at the partnering meeting tomorrow.

Around 1400 Evan Paine called Garry. Garry had me fax our mix design comments to Evan, which I did.

Began reviewing Pacific Coast Drilling's CIDH pile placing plan rec'd 9-11-06 from MCM. Disc'd problems identified with Garry.

RWT 0700-1730, 2 hrs OT, reviewing submittal

#397 Tuesday, Oct 3rd, 2006 clear, wind calm to 5 mph, 45°-66°, high 75°

Garry Tolen is at the partnering meeting in Ukiah today.

Checked mix designs rec'd by fax this morning for pile conc, 25 MPa Wet Hole and Dry Hole. Both checked OK. Phil Gundlach stopped in to check on mix design approval and said they would do trial batches after lunch.

-0945 Carl Page came into the office and informed me that there were only 2 guys working on soil stabilization and sediment control measures spraying bonded fiber. He said there were several BMP's that needed to be installed or improved. I told him to call Ron den Heyer as there was probably a break before the 1000 partnering session. He called then told me that he left a message. I suggested he call Gene Leo, he said he had been called but also hadn't answered. I called Garry Tolen who didn't answer but called back a few minutes later. I said there were only 2 people working on spraying fiber and that they said no one else was available to work on erosion control measures and Carl said there were a lot of other BMP's that needed to be taken care of. I said Carl left a message on Ron's cel phone and asked Garry to ask Ron to check his messages.

A little after 1100 Mitch Shands called to inform me the discharge from the dredge wasn't far from the steel plate cofferdam. I said it was supposed to be 100 ft from the river but we were allowing up against the bedrock because we couldn't get 100 ft. He said it was about 20 ft from the bedrock. He said Francisco Cordero, labor foreman, said they didn't have any more hose. I said that wasn't our problem and I'd come out to take a look.

Phil called to say he was going to batch a trial batch load and wanted to know if I wanted to be there. He wanted to batch by hand because he didn't know if the plant was adjusted correctly to stay within the % over/under on materials when on automatic. I said I'd come watch him batch after checking with Mitch. I parked by the batch plant and Mitch was there. It was almost 1200 so we watched Phil batch 4 cy of 25 MPa Wet mix. Then we went to the N Br trestle.

Continued on next page


Rich Thompson, Asst. Str. Rep.



Job Stamp

01-397514

ER-3783 (004)E

MEN-101-159.6/162.0 (Kp)

Report No. 397 page 2/2

Date 10/03/06

M T W T F S S Circle Day

Shift Hours Start 07:00 Stop 17:30

Sub Contractor: LADD

ASSISTANT RESIDENT ENGINEER'S DAILY Bridge No. 10-0300 Structure Construction REPORT

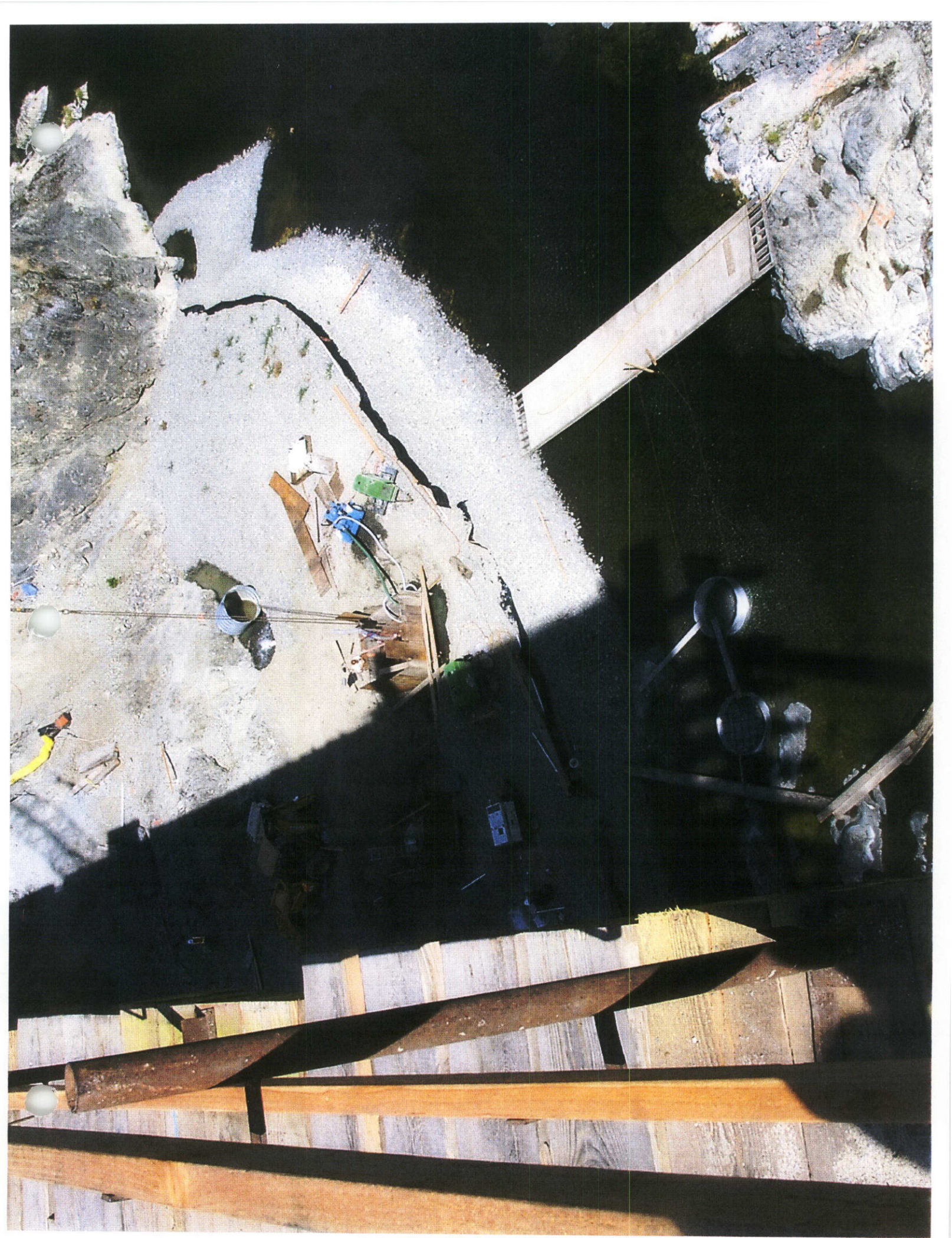
Location & Description of Operation LADD continue drilling, expect to blow tomorrow LADD drilled ± 140 holes.

				HOURS - ITEM NO.								WEATHER	
EQUIPMENT AND/OR LABOR:												Partly Cloudy Hi 72°F Low 60°F	
EQPT. NO.	NO. MEN	DESCRIPTION (Of Equipment or Labor)		Item 42 Excavation								REMARKS (Reason for idleness or other remarks)	
15-9970	1	Operator	10									Gale Hawkins	
	1	Laborer/Foreman	10									David Padilla	
	1	Miner	10									Walter Hawkins	
	1	Laborer	10									Luel Hernandez	
Rental	1	[ELGEO] [GEN]	10									Multiquip Gen 125 KVA	
609-3	1	[HCECL] [CAT]	10									CAT 302.5 excavator	
	1	[AIRTO] [ATOL]	10									Rock Drill	
208	1	[AIRCP] [PORT]	10									Sollair 1600 H	
Rental	1	[AIRCP] [PORT]	10									Sollair 5375 CFM	
15-9970	1	[HCESP] [TEREX]	10									Terex Crane RT 145	

Notes: At 1220 Rich & Mitch came to site talk to Frack (Foreman) about pumping water too close to river, asking the contractor (MCM) to pump as far as they can. The contractor then extend to pipe about 5 meters

G.F.

ASR





Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

October 30, 2006

Mr. Charles Fielder
District Director
CDOT - Eureka
1656 Union Street
Eureka, CA 95403

Dear Mr. Fielder:

Subject: Notice of Violation Regarding Activities at the Confusion Hill Bypass on
the South Fork Eel River, Mendocino County.

File: CDOT – Hwy 101, Confusion Hill Bypass
WDID No. 1B05153WNME

This Notice of Violation serves as a notice that the California Department of Transportation (CDOT) was in non-compliance with prior Regional Water Board authorization. On February 16, 2006, the Regional Water Board issued a Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) for the Highway 101 Confusion Hill Bypass Project on the South Fork Eel River in Mendocino County in response to an application submitted by CDOT on November 29, 2005.

The Water Quality Certification includes the following Additional Conditions.

7. Adequate Best Management Practices (BMPs) for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
9. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.

11. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
12. If construction dewatering is found to be necessary, the applicant will use a method of water disposal other than disposal to surface waters (such as land disposal) or the applicant shall apply for coverage under the General Construction Dewater Permit and receive notification of coverage to discharge to surface waters.
17. All activities, BMPs, and associated mitigation will be conducted as described in this Permit and the application submitted by the applicant for this project.

On September 8, 2006, Regional Water Board staff received an email report from Walt Dragaloski of your staff that described unauthorized discharges that occurred on August 29 and August 30, 2006. Mr. Dragaloski reported that the discharges occurred near the temporary trestle at the north bridge and the discharges were associated with construction dewatering activities. Mr. Dragaloski indicated that on both days the contractor pumped turbid water into an unlined basin located on the gravel bar and the turbid water flowed out of the gravel and into the river. The discharges created an approximately 15 foot long plume of turbid water in the river. The discharges were monitored by a biologist and the turbidity level in the river 100 feet downstream of the discharge point was not increased above background levels. Please be advised that Additional Condition 7 requires implementation of adequate BMPs for turbidity control at all times. It appears that BMPs were not in place prior to the discharge that occurred on August 29. BMPs should have been modified to control the anticipated turbidity discharge that occurred on August 30.

On October 2, 2006, Regional Water Board staff received a voice message from Mr. Dragaloski reporting another unauthorized discharge at the project. Mr. Dragaloski reported that late in the afternoon on Friday, September 29, the contractor discharged water that had been in contact with wet cement into an unlined sedimentation basin that was located within the 100-year floodplain. Regional Water Board staff worked closely with Susan Leroy of Caltrans regarding this issue during the permitting process and staff made it very clear that the Water Quality Certification would not allow any concrete wastes or associated wastewater to be discharged to unlined basins. The discharge of water that has contacted wet cement into an unlined basin violates Additional Condition 9.

On October 6, 2006, Regional Water Board staff inspected a portion of the project, mainly the northern bridge area. During our inspection staff **observed use of a sedimentation basin on the gravel bar near the north bridge. Staff were informed that the same basin was used to dispose of water that contacted wet cement, as well as for the dewatering activities that caused the turbidity discharges described above. The basin appeared to be located below ordinary high water and within 100 feet of the live stream channel. Caltrans' application for Water Quality Certification specifies that all**

sedimentation basins will be located a minimum of 100 feet from the live stream channel. Use of an unlined sedimentation basin for any purpose within 100 feet of the live stream channel violates Additional Condition 17 in the Water Quality Certification. Discharges from the sedimentation basin may also be violations of Additional Conditions 7 and 12.

Staff observed additional violations during the October 6, 2006 inspection. Staff observed a backhoe on the gravel bar near the north bridge that had excessive fluid leakage. Absorbent rags were stuffed into several crevices to control the leakage, however; that backhoe was not in an adequate condition for continued use near any river or gravel bar. Staff observed that rebar had been cut with a torch on the gravel bar without any containment. Steel slag and debris was deposited on the gravel bar within 150 feet of the high water mark, and where it may be washed into the river. Staff also observed steel being cut in the same area on the gravel bar. A small piece of plastic was placed under the saw; however, the plastic was not containing all the steel cuttings. Staff observed welding on the temporary trestle and over the river channel. Welding slag was observed to be falling directly into the water and the adjacent gravel bar. Welding and cutting activities observed by staff were in violation of Additional Conditions 9 and 11.

Based on the discharges reported by Caltrans and Regional Water Board staff observations on October 6, 2006, Caltrans is not providing adequate and appropriate oversight of their contractor to ensure compliance with the Water Quality Certification issued to Caltrans for this project. Caltrans shall ensure that adequate BMPs are implemented at the project, including secondary containment of cutting and welding activities in and over the river channel. All cutting and welding materials, and any other activities that generate waste and debris, shall be conducted with adequate containment BMPs to prevent debris from being deposited in the river channel.

Based on the discharges reported by Caltrans and based on staff's onsite observations on October 6, 2006, it appears that several activities at the Highway 101-Confusion Hill Bypass Project have been conducted in a manner that is not authorized by the Regional Water Board. The unauthorized activities described above threaten to impact water quality and beneficial uses and could result in violation of provisions of the California Water Code. Regional Water Board staff are considering potential follow-up actions and at this time request that Caltrans implement adequate BMPs at this site immediately. Regional Water Board staff request submittal of a report to this office by November 15, 2006 that addresses all areas of non-compliance described in this letter and describes the actions taken by Caltrans to implement adequate BMPs. The report shall specify the date any actions were taken and shall include dated photos of the affected areas.

If you have any further questions please contact Dean Prat of my staff at (707) 576-2801.

Sincerely,

Catherine E. Kuhlman
Executive Officer

103006_DH_DLP_cdotconfhillNOV.doc

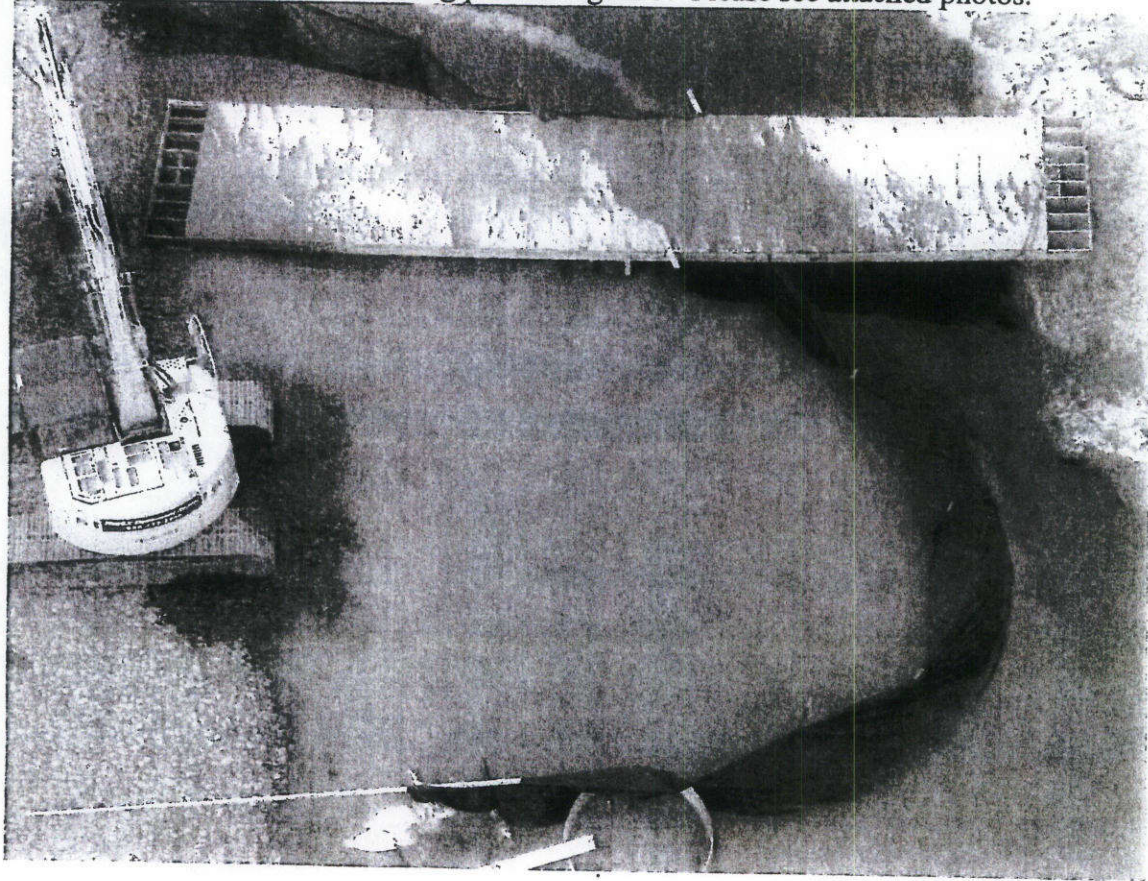
Certified-Return Receipt Requested

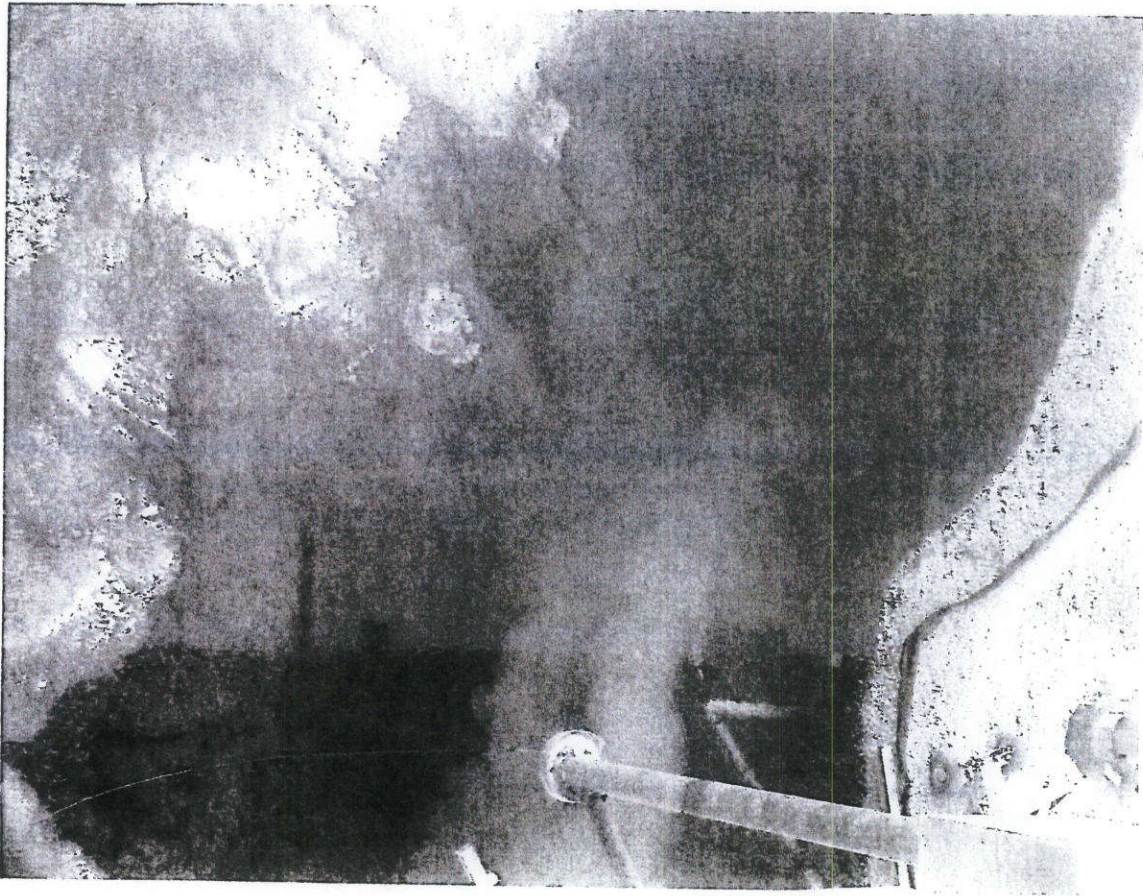
cc: Ms Jenny Chen, SWRCB, Acting Certification and Wetlands Program Manager,
Division of Water Quality
Ms. Samantha Olson, SWRCB, Office of the Chief Council
Ms. Susan Leroy, CDOT-Eureka, P.O. Box 3700, Eureka, CA 95502-3700
Ms. Jane Hicks, US Army Corps of Engineers, Regulatory Branch, 333 Market
Street, San Francisco, CA 94105
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA
95502
Ms. Corinne Gray, California Department of Fish and Game, P.O. Box 47,
Yountville, CA 94558

were observed within the silt fence parameter this week.

Row 28A

Saturday October 7. Construction of footing and BMP installation activities continued. Dewatering of the footings on the gravel bar caused some concern and a mini-memo was delivered to Mr. Hamm at MCM. Silty water was not being deposited in the approved area 70-feet away from the river. The main focus of work during the afternoon was the false work footings on the gravel bar and the initial work on the last two footings in stream. The area around the footing to be excavated was isolated from active flow with the use of a fabric material, fence posts, and sand bags. This initial attempt produced a notable plume outside the containment area, and was ceased until improvements were made. The second attempt proved ineffective due to subsurface flow through the isolation area and porosity of the fabric. Complete isolation of the footing work area to contain silt, seems impractical. Future work however will now be conducted within the containment shroud, or steel box. The silt plume produced by the second event is documented in Figure 4, and the downstream long pool in Figure 5. Please see attached photos.





Sincerely,

Carl Page
For IBIS Environmental

Contract No. 01-397514
01-Men-101-KP 159.6-162.0
CONFUSION HILL BRIDGES

Report No. 46.5-424

Date Mon Nov 13, 2006
M T W T F S S Circle Day
Shift Hours Start 7:00 Stop 15:30

Assistant Resident Engineer's Daily

Item 5,6,37, & CCO #5

Report

Location & Description of Operation: Subcontractor-Mercer Fraser on site to continue work on water pollution control through out the project limits. Mercer Fraser completed placing 134 m silt fence and 3 straw rolls on the south access road to prevent erosion due to heavy flows down ac. Straw rolls placed in areas where the flows were the greatest, to have two levels of BMP. 3 rolls of straw mats were placed on the slope at the switch back on the south access road. Mercer Fraser worked to clean all check dams along 271, peninsula, and South access road.

			HOURS - ITEM NO.						Weather
EQUIPMENT AND/OR LABOR			ITEM 5	ITEM 6	ITEM 37	CCO #5			RAIN/COOL
EQUIP. NO.	NO. MEN	DESCRIPTION of Equipment and							
		Ladd and Associates							
610-017	1	project super w/truck	7.0						Bill Hall
609-7	1	excavator operator apr	7.0						Penny Sanderson
601-2	1	dozer operator	7.0						Joe Gahart
609-2		excavator operator	7.0						Dave Wilson
610-017		project super truck	7.0						3/4 tn pickup
609-7		excavator	7.0						cat 320 w/hammer
601-2		dozer	7.0						cat D6
600-010		dump truck	6.0						cat D350E
609-2		excavator	2.0						cat 325
31-13	1	operator/driller			8.0				Kisha Clarke
31-13		Drill Rig			8.0				Ingersol rand ECM-490
	1	Laborer	7.0						Mike Williams
		Mercer Fraser							
3606	1	Project 4man w/truck	4.0	3.0		1.0			Rick Garner
	1	Laborer	7.0			1.0			James Walker
	1	Laborer	4.0			1.0			Mike Vaile
	1	Laborer		7.0		1.0			Jabe Richardson
	1	Laborer		5.0		1.0			Kenny Baker
3606		Project 4 man	4.0	3.0		1.0			3/4 tn truck
		Backhoe							cat 416 D
	1	10 wheeler/transfer							Jack Hurst O/O

Confusion Hill Hwy 101 slid today Chas on site with 966 loader and turned on the PCMS board prior to Leggett Maintenance coming on site 1 hour to CCO #14 for Chas 4man with 3/4 tn truck and Cat 966 Loader, and PCMS x 1 hr.

Turbidity reading North of Red Mt. Creek = 24; South of Red Mt.=26; Blackwell property =1

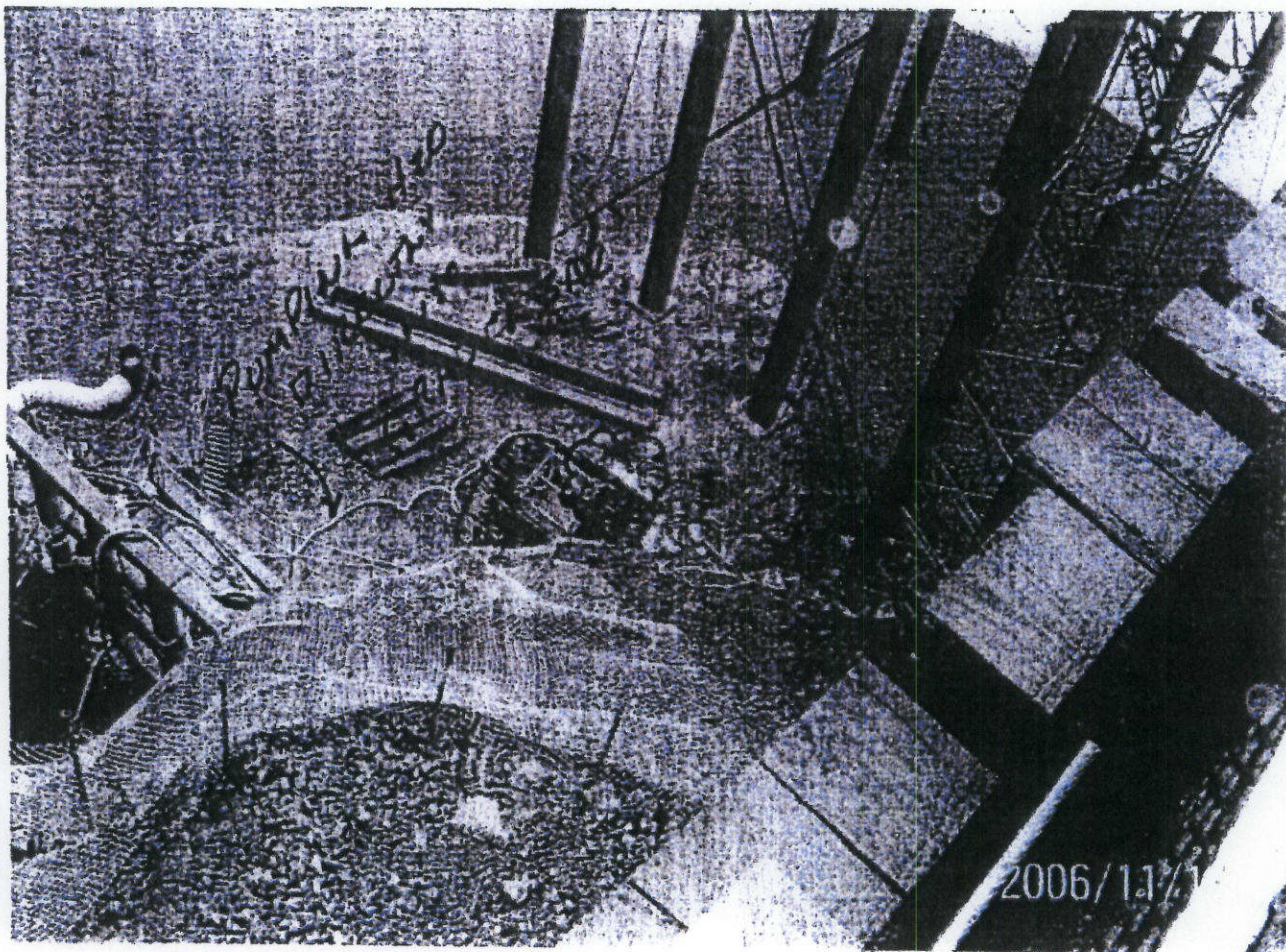
** Spoke with Mitch Lipsky regarding water from the drilling operation draining onto the rock within the 100 yr. I stated that it was in violation of the permits. At this time I took John Railey to the location and brought it to his attention. At that time Justin Webster of MCM was on site, I took him to the location and identified the issue to him. I also addressed the issue to Gary Tolen as Ron Denheyer was on vacation and Gary was acting on his behalf.

Start time inspection

ORIGINAL

Signature

Title



NOV 13, 2006

061115-01.jpg

Contract No. 01-397514
01-Men-101-KP 159.6-162.0
CONFUSION HILL BRIDGES

Report No. 46.5-425
Date Tue Nov 14, 2006
MTWTFSS Circle Day
Shift Hours Start 7:00 Stop 15:30

Assistant Resident Engineer's Daily

Item 5,6,58, & CCO #5

Report

Location & Description of Operation: Subcontractor-Mercer Fraser on site to continue work on water pollution control through out the project limits. Mercer Fraser completed placing 204 m silt fence and 53 m of straw rolls on the south access road to prevent erosion due to heavy flows down ac. Straw rolls placed in areas where the flows were the greatest, to have two levels of BMP. 8 rolls of straw mats were placed on the acces road to abut 1 of the trestle. Jack Hurst on site to deliver 4 transfer loads of 1.5" rock from Cooks Valley. Rock placed on the access road appoaching trestle to prevent tracking. James and Mike completed the extension of the 18" HDPE pipe on the outlet of cross culverts, peninsula. Double

HOURS - ITEM NO.

Weather

PT CLOUDY/COOL

EQUIPMENT AND/OR LABOR			HOURS - ITEM NO.							Weather	
EQUIP. NO.	NO. MEN	DESCRIPTION of Equipment and	ITEM 5	ITEM 6	ITEM 37	ITEM 58	CCO #5				
Ladd and Associates											
610-017	1	project super w/truck	2.0							Bill Hall	
609-7	1	excavator operator apr	5.0							Penny Sanderson	
601-2	1	dozer operator	3.5							Joe Gahart	
609-2		excavator operator	4.0							Dave Wilson	
610-017		project super truck	8.0							3/4 tn pickup	
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630-010		dump truck	5.0							cat D350E	
609-2		excavator	4.0							cat 325	
31-13	1	operator/driller			8.0					Kisha Clarke	
31-13		Drill Rig			8.0					Ingersol rand ECM-490	
	1	Laborer								Mike Williams	
Mercer Fraser											
3606	1	Project 4man w/truck	2.0	3.0		1.0	2 1/2			Rick Garnero	
	1	Laborer	4.0	4 1/2			1 1/2			James Walker	
	1	Laborer	4.0	4 1/2			1 1/2			Mike Vaile	
	1	Laborer	1.0	4.0		1.0	2 1/2			Jabe Richardson	
	1	Laborer	1.0	4.0		1.0	2 1/2			Gary Eliason	
3606		Project 4 man	2.0	3.0			4.0			3/4 tn truck	
		Backhoe	2.0							cat 416 D	
	1	10 wheeler/transfer	8.0							Jack Hurst O/O	

wall used as single wall not available. Justin Porteous also delivered 300' of straw rolls. Ladd's crew working to repair down and damaged silt fence in numerous location along peninsula. Ladd charging to CCO for this operation I told Chas that Per letter from RE that this operation was on them as their operation destroyed the silt fence. It should have been removed and placed off to the side as directed.

** Spoke with Mitch's signal man in the AM and told him to let Mitch know to shut off the pump draining water to the rock below the 100 yr. In the afternoon I addressed the issue to him directly. He was told that he was in violation of the permits.

part time inspection

ORIGINAL

Signature

Title

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
RESIDENT ENGINEER'S DAILY REPORT
ASST. RESIDENT ENGINEER'S DAILY REPORT
DC-CEM-4501 (OLD HC-0010 REV 11/92) 7541-3506-1

RESIDENT ENGINEER'S DAILY REPORT - FILE CAT. 45 ☐
ASST. RESIDENT ENGINEER'S DAILY REPORT - FILE CAT. 46 ☒

01-397514

JOB STAMP

ER-37B3(004)E
Men-101-159.6/162.0 (KP)
REALIGN HIGHWAY WITH TWO BRIDGES

01-397514

REPORT NO.

46-500

DATE

03/07/07

M T W T F S S (Circle Day)

SHIFT HOUR:

START

STOP

TEMPERATURE:

MIN 50's °F MAX

WEATHER

Light Rain

(1) Mercer Fraser - Men on Site: Tucker Portione
Super Working on Concrete Batch Plant Water System with
Dave Dibble, Mechanic. Rich Gannero, 4-man with
laborer James Walker & Taber Richardson continuing erosion
control work and maintenance.

(2) Mike Robert, Carpenter 8 hrs Reg Labor 1 Ton Flat Bed 8 hrs
Ken Syverton, Labor 8 hrs. Reg Labor 10K Generator 8 hrs
with Hand Tools & electric saws Mike & Kenny made & set in
concrete cement (3) Bench Brackets @ Redwood Lodge AND Built
Frame for Shower Room @ RE office.

(3) MCM, notice crew @ Pier # Br. 10-0299
Steve, Francisco, 1 Labor, and
2 metal Fabricators dewatering Pier Pit and preparing site
for Work Trench. A small electric sump pump is being
used to get the last of the water. Water is being
released under the Oregon Oak Tree - The brownish
water is making its way to the Elk River side channel
discoloring the waters. Told MCM, Steve, to stop
and notified Ron den Heyer R.E. - It was stopped. Ron said

SIGNATURE

Jack Naylor

TITLE

ARE CT

ORIGINAL



FILE COPY

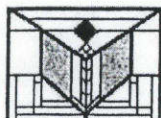


Terry
Davis/D01/Caltrans/CAGov
08/28/2006 07:44 AM

To Walt Dragaloski/D01/Caltrans/CAGov@DOT
cc
bcc
Subject Re: SWPPP issues at Confusion Hill

Good report!

Walt Dragaloski/D01/Caltrans/CAGov



Walt
Dragaloski/D01/Caltrans/CAGov
08/25/2006 01:07 PM

To Ron Den Heyer/D01/Caltrans/CAGov@DOT, Gene
Leo/D01/Caltrans/CAGov@DOT
cc Terry Davis/D01/Caltrans/CAGov@DOT, Alex
Arevalo/D01/Caltrans/CAGov@DOT, Melinda L
Molnar/D01/Caltrans/CAGov@DOT
Subject SWPPP issues at Confusion Hill

Ron,

On Tuesday, August 22, 2006, I performed a site inspection for SWPPP compliance. The following deficiencies were observed:

1. Equipment is being fueled on the riverbar at the north bridge. Our permit with the Regional Water Quality Control Board explicitly states that fueling must only occur outside of waters of the United States. At the PDT James Hamm acknowledged that they were fueling a compressor, generator, man-lift and backhoe.
2. A discharge of oil occurred from the backhoe directly onto the riverbar. Equipment that has even minor leaks must not be allowed to operate in sensitive areas such as the riverbar. This discharge should have been reported to the RE and cleanup up immediately. There were no BMP's in place to prevent the discharged oil from reaching the riverbar.
3. Careless discarding of welding rods is occurring onto the riverbar.
4. A temporary sedimentation basin has been constructed and used within 100 feet of the live stream channel. Page 144 of the Special Provisions states, "temporary sedimentation basins for dewatering...shall be located a minimum of 32 meters away from the live stream channel."
5. Fueling is occurring in the TCE near the RE's office without use of ANY BMP's. Ladd personnel were fueling the tracked hoe and claimed they had no training or knowledge of required fueling practices and have been fueling their equipment for weeks in such a manner.
6. There is no stabilized construction entrance at the south bridge approach where dirt is tracking onto the highway due to trucks entering and leaving the work site. The stabilized entrance should be constructed prior to dirt hauling activities in the area.
7. Linear sediment barriers should be constructed along highway 271 where disturbed soil areas exist.

In addition to the above described deficiencies, please consider the following requests and recommendations:

1. The Water Pollution Control Manager (WPCM) should amend the SWPPP by submitting the information described on Page 144 of the Special Provisions to graphically depict the dewatering process that the contractor is using to construct the temporary trestle at the north bridge. The graphic needs to show a sectional and plan view that details the removal techniques for pumping

AUG 29 2008





SEP 26 2006

SECTION SIX

Water Quality Monitoring

Proactive Measures. Plastic sheeting was placed under equipment to catch the fluid leaks. Absorbent oil diapers and plastic "kiddy pools" were employed under heavy equipment to contain leaks.

Problems Encountered and Measures Taken. Some equipment seemed to suffer from chronic leaks. These were photo-documented and presented to the Caltrans inspectors (Figure 42). Most leaks were cleaned up promptly when pointed out by monitors.

The Manitowoc crane on the north trestle (main lift), the man lift on the gravel bar, and the CAT 350 were the main offenders for oil and hydraulic leaks. It proved difficult to prevent these vehicles from leaking oil. Other recommendations such as placing sheets of plastic under the vehicles to catch the oil did not work properly. Plastic sheeting typically spilt its oil onto the trestle. Although the oil leaks improved over time it was still a problem throughout the monitoring period. It was finally recommended to remove the Manitowoc from directly above the river at night to prevent any oil or hydraulic leak from falling into the river. The RE informed the contractor to do so at the beginning of November.

In addition, some equipment storage occurred on the gravel bar which has the potential for oil leaks to wash into the river during rain events or higher flows. In the future, overnight leaks could be minimized by either removing the equipment on a nightly basis or the use of large absorbent pads.

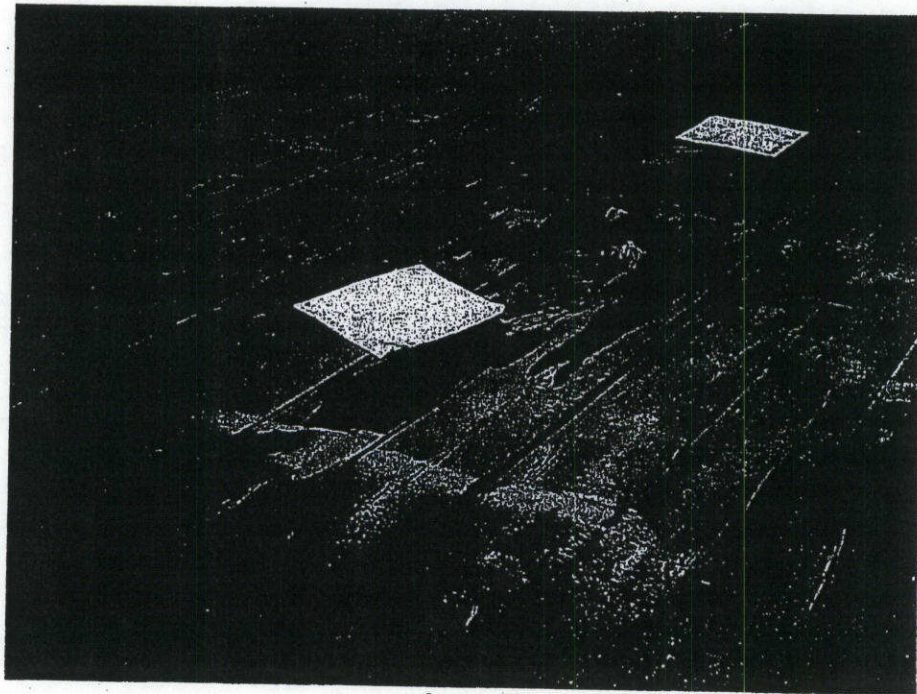
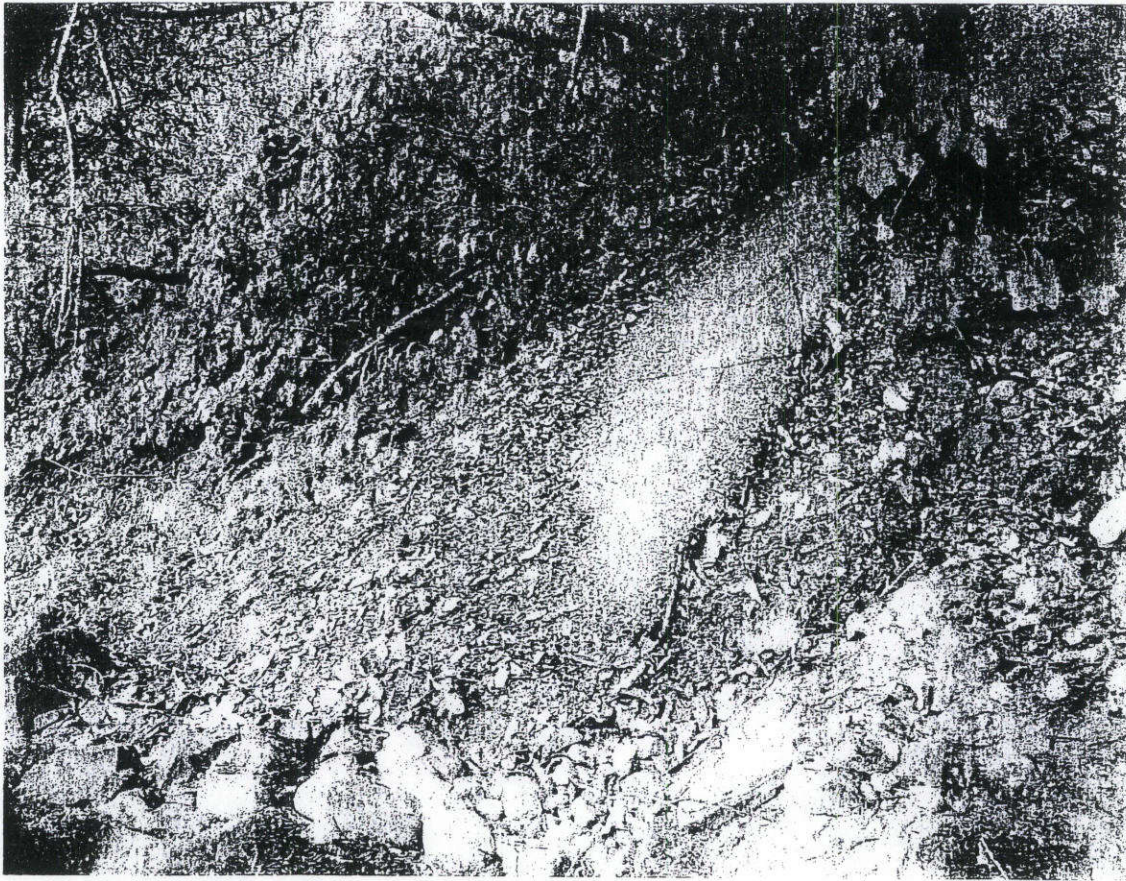


Figure 42. Oil leaks above river on wooden trestle. The large trestle crane had this problem regularly.

SEP 27 2006





At 12:23 the first blast of the week was completely covered by the blast mat, so no fly rock was projected. Hydro-acoustic monitors did not detect any recordable pressure waves.

Thursday October 5. No regular morning meeting occurred, allowing an initial survey of the work area before daily activities began. Oil and diesel stains on the gravel bar were identified for cleanup. Dewatering of the shoring boxes for false work footing onto the gravel bar, although not 100-feet away due to bedrock, filtered the silty water effectively. Water Quality below the construction area, and Red Mountain Creek were measured at noon. Data from main stem South Fork Eel and Red Mountain Creek tributary continues to be compiled. A second blast in the pier shaft occurred at about 2:17 on Thursday. Completely blanketed with a blast mat, no fly rock occurred and no recordable pressure waves produced. Hydraulic and oil leaks were noted from the problematic backhoe moved back across the river, now working along HWY 101.

Friday October 6. Activities included monitoring gravel bar construction of the footings, grubbing, and tree clearing. BMP installations were monitored at the south access road. A concrete washout containment area need was identified and requested. Molten slag was observed dripping into the river at 2:20 pm, using no bucket to catch the excess. This activity was terminated, but not before noticeable amounts of slag, small sheets of rusty metal, welding rods, and other debris had accumulated in the river channel. These will need to be retrieved by snorkel divers, and preventative measures applied. One aquatic garter snake was rescued and relocated from the tunnel shaft. No yellow-legged frogs











Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

October 30, 2006

Mr. Charles Fielder
District Director
CDOT - Eureka
1656 Union Street
Eureka, CA 95403

Dear Mr. Fielder:

Subject: Notice of Violation Regarding Activities at the Confusion Hill Bypass on
the South Fork Eel River, Mendocino County.

File: CDOT – Hwy 101, Confusion Hill Bypass
WDID No. 1B05153WNME

This Notice of Violation serves as a notice that the California Department of Transportation (CDOT) was in non-compliance with prior Regional Water Board authorization. On February 16, 2006, the Regional Water Board issued a Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) for the Highway 101 Confusion Hill Bypass Project on the South Fork Eel River in Mendocino County in response to an application submitted by CDOT on November 29, 2005.

The Water Quality Certification includes the following Additional Conditions.

7. Adequate Best Management Practices (BMPs) for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
9. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.

California Environmental Protection Agency

Recycled Paper

11. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
12. If construction dewatering is found to be necessary, the applicant will use a method of water disposal other than disposal to surface waters (such as land disposal) or the applicant shall apply for coverage under the General Construction Dewater Permit and receive notification of coverage to discharge to surface waters.
17. All activities, BMPs, and associated mitigation will be conducted as described in this Permit and the application submitted by the applicant for this project.

On September 8, 2006, Regional Water Board staff received an email report from Walt Dragaloski of your staff that described unauthorized discharges that occurred on August 29 and August 30, 2006. Mr. Dragaloski reported that the discharges occurred near the temporary trestle at the north bridge and the discharges were associated with construction dewatering activities. Mr. Dragaloski indicated that on both days the contractor pumped turbid water into an unlined basin located on the gravel bar and the turbid water flowed out of the gravel and into the river. The discharges created an approximately 15 foot long plume of turbid water in the river. The discharges were monitored by a biologist and the turbidity level in the river 100 feet downstream of the discharge point was not increased above background levels. Please be advised that Additional Condition 7 requires implementation of adequate BMPs for turbidity control at all times. It appears that BMPs were not in place prior to the discharge that occurred on August 29. BMPs should have been modified to control the anticipated turbidity discharge that occurred on August 30.

On October 2, 2006, Regional Water Board staff received a voice message from Mr. Dragaloski reporting another unauthorized discharge at the project. Mr. Dragaloski reported that late in the afternoon on Friday, September 29, the contractor discharged water that had been in contact with wet cement into an unlined sedimentation basin that was located within the 100-year floodplain. Regional Water Board staff worked closely with Susan Leroy of Caltrans regarding this issue during the permitting process and staff made it very clear that the Water Quality Certification would not allow any concrete wastes or associated wastewater to be discharged to unlined basins. The discharge of water that has contacted wet cement into an unlined basin violates Additional Condition 9.

On October 6, 2006, Regional Water Board staff inspected a portion of the project, mainly the northern bridge area. During our inspection staff observed use of a sedimentation basin on the gravel bar near the north bridge. Staff were informed that the same basin was used to dispose of water that contacted wet cement, as well as for the dewatering activities that caused the turbidity discharges described above. The basin appeared to be located below ordinary high water and within 100 feet of the live stream channel. Caltrans' application for Water Quality Certification specifies that all

sedimentation basins will be located a minimum of 100 feet from the live stream channel. Use of an unlined sedimentation basin for any purpose within 100 feet of the live stream channel violates Additional Condition 17 in the Water Quality Certification. Discharges from the sedimentation basin may also be violations of Additional Conditions 7 and 12.

Staff observed additional violations during the **October 6, 2006 inspection**. Staff observed a backhoe on the gravel bar near the north bridge that had excessive fluid leakage. Absorbent rags were stuffed into several crevices to control the leakage, however; that backhoe was not in an adequate condition for continued use near any river or gravel bar. Staff observed that rebar had been cut with a torch on the gravel bar without any containment. Steel slag and debris was deposited on the gravel bar within 150 feet of the high water mark, and where it may be washed into the river. Staff also observed steel being cut in the same area on the gravel bar. A small piece of plastic was placed under the saw; however, the plastic was not containing all the steel cuttings. Staff observed welding on the temporary trestle and over the river channel. Welding slag was observed to be falling directly into the water and the adjacent gravel bar. Welding and cutting activities observed by staff were in violation of Additional Conditions 9 and 11.

Based on the discharges reported by Caltrans and Regional Water Board staff observations on October 6, 2006, Caltrans is not providing adequate and appropriate oversight of their contractor to ensure compliance with the Water Quality Certification issued to Caltrans for this project. Caltrans shall ensure that adequate BMPs are implemented at the project, including secondary containment of cutting and welding activities in and over the river channel. All cutting and welding materials, and any other activities that generate waste and debris, shall be conducted with adequate containment BMPs to prevent debris from being deposited in the river channel.

Based on the discharges reported by Caltrans and based on staff's onsite observations on October 6, 2006, it appears that several activities at the Highway 101-Confusion Hill Bypass Project have been conducted in a manner that is not authorized by the Regional Water Board. The unauthorized activities described above threaten to impact water quality and beneficial uses and could result in violation of provisions of the California Water Code. Regional Water Board staff are considering potential follow-up actions and at this time request that Caltrans implement adequate BMPs at this site immediately. Regional Water Board staff request submittal of a report to this office by November 15, 2006 that addresses all areas of non-compliance described in this letter and describes the actions taken by Caltrans to implement adequate BMPs. The report shall specify the date any actions were taken and shall include dated photos of the affected areas.

If you have any further questions please contact Dean Prat of my staff at (707) 576-2801.

Sincerely,

Catherine E. Kuhlman
Executive Officer

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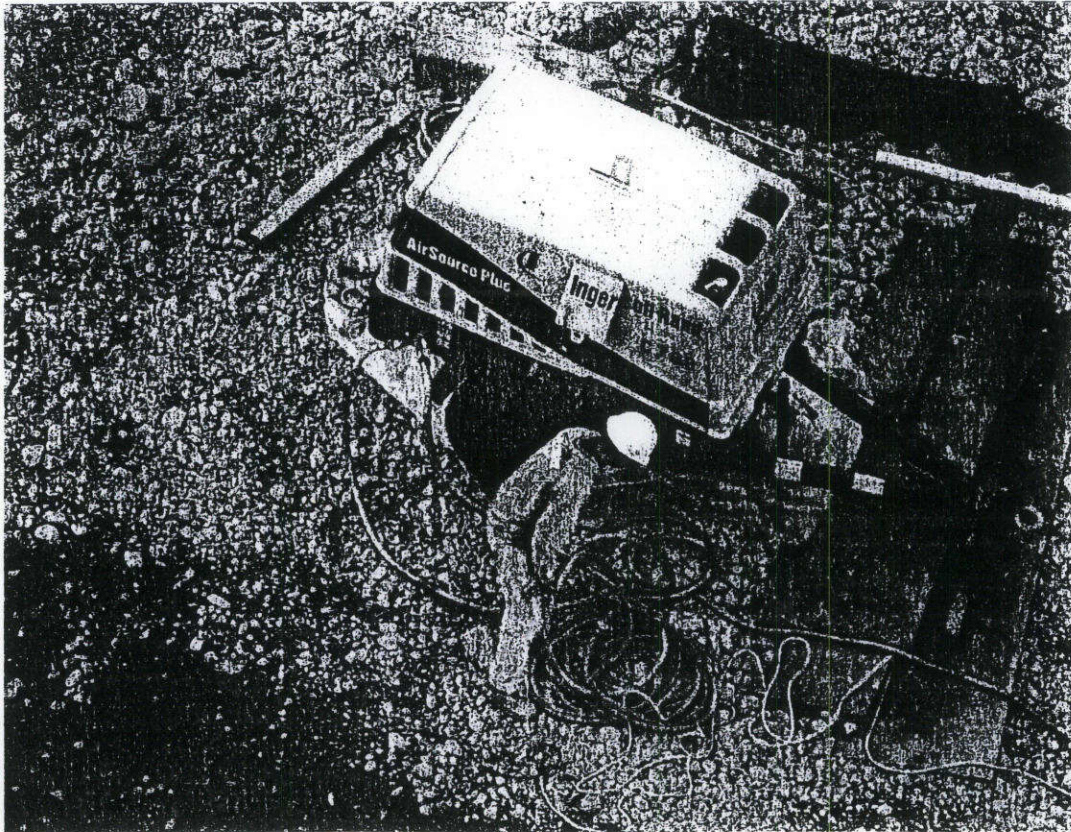
Certified-Return Receipt Requested

cc: Ms Jenny Chen, SWRCB, Acting Certification and Wetlands Program Manager,
Division of Water Quality
Ms. Samantha Olson, SWRCB, Office of the Chief Council
Ms. Susan Leroy, CDOT-Eureka, P.O. Box 3700, Eureka, CA 95502-3700
Ms. Jane Hicks, US Army Corps of Engineers, Regulatory Branch, 333 Market
Street, San Francisco, CA 94105
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA
95502
Ms. Corinne Gray, California Department of Fish and Game, P.O. Box 47,
Yountville, CA 94558



Water quality measurements were taken morning and afternoon. No notable environmental impacts were observed on this day.

Wednesday October 11. Inspections of machinery identified two problems. The IR compressor leaks excessively, and diapers and plastic sheets have been employed for a long time, but the leaks increase. The second unidentified leak from the Manotowic crane grows worse. Plastic sheeting catching oil and hydraulic leaks have also spilt onto the false bridge deck on several occasions. The explosive tunneling "shot" took place just after noon. No fly rock was observed or photo documented (Figure 3).



Hydro-acoustic monitors did not detect any recordable pressure waves.

Thursday October 12. The regular morning meeting, during which seven locations for future were identified for storm water monitoring, occurred, allowing an initial survey of the work area before daily activities began. Oil and diesel stains on the gravel bar were identified for cleanup. The second shot for the week took place before noon, and again no fly rock was observed. I discovered a large oil stain under one piece of machinery at noon, not cleaned up by 1:30, raised concerns.

Some construction workers increasingly prove hostile to inspections, needing close monitoring, and important questions. Keeping the gravel bar clean is a constant battle to control the accumulation of debris, oil, and hydraulic fluids. Construction sprawl out over the gravel bar is also being controlled, to the best of my authority.

Friday October 13. Activities included monitoring gravel bar construction of the footings and cementing. The in-stream footings construction has been delayed by the complicated slow progress of securing a strong footing onto bedrock many feet down. SCUBA was employed to remove cobble in deeper footings (Figure 4).

Saturday October 14. Construction of the remaining in stream footings was the main focus of work during the day. The area around the footing to be excavated was isolated from active flow with the use of a fabric material, fence posts, and sand bags. This initial attempt produced a notable plume outside the containment area, and was ceased until







Confusion Hill Realignment With Two Bridges Project Biological Monitoring Report

October 31, 2006.

To Whom It May Concern

Re: Weekly Monitoring for October 23rd through 28th, 2006.

Biological monitoring duties for this week's construction at the Confusion Hill Project included continued spot checks of leaky equipment and additional (BMP) installation, as well as in-stream and gravel bar activities below the north bridge. One "shot" (Blast) for tunnel work occurred on Thursday. Construction activities on the gravel bar included cleaning up and removal of non-essential equipment.

Monday October 23. Gravel bar activities included continued false work footing construction and bent & pier placement at the north bridge. Temperatures in Red Mountain Creek continue to fall to 8.1 degrees C while the mainstem, with less canopy cover, remains relatively warm at 10-12 degrees C. Action items were developed for cleanup to remove all equipment from below the ordinary high water mark before the October 31 deadline. Important action items were documented and photographed for the Resident Engineer and subsequently given to the contractors to address.

Tuesday October 24. Chalking the spaces between the deck mats to seal the surface proved inadequate. Heavy equipment flexed the deck and separated the deck mat seal (i.e., the chalking was pulled apart). Action taken included placing small bits of plywood nailed over larger gaps, with smaller ones left unmodified (Figure 1). The RE was notified that an alternative method will need to be incorporated into the decking design to prevent oil and hydraulic fluid, leaking from equipment onto the decking, from going into the river. Rocks and other debris falling through some of the larger holes may also pose a hazard to people below as well as falling into the river (Figure 2). Large flakes of rusty metal from I-beams and slag from continuous welding accumulated on the gravel bar. These were temporarily cleaned up, but those in the river remain. The RE was notified but no solution was reached.

Wednesday October 25. Water quality sampling in Red Mountain Creek and the South Fork Eel, both morning and evening continues to provide data for the year end report. An action item list was developed to return the gravel bar to its natural state by the end of the month. The following items have been targeted for removal by the end of the month.

- debris from Split-set and welding (slag)
- wood scraps, metal scraps, and saw dust
- plastic and food wrappings
- rust flakes
- hay bails (west side of river, below the ordinary high water mark)
- tree limbs and brush on southerly bank and in the water
- molten slag on rocks and in the sand (both sides of river)

Wood scraps and saw dust, rust flakes and plastics have been removed from the gravel bar, returning it to an acceptable pre-construction appearance. Large flakes of rust from old I-beams that could easily fall into the river were cleaned up (Figure 3). Continued efforts to seal cracks and spaces between trestle deck mats with caulking proved inadequate (Figure 4).

Thursday October 26. Seven locations for future storm water monitoring were identified. Oil and diesel stains on the gravel bar were also identified for cleanup. The second shot for the week took place before noon, and again no fly rock was observed. The explosive tunneling "shot" took place at 2:17 pm. No fly rock was observed or photo documented. Again, hydro-acoustic monitors did not detect any recordable pressure waves.

Friday October 27. Activities included monitoring gravel bar construction of bents and piers, and cleanup outlined by the punch list action items (mentioned above). Oil leaks continue to occur without adequate cleanup or prevention with the standard kiddie pools and diapers. Overnight oil spots are often not prevented and typically just covered up with soil. The worst offenders are the Manatowoc crane on the false bridge, the LINK man lift on the gravel bar, and the CAT 350. This has been brought to the attention of the RE on many occasions. The plastic "tarps" placed under the crane constantly spills its contents onto its tracks and the bridge decking (Figure 5). The RE was informed of the oil spills and that rainfall will facilitate pollution if not redesigned or the crane leaks fixed.

Saturday October 28. The punch list for the South access road was formalized with the following action items. The silt fencing below ordinary high water line on gravel bar should be removed. The RE has asked that the fine soils from lower south access road (ramp) be removed and the access road be stabilized with rocks. Constant use has turned the road into a fine dust several inches deep (Figure 6). The plastic PVC water pipe should be removed before the first rain event. Culvert inlets need cleaning and some need enlarging on south access road. Energy dissipation BMP's also need to be installed at the culvert outlets before the rain, especially on the culverts along the peninsular access road and Highway 271.

Construction of the remaining false work to connect the trestle to the peninsular side was the focus of work. Welding slag continued to fall into the river. No solution was reached between the RE and contractors. All construction on the gravel bar will be completed before the end of the month. Working directly above the river, decking construction debris and petro-chemical spills will pose a constant threat especially during rain events (Figure 7).

The RE was informed that the crane should be kept on the access road after hours, not on the decking and especially not above the river where oil will be discharged. The RE was also informed that most of the old heavy equipment and generators will need constant attention to prevent spills during construction in the winter months.

Comparative water quality measurements continue for Red Mountain Creek and the

South Fork Eel River, and will be taken periodically during the storm water runoff period when turbidity is monitored. During the final two days of the month I will insure the all conditions on the gravel bar and river are returned to the "natural condition" below the ordinary high water mark.

Carl Page
Biological Monitor
For Ibis Environmental, Inc.

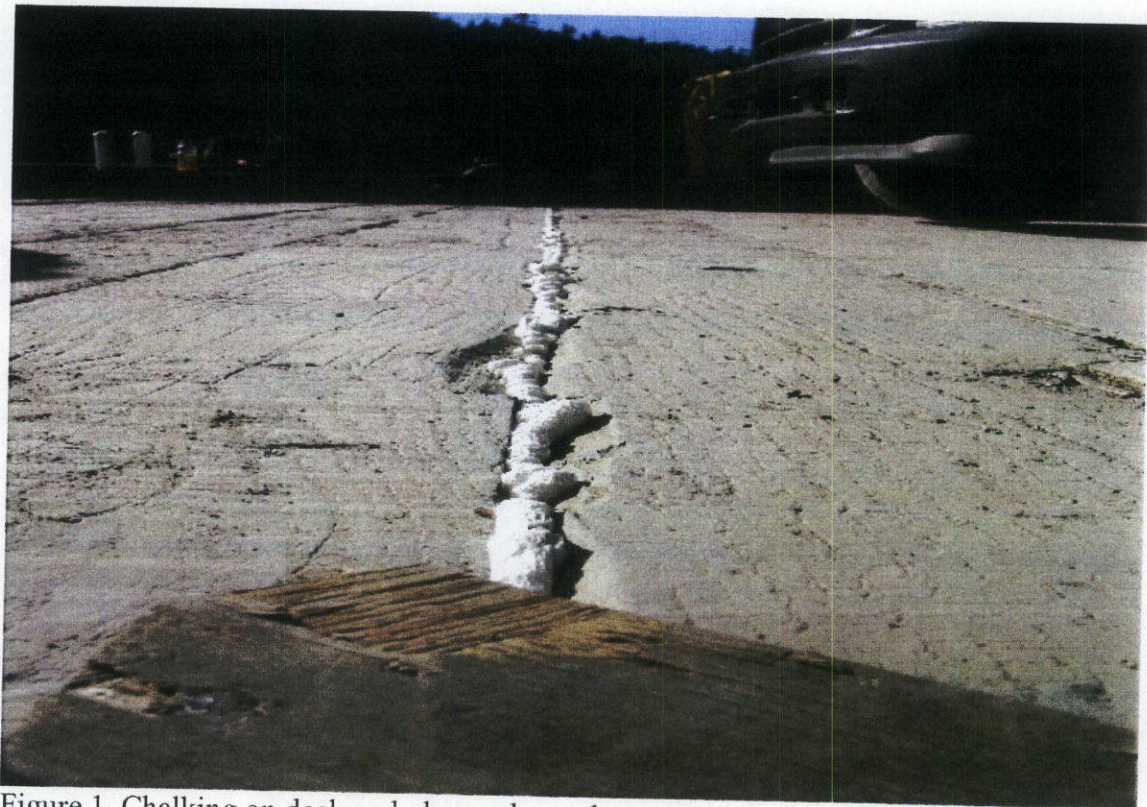
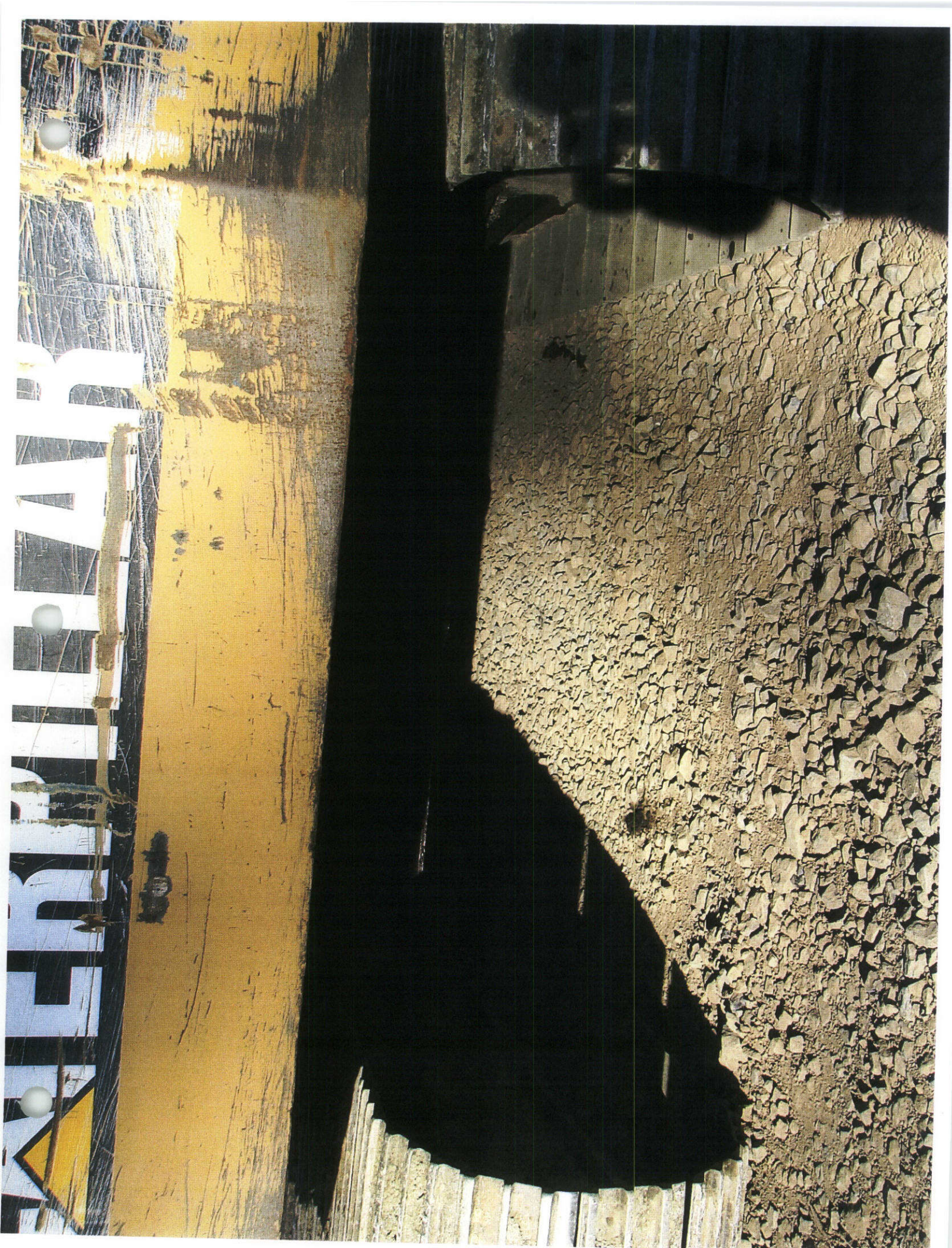


Figure 1. Chalking on deck and plywood over larger gaps.









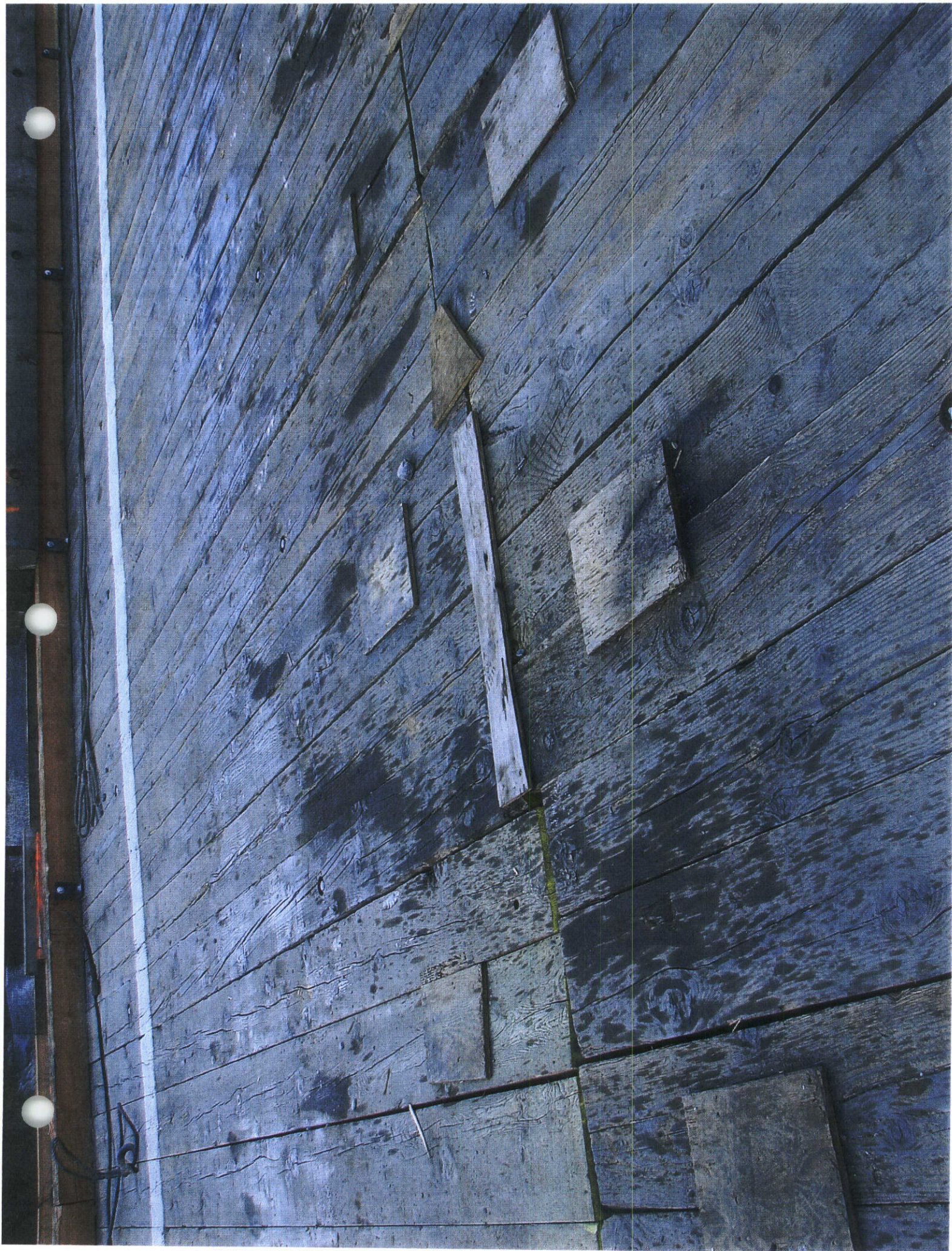




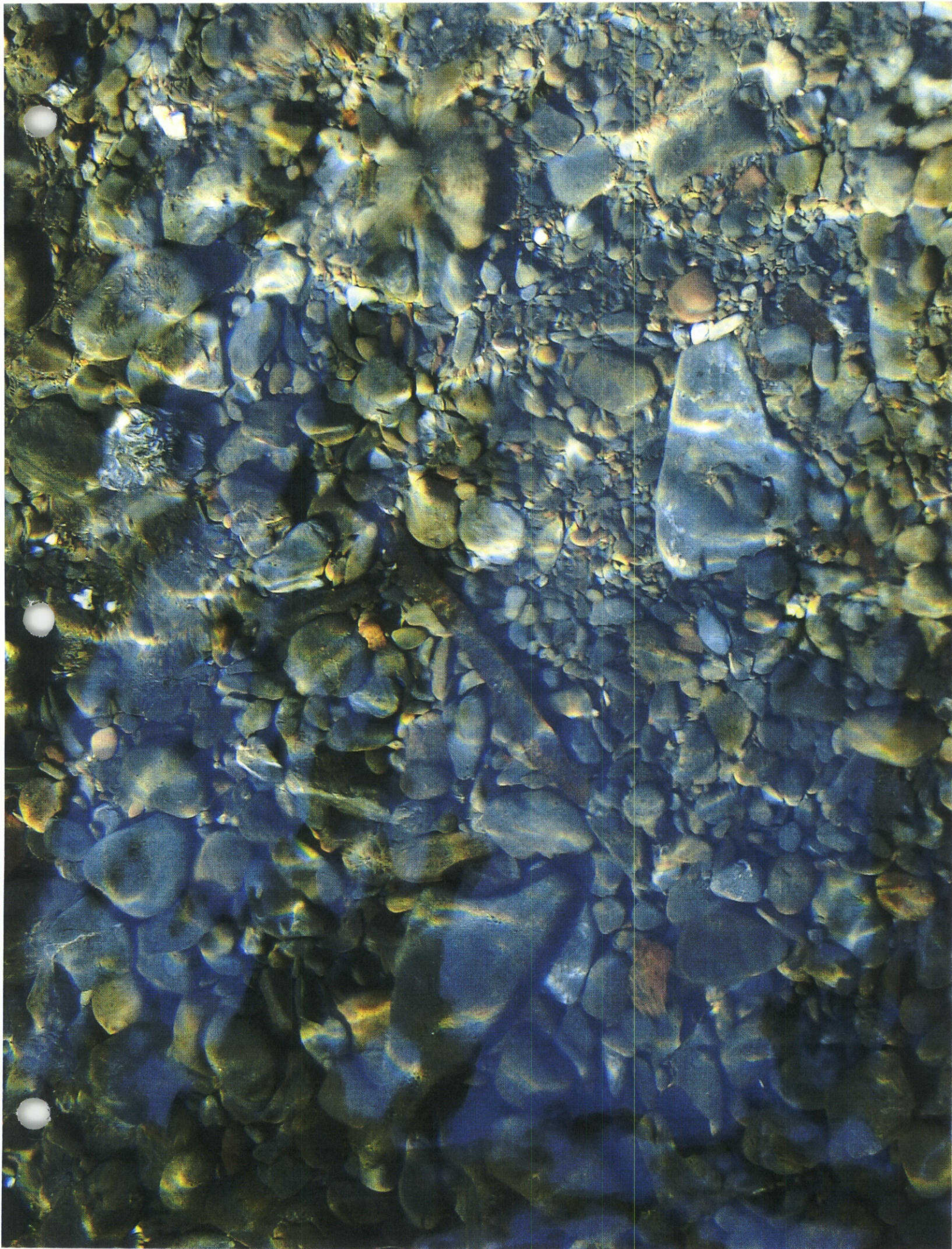


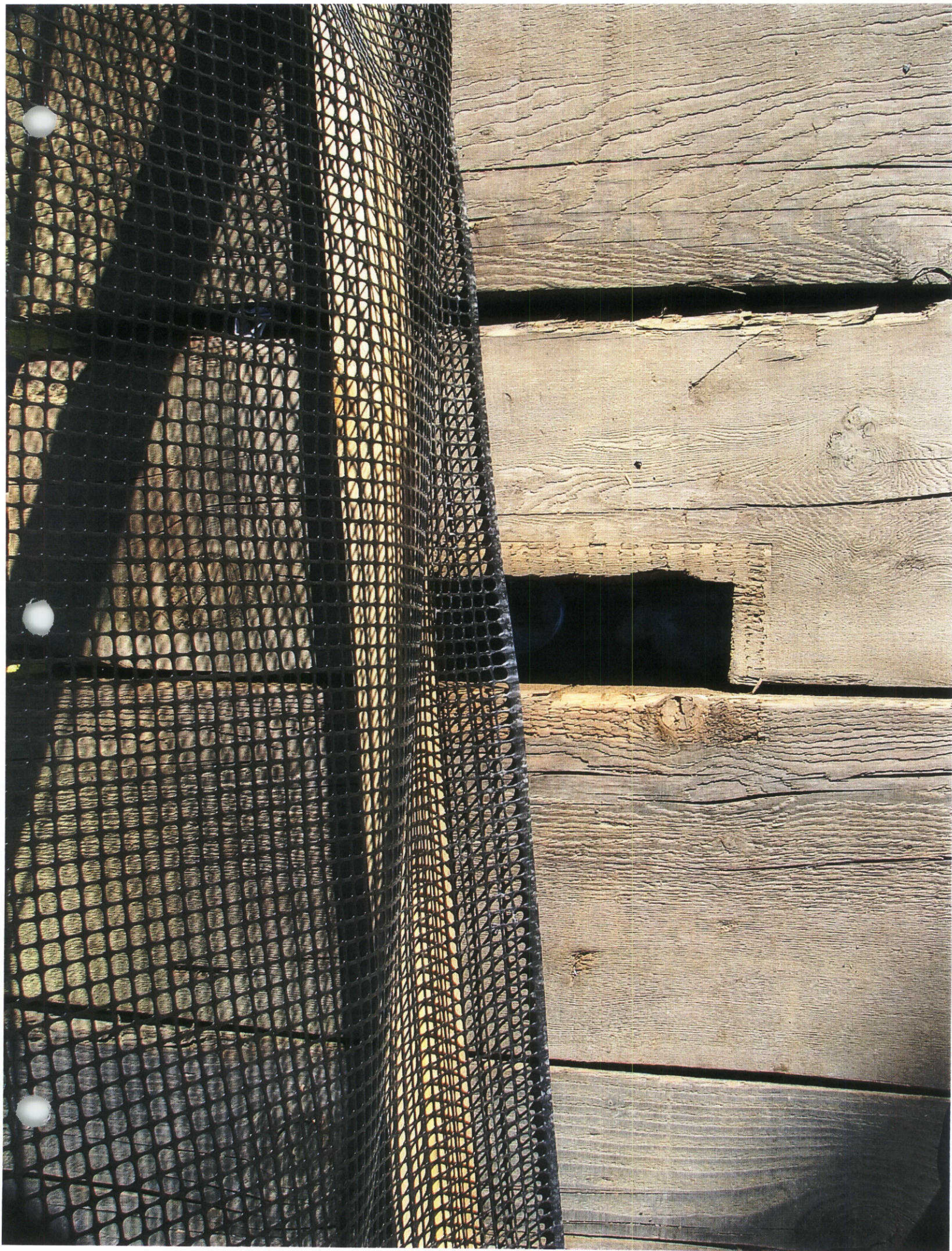














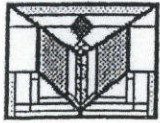






placed on top of the deck. This deficiency has been identified earlier by myself and the Storm Water Task Force. I recommend that we get something installed before the next Task Force inspection. The contractor has attempted to place expanding foam into some of the cracks but not all cracks are filled and those that are filled still show daylight through portions appear to have lost adherence during deck loading. During deconstruction of the trestle, care will have to be taken to prevent a discharge of loose, hardened foam into the river.

11. The crane being used on the trestle has leaking fluids. This has been noted many times earlier. The contractor has attached a piece of plastic under the crane, but the plastic catches both oil leaks and stormwater. There is evidence on the trestle deck that oil that has leaked off of the plastic. I observed commingled oil with water on the plastic during my site visit. I recommend that the crane be repaired immediately or discontinue its use.
12. The access roads on the peninsula have not been stabilized with rock as required by the special provisions. I estimate that there are over 3 acres of unstabilized roadway on the peninsula.
13. There are NO BMP's on the large amount of DSA above the south abutment for the north bridge. I did not make any rough measurements, however, I believe that there are over 5 acres of DSA currently exposed above the south abutment. There is plenty of room for desilting basins and temporary erosion control should be applied to all areas that are inactive, or expected to be inactive due to rainy weather. The roadside berms that were constructed will confine stormwater to the steep road, increasing the velocity and volumes and potentially posing a serious threat of discharge at the lower end. I recommend that the berms be broken to allow run-off, waterbars be placed longitudinally, and concentrated flow directed to desilting basins. Additionally, during construction of the roadside berms, loose soil has been pushed down the slope at many locations. There are no BMP's in place to prevent this soil from mobilizing when contacted by stormwater. Silt fences should be placed at the lower edge of the clearing limits and temporary erosion control should be applied to the loose soil.
14. The current amount of DSA is estimated to be greater than the 5 acres allowed by the special provisions.
15. Two culverts have been placed on the lower peninsula access road. These culverts will concentrate run-off. The culverts do not extend to the bottom of the slope and do not appear to be well attached to the slope. There is no energy dissipation device at the bottom of the culverts, although silt fence has been placed on the flat section near the toe of the slope. I recommend that the culverts be extended to the toe of the slope, be well secured to the slope, and an energy dissipater be placed at the outlet.
16. The fiber rolls placed on the north end of the peninsula access road to the north bridge Abutment 1 are not entrenched or staked.
17. The inboard ditch adjacent to the steep section of paved road to the south bridge is susceptible to high flow velocity. During earlier visits, I discussed with Justin Porteous, the need to protect the v-ditch along the steep portion by lining it with rock. No rock lining has been placed.
18. Due to paving of the south access road, run-off velocity will be increased along the entire length of the outsloped road. There are no BMP's currently installed along the outer edge of the road. I recommend that silt fence be installed along the entire length of the outside edge in all locations where the road is out-sloped.
19. During construction of the work platform for the south bridge Pier 2, loose soil was pushed over the edge of the bank. The soil cascaded all the way to the toe of the slope, which is below the Ordinary High Water elevation. The loose soil along the entire chute should be stabilized or removed. The loose soil below OHW should be removed.
20. The construction entrances/exits were not constructed according to the special provisions. There is no evidence of large amounts of soil tracking onto the highway, however during higher intensity rainfall events and increased construction traffic, tracking may become an issue. I recommend that the stabilized construction entrances/exits be built according to the special provisions.
21. The detention basin adjacent to the concrete batch plant does not have any means of conveying water should it overflow. An old culvert used to be connected to the basin, however during improvement of the road, an excavator could not find the inlet. If the basin overflowed, a portion of the north bridge access road would be at risk of being washed into Red Mountain Creek. I recommend that an overflow drain be installed and joined into the existing culvert on the outer slope below the basin.
22. The falsework trestle footings and bents have been erected. The Notice of Violation sent by the RWQCB identifies direct discharge of welding slag to the river. Currently there is no written plan to prevent the discharge of welding slag. I recommend that the SWPPP be amended to provide a plan to



Walt Dragaloski
11/07/2006 10:15 AM

To: Ron Den Heyer/D01/Caltrans/CAGov@DOT
cc: Gene Leo/D01/Caltrans/CAGov@DOT, Terry
Davis/D01/Caltrans/CAGov@DOT, Karen
Spliethof/D03/Caltrans/CAGov@DOT
Subject: Confusion Hill site visit 11/3/06 to review stormwater BMP's

Ron,

On Friday, November 3, 2006, I visited the Confusion Hill Bypass project site during a rain event to review construction stormwater BMP's. Please consider the following observations and recommendations:

1. A sediment plume was observed emanating from a culvert outlet located just upstream from the Bearpen Disposal area. This sediment plume was traced back to run-on, coming from the Hwy 101 undercrossing just north of the staging area on Hwy 271. I spoke with Justin Porteous about diverting the run-on across Hwy 271 and into an overside drain near the gate at the north end of the staging area. Justin responded that he would rather sample run-on and run-off instead of diverting the run-on. This will be costly over the duration of the project compared to placing an AC berm (bump) just north of the fencing. I called the Regional Water Quality Control Board to inform them of an observed sediment plume in the river that was coming from run-on and not project work. I recommend that an AC berm be placed diagonally across Hwy 271, north of the access gate.
2. The silt fence and haybale checkdam located below Ordinary High Water at the bottom of the Bearpen river access road are still in place. The BMP's need to be removed before the area is inundated by high flows.
3. The Bearpen access road is currently superelevated along the top portion and concentrates run-off along the inboard edge. The road then reverses the superelevation and causes concentrated run-off at the low point. Evidence of erosion can be seen on the upper part of the slope at the discharge location, despite receiving only a small amount of rainfall. No discharge of sediment was observed outside the disposal area limits nor evidence of erosion below the silt fence. The access road should be outsloped to allow sheet flow along the entire road and prevent concentrated run-off.
4. The silt fence along the top of slope, on the river side of the Bearpen river access gate, allows run-off to flow around the lower end. The silt fence should be extended towards the gate to filter all run-off.
5. Run-off from the staging area adjacent to Hwy 271 above Bearpen disposal area is being diverted by the crushed rock that was placed from the highway to the disposal area. The run-off is running down the disposal area road and discharging at the low point in the access road. The crushed rock approach should contain a swale to channel water across it or a berm should be placed at the top of the access road to the disposal area.
6. Currently there are 3 access points to the fueling/maintenance area at the north end of Hwy 271. Pea gravel has been placed at two of the access points to stabilize the entrances/exits. The pea gravel layer is very thin and susceptible to displacement by wheel loads and will be insufficient during higher intensity rainfall events. I recommend that one of the access points be closed off and a layer of crushed rock be placed at the remaining 2 access points to create stabilized construction entrances/exits.
7. Stormwater currently flows along the dike on the river side of Hwy 271 south of the Bearpen disposal area. The velocity of the water is unchecked and has the potential to transport sediment and gravel. Placement of checkdams along the dike would help to reduce the stormwater velocity and capture entrained sediment and gravel.
8. The concrete secondary containment structure for the fuel tank on the east side of Hwy 271 has no walls to prevent stormwater capture. The drip containment barrel for the fuel nozzle is currently located against the outside edge of the structure and is receiving rainfall directly into the barrel. In order to reduce the amount of water that the barrel captures for off-site treatment, I recommend that the barrel be moved away from the outside edge of the structure.
9. The gravel bag and haybale checkdams placed in the ditchline to the drain inlet located just north of the contractor's office trailers has been completely knocked over by the stormwater flows. Additionally, stormwater is also bypassing the drain inlet. The entrance to the ditchline should have a gravel bag berm to prevent bypass.
10. The temporary trestle is still without protection under the deck, or alternatively, no plywood has been



FILE COPY

Job Stamp

EA 01-397514
ER-37B3(004)E

Realign HWY with 2 Bridges
Bridge Nos. 10-0299 and 10-0300
MEN-101-159.6/162.0 KP

Sheet	2	of	4
Report No.	385		
Date	9/15/2006		

Shift HRS		
Start	7:00	AM
Stop	5:30	PM

Circle Day
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday

Assistant Resident Engineers Daily

Structures

Report

Controlling Operation: Pier 3 Br.No. 10-0300

ITEM #161 MOBILIZATION: LOCATION/OPERATION TRESTLE @ NORTH BRIDGE BR.NO. 10-0300 WORK CONTINUES @ SPAN 4 - DIAGONAL BRACING @ PIER 5 DIAPHRAGM 1 @ INTERMEDIATE LOCATIONS PLACED SEE SKETCH PROVIDED FOR BRACING @ PIERS. MCM PLACED 12x12 DECKING ~ TO MIDSPAN. MCM WAS WELDING DIAGONALS @ PIER 4. IT STARTED TO RAIN @ 11:16 AM. (I LEFT JOB SITE @ ~ 12:00 TO GO TO GARBERVILLE) RETURNED ON SITE @ 14:00 - MITCH SHANDS INDICATES THAT MCM STOPPED WORKING @ ~ 12:00 ±. RAIN WAS INTERMITTANT BUT SIGNIFICANT THE REST OF DAY. PER DISCUSSION W/ EVAN PAINE MCM INTENDS TO WORK TOMMOROW / LADD INTENDS TO WORK TOMMOROW WX PERMITTING.

ENVE ISSUES: SPAN 4 IS OVER THE ACTIVE CHANNEL - NOTICED SOME MINOR SLAG DROPPING INTO CHANNEL - SPOKE TO FRANK CORBERO (JAMES NOT ON SITE) ABOUT CONTAINMENT - ALSO REMINDER THAT WOOD SHAVINGS MUST NOT ENTER ACTIVE CHANNEL / KEEP OFF OF GRAVEL BAR. NOTIFIED JAMES HAM - JAMES INDICATED - WILL PLACE BUCKETS TO CATCH SLAG.

ON SITE THIS DAY RON DEN HEYER, DAVE MELENOREZ & ALEX AREYALO + LT'S LAWYER FOR SITE VISIT. SARA ATCHLEY ON SITE THIS AFTERNOON.

ITEM #42 (STRUCT EXCAVATION ABOVE PIER COLUMN) LOCATION/OPER. SUBCONTRACTOR LADD ON SITE @ PIER 3 BR.NO. 10-0300. CONTINUED WORK PERFORMED - REMOVAL OF SPOILS & FURTHER PLACEMENT OF SPLIT SETS - MITCH SHANDS COVERS LADD'S OPER. THIS DAY. NOTE SPOKE TO MITCH LIPSKY EARLY THIS MORNING. MITCH WANTS TO POSTPONE THE SURVEY REQUESTED FOR MONDAY. HE WILL BE READY ON WEDS 09-20-06. SPOKE TO MITCH SHANDS - INDICATES THAT LADD WILL BLAST ONE MORE TIME TO COMPLETE ITEM #42.

DARYL FULLER ON SITE THIS DAY - LADD WORKS ON CLEARING & GRUBBING @ SOUTH END OF BR.NO. 10-0300. MCM NEEDS AREA CLEARED FOR ABOUT 1 & BENT 2 FOR THIRD TRESTLE. CARLON SPRARIE MONITORS LADD'S OPERATION THIS DAY.

PACIFIC COAST DRILLING CO. ON SITE THIS DAY @ ABOUT BR.NO. 10-0299 - G. TOLEN & R. THOMPSON ON SITE FOR DISCUSSION

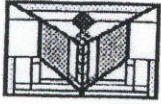
Signed

John Railey

ASR

Hrs for John Railey on Time Card

0	REG
	OT6



Walt Dragaloski
09/22/2006 01:47 PM

To: Ron Den Heyer/D01/Caltrans/CAGov@DOT
cc: Gene Leo/D01/Caltrans/CAGov@DOT, Terry
Davis/D01/Caltrans/CAGov@DOT
Subject: Notice of a discharge

Ron,

When the next weekly biologic monitor report comes out on Monday it will contain information regarding a discharge of welding slag and/or wire into the South Fork Eel River during construction of the trestle. This discharge is required to be reported to the Regional Water Quality Control Board (RWQCB). There were no BMP's in place to help prevent the discharge. The biological monitor reported his observations to Mitch Shands (? spelling), who required the contractor to implement a BMP to catch the slag. The contractor attempted to prevent further discharge by placing a 5 gallon bucket of water under the welding locations. The buckets were only partly effective due to windy conditions. Please inform Justin Porteous, Mercer Fraser Company, to investigate the incident and file an Attachment K as required by the SWPPP.

I have notified the RWQCB of the above discharge. In addition, I notified them of the discharge that occurred this morning due to equipment crossing the channel. Apparently, Susan Leroy was not on-site as planned, to observe the condition of the equipment prior to crossing the stream. Additionally, Justin Porteous was not on-site to monitor the discharge as required by the SWPPP. The Caltrans biological monitor, Bradford Norman, measured the background turbidity upstream but was unable to obtain a measurement 100 feet downstream of the discharge due to equipment malfunction. The visual extent of the discharge was approximately 400 feet downstream. Please inform Justin that an Attachment K will need to be filed.

Walt Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5601 South Broadway, Eureka, CA 95503
(707) 445-6697 office
(707) 496-6356 cell

COPY

COPY

SEP 21 2006



October 9, 2006.

Confusion Hill Realignment With Two Bridges Project

Mr. Dan Lagan and Ms. Corrine Gray,

Re: Weekly Biological Monitoring for October 2 through 7, 2006.

During the first week of October false bridge footing construction continued while brush and earth moving activities accelerated on the peninsular on the west side. Stock pile areas and access to the north bridge developed rapidly.

Work on the south bridge Pier 2 foundation was also a main focus of activities. With impending rain, BMP (silt fences, etc) installation needs became a concern. In stream construction procedures to prevent discharges was also addressed. Biological monitoring duties included spot checks of silt fence installation and in-stream and gravel bar activities below the false work on the north side and tunnel blasting compliance.

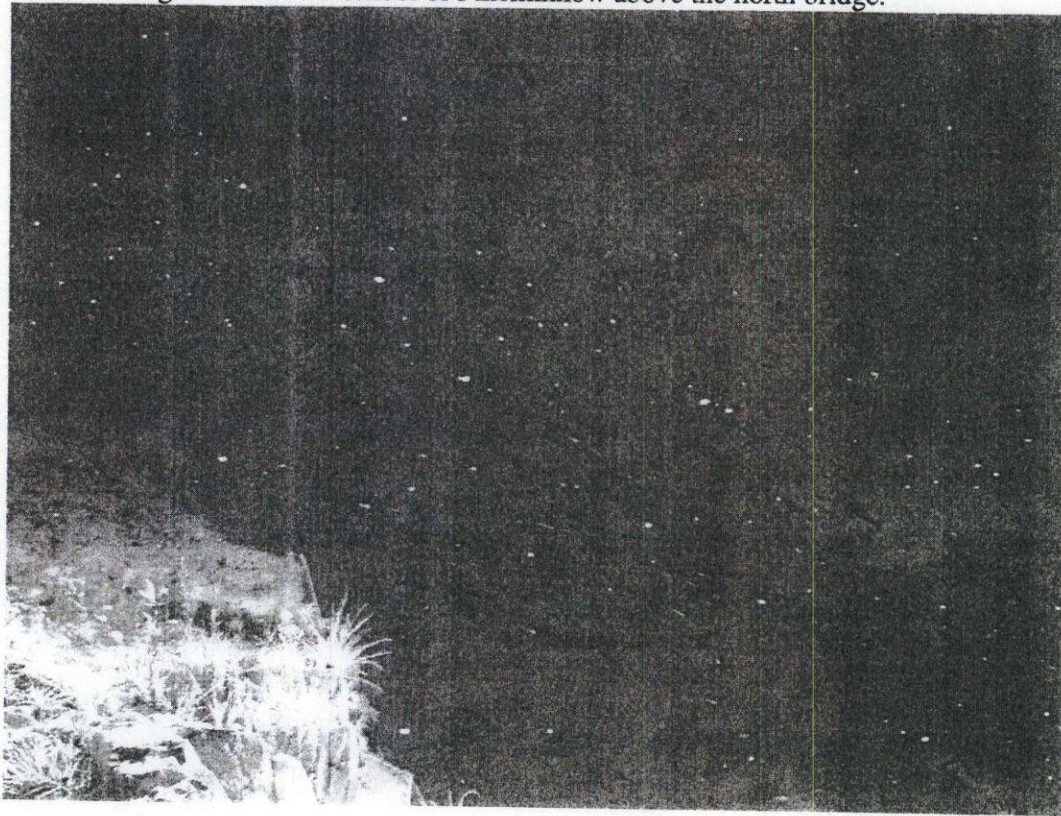
Monday October 2. Activities included observations of false work footing construction at the north bridge and monitoring water quality prior to and immediately following the return crossing of the Excavator 320, across the designated fording area at bottom of the south access road (Figure 1).



At 3:24 pm, the turbidity measurement 100-feet below the crossing area maintained a reading of 2.0 NTU's on the Horiba U-10 water quality meter. Water quality

measurements were taken several times this week in mainstem S. Fk. Eel River and Red Mountain Creek. Thorough cleaning of the backhoe tracks machinery took place. This was inspected for cleanliness, and using the lowest gear during crossing minimized siltation. The necessity for this equipment to return cross the river seems to be expediency, avoiding the long trip around on the logging road.

Tuesday October 3. The morning started with no in stream activities, so I performed a snorkel survey of the northern construction area for listed species and exotics. The only fish species observed were Sacramento pikeminnow. Over 150 fish were observed and some photographed in the deep pool upstream of the gravel bar. Approximately 100 for these were over 12-inches long. Ten of these were over 20-inches, and one over 24-inches long. The pool below the false bridge contained 40-50 fish as well. BMP's were inspected and one obvious unprotected culvert identified. BMP's were installed. Mr. Walt Dragaloski (Caltrans Construction Stormwater Coordinator) inspected and recommended modifications to many location BMP's. No notable environmental impacts were observed. Figure 2 shows a school of Pikeminnow above the north bridge.



Wednesday October 4. The Day's events included inspection of BMP installation on the south access road and river bank. Over-cast soils estimated at 1.5-2.0 cubic yards was deposited down a very steep slope from the development of a pad for a crane, half way along the south access road (Figure 3).



At 12:23 the first blast of the week was completely covered by the blast mat, so no fly rock was projected. Hydro-acoustic monitors did not detect any recordable pressure waves.

Thursday October 5. No regular morning meeting occurred, allowing an initial survey of the work area before daily activities began. Oil and diesel stains on the gravel bar were identified for cleanup. Dewatering of the shoring boxes for false work footing onto the gravel bar, although not 100-feet away due to bedrock, filtered the silty water effectively. Water Quality below the construction area, and Red Mountain Creek were measured at noon. Data from main stem South Fork Eel and Red Mountain Creek tributary continues to be compiled. A second blast in the pier shaft occurred at about 2:17 on Thursday. Completely blanketed with a blast mat, no fly rock occurred and no recordable pressure waves produced. Hydraulic and oil leaks were noted from the problematic backhoe moved back across the river, now working along HWY 101.

Friday October 6. Activities included monitoring gravel bar construction of the footings, grubbing, and tree clearing. BMP installations were monitored at the south access road. A concrete washout containment area need was identified and requested. Molten slag was observed dripping into the river at 2:20 pm, using no bucket to catch the excess. This activity was terminated, but not before noticeable amounts of slag, small sheets of rusty metal, welding rods, and other debris had accumulated in the river channel. These will need to be retrieved by snorkel divers, and preventative measures applied. One aquatic garter snake was rescued and relocated from the tunnel shaft. No yellow-legged frogs



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

October 30, 2006

Mr. Charles Fielder
District Director
CDOT - Eureka
1656 Union Street
Eureka, CA 95403

Dear Mr. Fielder:

Subject: Notice of Violation Regarding Activities at the Confusion Hill Bypass on the South Fork Eel River, Mendocino County.

File: CDOT - Hwy 101, Confusion Hill Bypass
WDID No. 1B05153WNME

This Notice of Violation serves as a notice that the California Department of Transportation (CDOT) was in non-compliance with prior Regional Water Board authorization. On February 16, 2006, the Regional Water Board issued a Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) for the Highway 101 Confusion Hill Bypass Project on the South Fork Eel River in Mendocino County in response to an application submitted by CDOT on November 29, 2005.

The Water Quality Certification includes the following Additional Conditions.

7. Adequate Best Management Practices (BMPs) for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
9. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.

California Environmental Protection Agency

Recycled Paper

11. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
12. If construction dewatering is found to be necessary, the applicant will use a method of water disposal other than disposal to surface waters (such as land disposal) or the applicant shall apply for coverage under the General Construction Dewater Permit and receive notification of coverage to discharge to surface waters.
17. All activities, BMPs, and associated mitigation will be conducted as described in this Permit and the application submitted by the applicant for this project.

On September 8, 2006, Regional Water Board staff received an email report from Walt Dragaloski of your staff that described unauthorized discharges that occurred on August 29 and August 30, 2006. Mr. Dragaloski reported that the discharges occurred near the temporary trestle at the north bridge and the discharges were associated with construction dewatering activities. Mr. Dragaloski indicated that on both days the contractor pumped turbid water into an unlined basin located on the gravel bar and the turbid water flowed out of the gravel and into the river. The discharges created an approximately 15 foot long plume of turbid water in the river. The discharges were monitored by a biologist and the turbidity level in the river 100 feet downstream of the discharge point was not increased above background levels. Please be advised that Additional Condition 7 requires implementation of adequate BMPs for turbidity control at all times. It appears that BMPs were not in place prior to the discharge that occurred on August 29. BMPs should have been modified to control the anticipated turbidity discharge that occurred on August 30.

On October 2, 2006, Regional Water Board staff received a voice message from Mr. Dragaloski reporting another unauthorized discharge at the project. Mr. Dragaloski reported that late in the afternoon on Friday, September 29, the contractor discharged water that had been in contact with wet cement into an unlined sedimentation basin that was located within the 100-year floodplain. Regional Water Board staff worked closely with Susan Leroy of Caltrans regarding this issue during the permitting process and staff made it very clear that the Water Quality Certification would not allow any concrete wastes or associated wastewater to be discharged to unlined basins. The discharge of water that has contacted wet cement into an unlined basin violates Additional Condition 9.

On October 6, 2006, Regional Water Board staff inspected a portion of the project, mainly the northern bridge area. During our inspection staff observed use of a sedimentation basin on the gravel bar near the north bridge. Staff were informed that the same basin was used to dispose of water that contacted wet cement, as well as for the dewatering activities that caused the turbidity discharges described above. The basin appeared to be located below ordinary high water and within 100 feet of the live stream channel. Caltrans' application for Water Quality Certification specifies that all

sedimentation basins will be located a minimum of 100 feet from the live stream channel. Use of an unlined sedimentation basin for any purpose within 100 feet of the live stream channel violates Additional Condition 17 in the Water Quality Certification. Discharges from the sedimentation basin may also be violations of Additional Conditions 7 and 12.

Staff observed additional violations during the October 6, 2006 inspection. Staff observed a backhoe on the gravel bar near the north bridge that had excessive fluid leakage. Absorbent rags were stuffed into several crevices to control the leakage, however; that backhoe was not in an adequate condition for continued use near any river or gravel bar. Staff observed that rebar had been cut with a torch on the gravel bar without any containment. Steel slag and debris was deposited on the gravel bar within 150 feet of the high water mark, and where it may be washed into the river. Staff also observed steel being cut in the same area on the gravel bar. A small piece of plastic was placed under the saw; however, the plastic was not containing all the steel cuttings. Staff observed welding on the temporary trestle and over the river channel. Welding slag was observed to be falling directly into the water and the adjacent gravel bar. Welding and cutting activities observed by staff were in violation of Additional Conditions 9 and 11.

Based on the discharges reported by Caltrans and Regional Water Board staff observations on October 6, 2006, Caltrans is not providing adequate and appropriate oversight of their contractor to ensure compliance with the Water Quality Certification issued to Caltrans for this project. Caltrans shall ensure that adequate BMPs are implemented at the project, including secondary containment of cutting and welding activities in and over the river channel. All cutting and welding materials, and any other activities that generate waste and debris, shall be conducted with adequate containment BMPs to prevent debris from being deposited in the river channel.

Based on the discharges reported by Caltrans and based on staff's onsite observations on October 6, 2006, it appears that several activities at the Highway 101-Confusion Hill Bypass Project have been conducted in a manner that is not authorized by the Regional Water Board. The unauthorized activities described above threaten to impact water quality and beneficial uses and could result in violation of provisions of the California Water Code. Regional Water Board staff are considering potential follow-up actions and at this time request that Caltrans implement adequate BMPs at this site immediately. Regional Water Board staff request submittal of a report to this office by November 15, 2006 that addresses all areas of non-compliance described in this letter and describes the actions taken by Caltrans to implement adequate BMPs. The report shall specify the date any actions were taken and shall include dated photos of the affected areas.

If you have any further questions please contact Dean Prat of my staff at (707) 576-2801.

Sincerely,

Catherine E. Kuhlman
Executive Officer

103006_DH_DLP_cdofconfillNOV.doc

Certified-Return Receipt Requested

cc: Ms Jenny Chen, SWRCB, Acting Certification and Wetlands Program Manager,
Division of Water Quality
Ms. Samantha Olson, SWRCB, Office of the Chief Council
Ms. Susan Leroy, CDOT-Eureka, P.O. Box 3700, Eureka, CA 95502-3700
Ms. Jane Hicks, US Army Corps of Engineers, Regulatory Branch, 333 Market
Street, San Francisco, CA 94105
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA
95502
Ms. Corinne Gray, California Department of Fish and Game, P.O. Box 47,
Yountville, CA 94558



Job Stamp
01-397514

01-Men-101-159.6/162.0 kp
Confusion Hill Realignment

Assistant Structure Representative's
Daily Report

Report No. 405-406

Date: As Noted
M T W T F S S

#405 Monday, Oct 16th, 2006 cloudy, wind calm to 4 mph, low 50°, high 62°
Controlling operation considered span 2 N Br falsework.

Drove to CH office this morning and returned home by 0700. Worked at home before and after going to jury duty in Eureka. I was in the jury pool, but not selected as a juror and released ~1200.

RWT 0700-0800, mix designs; 0800-1330, 4 hrs vac, jury duty; 1330-1530, 1730-1830, mix designs & job photos

#406 Tuesday, Oct 17th, 2006 cloudy to clear, wind calm to 9 mph, low 51°, high 67°
Controlling operation considered span 2 N Br falsework, however that falsework is not even on MCM's 6 week schedule submitted by Evan Paine today, so the N Br trestle is the controlling operation.

Attended Ron den Heyer's staff meeting. He decided to hold it only on Tue and Thur from now on.


Per Garry Tolen went to check on activities at N Br P-3 area. Qi Fu was not there. Found a welder attaching angles to the cofferdam template with no attempt to catch splatter/slag. I told them they were not allowed to drop material into the water and they hung a bucket under the work which caught about half of the falling material. Returned to the office and found Qi collecting survey gear to verify the elevation of a monument on the S side of the river near and Rt/E the span 2 falsework footing installation. Returned with Scott Morris and we assisted Qi in verifying the elevation of CP312 so Qi could inform Supt. James Ham of the verified elevation. When leaving I noticed a set of Oxygen-Acetylene bottles standing unsupported on a falsework footing. The worker at the footing recognized Scott and I asked Scott to tell him the cylinders could not be left unsupported and able to fall over. He and Qi talked to him about that and he began to take care of the situation. Scott and I returned to the office to get other survey gear and went out to P-3 S Br to set additional reference stakes—surveys placed only one reference each side of the ftg, not the usual 2 per the standard const staking. We also put out "line only" references. Matt Cortez, Ladd grade setter, made a request to allow them to cover up a control point (pt RUS 2006) with excavated material being stockpiled around it. I said not until we get clearance from the surveys. When returning from P-3 we passed P-2 and I observed a welder walking on a horizontal beam attached to the driven piles for the crane platform under construction who was not tied off. I told him he should be tied off. He grabbed his lanyard and appeared to be tying off to the safety cable attached to the beam as we departed.

We arrived back at the office ~1330. Shortly thereafter I called Randy Haralson, Surveys, and he said not to let them cover the control point. He said if we want it moved, we should put in a survey request and they would move it. Matt came into the office with some other questions and I informed him that they could not cover the control point and I would talk to the RE about having it relocated. Informed Garry Tolen about the above.

Reviewed MCM's 6 week schedule. Found span 2 N Br falsework was not on it even though that's what they have been concentrating on for more than two weeks. Talked with Garry Tolen and Gene Leo about the lack of the falsework on the schedule and that leaves the N Br trestle completion, which is on the schedule, as the controlling operation.

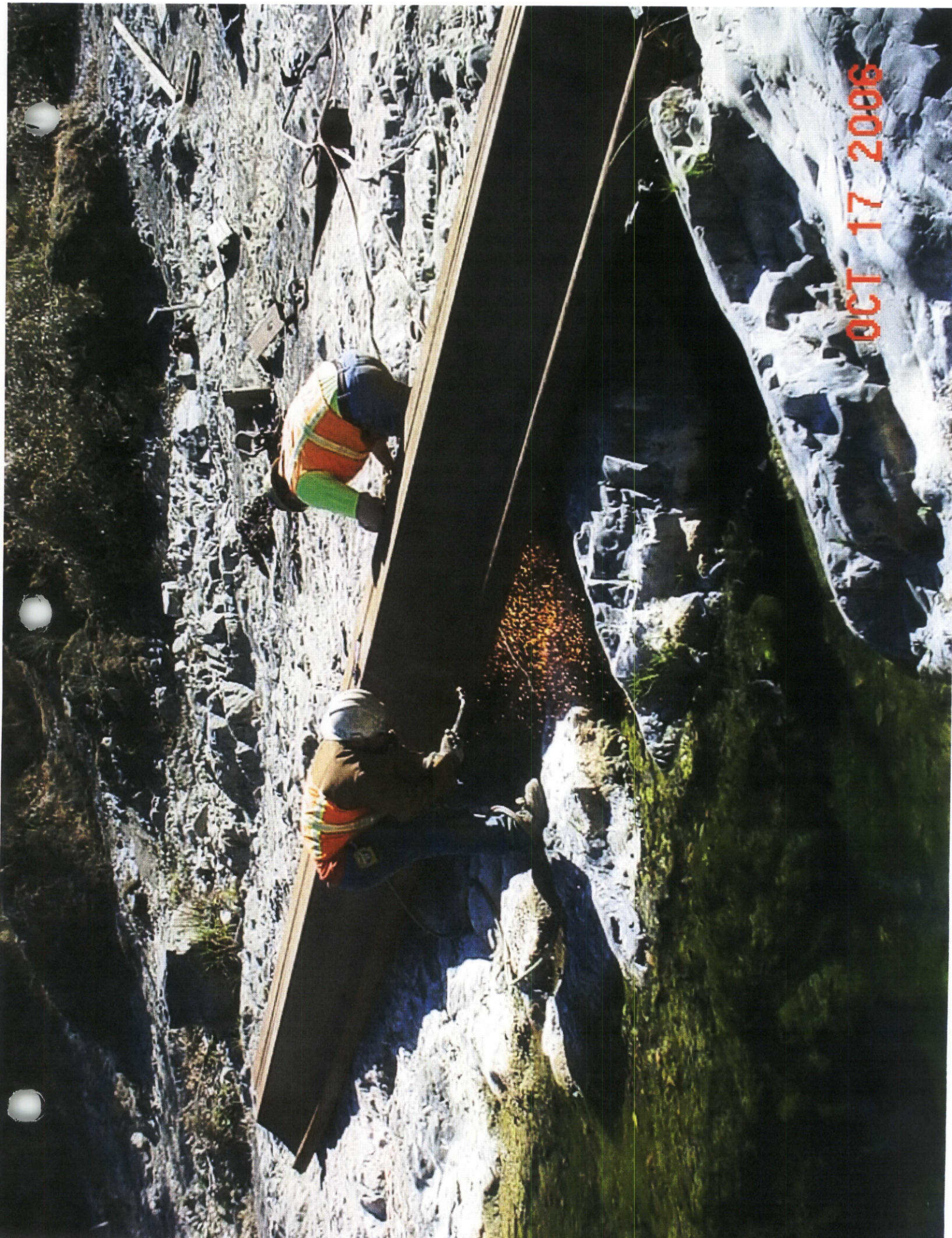
Resumed work on job photos. Gene Leo informed me that Ed Yarborough, NRC Safety, would be here tomorrow and not to inform MCM of his pending visit.

RWT no OT


Rich Thompson, Asst. Str. Rep.



OCT 17 2006



OCT 17 2006



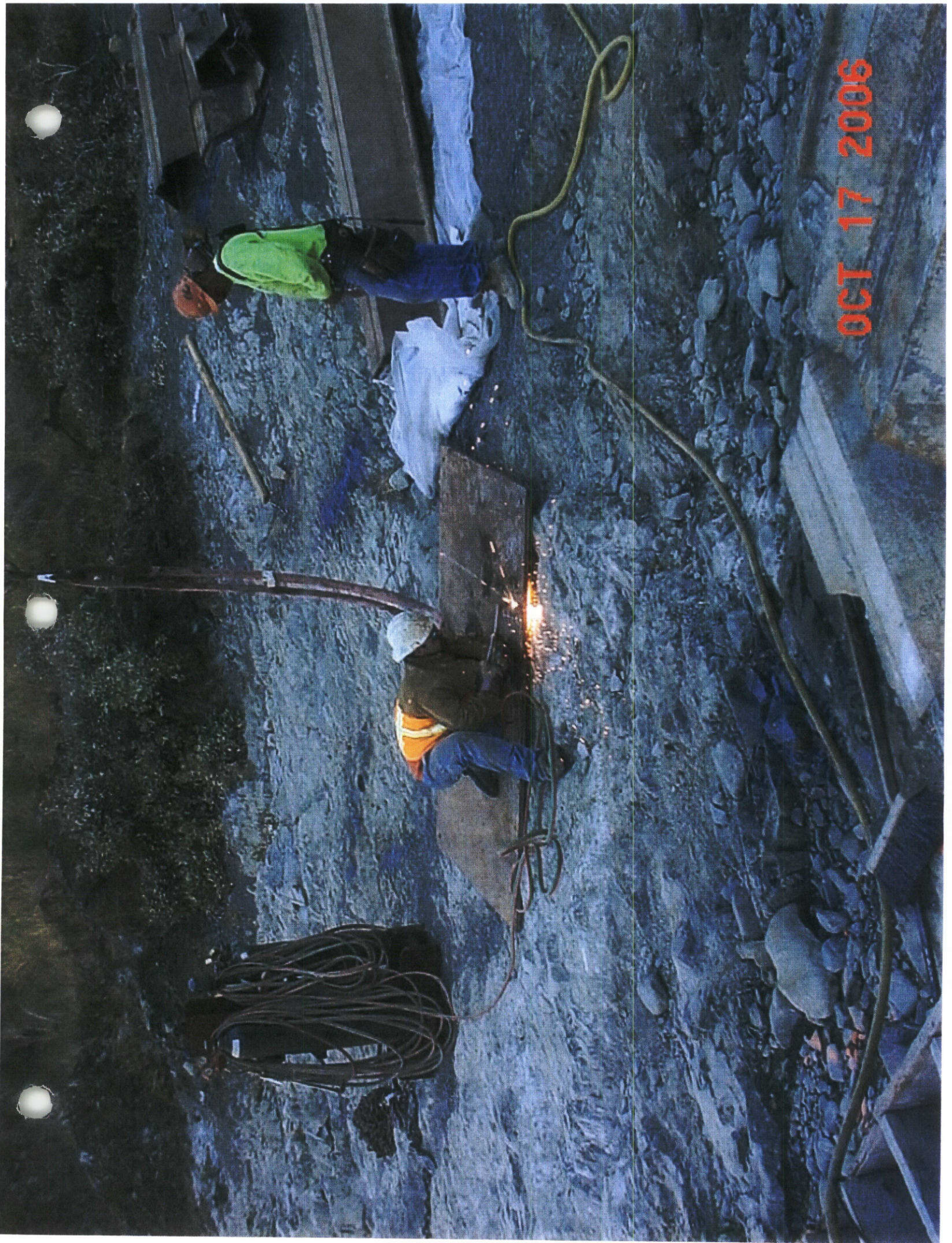
OCT 17 2006



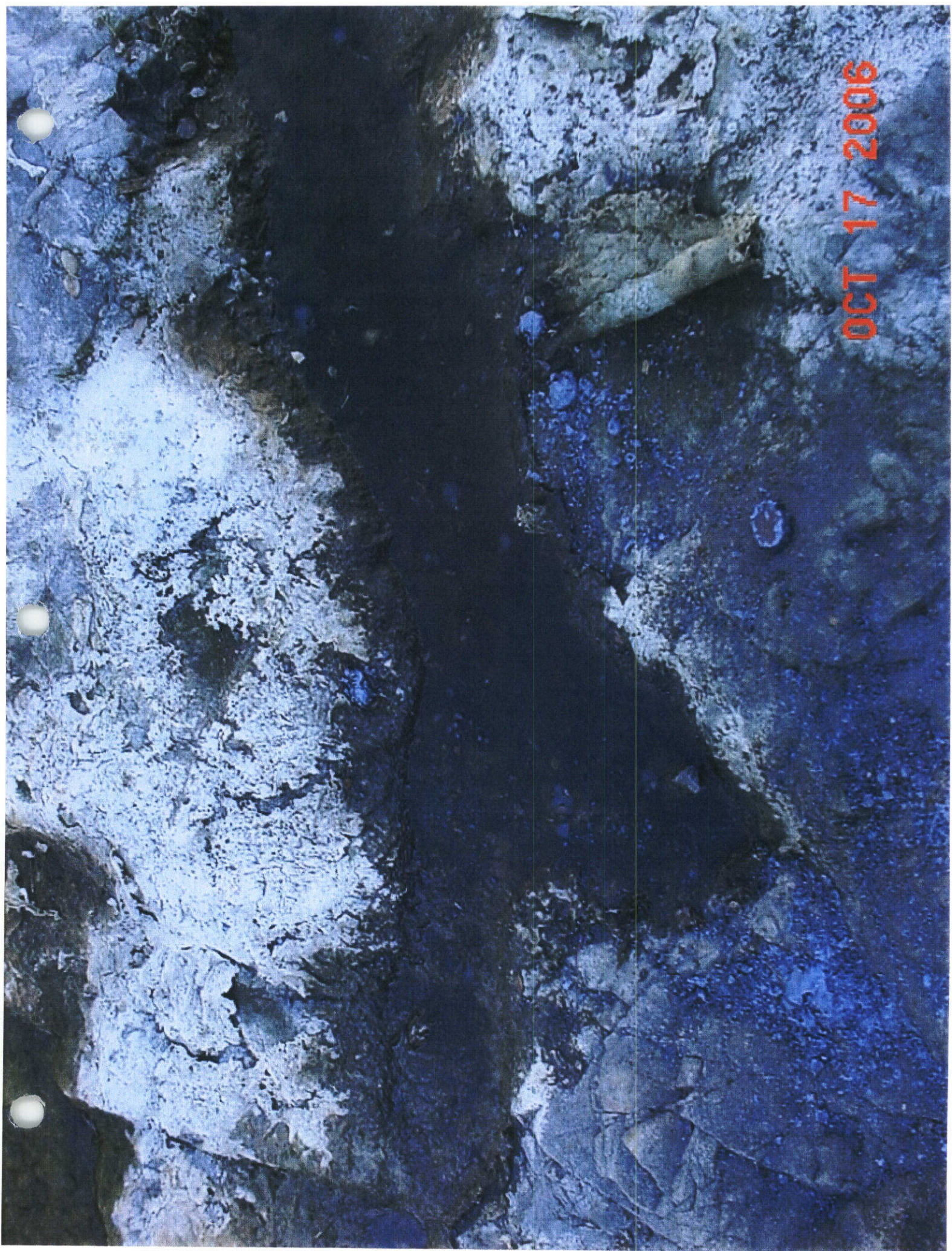


OCT 17 2006

OCT 17 2006



OCT 17 2006



Job Stamp
01-397514
ER-37B3(004)E
MEN - 101-159.6/162.0 (Kp)

Report No. 407 page 2/2
Date 10/18/06
M T W T F S S Circle Day
Shift Hours Start 07:00 Stop 19:00

Subcontractor: LADD

ASSISTANT RESIDENT ENGINEER'S DAILY Bridge No. 10-300 Structures Construction REPORT

Location & Description of Operation LADD drilled until 13:00. The contractor set up a cable guide to guide the crane lifting from the bottom. LADD started place explosives at 15:45, had 5-min warning for blast at 18:50, 1-min warning at 18:52, and blasted at 18:53. "All Clear" at 18:54. (4)

EQUIPMENT AND/OR LABOR:			HOURS - ITEM NO.								WEATHER
EQPT. NO.	NO. MEN	DESCRIPTION (Of Equipment or Labor)	Item 43 Excavation								AM: Foggy / 48°F PM: Clear / 80°F
	1	Superintendent	11.5								Mitch Lipsky
15-9970	1	Operator	11.5								Gale Hawkins
	1	Foreman/Laborer	11.5								David Padilla
	1	Laborer	11.5								Ruel Hernandez
	1	Miner	11.5								Walter Hawkins
	1	[ELGEN] [GEN]	11.5								CAT 302.5 Excavator
609-3	1	[HCELL] [CAT]	11.5								CAT 302.5 Excavator
	1	[HCELL] [CAT]	11.5								CAT 304.5 Excavator
Rental	1	[AIRCP] [PORT]	11.5								AIR 5375 CFM
208	1	[AIRCP] [PORT]	11.5								Sullair 1600 ft
15-9970	1	[HCEP] [TEREX]	11.5								Terex Crane RT 175
	1	[AIR TO] [ATOL]	11.5								Rock Drill
	1	"Clamshell"	11.5								Excavator

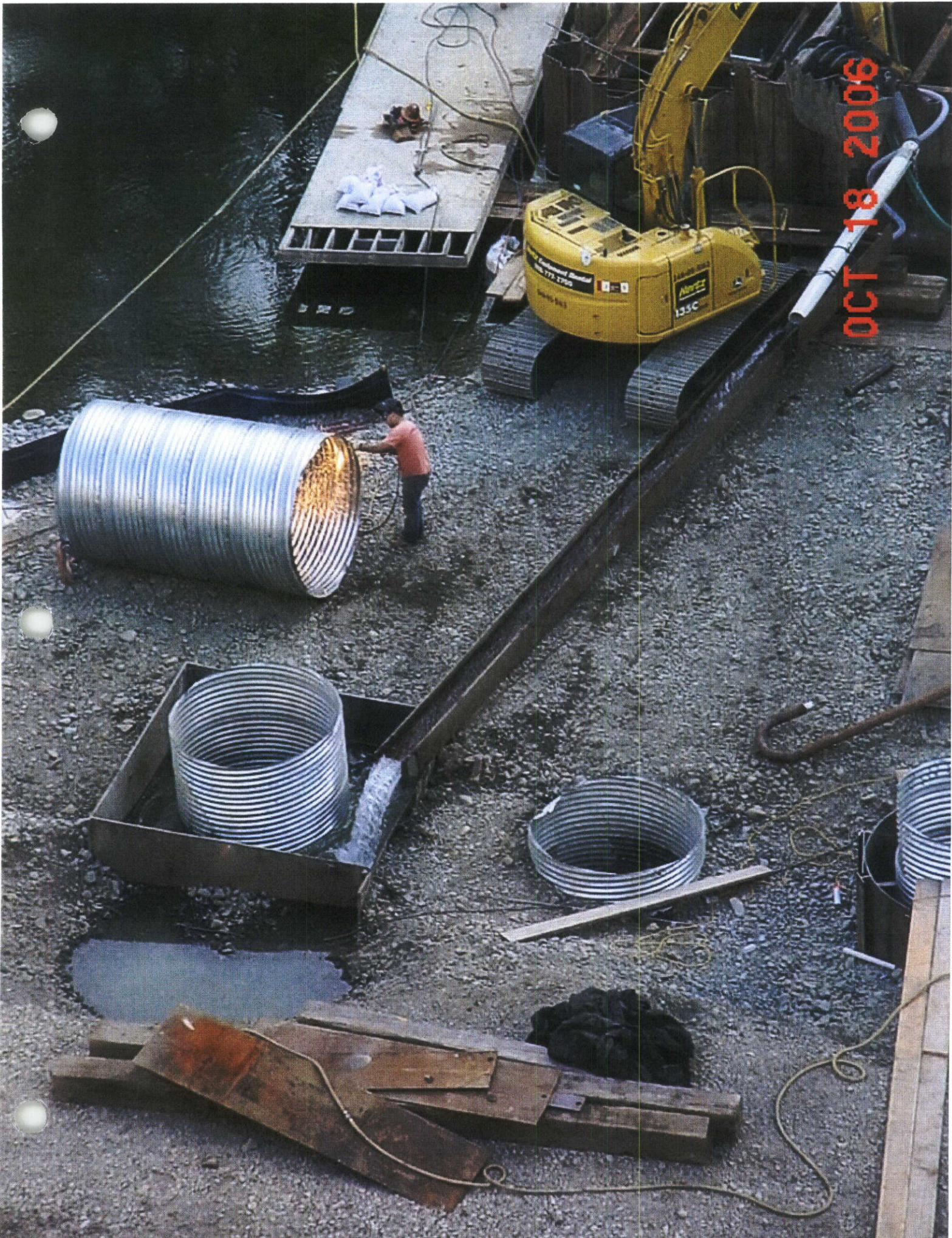
- Remarks: (1) Garry came to jobsite pointed out that the welding slag remains on the riverbank need to be cleaned. When James Ham came later, he promise to arrange labor cleaning tomorrow.
- (2) Dan Logan (NOAA/NMFS) visited jobsite with Ron, Susan (Environment) and Brad (Biologist) at 11:10.
- (3) Ed Yarbrough (Safety) inspected the jobsite at 12:00.
- (4) See blast report #17
- (5) The bolt locations of all four footings are off-set.

(1) : En

ASR

AK

OCT 18 2006



OCT 20 2006



01-397514
ER-37B3(004)E
MEN-101-159.6/162.0(KP)

Report No. 46-411 page 3
Date 10/24/06
M T W T F S S Circle Day
Shift Hours Start 0730 Stop 1800

ASSISTANT RESIDENT ENGINEER'S DAILY Structures Construction REPORT

Location and Description of Operation Bridge 10-0300, falsework.

Prime Contractor: MCM			HOURS - ITEM NO.								WEATHER
EQUIPMENT AND/OR LABOR:			Bridge 10-300, falsework installation	Bridge 10-300, falsework fabrication, Fab. Yard						IDLE OR DOWN	REMARKS (Reason for Idleness or other remarks)
EQPT. No.	No. Men	DESCRIPTION									
C706	1	Welder	10								500 amp
C612	1	Welder	10								500 amp
Rental	1	Excavator	10								JD 135C
B342	1	Crane	10								Crane 140 ton
3347/D43		Tractor/Trailer	10								40'
C762	1	Generator	10								12KW

At 1030 I observed a worker cutting plate steel with a cutting torch on the river bed. I spoke with J. Hamm regarding protecting the river bed from welding slag. He is aware the river bed should be protected (eg. With a plywood sheet) and said he would tell the worker to keep slag off the river bed.

Scott Morris worked 0700 - 1900, 3.5. hours O.T. (Field Inspection)

Scott Morris
Signature

ASR
Title









STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Job Stamp
01-397514

01-Men-101-159.6/162.0 kp

Confusion Hill Realignment

Assistant Structure Representative's
Daily Report

46.

Report No. 412

Date: As Noted

M T W T F S S

#412 Wednesday, Oct 25th, 2006 clear, wind calm to 5 mph, low 45°, high 67°

Controlling operation considered N Br trestle. Garry Tolen at BCE meeting.

-0815-1030 inspected work at N Br trestle and river bar during the time when Abbas Iranmanesh, Ira Quintanar, John Railey, Scott Morris and Qi Fu were taking written tests for concrete sampling and testing with Cindy Hicks, OSC IA.

-0830 began inspecting welds on span 2 N Br lower level falsework pier 2-3 pipe bent. The splice welds in the 30" ϕ pipe columns generally had good weld profiles but every few inches there was a bulge from too much weld material, often $\frac{1}{4}$ " high, and there were occasional pin holes in the weld metal. Many of the stiffener to web fillet welds had weld profiles with extreme convexity. I went down to the gravel bar and found some 3x3 angles that had been spliced on the gravel bar and a worker cutting plate steel with the slag falling on the gravel. I did not see the foreman around so I headed up to find him or Supt. James Ham.

-0935 encountered Supt. James Ham at the end of the P-3 access road near the batch plant. I told him they were preparing to splice 3x3 angles for falsework column braces on the river bar and they needed to put down something to catch the weld splatter, then vacuum it up before it goes onto the gravel bar. He said he's told his crews to do that, even yesterday, and will tell them again. He then left, headed toward his office.

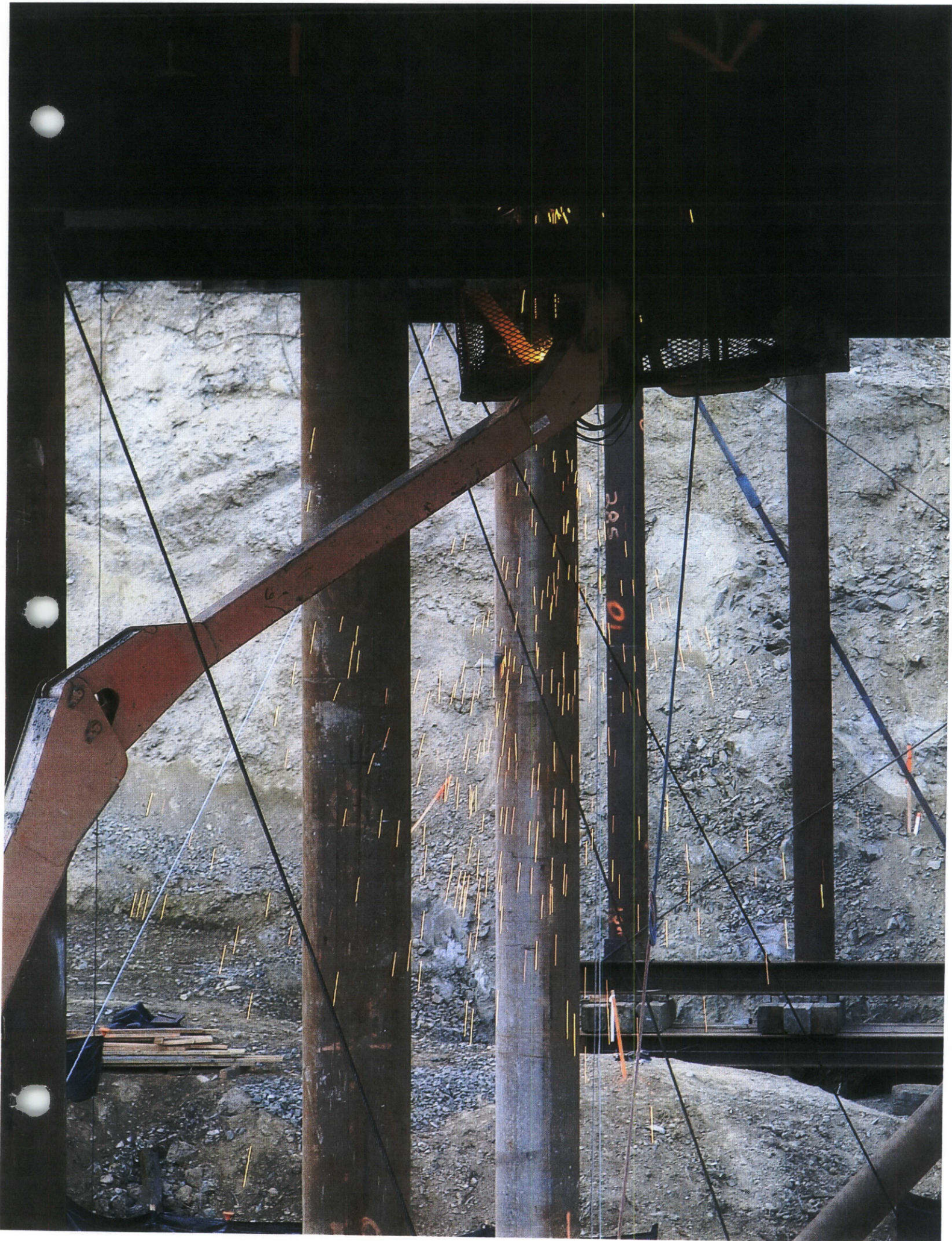
-0955 I had returned to the gravel bar and found Albert. I asked him if James had called him, he said no. I said I just talked to him and he said he was going to call him about welding and cutting on the gravel bar. I reminded Albert to have his welders and those cutting steel to put something under their work and vacuum or deposit the debris in a container. He said they all know but he can't watch them all the time. He talked to both those welding and cutting to have them put something under their work and had a laborer pick up slag that was on the gravel.

Reviewed shoring plan for P-3 S Br rec'd yesterday evening. -1330-1430 drove and walked to P-3 S Br to view excavation prior to checking shoring plan for southwesterly vertical face—toward Oak tree. Found the top cobble/soil layer from 4.5+ ft to 5.5+ ft, westerly to easterly while the shoring plan reports it as approximately 1 m/-3.3 ft. However, the designer is Mark Twede, P.E., G.E., so I'll accept his expertise and approve the plan using split sets as soil nails at 2' horizontally, driven thru 10" wide by continuous steel mats to hold chain link fencing and geotextile fabric against the soil, with split sets and steel mats only in the rock.

Worked with Carl Page to develop punch list for work needed below OHW, N Br vicinity, by Oct 31. Took photos and got others from Carl. Copied photos onto 2 pages to be attached to the punch list. Edited punch list received from Carl.

Abbas Iranmanesh completed checking FW pier 2-1, span 2 N Br. Steel stresses are OK, but foundation material will have to be verified as having the bearing capacity needed. Ira Quintanar performed some field inspection with others after conc sampling tests and worked on checking DL's on FW span 2 N Br.

RWT 0700-1830, 3 hrs OT, office, punch list, inspection



Daily Report

Date: As Noted

M T W T F S S

#413 Thursday, Oct 26th, 2006 clear, wind calm to 4 mph, low 47°, high 69°

Controlling operation considered N Br trestle. Garry Tolen at BCE meeting.

-0700-0720 attended staff meeting. Gene Leo and I were designated as project safety coordinators.

Finalized punch list with Carl Page and Ron den Heyer. We added removal of the tree limbs and branches on the southerly bank below P-2 N Br, to the list. Ron said he had heard from Mercer Fraser that Susan Leroy had said the material could be left, but the permits don't allow it. I distributed copies of the punch list and photos to Jack Naylor, Scott Morris, job file, and Carl Page, and prepared 2 for MCM. Carl reported that MCM was welding under the trestle and welding debris was mostly falling onto the gravel bar. I told he and Ron that I'd talked with Supt. James Ham yesterday about that and then foreman Albert Esparza also. Went to the N Br trestle area. Met with Qi Fu and went down to the gravel bar and observed what was going on. Observed welder in the manlift welding longitudinal force transfer clips onto the trestle beams with much of the debris falling to the gravel bar. We went up to the trestle and found James Ham. I gave him the 2 copies of the punch list, with photos, and we reviewed same. He said he hadn't expected it before Fri afternoon. He said he saw nothing major and most of it they tried to work on daily. He said he had written Mercer Fraser last week asking them to remove the clearing debris on the river bank and Justin Porteous replied to him stating Susan Leroy had said it could stay as bank protection. I mentioned to James that they needed to put something in the man lift basket to retain the weld splatter, cover the bottom and put something on the sides too. 38

Later I mentioned to Ron that perhaps we should threaten to dismiss workers who can't remember rules like welding w/out trying to catch splatter or cutting on the river bar without putting something underneath to catch the debris. He said he didn't think we could make it stick. I said it might be hard to dismiss a Supt but I thought we could make dismissing a worker stick. I said I wasn't sure that Ron or we wanted to go there, but it's tiresome having to tell them day after day to do the same things.

-1445 talked with Carl Page about a punch list for the South Br river crossing access area, esp the dirt road from the paved access road to the river bank and a slide below the P-2 exc. He also mentioned that he had just seen a worker at the N Br on the southerly bank cutting steel right over the rock. I told him that I'd talked to Supt. James Ham the last couple of days about that. I said he should mention it to the inspector on site.

Several times during the day spoke with Abbas Iranmanesh about his FW checking. As lower FW pier 2-9, N Br span 2, is essentially the same as pier 2-1, he checked 2-9 also. He said he found ~1% overstresses in center columns at pier 2-9. He began checking FW pier 2-7. Ira Quintanar worked on checking FW pier 2-1 and performed some field inspection at the N Br area.

-1600 called Phil Gundlach about the trial batches tomorrow. He said they would not do them because Mark Benzinger had not informed him which batches they would do so he cancelled their lab technician. I asked him to let me know when they would do them. He said I should call Mark Benzinger to agree on the mix designs to batch and agree on a date. He asked if we'd gotten the trial batch results, I said we hadn't gotten them for the 25 MPa Dry and Wet, nor had we gotten the C of C for the fly ash. He said Mark told him he had sent that info to MCM and he would ask him to send it again. I called and left a message for Mark.

-1640 found Supt. James Ham at their pipe yard and gave him a copy of a photo of the pack rusted beam in span 3 of the N Br trestle and asked if they could clean it before the 31st as the only way was probably using the manlift. I also mentioned to him that this afternoon one of his workers was on the southerly side of the river cutting steel plates to go around FW columns in bent 2-3 with nothing under it to catch the slag. He said well I guess he'll have to clean it up. I said yes, but he shouldn't be cutting that way anyway. 39

RWT 0700-1730, 2 hrs OT, field and office.

R. Thompson

Report No. 413 page 2/2
Date 10/26/06
M T W (T) F S S Circle Day
Shift Hours Start 07:00 Stop 19:00

Subcontractor: LADD.

01-397514

ER-37B3(004)E

MEN-101-159.6/162.0(KP)

ASSISTANT RESIDENT ENGINEER'S DAILY Bridge No. 10-300 Structures Construction REPORT

<p>Location & Description of Operation</p> <p>LADD finished drilling 10 1/2" holes (total of ± 150), set for the 1st blast. The time-mat was placed before the blast. The contractor put an extra yellow metal bucket on top the mat. The 5-min. blast warning was given at 14:10, 1-min warning at 14:14, and the blast was at 14:16. (2) After checking, LADD gave "all clear" horn at 14:17. (3)</p>	<p>HOURS - ITEM NO.</p> <div style="background-color: #cccccc; height: 100px;"></div>	<p>WEATHER</p> <div style="background-color: #cccccc; height: 100px;"></div>
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EQUIPMENT AND/OR LABOR:

[illegible]

Remarks: ① Rich came with Carl, pointed out MCM cutting, welding at gravel bed. The site was later cleaned by the contractor.

② See blast report #19. (The result was not as expected, w/11 have extra blast)

③ MCM workers left the site at 14:10. resumed work at 14:23.

④ Dan was not at the site afternoon, Frank said he worked at other location, hrs. was not reported.

Qifan
Signature

A.S.R

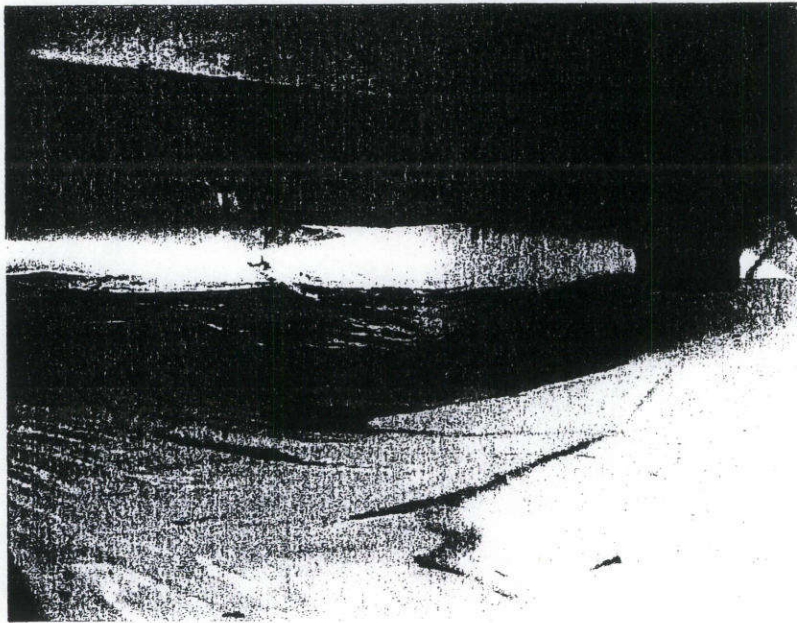
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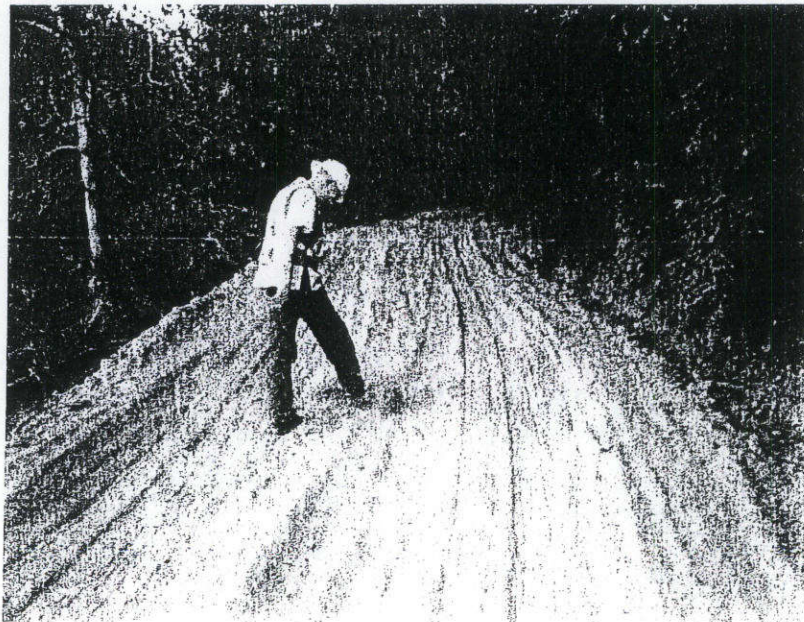
This has been brought to the attention of MCM on many occasions, with no satisfactory resolution. The plastic "tarps" placed under the crane are not serviced often, and spill contents on it's tracks and the bridge decking (Figure 5).



Rain fall will facilitate this pollution if not redesigned or the crane leaks fixed.

Saturday October 28. The punch list for the South access road was formalized with the following action items.

The silt fencing that may be below high water line on gravel bar and the fine powdered soil from lower south access road (ramp) should be removed. Constant use has turned the road into a powder puff several inches deep (Figure 6).

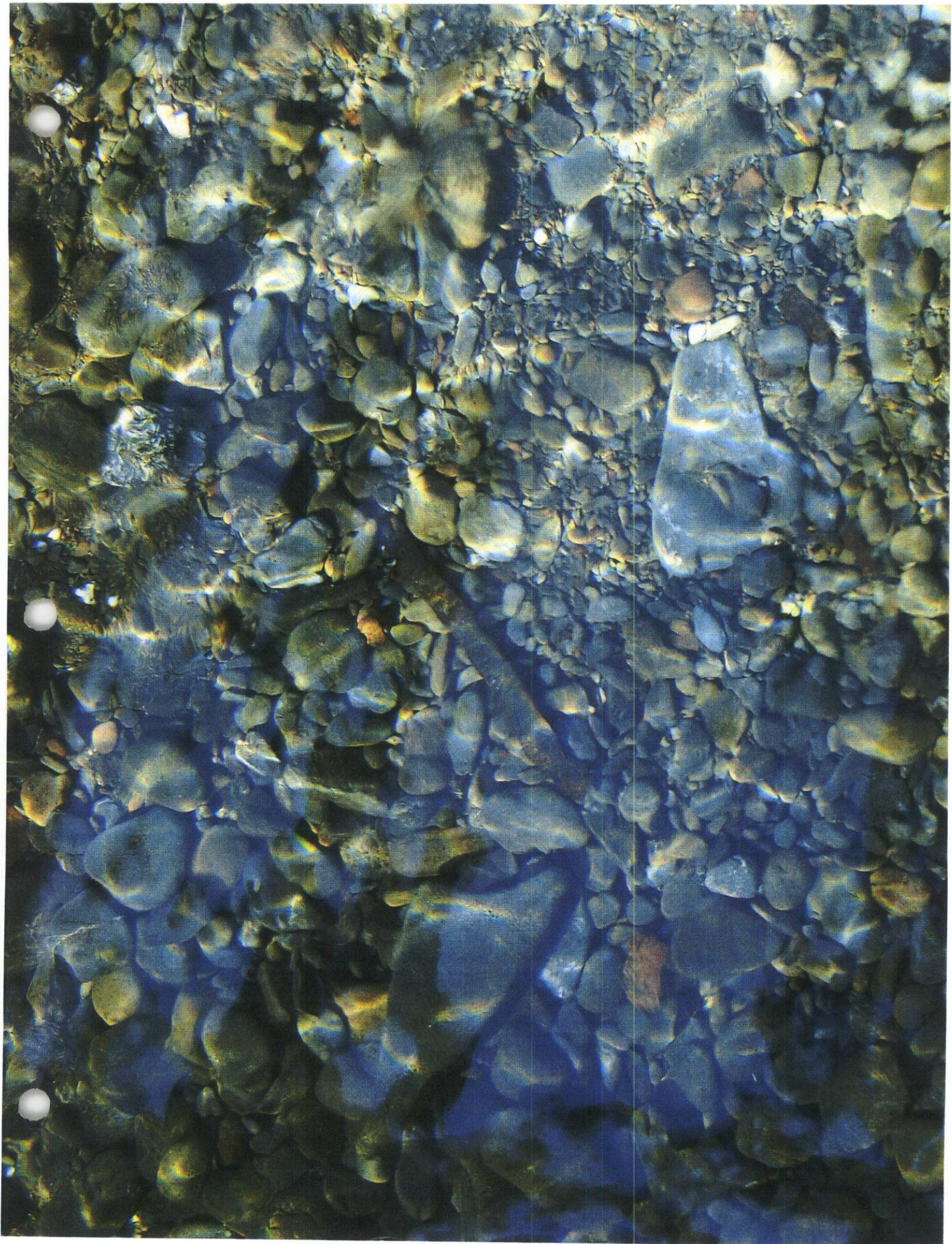


Poised to run off directly onto the gravel bar and eventually river, this will be done before the first rains. The plastic PVC water pipe should be removed after first rain event substantial enough to reduced the chance of fire. Culvert inlets need cleaning and some enlarging on south access road and energy dissipation BMP's at culvert outlets. The Peninsular access road culverts also need placement prior to rain.

Construction of the remaining in false work to connect the bridge to the peninsular side was the focus of work. **Welding slag continued to fall into the river without adequate mitigation.** Grubbing and removal of cut trees on the river bank helped prepare the gravel bar to it's natural contour and appearance. All construction on the gravel bar will be completed before the end of the month, but working directly above the river, decking construction debris and petro-chemical spills will pose a constant threat. Comparative water quality measurements continue for Red Mountain Creek and the South Fork Eel River.

Carl Page
Biological Monitor
For IBIS Environmental





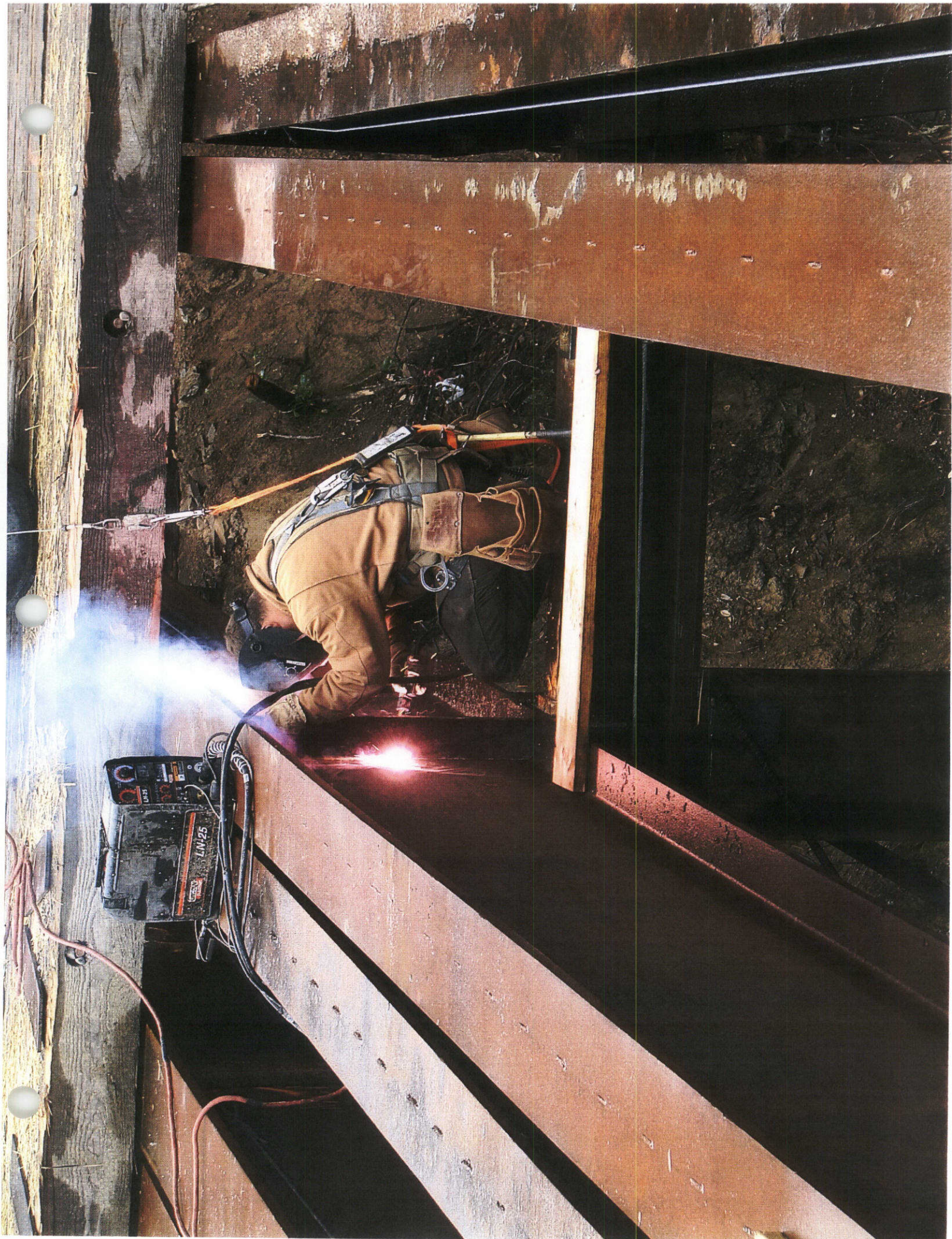




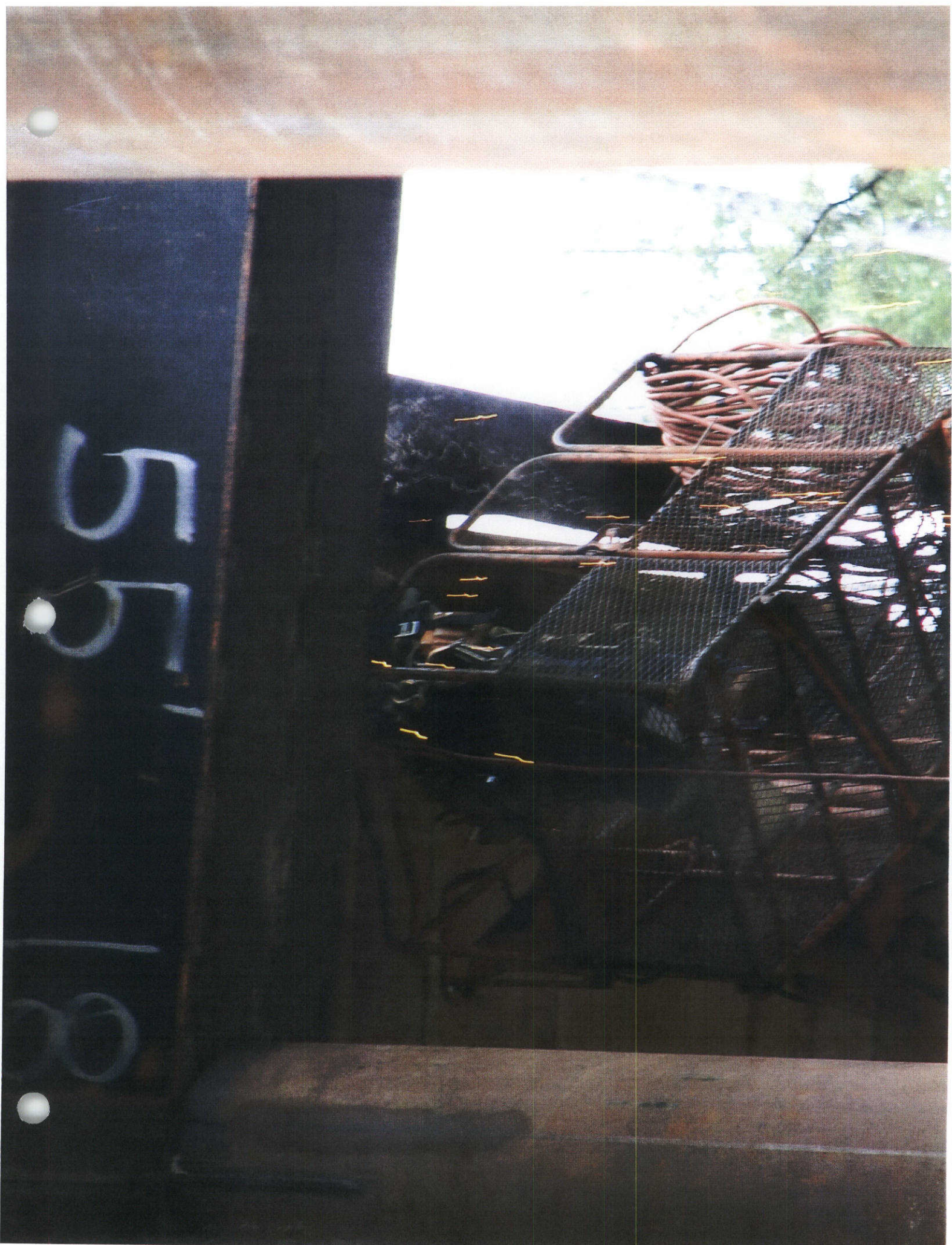












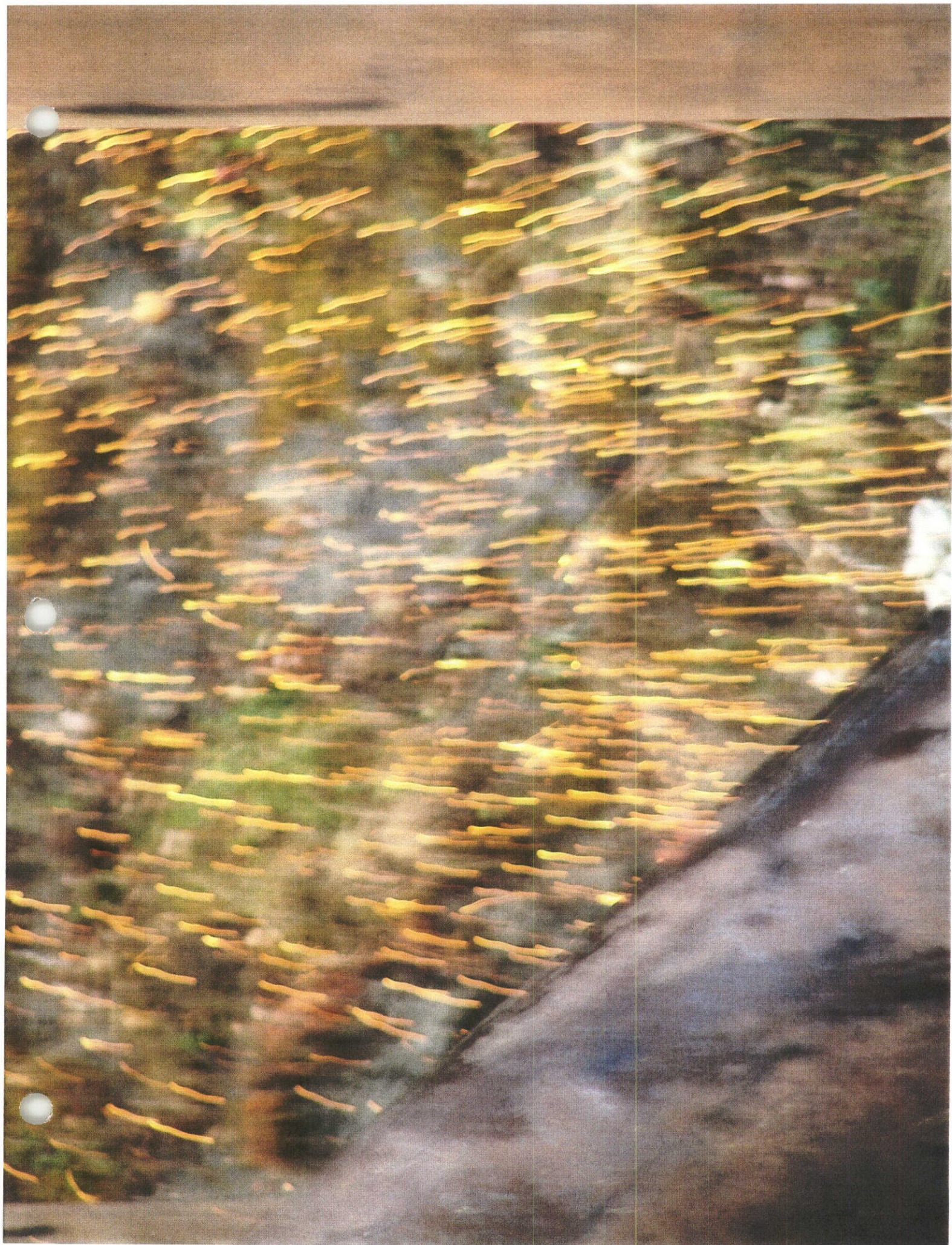






Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

I will be filing reports specific to these sediment plumes, their believed origin/causes and what might be done to even further contain these relatively minor events during the future activities, if further pumping and pouring is necessary at the sites.

Table 2. "Fine sediment Plumes" Observed by the Biological Monitor, during the week of 28 August – 1 Sept. 2006.

Date:	Location:	Origin:	Duration:
29 August.	Immediate area adjacent to Blast Zone.	Seeping through bar.	After 8 hours of pumping
	from coffer dams set in bar to Isolated Pool B of Norman's notes.		
30 August	Immediate area adjacent to Blast Zone	Seeping through bar.	After 8-10 hours of
	pumping from coffer dams set in bar to Iso. Pool B.		
1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in.	ca. 2 minutes post pour.

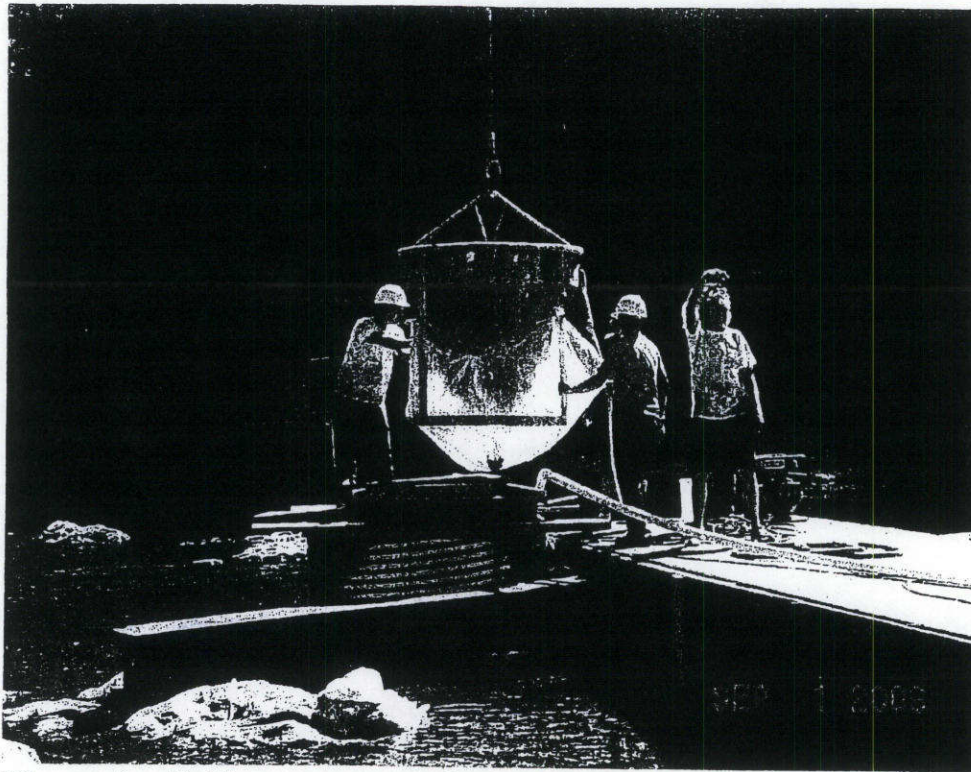


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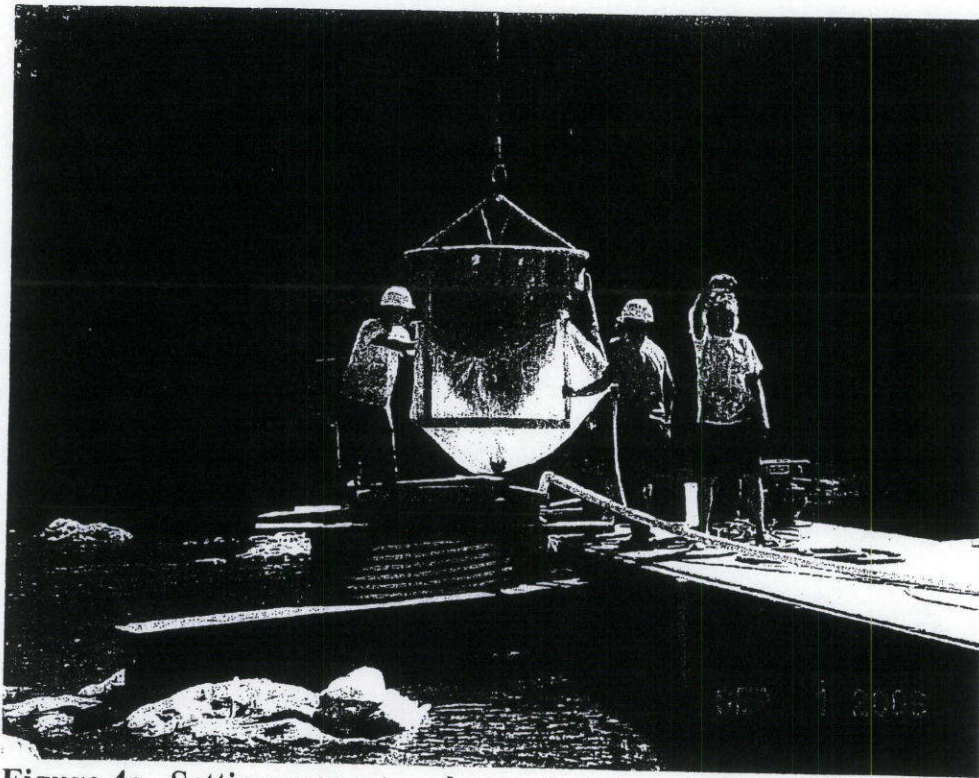


Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

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Date:	Location:	Origin:	Duration:
29 August.	Immediate area adjacent to Blast Zone.	Seeping through bar.	After 8 hours of pumping
	from coffer dams set in bar to Isolated Pool B of Norman's notes.		
30 August	Immediate area adjacent to Blast Zone	Seeping through bar.	After 8-10 hours of
	pumping from coffer dams set in bar to Iso. Pool B.		
1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in.	ca. 2 minutes post pour.

Attachment K

Notice of Discharge, Written Notice, or Order

To: Ron den Heyer

Date: September 16, 2006

Subject: Notice of Discharge

Project Name: Realign Highway 101 and construct two bridges at Confusion Hill
Caltrans Contract Number: 01-379514

In accordance with the Caltrans NPDES Statewide Permit for Storm Water Discharges Associated with Construction Activity, the following instance of discharge is noted:

Date, time, and location of discharge

Date: September 1, 2006

Time: Not recorded

Location: South Fork Eel River at the proposed location for bridge no. 10-300.

Nature of the operation that caused the discharge

A discharge occurred during the construction of temporary trestle footings. The footing was formed with a corrugated steel pipe, placed on end, on bedrock within the wetted channel. The following precautions were employed to reduce the threat of discharge of fresh Portland cement concrete to SFER: 1) Filter fabric was placed on the bedrock prior to placement of the corrugated steel pipe form, 2) the interface between the inside of the steel pipe and the bedrock surface was sealed with sand bags filled with clean washed sand, and 3) bags filled with washed gravel were placed around the outside of the steel pipe to secure the pipe in place. Placement of the gravel filled bags disturbed existing sediment on the bedrock and channel floor which caused a discharge.

Initial assessment of any impact cause by the discharge

The disturbance caused a plume of sediment about 20-feet in length and lasting approximately 2-minutes. The discharge was monitored by a biologist who confirmed that background turbidity levels were not increased as measured from a point 100-feet downstream. No apparent adverse impacts to the aquatic environment were observed.

Existing BMP(s) in place prior to discharge event

NS-2 Dewatering Operations, NS-13 Material and Equipment Use Over Water, NS-14 Concrete Finishing, WM-10 Liquid Waste Management



Date of deployment and type of BMPs deployed after the discharge.

No further work is expected on in-stream operations.

Steps taken or planned to reduce, eliminate and/or prevent recurrence of the discharge

No further work is expected on in-stream operations.

Implementation and maintenance schedule for any affected BMPs

All BMPs and will be implemented and maintained as described in the SWPPP.

If further information or a modification to the above schedule is required, notify the contact person below.

Justin Porteous

Name of Contact Person

Water Pollution Control Manger

Title

MCM Construction

Company

(707) 599-6365

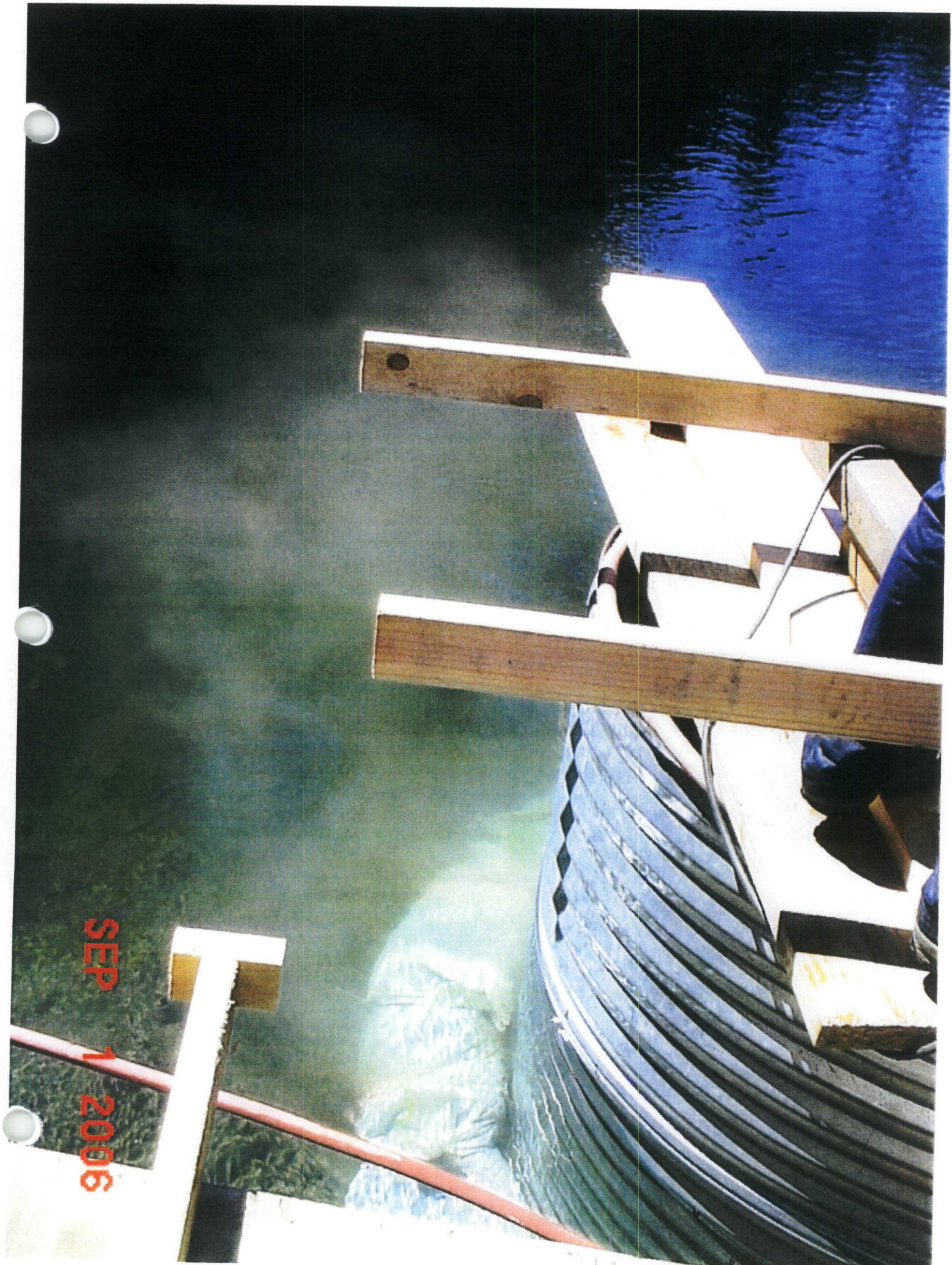
Telephone Number

Signature

Date

9/16/06

SEP 1 2006



PROVIDED BY:
SWRCB
SEP 4, 2008

Acting Structure Representative's
Daily Report

Report No. 379

Date: As Noted

M T W T F S S

#379 Thursday, Sept 7th, 2006 clear, wind calm to 6 mph, 57°-90°, high 90°
Controlling operation still considered P-3 N Br overburden excavation.

-0830 went to the river bar with Mitch Shands to talk to Supt. James Ham about his plan for grouting the trestle foundation anchor bolts due to water in the holes. He was going to place a standpipe in the holes to above water level to obtain static water then tremie pump grout and insert the HS rods which sounded like a reasonable plan.

-0900 returned to the office and found Claudio Avila and Bill Bertucci, Strs Geotechs. We talked about my concerns at A-1 S Br and reviewed the plan contour sheet and test borings. We then walked to the A-1 ftg excavation, then walked down the access road to below the A-1ftg. They expressed their concerns about the depth of rock in front of the abut and Claudio said he'd probably lower the pile tips and he would talk to designer Kevin Harper about lowering the bottom of footing and perhaps moving the abut back a few meters. I said I'd send the photos I'd sent Claudio, which he was unable to view with a dial-up connection, to Kevin. We then walked to the P-2 S Br excavation. I told them Ladd had an engineer looking at the work and would be submitting an Engr prepared plan soon. They were comfortable with the exc slopes and said they would be happy to review the plan when submitted. We returned to the office then drove to the N Br access road. We walked to P-3 exc site, then down to the river bar. They were comfortable with that excavation. We returned to the office a little before noon. Dan Van, 01 Geologist, stopped in and they talked for a while. About 1215 they headed for P-3 S Br and to find the survey crew to request a resurvey of the rock outcrop in front of A-1 S Br.


Shortly after 1230 there was a blast at the P-2 S Br exc. It seemed loud and shook our office. Gene Leo and I headed down the access road. We came across Harlan Davis, licensed blaster, who was leaving the site. He said they didn't fly any rock and the loud noise was from the bounce back from the opposite bank. We went down to the P-2 exc and viewed the blast area. We found no fresh rock on open ground around the blast area.

-1440 Ed Yarbrough came into the office. We discussed ramp safety issues. I told Ed that Claudio had measured 24° and 25° angles on 2 of the ramp sections. He said the Safety Orders were not real clear on ramps but Tim Strahan had emailed a contact at CalOSHA with questions on ramps, stairs, and hand railing. Tim came in -1450 and confirmed the inquiry and was said he was expecting an answer Monday.

Called Phil Gundlach, MF batch plant operator, he'll come down on Mon P.M. to talk about concrete.

#47 Late this afternoon, Gene Leo was talking to Walt Dragaloski about the reports he had from biologist Brad Norman about discharges into the river at the N Br const area. One was from dewatering into a settlement basin and after about 8 hrs of pumping some turbidity was noticed emanating from the gravel bar. Walt asked to talk to me. I told Walt I hadn't seen the discharge from dewatering but Brad mentioned it once when I was on the gravel bar. My recollection was that it was mentioned to MCM and #48 the pumping was stopped and the discharge ceased shortly thereafter. The other was during the seal course placement within the two CSP's for the trestle bent 3 foundations. I told Walt that bags filled with river bar gravel were placed outside the CSP's which had been cut to approximate the contour of the bedrock in the river, filter fabric was placed inside the CSP's and pushed into the gap between the CSP and the rock, then sandbags were placed inside and against the CSP's. A pump was running to lower the water level inside the CSP's, which was ineffective until the water level rose due to the placement of the concrete seal course. Pumping was halted after the conc placement started. The water was pumped to a settlement basin against the river bank. The conc was placed with a tremie pipe and during the first half yard of conc placement a small discharge was noticed. It could not be determined whether the cloud was from displaced water forcing silt out of the gravel bags on the outside of the CSP's or cement mortar leaking past the sandbags, filter fabric and gravel bags, but Sacramento pike minnows (per Brad) swimming outside the CSP's were unaffected. The discharges dissipated quickly within about 50' (Rt CSP) to 100' (Lt CSP) as near as I could tell. Although there was some discussion of measuring the turbidity, Brad mentioned that it didn't appear to him that there was a 20% increase at 100'. RE Ron den Heyer was also present during the conc seal placement. The next day the water was tested for pH, treated with muratic acid then pumped into the settlement basin. I estimate about 25 gal was pumped from the Lt CSP and perhaps 50 gal pumped from the Rt CSP based on the conc placed.

RWT 0700-1630 1 hr OT, office; MShands 0630-1700, 2 hrs OT, insp;
JRailey no OT


Rich Thompson, Asst. Str. Rep.

PROVIDED BY:

SWRCB

SEPTEMBER 4, 2008

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Acting Structure Representative's
Daily Report

46.

Report No. 379

Date: As Noted

M T W T F S S

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RWT 0700-1630 1 hr OT, office; MShands 0630-1700, 2 hrs OT, insp;
JRailey no OT


Rich Thompson, Asst. Str. Rep.

Job Stamp
01-397514

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

46.

01-Men-101-159.6/162.0 kp
Confusion Hill Realignment

Assistant Structure Representative's
Daily Report

Report No. 381

Date: As Noted

M T W T F S S

#381 Monday, Sept 11th, 2006 clear, wind calm to 6 mph, 53°-90°, high 95°
Controlling operation still considered P-3 N Br overburden excavation.

-0730 Garry Tolen called. He said he got to Sac Airport ~1600 Sat due to flight problems and couldn't take care of Credit Union business as he had planned so he would be doing that this morning before heading here. I informed Gene Leo.

Called Phil Gundlach to postpone our meeting with Garry until tomorrow. He said he had talked to Mark Benzinger and they were thinking tomorrow would be better anyway. He will be here this afternoon to do trial batches on two 25 MPa mixes.

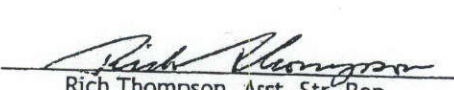
-1000 I called Evan Paine, MCM, to inform him that the pile tips would probably be lowered at A-1 S Br and not to have the pile rebar cages made or stop them if they've started. He said he'd call Fontana and stop fabrication.

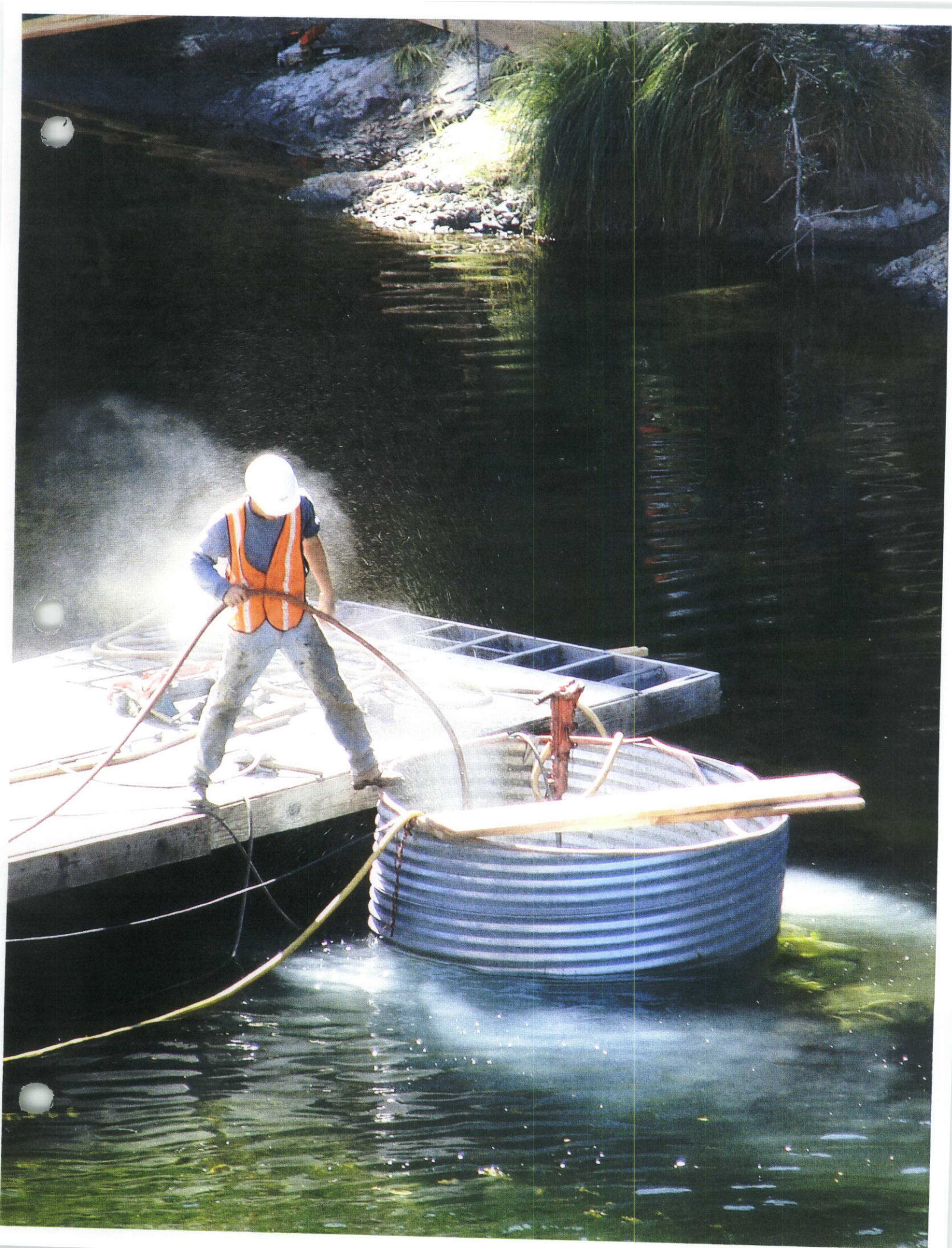
-1010 RE Ron den Heyer came to my office with Carl Page and a photo of turbidity from drilling debris in the water around trestle foundation 4 Lt. Ron said that our inspectors can't let this happen and asked me to call Mitch Shands and have him come in for a discussion. I said Mitch had been a while ago and said that MCM was using a baffle to keep anchor rod hole cleanout debris within the 6' dia CSP. I called Mitch no answer as expected (our Verizon phones don't work at the trestle or gravel bar). I drove to the jobsite. Talked with Mitch and John Railey down on the gravel bar. John wasn't there this morning and when Mitch went down to the gravel bar after looking at trestle superstructure work he saw MCM's crew using a baffle to keep debris within the CSP and saw no turbidity in the water. We returned to the office and met with Ron and Carl -1045. Ron said we can't let this happen. Mitch explained that at his first inspection at the foundation this morning MCM was using the baffle to keep debris within the CSP. He also has told them previously that any debris on the planks over the CSP's had to be cleaned off into the CSP's. Mitch said Carl didn't say anything to him about debris spraying into the water when they were at the foundation work this morning. Carl said he saw it before Mitch came down and he also saw some Sat when he and I were on the job. I said I didn't see any turbidity Sat but most of my time was spent above (they were setting the bent, cap and girders) and they got a drill bit stuck early and didn't spend much time on that work (in the Lt CSP). I said Carl didn't say anything to me on Sat about turbidity or I would have done something about it. Ron said that if we see something going into the water we need to stop immediately, if Carl, or Brad, sees something they need to notify the closest inspector immediately or call him if no one is around. I asked Ron if Gene had told him about Garry being late, he hadn't so I did.

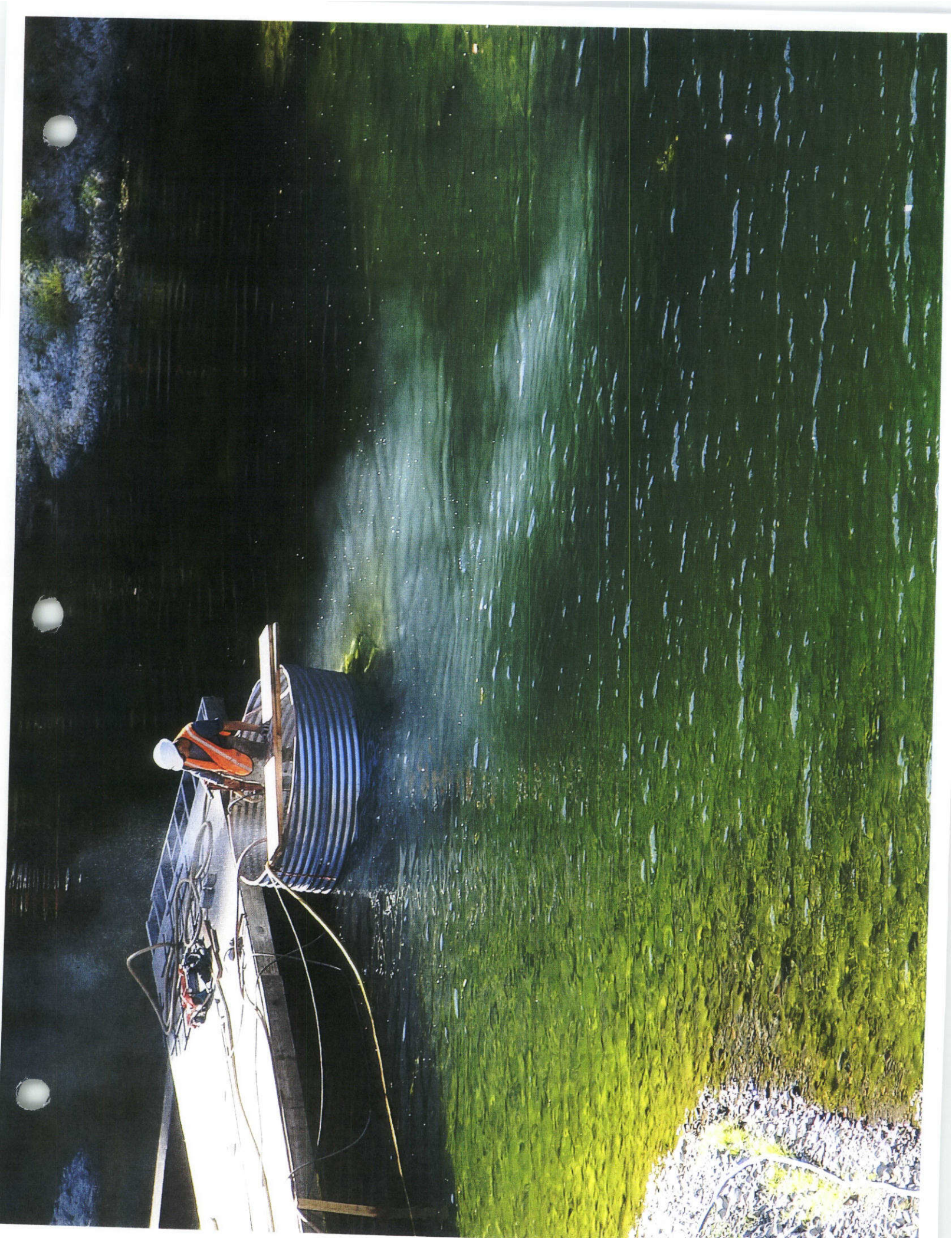
-1210 talked with Phil Gundlach about not having to prequalify the 25 MPH mixes. After lunch I went to the batch plant and took him a complete set of Special Provisions, as he only had a few copied pages. He cancelled his 25 MPH trial batches. We discussed the allowance of 35% fly ash. I went over the applicable Special Provisions wherein they are allowed more than 25% fly ash if the cementitious content exceeds the minimum, but the cement has to be 75% of the minimum cementitious material in Sec 90. Karen Spliethof, NRC materials sampler/inspector, started today. I called her out to see the batch plant and Phil showed her the belt sampling platform.

Began drafting a letter to MCM regarding the need for them to submit falsework plans for the N Br as the deadline for work below the ordinary high water elevation is Oct 31.

RWT no OT


Rich Thompson, Asst. Str. Rep.





6.5 MONITOR BENTONITE USE AND CONTAINMENT

No bentonite was used this monitoring season.

6.6 MONITOR VEHICLE ACCESS ACROSS RIVER

Methods. All known vehicle crossings were observed by the biological monitors. Three vehicle crossings were monitored this season over the South Side Project Area South Fork Eel River mainstem. Bradford Norman monitored the September 6 and 22, 2006 wet-channel crossings and Carl Page monitored a third on October 2, 2006. All occurred at the same place, along the tail end of a large bedrock-formed lateral scour pool at the top of a shallow riffle, at the South-Side of the project area. Biological monitors gathered background turbidity and water quality data at the crossing site prior to the 3 crossings to provide baseline data. During or immediately after the crossings they estimated visual turbidity and took digital photos.

A record of these activities and the observations has been presented in the weekly biological monitoring reports (Page 2006; Norman 2006). Further documentation of these activities is presented in the Digital Photographic Record Set of Digital Photo CDs, Appendix B.

Proactive Measures. Having the biological monitors on site ensured that no salmonids were in the area during the crossing. The same crossing site was used for each of the 3 wet-channel crossings observed, thereby limiting the affected area of disturbance.

Contractors were notified at project meetings that the equipment should be thoroughly cleaned of dirt, mud, and grease before crossings. The cleaning was to be done prior to staging at the river's edge. Vehicles were then to be inspected by the biological monitors (i.e., checking the tracks and undersides of heavy equipment) at the staging areas on the river bank prior to wet-channel crossings (referred to as "staging of equipment"). Monitors were also responsible to ensure that no sensitive fish species would be harmed from the crossing, which usually involved walking in front of the equipment as it crossed. Another proactive measure was for the vehicles to use a slower gear when crossing to reduce the potential for disturbance.

Biological monitors were able to inspect the equipment and walk the vehicle across the river for two of the crossings (September 6 and October 2). However, we were unable to do either for the second crossing (see description below).

Problems Encountered and Actions Taken. All 3 wet-channel crosses created a sediment plume to varying degrees of high turbidity (See Table 5), but the durations and intensities of each varied by the speed and number of vehicles per crossing.

The first wet-channel crossing occurred on September 6 and resulted in a sediment plume with a maximum extent of over 200 feet in length that lasted 25 minutes (Figures 38, See Discharge Table 5). This was a one-way crossing event involving three vehicles. The second wet-channel crossing event (one-way) occurred on September 22 and resulted in the largest sediment plume

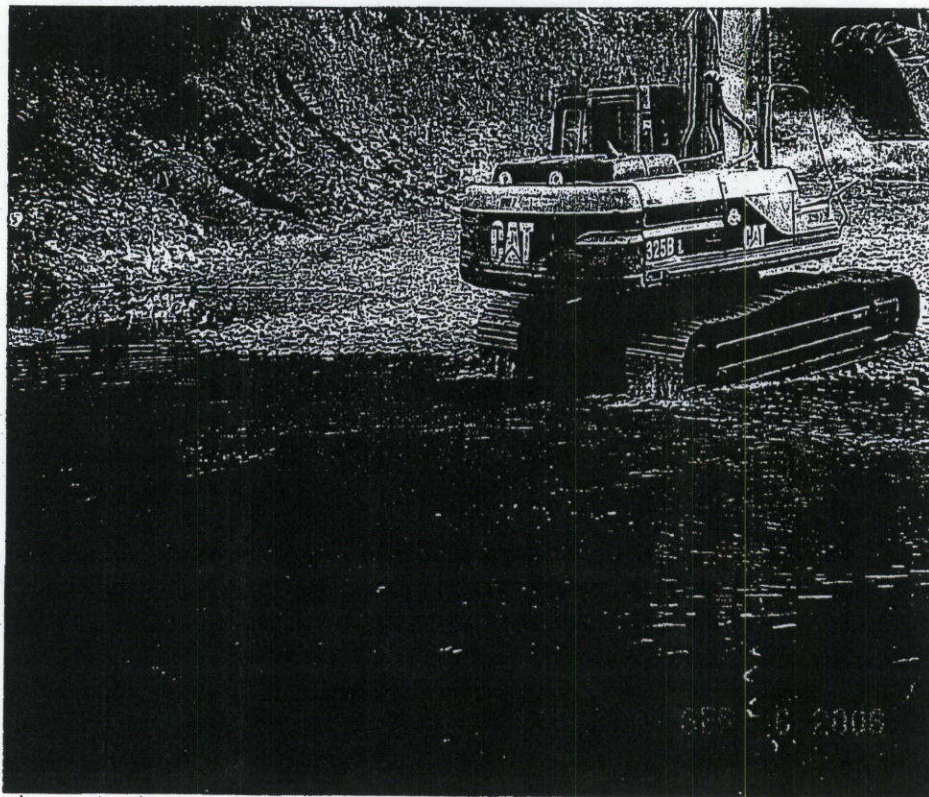


Figure 38. Wet-channel crossing number 1 (Note there is no mud on tracks after it goes through the mainstem).

of all three crossings, about 400 feet in length and lasting about 50 minutes (Figure 39, See Discharge Table 5). This was caused by in-stream sediment disturbance from heavy equipment (1 loader, 1 bulldozer with attached sheep roller, and 2 dump trucks) and from deposition of soils into the river from uncleaned or incompletely cleaned heavy equipment. For both of these crossings the value of "3" on the visual scale was recorded within the plume at the crossing site, representing a high amount of acute turbidity. The visual turbidity value 50 feet upstream of the crossing was "0" and the value 100 feet downstream was "3".

Equipment cleaning was a pro-active measure taken for the first & third crossings, but it appeared to have not been done for the second crossing event witnessed by B. Norman on September 22. This was apparent by the much larger amount of dirt on the equipment during the second crossing compared to the other two crossings.

No "staging of the equipment" occurred immediately prior to the September 22 crossing. Although the biological monitor was notified that the wet-channel crossing was to occur that morning, he was not given any notice immediately before the event occurred. The vehicle did not stop at the edge of the river and continued directly into the river. The monitor attempted to hail the equipment operator but was not successful. Biological monitors were also not able to walk the equipment across the river during the second crossing. However, the crossing site was inspected for salmonids that morning.

SECTION SIX

Water Quality Monitoring

In addition, a sheep-foot roller, not originally approved for the crossing, also crossed the river (Figure 40). This equipment was pulled across by a bulldozer (that was approved for crossing). This caused additional disturbance to the river bed and probably increased the sediment plume.

The third wet-channel crossing, involving just one vehicle on October 2, was apparently not originally authorized by the permits in the Environmental Redbook. This was a backcross (return) in which very low gearing was used to inch across the creek and the resultant plume was slight and quickly dissipated (Figure 41). For the third crossing the value of 1" on the visual scale was recorded within the plume at the crossing site, representing a low amount of acute turbidity. Using the Horiba meter, the turbidity measurement 100 feet below the crossing area showed a reading of 2 NTU's. This was the only crossing event where the Horiba meter was used. Hydraulic and oil leaks also were noted from the backhoe that moved back across the river during the third crossing.

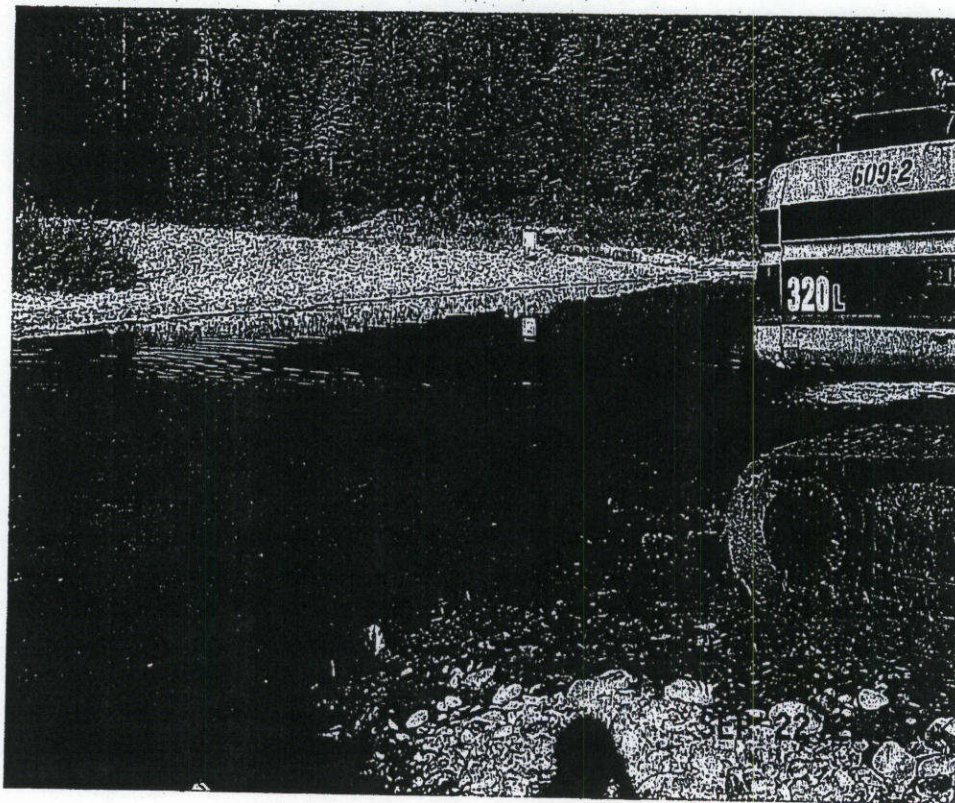


Figure 39. A sediment plume caused during second wet-channel crossing, 22 Sept. 2006, South Side Confusion Hill Project Area (Note mud was still caked on after going through the clean cobble river bed). The visual scale of turbidity at this event was considered a "3" by the biological monitor as reported in a weekly report.

Although the contractors' crew members were required to watch a video of permit requirements, the in-stream contractor work crews this season seemed uninformed of the in-channel permit restrictions. When a biological monitor (B. Norman) asked several contractor crew members to see a copy of their Environmental Redbooks on site, none of the workers asked had seen a copy, been given a copy, or had read a copy. And none of the above mentioned contractors (N=5)

SECTION SIX

Water Quality Monitoring

during the episode on September 22 had one in their possession. This is a requirement specified by Caltrans on Page 2 of the Environmental Redbook for the Confusion Hill Project: "A copy of the 1602 Agreement and 401 Certification must be provided to the contractor and all subcontractors who work within the 100-year flood plain and they must be in their possession at all times." The "1602" refers to the Stream Bed Alteration Agreement with Calif. Dept. of Fish and Game (dated April 17, 2006, Notification Number: 1600-2005-0697-3) and the 401 Certification refers to the Calif. Regional Water Quality Control Board (CEPA Permit: WDID No. 1B05153WNME). Both documents are in the Environmental Redbook, Section 3 & Section 4, respectively.



Figure 40. Wet-channel crossing number 2. Bulldozer with sheep-foot roller attached.



Figure 41. Wet-channel crossing number 3.

It was Caltrans policy that the biological monitors were to report such issues directly to the Caltrans Inspectors and/or to the Resident Engineer, Ron den Heyer, for resolution ("chain of command"). Consequently, we were not to give directives to contractor crews working on the ground. This resulted in a few instances when the chain of reporting problems did not provide a resolution prior to events, such as the September 22 wet-channel crossing; the incident was happening or had already happened before a determination of a possible permit violation was made.

6.7 MONITOR FUEL STORAGE, REFUELING SITES, VEHICLE MAINTENANCE

Methods. Biologists monitored the storage and staging of vehicles, equipment, and materials. All vehicles were to be stored and refueled above the 100-year flood elevation. When biologists observed vehicles that leaked fluids these were reported to the RE. Equipment or vehicles driven or operated within or adjacent to the river were regularly checked for leaks.

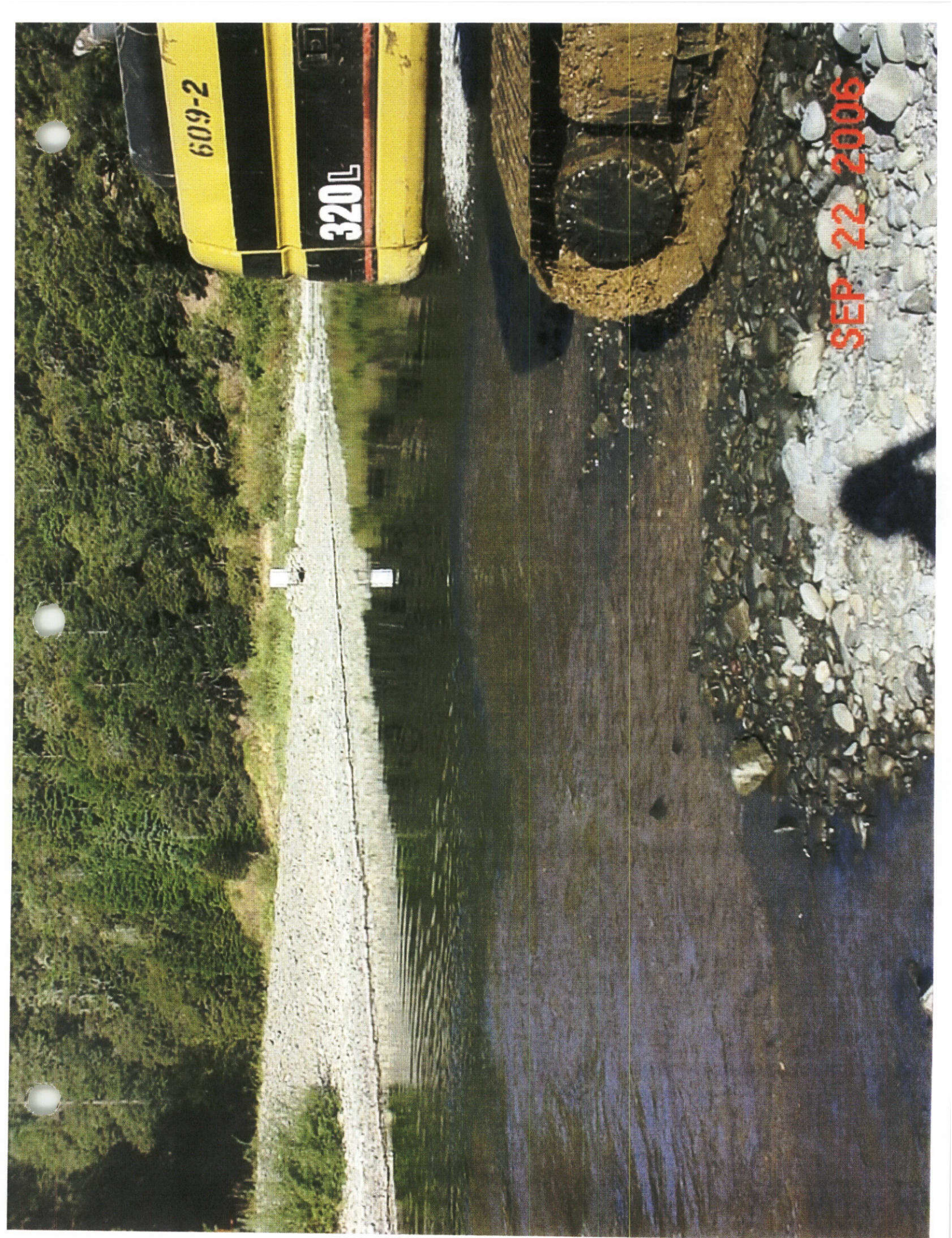
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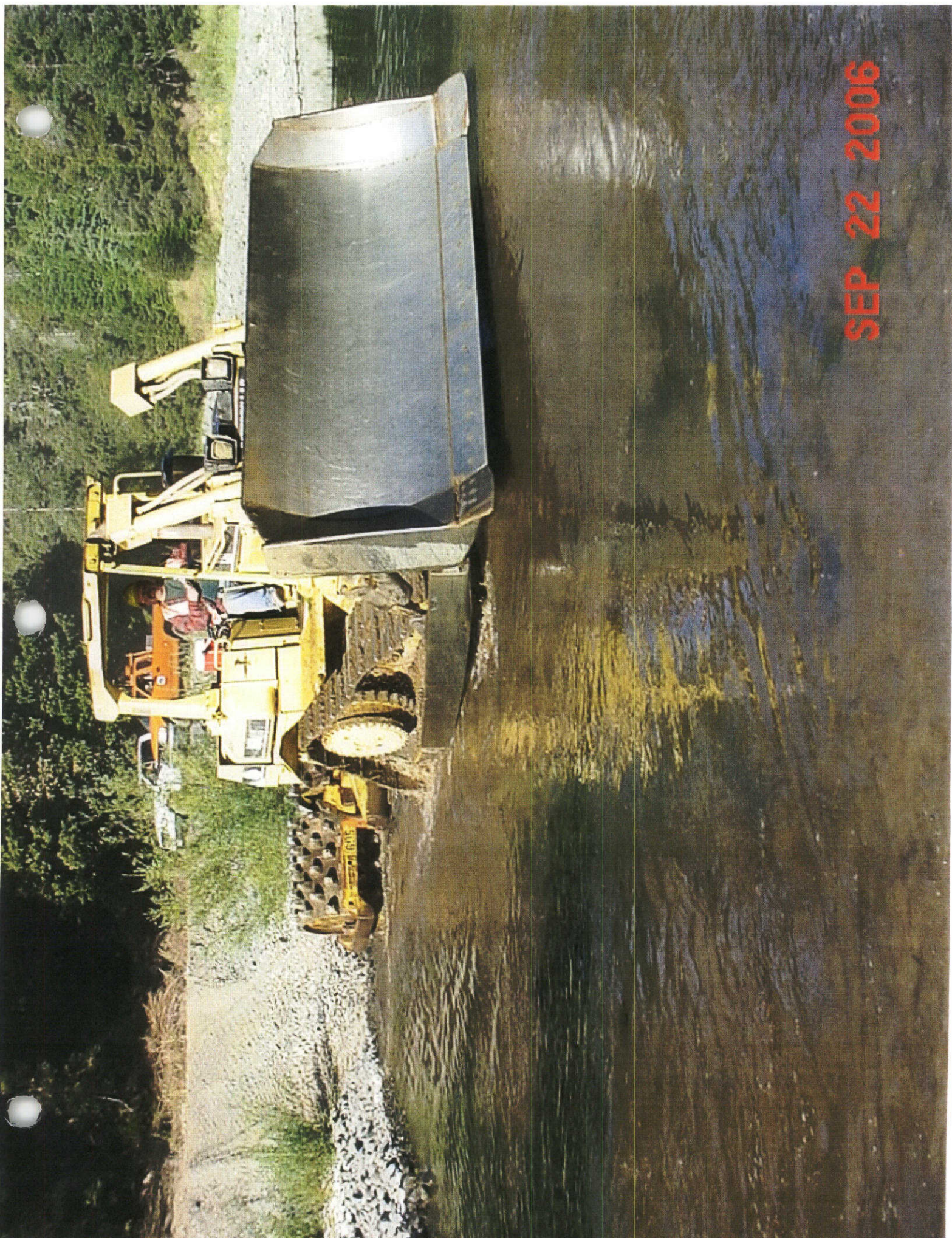
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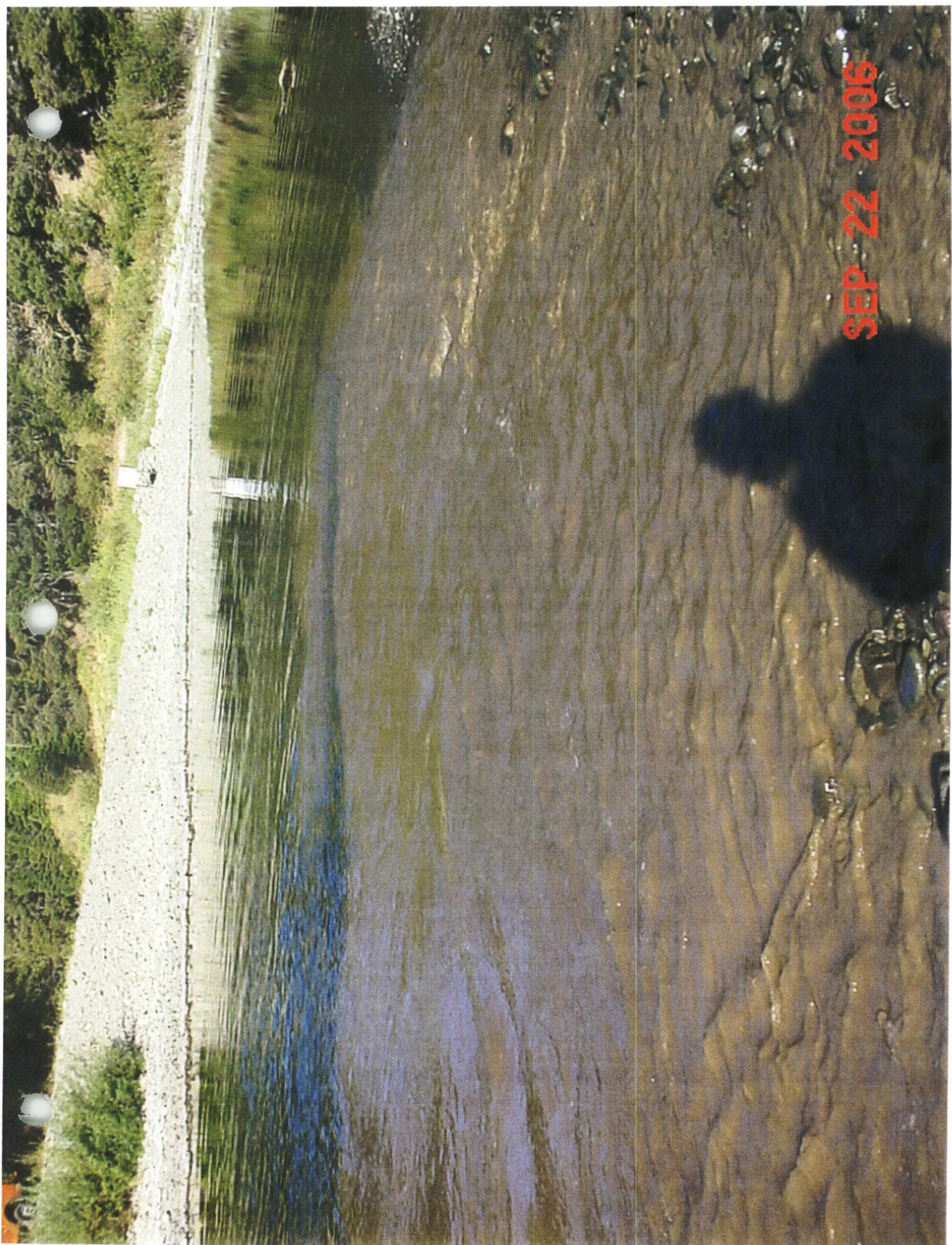
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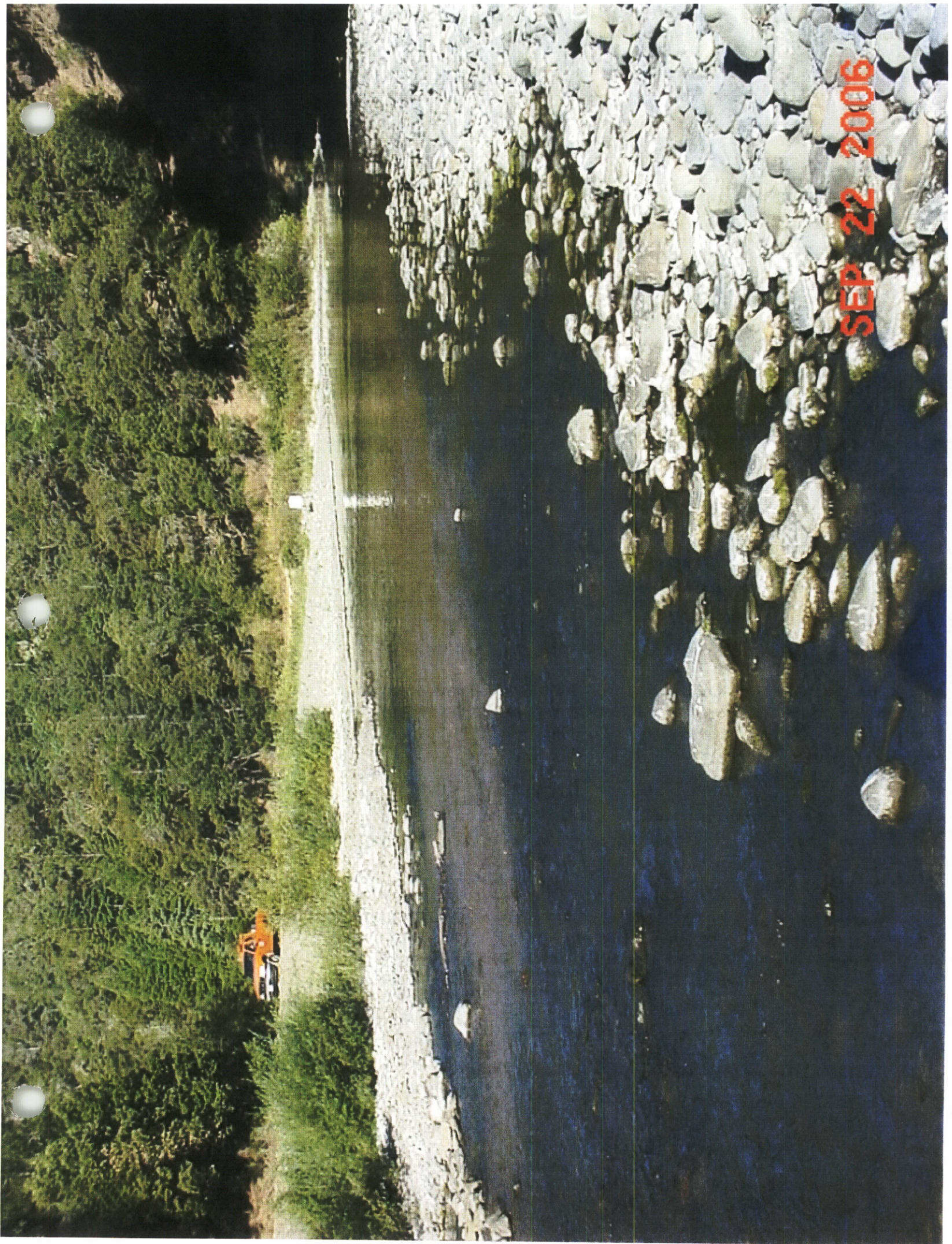
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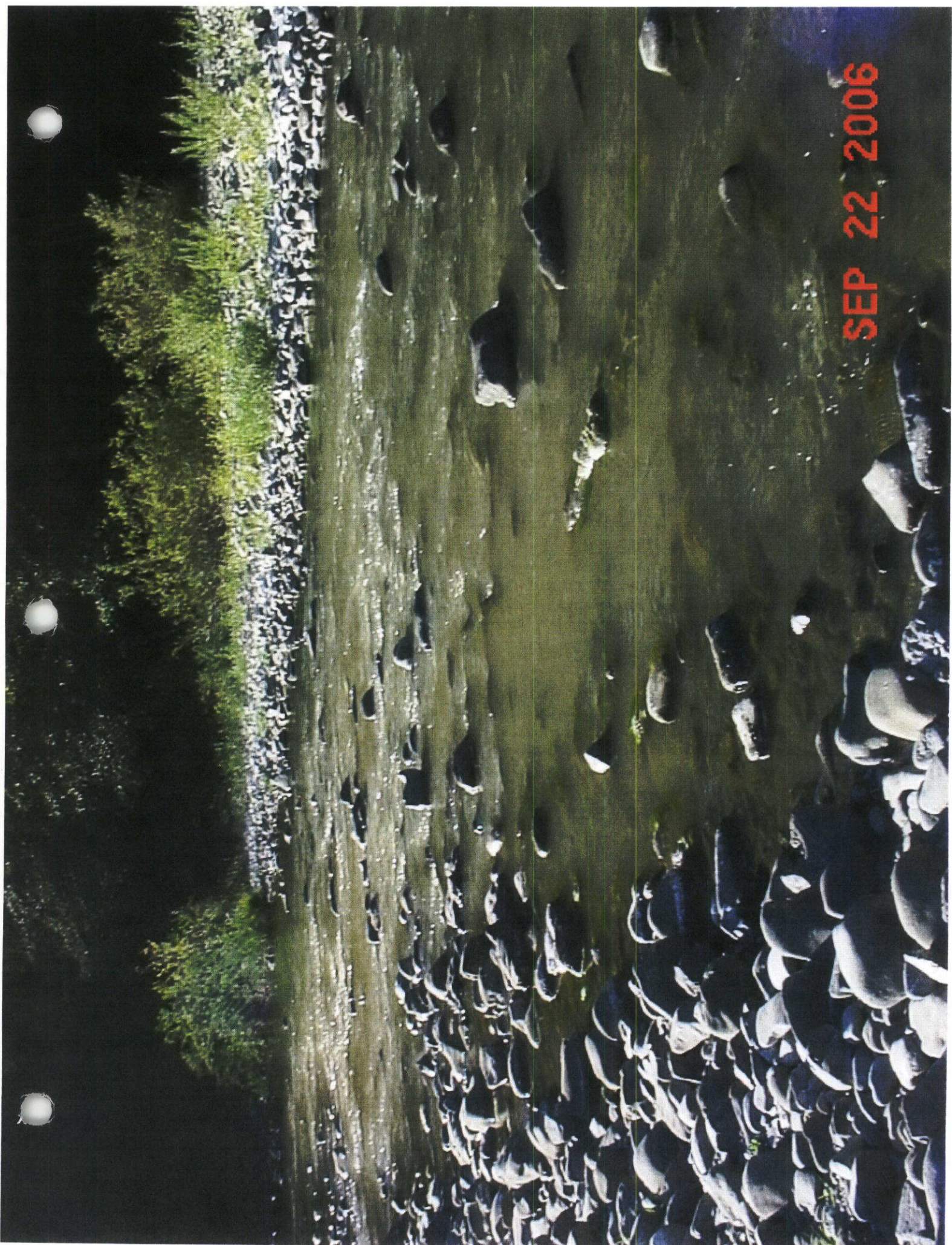
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SEP 22 2006





SEP 22 2006



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.395
Sheet 2 of 2
Date Sept 29, 2006
Circle Day S M T W T F S
Shift Hours Start 0700 Stop 1730

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work See page 1.

1 Item 43: Sub CONTR, Ladd continued the mining operation for pier 3. Ladd spent the shift continuing to erect the the A - Frame for the "Betsy Cryderman" excavator (digging arm). Ladd drilled down into the rock formation and installed 1" ϕ DYWIDAG type rod 4'-0 in length. The rod was set with epoxy, Lockset Resin Cartridge (exp 07-30-07). Around the perimeter, Ladd set split sets and attached rope for hand railing. Once this was completed, Ladd began layout on the heading for drilling for the next set of charges. Total pier excavated to date per plan = 30.834m³. THIS PORTION OF THE WORK IS NOT COMPLETE.

2 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, the CONTR employed a backhoe, excavating down approx 8'-0 below the bar for FTG #1. No cofferdam (shield) assembly was employed. *Per direction from MCM's Field Superintendent James Ham, the operator was directed to knock down the spoils and push them into the swell. Please see the mini - memo dated September 27, 2006.* After the spoils were leveled, the operator then switched back to bent 2-7's FTG #4 (#3?) and resumed excavating inside the cofferdam (shield). At bent 2-1, the CONTR performed layout and began excavating down to rock on all four FTG's. At bent 2-5, the CONTR continued removing rock for FTG's 1 and 2. Once this was completed, the CONTR mapped the bottom surface and cut the 6'-0 ϕ CMP to approx shape. The CMP was then hoisted over to the FTG and set into place. Sandbags were then placed on the outside perimeter only, no sandbags were placed on the inside of the CMP. CONTR began placing seal coarse concrete @ 1701hrs. Concrete was placed via concrete bucket. CONTR began by placing the seal coarse in the #3 FTG. *During placement, it was apparent that the CONTR did not have a good seal around the CMP. Concrete escaped from the CMP leaving a plume in the river approx 150'-0 in length.* During placement for the #4 FTG, the CONTR's tremie on the hopper came off. While trying to reattach the tremie, the CONTR worked around the CMP standing on the sandbags. A plume was evident but how much was concrete or how much was alga was hard to determine. After the tremie was reattached, the CONTR resumed placing the seal coarse. *To prevent the water from overflowing the CMP, the water (untreated) was pumped onto the gravel bar, approx 60'-0 from the rivers edge. Once the seal coarse operation was completed, the CONTR cleaned the hopper, tremie and shovels in the glory hole for 2-7's FTG. This was also observed by SR Garry Tolien.* No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. Approx 2.869 m³ of seal coarse concrete was placed (0.867m³ in FTG 3 and 2.002m³ in FTG 4). **CONTR's Submittal is incomplete and has NOT BEEN APPROVED! CONTR is performing work at his own risk.** THIS PORTION OF THE WORK IS NOT COMPLETE.

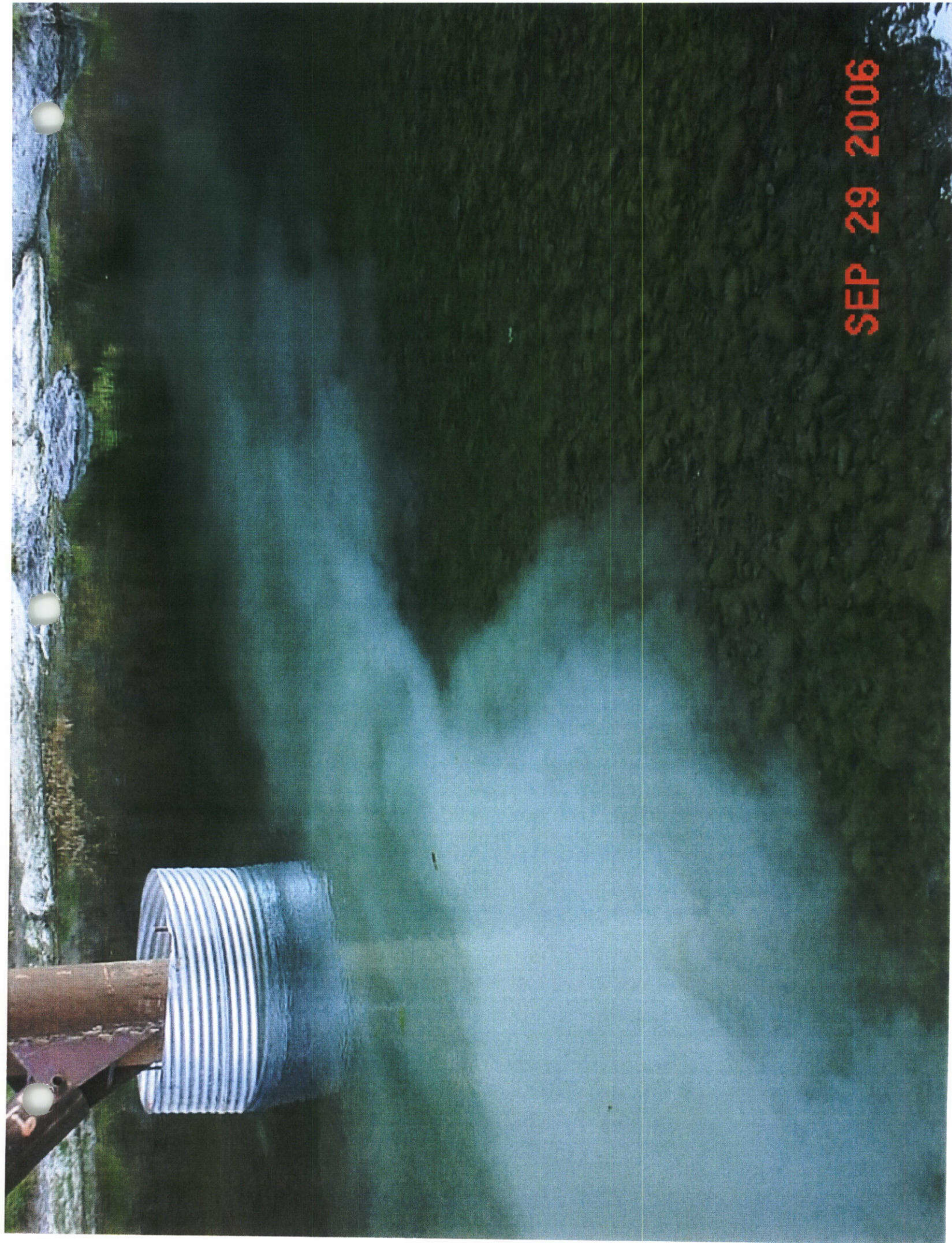
3 Item 164: CONTR (MCM) continued to erect the trestle. At bent 7, the CONTR continued and completed connecting the stiffener/connection plates and cross bracing (L3 x 3 x ³/₈) on the W36 X 182 and W36 x 260 stringers at the bent / cap connection. Connection plates and cross bracing were attached via 2F, 3F and 4F fillet welds via the FCAW (Lincoln NR-232 electrode wire) processes. A total of 7 pairs have been connected. THIS PORTION OF THE WORK IS NOT COMPLETE.

ASR NOTE: THIS is Controlling Item Work.

4 MISC: CONTR performed miscellaneous duties in and around the worksite. The CONTR performed maintenance, repair and service on equipment and tools. THIS PORTION OF THE WORK IS ONGOING.

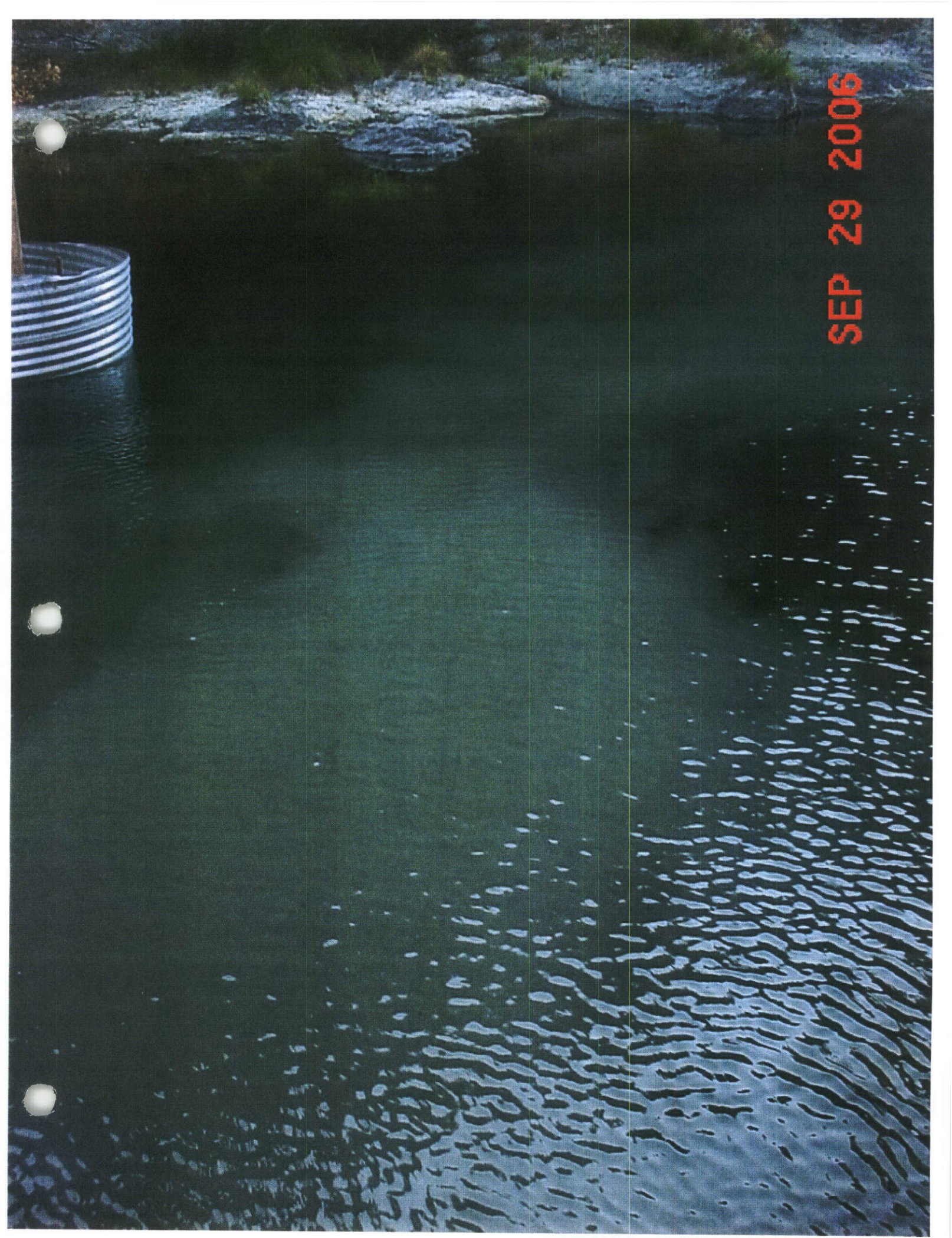
ASR NOTE: ASR Qi Fu was on site in the field performing surveillance of the Work during this shift.





SEP 29 2006

SEP 29 2006



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.395
Sheet 2 of 2
Date Sept 29, 2006
Circle Day S M T W T F S
Shift Hours Start 0700 Stop 1730

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work See page 1.

1 Item 43: Sub CONTR, Ladd continued the mining operation for pier 3. Ladd spent the shift continuing to erect the the A - Frame for the "Betsy Cryderman" excavator (digging arm). Ladd drilled down into the rock formation and installed 1" ϕ DYWIDAG type rod 4'-0 in length. The rod was set with epoxy, Lockset Resin Cartridge (exp 07-30-07). Around the perimeter, Ladd set split sets and attached rope for hand railing. Once this was completed, Ladd began layout on the heading for drilling for the next set of charges. Total pier excavated to date per plan = 30.834m³. THIS PORTION OF THE WORK IS NOT COMPLETE.

2 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, the CONTR employed a backhoe, excavating down approx 8'-0 below the bar for FTG #1. No cofferdam (shield) assembly was employed. *Per direction from MCM's Field Superintendent James Ham, the operator was directed to knock down the spoils and push them into the swell. Please see the mini - memo dated September 27, 2006.* After the spoils were leveled, the operator then switched back to bent 2-7's FTG #4 (#3?) and resumed excavating inside the cofferdam (shield). At bent 2-1, the CONTR performed layout and began excavating down to rock on all four FTG's. At bent 2-5, the CONTR continued removing rock for FTG's 1 and 2. Once this was completed, the CONTR mapped the bottom surface and cut the 6'-0 ϕ CMP to approx shape. The CMP was then hoisted over to the FTG and set into place. Sandbags were then placed on the outside perimeter only, no sandbags were placed on the inside of the CMP. CONTR began placing seal coarse concrete @ 1701hrs. Concrete was placed via concrete bucket. CONTR began by placing the seal coarse in the #3 FTG. *During placement, it was apparent that the CONTR did not have a good seal around the CMP. Concrete escaped from the CMP leaving a plume in the river approx 150'-0 in length. During placement for the #4 FTG, the CONTR's tremie on the hopper came off. While trying to reattach the tremie, the CONTR worked around the CMP standing on the sandbags. A plume was evident but how much was concrete or how much was alga was hard to determine.* After the tremie was reattached, the CONTR resumed placing the seal coarse. *To prevent the water from overflowing the CMP, the water (untreated) was pumped onto the gravel bar, approx 60'-0 from the rivers edge. Once the seal coarse operation was completed, the CONTR cleaned the hopper, tremie and shovels in the glory hole for 2-7's FTG. This was also observed by SR Garry Tolen.* No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. Approx 2.869 m³ of seal coarse concrete was placed (0.867m³ in FTG 3 and 2.002m³ in FTG 4). **CONTR's Submittal is incomplete and has NOT BEEN APPROVED! CONTR is performing work at his own risk.** THIS PORTION OF THE WORK IS NOT COMPLETE.

3 Item 164: CONTR (MCM) continued to erect the trestle. At bent 7, the CONTR continued and completed connecting the stiffener/connection plates and cross bracing (L3 x 3 x ³/₈) on the W36 X 182 and W36 x 260 stringers at the bent / cap connection. Connection plates and cross bracing were attached via 2F, 3F and 4F fillet welds via the FCAW (Lincoln NR-232 electrode wire) processes. A total of 7 pairs have been connected. THIS PORTION OF THE WORK IS NOT COMPLETE.

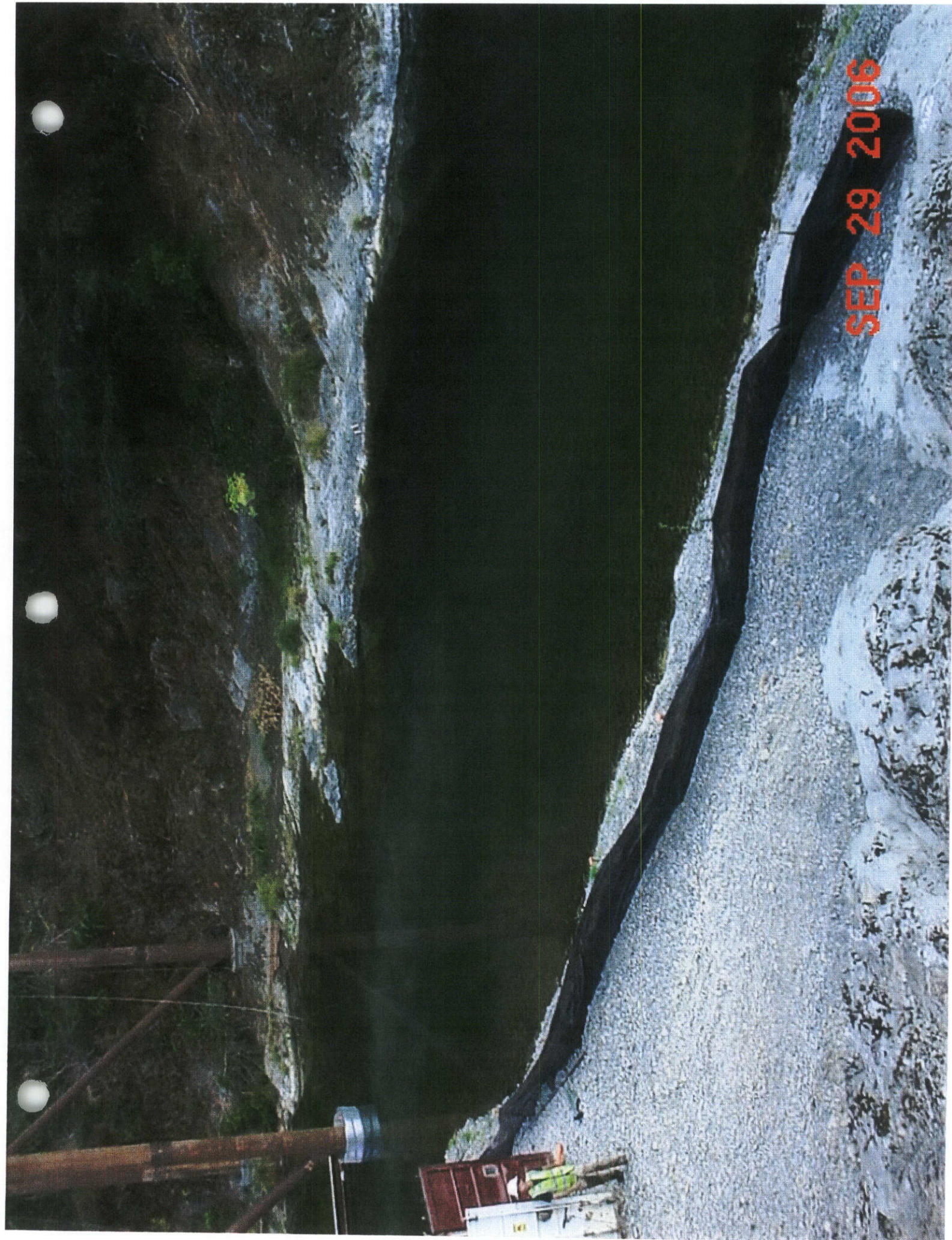
ASR NOTE: THIS is Controlling Item Work.

4 MISC: CONTR performed miscellaneous duties in and around the worksite. The CONTR performed maintenance, repair and service on equipment and tools. THIS PORTION OF THE WORK IS ONGOING.

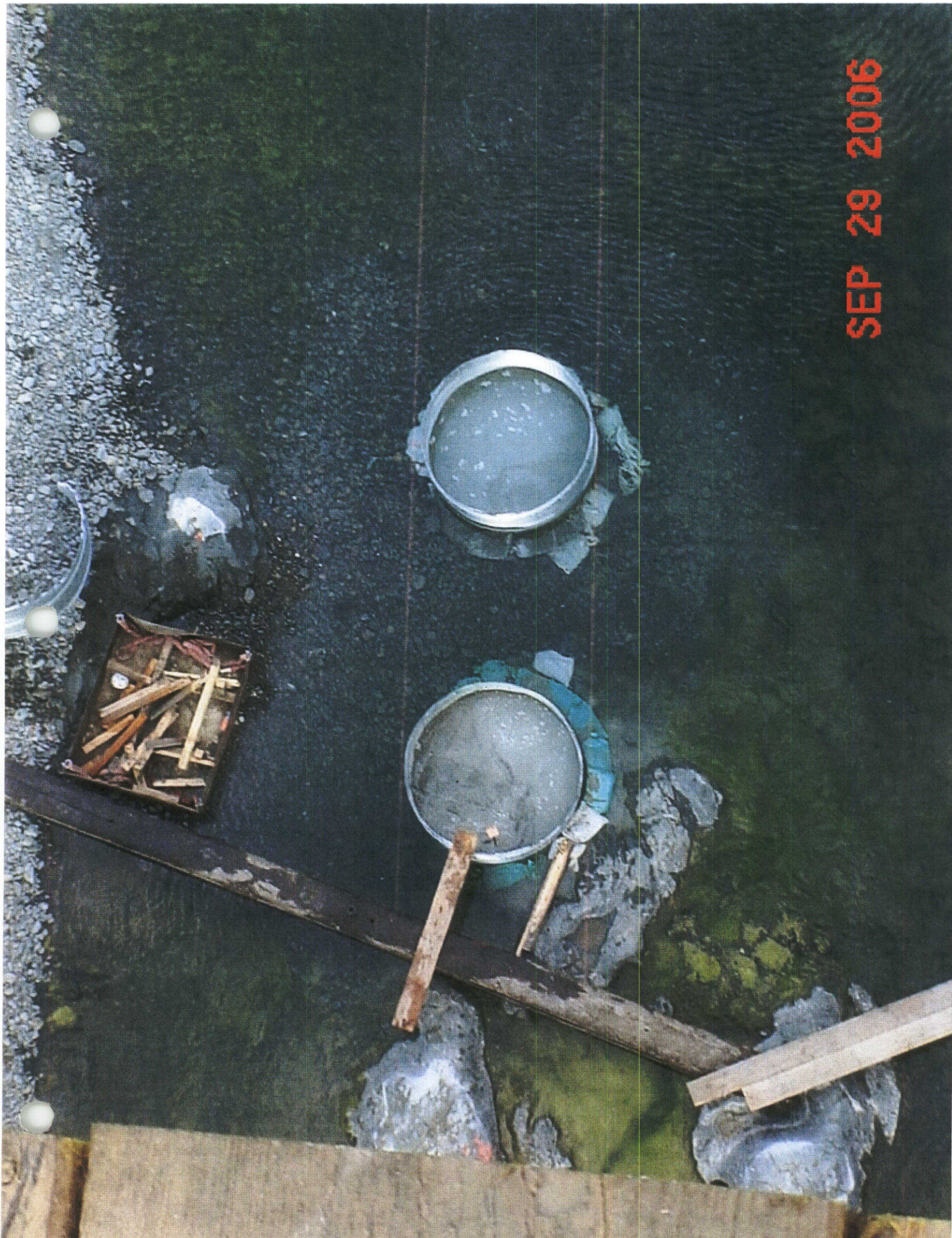
ASR NOTE: ASR Qi Fu was on site in the field performing surveillance of the Work during this shift.

SEP 29 2006





SEP 29 2006



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TRANSPORTATION
Form HC-10A4 (Rev. 7/85)

Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.400A
Sheet 2 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work See page 1.

1 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, do to the seal coarse being poured on a dirty rock formation and leaking, the CONTR had to remove the CMP w/seal coarse. Prior to placement, I checked the top of the rock formation and advised the CONTR that the top of the formation was not clean enough for a seal. I was told by the CONTR that he had worked all day on it and was going to pour. The CONTR employed the deck crane (Manitowoc) to remove the CMP w/seal coarse and hoist it to trestle. After the CMP was removed, the CONTR had an employee don a wet suit and work inside the cofferdam removing the rock by hand and placing them into the backhoes bucket. At FTG #2, the CONTR began the shift by re-hooking up the dredging system. The CONTR had removed the discharge line at the end of yesterday's shift from the cofferdam to the toe of the rock formation. This location was approx 25 meters from the live stream channel. The CONTR is required to have the discharge of a dewatering system a minimum of 32 meters away from the live stream channel. (Please see Special Provisions pg 144; paragraph 6 of Pile and cofferdam dewatering. This location had been approved by Caltrans Environmental do to natural runoff @ 32 meters would settle at this location. MCM's Project Superintendent James Ham was advised by me (and given a copy of SP pg 144) that any discharge from dewatering had to be within Contractual requirements and permits and that the location of that days discharge even less that required would be sufficient. Mr. Ham stated that "I'm not dewatering, I'm re-circulating, removing the water from inside the cofferdam and placing it on the other side." At approx 0922, the CONTR fired up and began the dredging operation with the discharge line on the right (east) side of the cofferdam pointing towards and approx 9 meters from the live stream channel. I called SR Gary Tolen and was directed to issue a mini memo (please see attached). Mr. Ham was issued the memo @ 0933. Mr. Ham was located at the south bridge (0299) and was performing layout for the platform stringers. Mr. Ham walked by me and would not take the memo and asked me to read it to him "you know I'm illiterate." I began reading the memo and he stated "that I'm miss interpreting the specs and reading into it what I want." I stated the memo was per SR Gary Tolen, he stated to put it into his truck." I called SR Gary Tolen @ 0945 and gave him a heads up. I called RE Ron den Heyer @ 0950 and gave him a heads up. Mr. den Heyer called back @ 0958 and stated he was only getting Mr. Ham's voice mail and if I would inform him that he would like to speak to him. I contacted Mr. Ham at approx 1010. At 1035hrs, the CONTR had stopped discharging on the bank and put the end of the discharge inside the cofferdam between the cofferdam and the 9'-0" casing. CONTR completed the dredging operation for bent 2-7's FTG #2 @ 1120hrs. CONTR then began to setup for placing the seal coarse. CONTR began placing the seal coarse @ 1552hrs. CONTR completed placing the seal coarse @ 1612hrs. After the seal coarse was placed, the seal coarse was consolidated via internal vibration and all tools and equipment that came in contact with concrete were cleaned inside the CMP. CONTR placed a total of 2.676m³. No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. In the waterway for bent 2-5, the CONTR began and completed erecting a silt containment fence for the isolation channel for removing rock for FTG's 1 and 2. CONTR drove fence posts from the shore line to just past the middle of the channel, then down channel to the right side of FTG #3, then back to the shore. After the fence posts were in, the CONTR draped filter fabric from the top of the post, down to the stream bed and placed sandbags at the toe. After the isolation channel was erected, the CONTR hoisted down the JD 135C excavator and began to excavate for bent 2-5's FTG #3. After the CONTR made 3 passes the silt began to escape thru the silt fence. CONTR stopped digging and placed more filter sandbags. The plume dissipated in about 1/2hr. The CONTR then made a 2nd attempt at excavating the footings. After about 6 passes, the silt again began to escape and leave a plume. I directed Mr. Ham via radio to stop excavating (Manitowoc's), and wait for the plume to dissipate. Mr. Ham stopped. Mr. Ham then came up to the trestle to change out of his wet suit. Mr. Page and I approached Mr. Ham for Mr. Page to give him suggestions on preventing (or attempting to) any further discharge of silts, such as


Signature



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.400A
Sheet 3 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

STANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work

See page 1.

placing a heavy plastic on the outside of the fabric, or calling his friend (Mr. Ham's) whom had recently worked with Mr. Page and erected a successful isolation channel. Mr. Ham stated that the plastic wouldn't work, that the water is coming up thru the rock (bottom) and using bladder bags would not give him enough room to work. Mr. Ham then stated that he was at least two thirds complete and everyone from the agencies are probably home now so he was going to go back down and complete the remaining excavation work. Please see Biologists Consultant Mr. Carl Page's daily report for further information and/or summary of impact to the channel. CONTR's SUBMITTAL IS INCOMPLETE AND HAS NOT BEEN APPROVED! CONTR IS PERFORMING WORK AT HIS OWN RISK. THIS PORTION OF THE WORK IS NOT COMPLETE.

Signature

Title ASR

Hours are approximate





ROVIDED BY:
WRCB
EPTEMBER 4, 2008

DEPARTMENT OF
TRANSPORTATION
Form HC-10A4 (Rev. 7/85)


Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

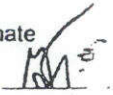
Report No. 46.400A
Sheet 2 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

STRUCTURES

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT
Location and Description of work See page 1.

1 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, do to the seal coarse being poured on a dirty rock formation and leaking, the CONTR had to remove the CMP w/seal coarse. Prior to placement, I checked the top of the rock formation and advised the CONTR that the top of the formation was not clean enough for a seal. I was told by the CONTR that he had worked all day on it and was going to pour. The CONTR employed the deck crane (Manitowoc) to remove the CMP w/seal coarse and hoist it to trestle. After the CMP was removed, the CONTR had an employee don a wet suit and work inside the cofferdam removing the rock by hand and placing them into the backhoes bucket. At FTG #2, the CONTR began the shift by re-hooking up the dredging system. The CONTR had removed the discharge line at the end of yesterdays shift from the cofferdam to the toe of the rock formation. This location was approx 25 meters from the live stream channel. The CONTR is required to have the discharge of a dewatering system a minimum of 32 meters away from the live stream channel. (Please see Special Provisions pg 144; paragraph 6 of Pile and cofferdam dewatering. This location had been approved by Caltrans Environmental do to natural runoff @ 32 meters would settle at this location. MCM's Project Superintendent James Ham was advised by me (and given a copy of SP pg 144) that any discharge from dewatering had to be within Contractual requirements and permits and that the location of that days discharge even less that required would be sufficient. Mr. Ham stated that "I'm not dewatering, I'm re-circulating, removing the water from inside the cofferdam and placing it on the other side." At approx 0922, the CONTR fired up and began the dredging operation with the discharge line on the right (east) side of the cofferdam pointing towards and approx 9 meters from the live stream channel. I called SR Gary Tolen and was directed to issue a mini memo (please see attached). Mr. Ham was issued the memo @ 0933. Mr. Ham was located at the south bridge (0299) and was performing layout for the platform stringers. Mr. Ham walked by me and would not take the memo and asked me to read it to him "you know I'm illiterate." I began reading the memo and he stated "that I'm miss interpreting the specs and reading into it what I want." I stated the memo was per SR Gary Tolen, he stated to put it into his truck." I called SR Gary Tolen @ 0945 and gave him a heads up. I called RE Ron den Heyer @ 0950 and gave him a heads up. Mr. den Heyer called back @ 0958 and stated he was only getting Mr. Ham's voice mail and if I would inform him that he would like to speak to him. I contacted Mr. Ham at approx 1010. At 1035hrs, the CONTR had stopped discharging on the bank and put the end of the discharge inside the cofferdam between the cofferdam and the 9'-0" casing. CONTR completed the dredging operation for bent 2-7's FTG #2 @ 1120hrs. CONTR then began to setup for placing the seal coarse. CONTR began placing the seal coarse @ 1552hrs. CONTR completed placing the seal coarse @ 1612hrs. After the seal coarse was placed, the seal coarse was consolidated via internal vibration and all tools and equipment that came in contact with concrete were cleaned inside the CMP. CONTR placed a total of 2.676m³. No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. In the waterway for bent 2-5, the CONTR began and completed erecting a silt containment fence for the isolation channel for removing rock for FTG's 1 and 2. CONTR drove fence posts from the shore line to just past the middle of the channel, then down channel to the right side of FTG #3, then back to the shore. After the fence posts were in, the CONTR draped filter fabric from the top of the post, down to the stream bed and placed sandbags at the toe. After the isolation channel was erected, the CONTR hoisted down the JD 135C excavator and began to excavate for bent 2-5's FTG #3. After the CONTR made 3 passes the silt began to escape thru the silt fence. CONTR stopped digging and placed more filter sandbags. The plume dissipated in about 1/2hr. The CONTR then made a 2nd attempt at excavating the footings. After about 6 passes, the silt again began to escape and leave a plume. I directed Mr. Ham via radio to stop excavating (Manitowoc's), and wait for the plume to dissipate. Mr. Ham stopped. Mr. Ham then came up to the trestle to change out of his wet suit. Mr. Page and I approached Mr. Ham for Mr. Page to give him suggestions on preventing (or attempting to) any further discharge of silts, such as


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Job Stamp

01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No.

Sheet

Date

Circle Day

Shift Hours

46.400A

of

Oct 7, 2006

S M T W T F S

Start 0730 Stop 1630

STANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Excavation and Description of work

See page 1.

placing a heavy plastic on the outside of the fabric, or calling his friend (Mr. Ham's) whom had recently worked with Mr. Page and erected a successful isolation channel. Mr. Ham stated that the plastic wouldn't work, that the water is coming up thru the rock (bottom) and using bladder bags would not give him enough room to work. Mr. Ham then stated that he was at least two thirds complete and everyone from the agencies are probably home now so he was going to go back down and complete the remaining excavation work. Please see Biologists Consultant Mr. Carl Page's daily report for further information and/or summary of impact to the channel. CONTR's SUBMITTAL IS INCOMPLETE AND HAS NOT BEEN APPROVED! CONTR IS PERFORMING WORK AT HIS OWN RISK. THIS PORTION OF THE WORK IS NOT COMPLETE.

PROVIDED BY:
WRCB
SEPTEMBER 4, 2008

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TRANSPORTATION
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Report No. 46.400A
Sheet 2 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work See page 1.

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BR 04-0017

Report No. 46.400A
Sheet 3 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

STANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work

See page 1.

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Job Stamp
01-397514
ER-37B3(009)E
MEN-101-159.6/162.0(KP)

Report No. 405 1/3
Date 10/16/06
M T W T F S S Circle Day
Shift Hours Start 07:00 Stop 18:00

Prime Contractor: MCM

ASSISTANT RESIDENT ENGINEER'S DAILY Bridge No. 10-0300 Structures Construction REPORT

Location & Description of Operation MCM used vibrating hammer driving metal sheet to construct the 4th footing containment at bent 2-7 of the falsework, placed the CMP, then dredged until 18:00, but could not pour concrete. MCM rebuilt the platform by the river bank for a cofferdam. The contractor started pour concrete at 16:45 for the trestle footings (bent 2) and falsework footings (bent 2-4).

EQUIPMENT AND/OR LABOR:

EQPT. NO.	NO. MEN	DESCRIPTION (Of Equipment or Labor)	HOURS - ITEM NO.								REMARKS (Reason for idleness or other remarks)
			Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7	Item 8	
B342	1	Operator	10.5								Robert Brown
B414	1	Operator	10.5								Derrick Canavari
	1	pile Driver	10.5								Kip Worden
	1	pile Driver	10.5								Justin Merrit
	1	pile Driver	10.5								Alberto Espinoza
Rentel	1	Operator	10.5								Greg Stuart
	1	Laborer/Foreman	10.5								Francisco Cordero
	1	Laborer	10.5								Bert Harris
	1	Laborer	10.5								Loren Lair
	1	Laborer	10.5								Matt Erickson
	1	Laborer	10.5								Jose Santos
	1	Carpenter	10.5								Felipe Reyes
	1	Carpenter/Foreman	10.5								Rick Ortiz
	1	Carpenter	10.5								Eddie Adams
	1	Superintendent	10.5								James Ham

(Equipment List next page)

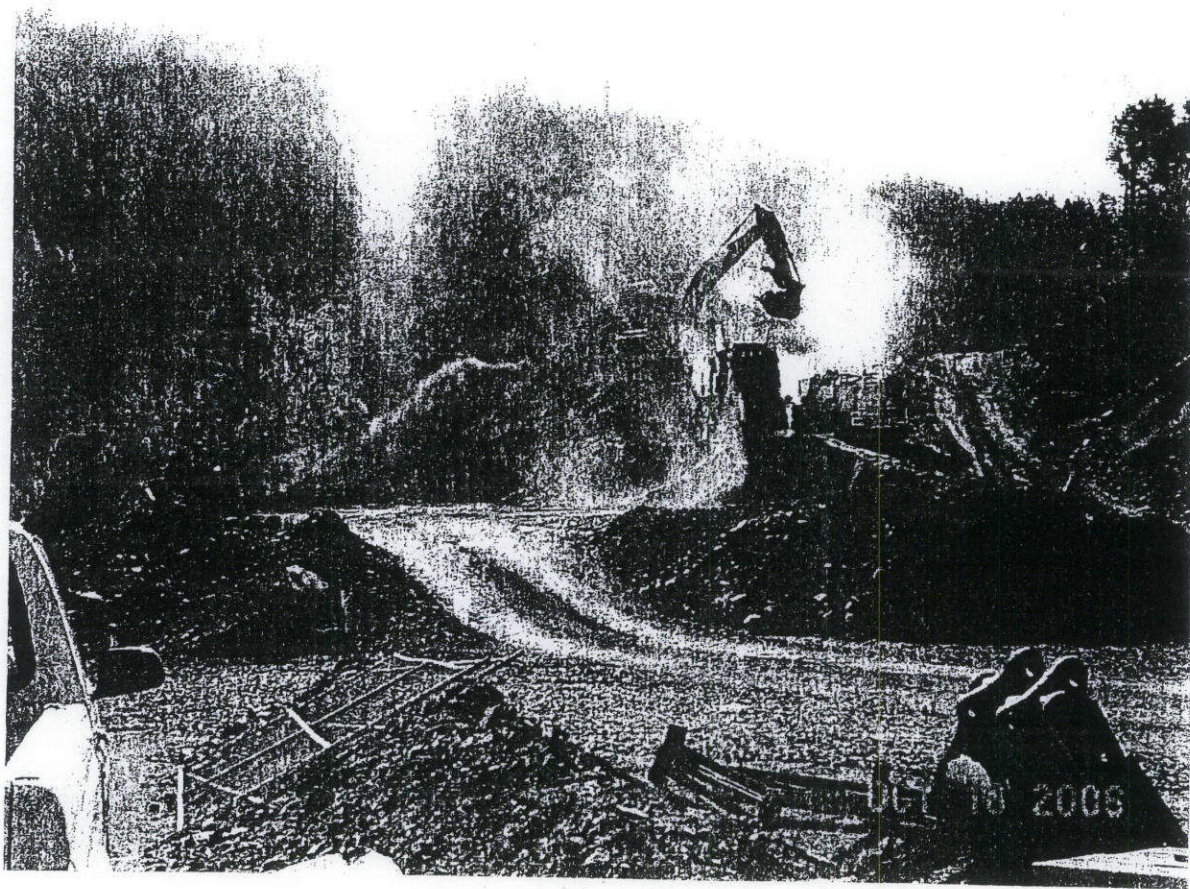
Remarks: ① Garry & Brad talk to the contract at 10:00 about the rust metal scale found on the steel beams used on the river. The beams were cleaned by the contractor before reuse.
② At 17:10, when pour concrete at 1 footing by the river (bent 2-4), there were minor leak.

Hrs. for Oj Fu: (10.5)

P: En

Ask

AK

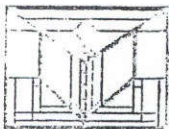


October 19 th: Gravel Bar clean up. Footing prep. was continued. Blasting took place – no adverse affects; no vibrations in water pools detected.

October 20 th: I observed one (1) very minimal sediment plume event during the seal-pour of the in-stream false work footings that lasted about 5 minutes and extended 2 feet downstream at about 4 feet wide and in the area of the downstream side of the coffer dam structure in the North Side Trestle/False work/Blasting Zone (BZ) area.

OCT 20 2006





Walt
Dragaloski/D01/Caltrans/CAGov

02/21/2007 04:32 PM

To dprat@waterboards.ca.gov,
mdougherty@waterboards.ca.gov, cmartz@dfg.ca.gov
cc Terry Davis/D01/Caltrans/CAGov@DOT, Ron Den
Heyer/D01/Caltrans/CAGov@DOT

bcc

Subject Discharge of water containing rock dust into SF Eel River,
Confusion Hill Bypass project

Dear, Mona,

Please consider this email as official notification of occurrence of a discharge into the South Fork Eel River (SFER) at the Confusion Hill Bypass project site, as required in accordance with Additional Conditions 8) and 9) of the 401 Certification issued by the North Coast Regional Water Quality Control Board for the Confusion Hill Bypass project. During a site visit with Craig Martz, California Department of Fish and Game, on Friday, February 16, 2007, evidence of fine gray silt was observed in a backflow channel and on the bank below the 100-year flood plain on the west side of the river at the south bridge location. After interviewing Caltrans staff and a representative of the contractor, it is estimated that the discharge occurred on, or around, Friday, January 5, 2007. The discharge was caused by a rupture of an aerial line that is suspended over the South Fork Eel River. The rupture occurred at night when there was no active pumping and according to those questioned, the discharge was not witnessed by anyone. The maximum amount of turbid water that may have been discharged is equal to the volume of the line, which is estimated at 170 gallons (1050 linear feet of a 2-inch diameter line). The line is used to supply water for dust control to the west side of the river and also to dispose of storm water and drilling water into a desilting basin from the south bridge Pier 2 excavation, after flow through a Baker tank. This discharge was not reported to Caltrans staff by the contractor and is not in a location that is readily visible to Caltrans staff.

Please feel free to call me if there are additional questions that you may have.
Sincerely,

Walt Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5601 South Broadway, Eureka, CA 95503
(707) 445-6697 office
(707) 496-6356 cell

Received
02/21/07 C

PCDC is not working CCO 12 work today most likely due to rain. The pad to allow access to higher level rock anchor locations appears complete.

MF's crew is continuing to maintain BMPs on the peninsula and is installing straw mats at minor slides.

LADD is not hauling slide material from slide 4 to Bear Pen tonight.

February 20, 2007, Tuesday, Cloudy with showers

I called Ray Bosch of Fish and Wildlife and left a message. He did not return my call.

Jack showed me where the dewatering line that crosses the river from P2 SB broke near P3 SB. Per Aaron of PCDC, the break occurred about a month ago due to freezing weather. What deposited on the ground is what was in the pipe and that the pump was off. The backwater is grey and its source is not clear. Its either from the water percolating through the ground from P3 SB excavation, runoff from the area near P3 SB is through grey fill rock, the river at times was very grey last month when the water backed up to the area or the dewatering line broke and deposited grey drilling water on the ground into the backwater.

Walt said the project SWPPP looks great. He really liked the down drains on the peninsula.

I talked to Dan Vann about slide 4 and he said a 2:1 slope's toe would be outside the abutment foot print. He said he estimates about three more nights of hauling to complete slide 4. I told him we need to continue all the way down to the trestle.

MCM was working at pier 3 of the north bridge to mobilize their crane. I told Evan last Friday and James Ham this morning not to excavate into original ground. Ham told me he is aware of the archeology site and was only working in the fill material.

PCDC is continuing drilling for CIDH Number 6.

PCDC is not working CCO 12 work today, rock anchors, at abutment 1 SB. They are waiting for LADD to build up a pad so they can install higher-level anchors. LADD is constructing a pad for PCDC to continue installing higher-level rock anchors.

MF's crew is continuing to maintain BMPs on the peninsula and is installing straw mats at minor slides.

LADD is hauling slide material from slide 4 to Bear Pen tonight.

Ron Den
Heyer/D01/Caltrans/CAGov
02/23/2007 12:01 PM

To Terry Davis/D01/Caltrans/CAGov
cc
bcc
Subject Fw: Discharge of water containing rock dust into SF Eel
River, Confusion Hill Bypass project

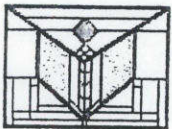
Terry,

Walt's email gives the impression that the break in the line is over the water and that all the estimated 170 gallons were released into the river. As you can see by the photo, the break in the line and the material was deposited on the river bank adjacent to pier 3. It is not known if any material flowed into the river. In addition, run-off from the area is grey and the water in the pier 3 excavation most likely percolates partially treated water through the soil between the pier and the river. I told all this to Walt and asked that he include this information in his communication with the Water Board.

I am concerned that this report may result in a NOV from the Board because now they think there was a release directly into the river and they weren't notified in a timely manner.


IMG_0165.JPG

----- Forwarded by Ron Den Heyer/D01/Caltrans/CAGov on 02/23/2007 11:33 AM -----



Walt
Dragaloski/D01/Caltrans/CAG
ov
02/21/2007 04:32 PM

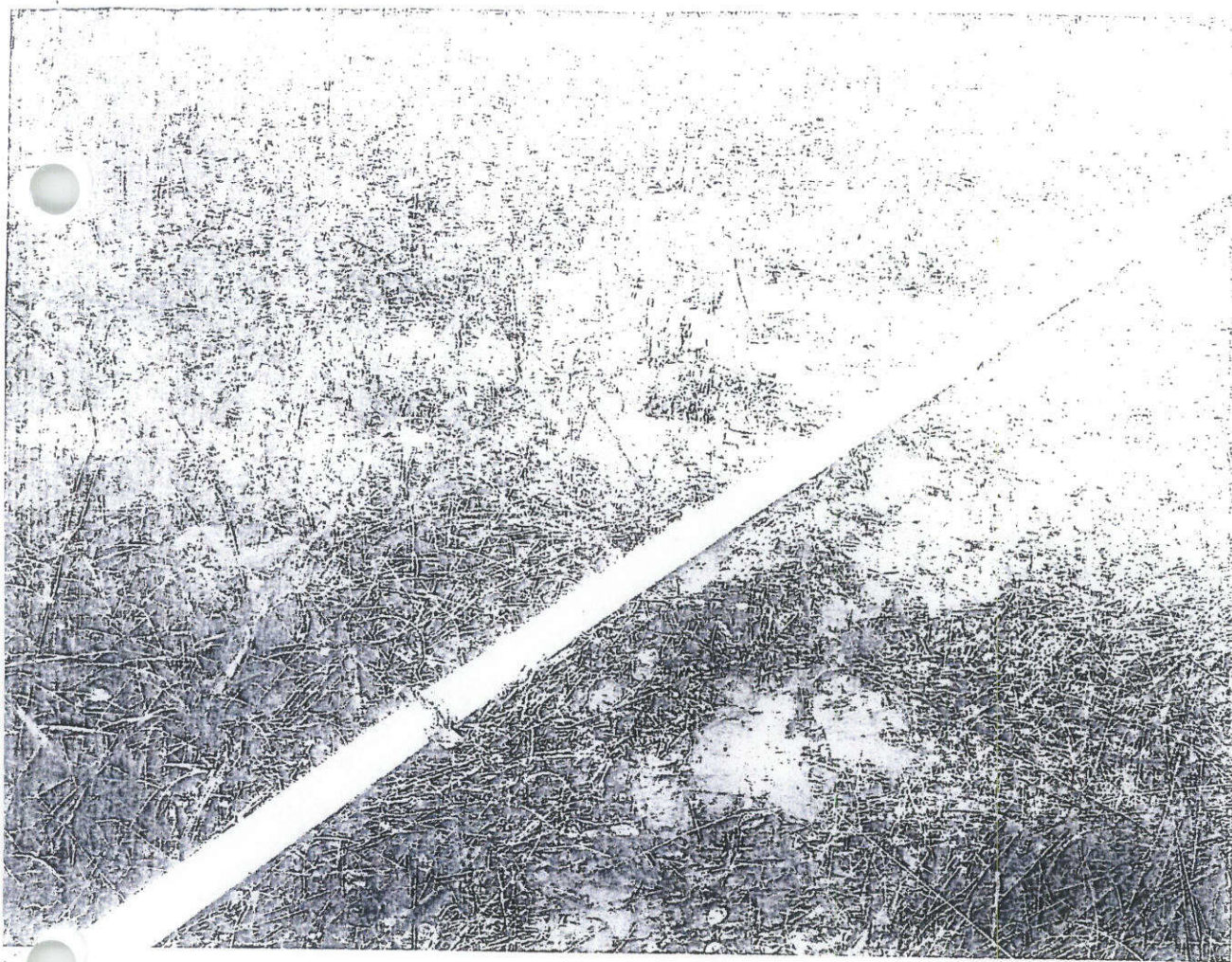
To dprat@waterboards.ca.gov,
mdougherty@waterboards.ca.gov, cmartz@dfg.ca.gov
cc Terry Davis/D01/Caltrans/CAGov@DOT, Ron Den
Heyer/D01/Caltrans/CAGov@DOT
Subject Discharge of water containing rock dust into SF Eel River,
Confusion Hill Bypass project

Dean, Mona,

Please consider this email as official notification of occurrence of a discharge into the South Fork Eel River (SFER) at the Confusion Hill Bypass project site, as required in accordance with Additional Conditions 8) and 9) of the 401 Certification issued by the North Coast Regional Water Quality Control Board for the Confusion Hill Bypass project. During a site visit with Craig Martz, California Department of Fish and Game, on Friday, February 16, 2007, evidence of fine gray silt was observed in a backflow channel and on the bank below the 100-year flood plain on the west side of the river at the south bridge location. After interviewing Caltrans staff and a representative of the contractor, it is estimated that the discharge occurred on, or around, Friday, January 5, 2007. The discharge was caused by a rupture of an aerial line that is suspended over the South Fork Eel River. The rupture occurred at night when there was no active pumping and according to those questioned, the discharge was not witnessed by anyone. The maximum amount of turbid water that may have been discharged is equal to the volume of the line, which is estimated at 170 gallons (1050 linear feet of a 2-inch diameter line). The line is used to supply water for dust control to the west side of the river and also to dispose of storm water and drilling water into a desilting basin from the south bridge Pier 2 excavation, after flow through a Baker tank. This discharge was not reported to Caltrans staff by the contractor and is not in a location that is readily visible to Caltrans staff.

Please feel free to call me if there are additional questions that you may have.
Sincerely,

Wali Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5601 South Broadway, Eureka, CA 95503
(707) 445-6697 office
(707) 496-6356 cell



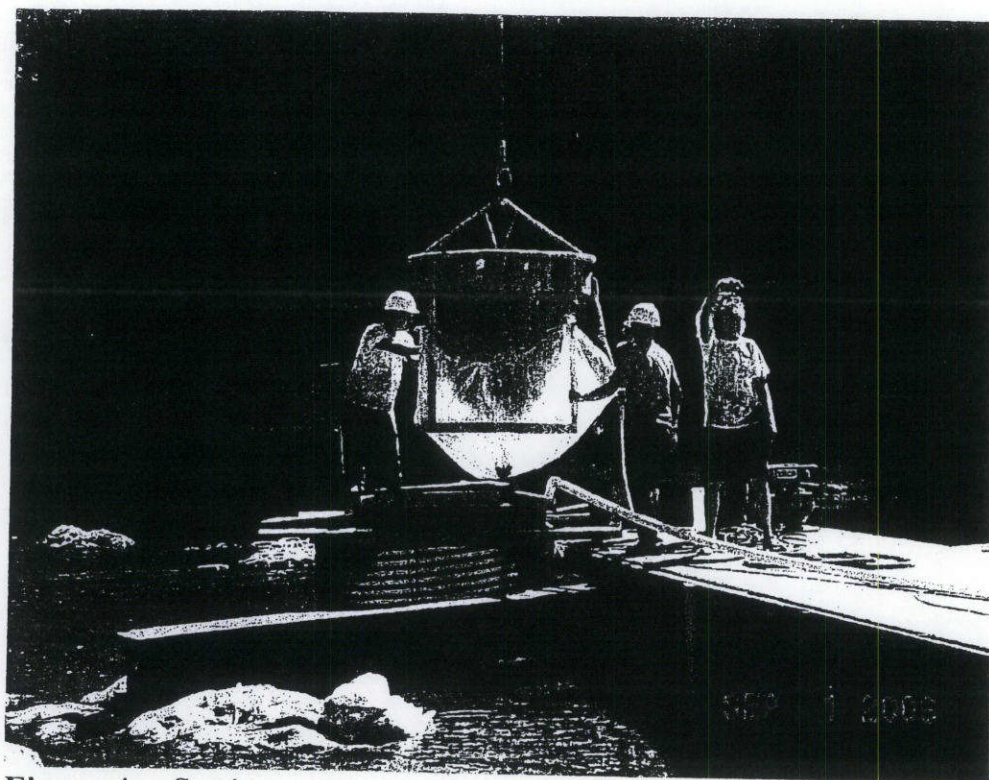


Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

I will be filing reports specific to these sediment plumes, their believed origin/causes and what might be done to even further contain these relatively minor events during the future activities, if further pumping and pouring is necessary at the sites.

Table 2. "Fine sediment Plumes" Observed by the Biological Monitor, during the week of 28 August – 1 Sept. 2006.

Date:	Location:	Origin:	Duration:
29 August.	Immediate area adjacent to Blast Zone.	Seeping through bar.	After 8 hours of pumping
	from coffer dams set in bar to Isolated Pool B of Norman's notes.		
30 August	Immediate area adjacent to Blast Zone	Seeping through bar.	After 8-10 hours of
	pumping from coffer dams set in bar to Iso. Pool B.		
1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in.	ca. 2 minutes post pour.

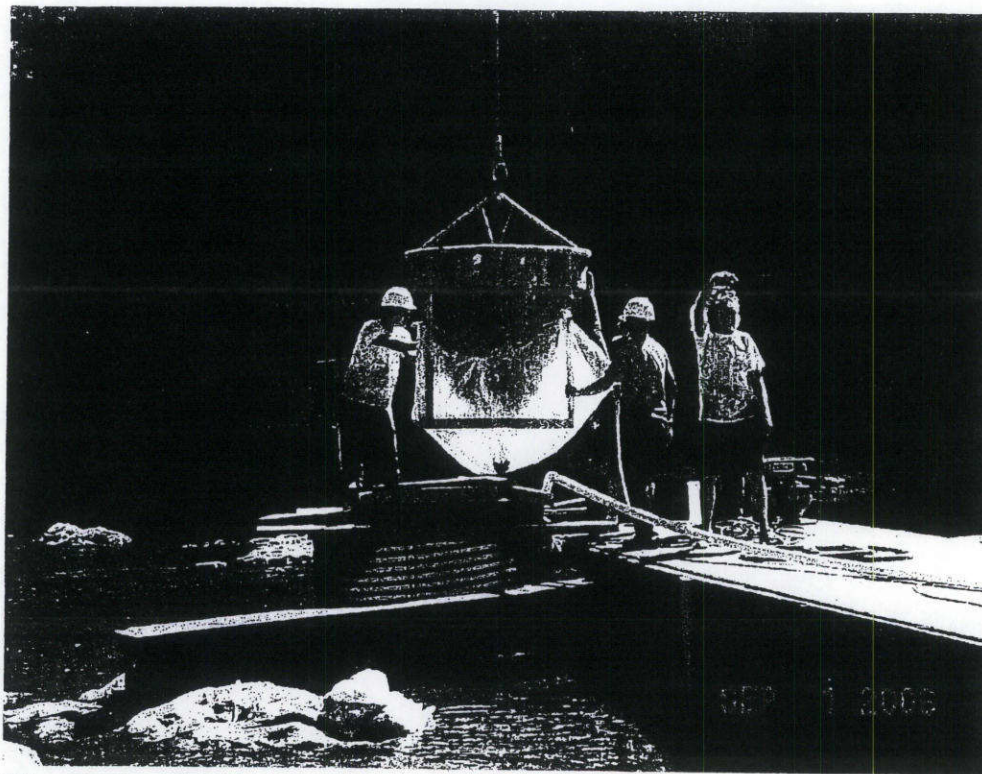


Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

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1 September	Immediate area of Culvert Piping Coffers	Seeping out bottom when seal cement placed in.	ca. 2 minutes post pour.

Completed
10/6/06
10/6/06

± 46

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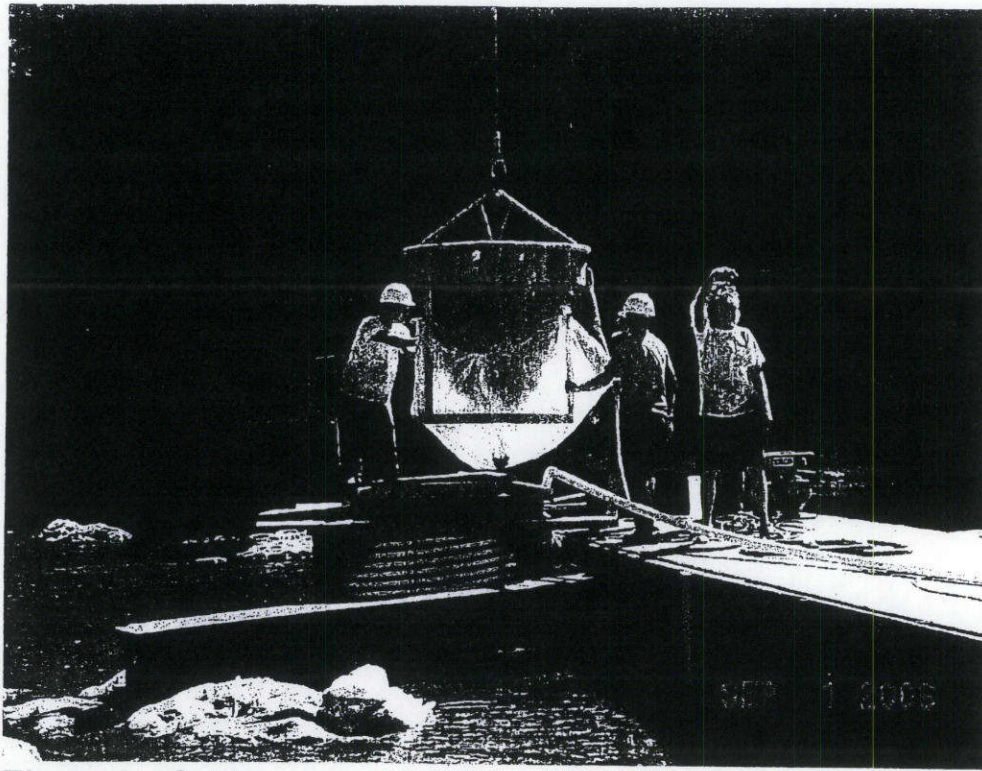


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Control
Area

#46

#2
#3
#44
#45
#46

Revisions. As per our phone conversations last week I will use this Section to clarify some items discussed regarding my last report, specifically, more details regarding the sediment plumes; especially the durations and sizes of each event observed. I talked with Walt as you requested. He was satisfied with my estimated lengths and time durations of the three events reported in Table 2 of my last report. He said: 1) he would contact the board, 2) he would call me back when he did so, and 3) that he would provide me with an e-mail to document our conversation. For clarity, the duration of the plume from the dewatering settlement pool on bar was any time after full-time pumping for > 8 hours; so each of the 2 events were about 2 hours in duration, that I observed on site. The length of each of these was 15 feet along shore by ca. 4 feet out from bank. If pumping took place after I left then the duration would have been greater.

The duration and size of the 3rd item in Table 2 of my last report was ca. 20-30 feet long by ca. 5 feet wide max. and it lasted ca. 120 seconds.

Water Drafting. As far as I am aware, no water drafting took place from the South Fork of the Eel River for the Project last week. I believe the Leggett gauge station has been repaired based on the following two graphs obtained from a USGS Website.

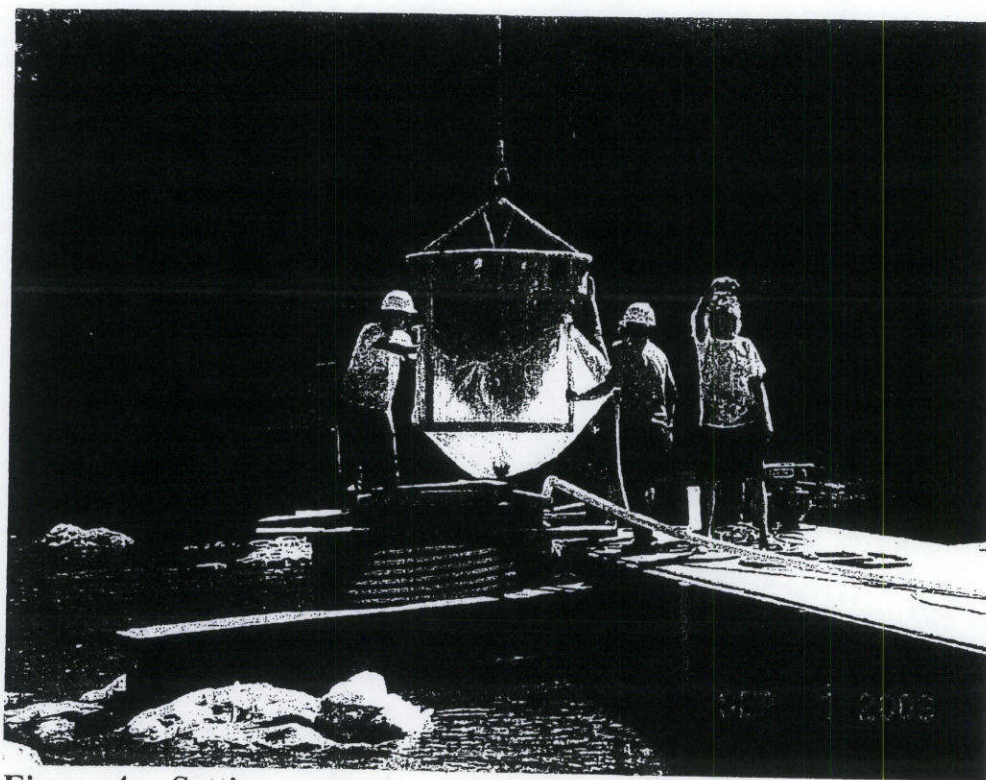


Figure 4c. Setting cement seal pour in culvert pipe coffer. Note plastic sheet at bottom to minimize cement introduction to mainstem .

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Controlled
leakage
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Applying

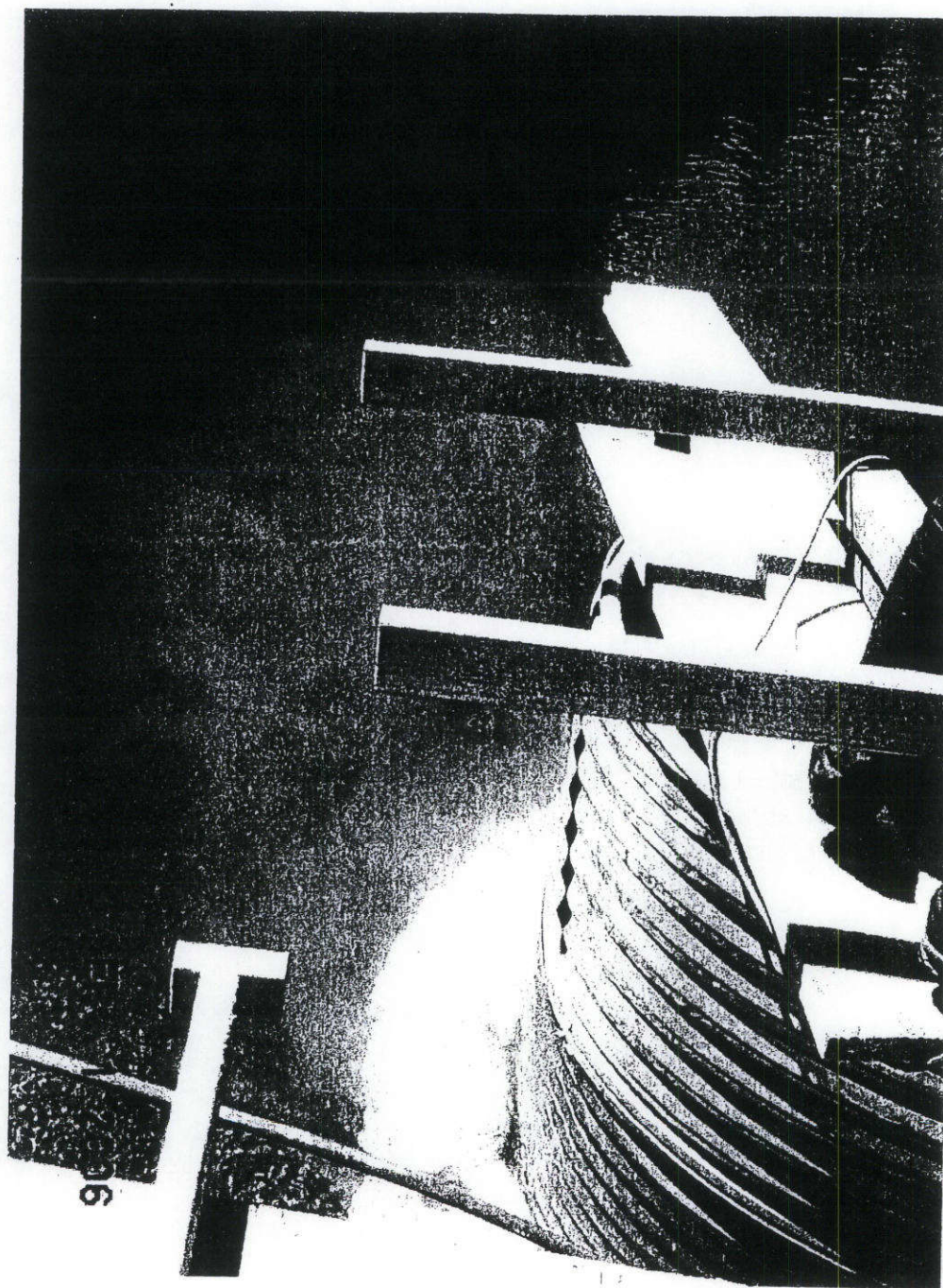
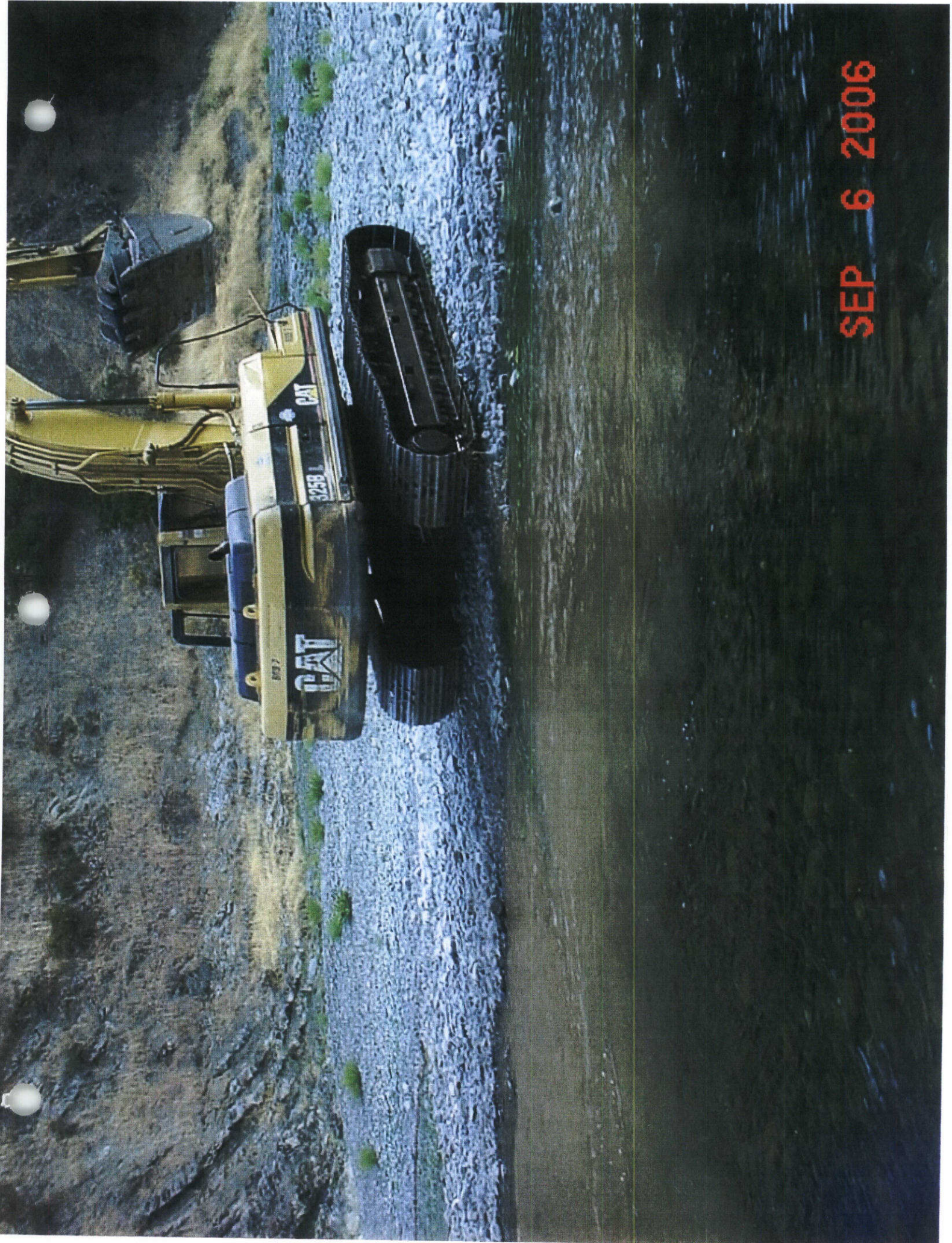


Figure 4b. Temporary plume of fine sediments from cement seeping out bottom when seal cement poured. Plume 3 in Table 2.

46

SEP 1 2006





SEP 6 2006

Job Stamp
01-397514

01-Men-101-159.6/162.0 kp

Confusion Hill Realignment

Acting Structure Representative's
Daily Report

Report No. 379

Date: As Noted

M T W T F S S

#379 Thursday, Sept 7th, 2006 clear, wind calm to 6 mph, 57°-90°, high 90°
Controlling operation still considered P-3 N Br overburden excavation.

-0830 went to the river bar with Mitch Shands to talk to Supt. James Harn about his plan for grouting the trestle foundation anchor bolts due to water in the holes. He was going to place a standpipe in the holes to above water level to obtain static water then tremie pump grout and insert the HS rods which sounded like a reasonable plan.

-0900 returned to the office and found Claudio Avila and Bill Bertucci, Strs Geotechs. We talked about my concerns at A-1 S Br and reviewed the plan contour sheet and test borings. We then walked to the A-1 ftg excavation, then walked down the access road to below the A-1ftg. They expressed their concerns about the depth of rock in front of the abut and Claudio said he'd probably lower the pile tips and he would talk to designer Kevin Harper about lowering the bottom of footing and perhaps moving the abut back a few meters. I said I'd send the photos I'd sent Claudio, which he was unable to view with a dial-up connection, to Kevin. We then walked to the P-2 S Br excavation. I told them Ladd had an engineer looking at the work and would be submitting an Engr prepared plan soon. They were comfortable with the exc slopes and said they would be happy to review the plan when submitted. We returned to the office then drove to the N Br access road. We walked to P-3 exc site, then down to the river bar. They were comfortable with that excavation. We returned to the office a little before noon. Dan Van, 01 Geologist, stopped in and they talked for a while. About 1215 they headed for P-3 S Br and to find the survey crew to request a resurvey of the rock outcrop in front of A-1 S Br.


Shortly after 1230 there was a blast at the P-2 S Br exc. It seemed loud and shook our office. Gene Leo and I headed down the access road. We came across Harlan Davis, licensed blaster, who was leaving the site. He said they didn't fly any rock and the loud noise was from the bounce back from the opposite bank. We went down to the P-2 exc and viewed the blast area. We found no fresh rock on open ground around the blast area.

-1440 Ed Yarbrough came into the office. We discussed ramp safety issues. I told Ed that Claudio had measured 24° and 25° angles on 2 of the ramp sections. He said the Safety Orders were not real clear on ramps but Tim Strahan had emailed a contact at CalOSHA with questions on ramps, stairs, and hand railing. Tim came in -1450 and confirmed the inquiry and was said he was expecting an answer Monday.

Called Phil Gundlach, MF batch plant operator, he'll come down on Mon P.M. to talk about concrete.

Late this afternoon, Gene Leo was talking to Walt Dragaloski about the reports he had from biologist Brad Norman about discharges into the river at the N Br const area. One was from dewatering into a settlement basin and after about 8 hrs of pumping some turbidity was noticed emanating from the gravel bar. Walt asked to talk to me. I told Walt I hadn't seen the discharge from dewatering but Brad mentioned it once when I was on the gravel bar. My recollection was that it was mentioned to MCM and the pumping was stopped and the discharge ceased shortly thereafter. The other was during the seal course placement within the two CSP's for the trestle bent 3 foundations. I told Walt that bags filled with river bar gravel were placed outside the CSP's which had been cut to approximate the contour of the bedrock in the river, filter fabric was placed inside the CSP's and pushed into the gap between the CSP and the rock, then sandbags were placed inside and against the CSP's. A pump was running to lower the water level inside the CSP's, which was ineffective until the water level rose due to the placement of the concrete seal course. Pumping was halted after the conc placement started. The water was pumped to a settlement basin against the river bank. The conc was placed with a tremie pipe and during the first half yard of conc placement a small discharge was noticed. It could not be determined whether the cloud was from displaced water forcing silt out of the gravel bags on the outside of the CSP's or cement mortar leaking past the sandbags, filter fabric and gravel bags, but Sacramento pike minnows (per Brad) swimming outside the CSP's were unaffected. The discharges dissipated quickly within about 50 (Rt CSP) to 100' (Lt CSP) as near as I could tell. Although there was some discussion of measuring the turbidity, Brad mentioned that it didn't appear to him that there was a 20% increase at 100'. RE Ron den Heyer was also present during the conc seal placement. The next day the water was tested for pH, treated with muratic acid then pumped into the settlement basin. I estimate about 25 gal was pumped from the Lt CSP and perhaps 50 gal pumped from the Rt CSP based on the conc placed.

RWT 0700-1630 1 hr OT, office; MShands 0630-1700, 2 hrs OT, insp;
JRailey no OT


Rich Thompson, Asst. Str. Rep.

Acting Structure Representative's
Daily Report

Report No. 379

Confusion Hill Realignment

Date: As Noted

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Rich Thompson, Asst. Str. Rep.

Job Stamp
01-397514

01-Men-101-159.6/162.0 kp
Confusion Hill Realignment

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Assistant Structure Representative's
Daily Report

46.

Report No. **381**

Date: **As Noted**

M T W T F S S

#381 Monday, Sept 11th, 2006 clear, wind calm to 6 mph, 53°-90°, high 95°
Controlling operation still considered P-3 N Br overburden excavation.

-0730 Garry Tolen called. He said he got to Sac Airport ~1600 Sat due to flight problems and couldn't take care of Credit Union business as he had planned so he would be doing that this morning before heading here. I informed Gene Leo.

Called Phil Gundlach to postpone our meeting with Garry until tomorrow. He said he had talked to Mark Benzinger and they were thinking tomorrow would be better anyway. He will be here this afternoon to do trial batches on two 25 MPa mixes.

-1000 I called Evan Paine, MCM, to inform him that the pile tips would probably be lowered at A-1 S Br and not to have the pile rebar cages made or stop them if they've started. He said he'd call Fontana and stop fabrication.


-1010 RE Ron den Heyer came to my office with Carl Page and a photo of turbidity from drilling debris in the water around trestle foundation 4 Lt. Ron said that our inspectors can't let this happen and asked me to call Mitch Shands and have him come in for a discussion. I said Mitch had been a while ago and said that MCM was using a baffle to keep anchor rod hole cleanout debris within the 6' dia CSP. I called Mitch no answer as expected (our Verizon phones don't work at the trestle or gravel bar). I drove to the jobsite. Talked with Mitch and John Railey down on the gravel bar. John wasn't there this morning and when Mitch went down to the gravel bar after looking at trestle superstructure work he saw MCM's crew using a baffle to keep debris within the CSP and saw no turbidity in the water. We returned to the office and met with Ron and Carl -1045. Ron said we can't let this happen. Mitch explained that at his first inspection at the foundation this morning MCM was using the baffle to keep debris within the CSP. He also has told them previously that any debris on the planks over the CSP's had to be cleaned off into the CSP's. Mitch said Carl didn't say anything to him about debris spraying into the water when they were at the foundation work this morning. Carl said he saw it before Mitch came down and he also saw some Sat when he and I were on the job. I said I didn't see any turbidity Sat but most of my time was spent above (they were setting the bent, cap and girders) and they got a drill bit stuck early and didn't spend much time on that work (in the Lt CSP). I said Carl didn't say anything to me on Sat about turbidity or I would have done something about it. Ron said that if we see something going into the water we need to stop immediately, if Carl, or Brad, sees something they need to notify the closest inspector immediately or call him if no one is around. I asked Ron if Gene had told him about Garry being late, he hadn't so I did.

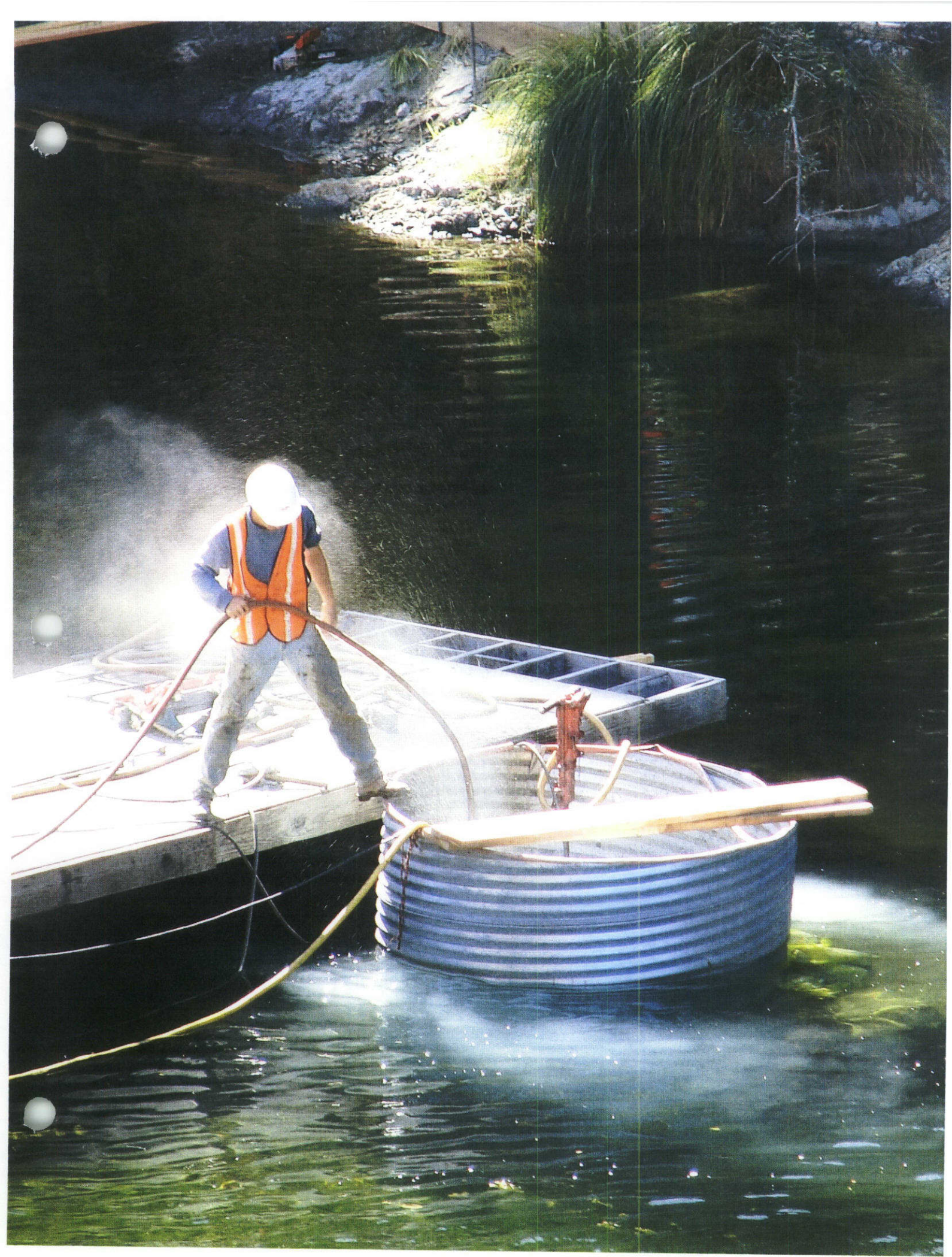
-1210 talked with Phil Gundlach about not having to prequalify the 25 MPH mixes. After lunch I went to the batch plant and took him a complete set of Special Provisions, as he only had a few copied pages. He cancelled his 25 MPH trial batches. We discussed the allowance of 35% fly ash. I went over the applicable Special Provisions wherein they are allowed more than 25% fly ash if the cementitious content exceeds the minimum, but the cement has to be 75% of the minimum cementitious material in Sec 90. Karen Spliethof, NRC materials sampler/inspector, started today. I called her out to see the batch plant and Phil showed her the belt sampling platform.

Began drafting a letter to MCM regarding the need for them to submit falsework plans for the N Br as the deadline for work below the ordinary high water elevation is Oct 31.

RWT no OT


Rich Thompson, Asst. Str. Rep.







SECTION SIX

Water Quality Monitoring

6.5 MONITOR BENTONITE USE AND CONTAINMENT

No bentonite was used this monitoring season.

6.6 MONITOR VEHICLE ACCESS ACROSS RIVER

Methods. All known vehicle crossings were observed by the biological monitors. Three vehicle crossings were monitored this season over the South Side Project Area South Fork Eel River mainstem. Bradford Norman monitored the September 6 and 22, 2006 wet-channel crossings and Carl Page monitored a third on October 2, 2006. All occurred at the same place, along the tail end of a large bedrock-formed lateral scour pool at the top of a shallow riffle, at the South-Side of the project area. Biological monitors gathered background turbidity and water quality data at the crossing site prior to the 3 crossings to provide baseline data. During or immediately after the crossings they estimated visual turbidity and took digital photos.

A record of these activities and the observations has been presented in the weekly biological monitoring reports (Page 2006; Norman 2006). Further documentation of these activities is presented in the Digital Photographic Record Set of Digital Photo CDs, Appendix B.

Proactive Measures. Having the biological monitors on site ensured that no salmonids were in the area during the crossing. The same crossing site was used for each of the 3 wet-channel crossings observed, thereby limiting the affected area of disturbance.

Contractors were notified at project meetings that the equipment should be thoroughly cleaned of dirt, mud, and grease before crossings. The cleaning was to be done prior to staging at the river's edge. Vehicles were then to be inspected by the biological monitors (i.e., checking the tracks and undersides of heavy equipment) at the staging areas on the river bank prior to wet-channel crossings (referred to as "staging of equipment"). Monitors were also responsible to ensure that no sensitive fish species would be harmed from the crossing, which usually involved walking in front of the equipment as it crossed. Another proactive measure was for the vehicles to use a slower gear when crossing to reduce the potential for disturbance.

Biological monitors were able to inspect the equipment and walk the vehicle across the river for two of the crossings (September 6 and October 2). However, we were unable to do either for the second crossing (see description below).

Problems Encountered and Actions Taken. All 3 wet-channel crosses created a sediment plume to varying degrees of high turbidity (See Table 5), but the durations and intensities of each varied by the speed and number of vehicles per crossing.

The first wet-channel crossing occurred on September 6 and resulted in a sediment plume with a maximum extent of over 200 feet in length that lasted 25 minutes (Figures 38, See Discharge Table 5). This was a one-way crossing event involving three vehicles. The second wet-channel crossing event (one-way) occurred on September 22 and resulted in the largest sediment plume

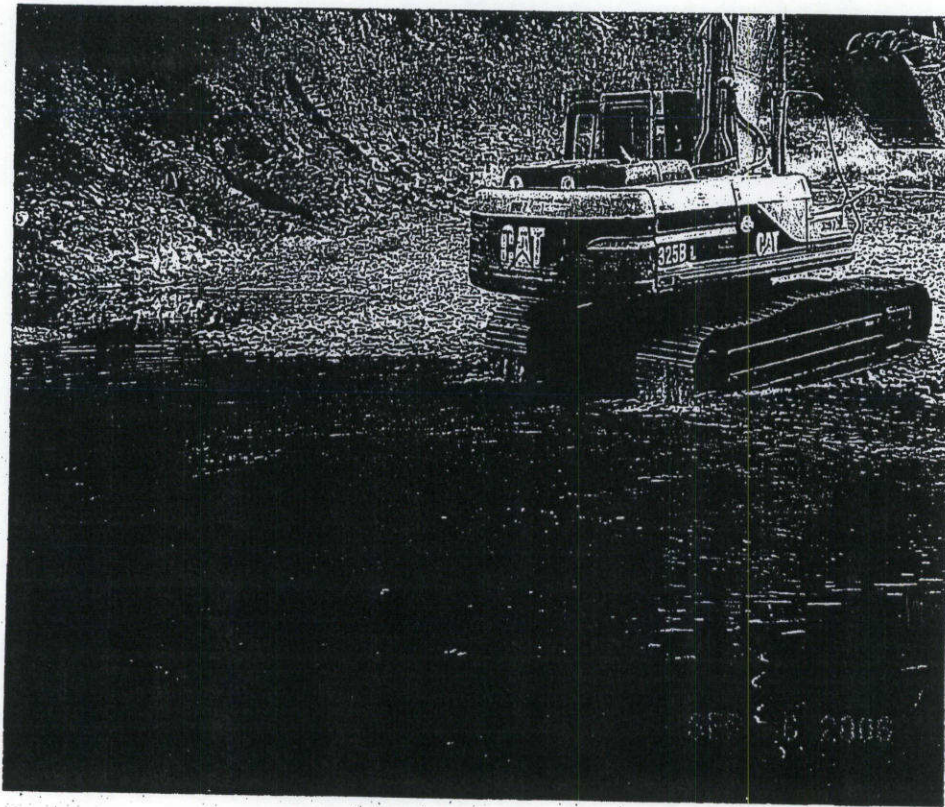


Figure 38. Wet-channel crossing number 1 (Note there is no mud on tracks after it goes through the mainstem).

of all three crossings, about 400 feet in length and lasting about 50 minutes (Figure 39, See Discharge Table 5). This was caused by in-stream sediment disturbance from heavy equipment (1 loader, 1 bulldozer with attached sheep roller, and 2 dump trucks) and from deposition of soils into the river from uncleaned or incompletely cleaned heavy equipment. For both of these crossings the value of "3" on the visual scale was recorded within the plume at the crossing site, representing a high amount of acute turbidity. The visual turbidity value 50 feet upstream of the crossing was "0" and the value 100 feet downstream was "3".

Equipment cleaning was a pro-active measure taken for the first & third crossings, but it appeared to have not been done for the second crossing event witnessed by B. Norman on September 22. This was apparent by the much larger amount of dirt on the equipment during the second crossing compared to the other two crossings.

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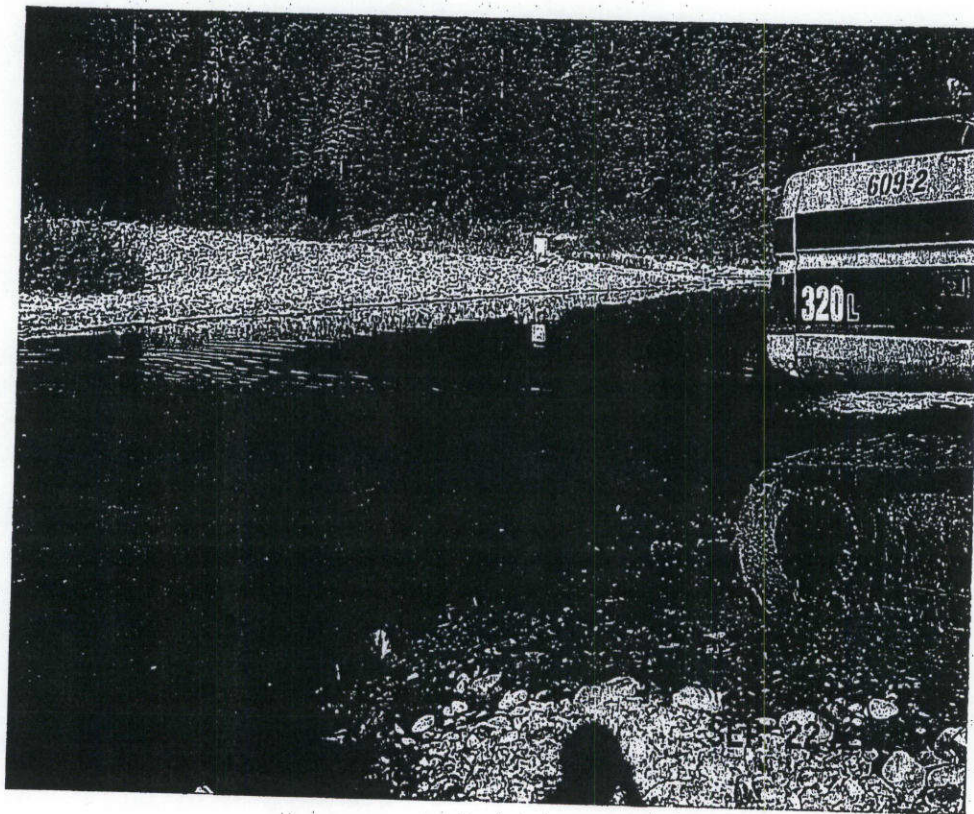


Figure 39. A sediment plume caused during second wet -channel crossing, 22 Sept. 2006, South Side Confusion Hill Project Area (Note mud was still caked on after going through the clean cobble river bed). The visual scale of turbidity at this event was considered a "3" by the biological monitor as reported in a weekly report.

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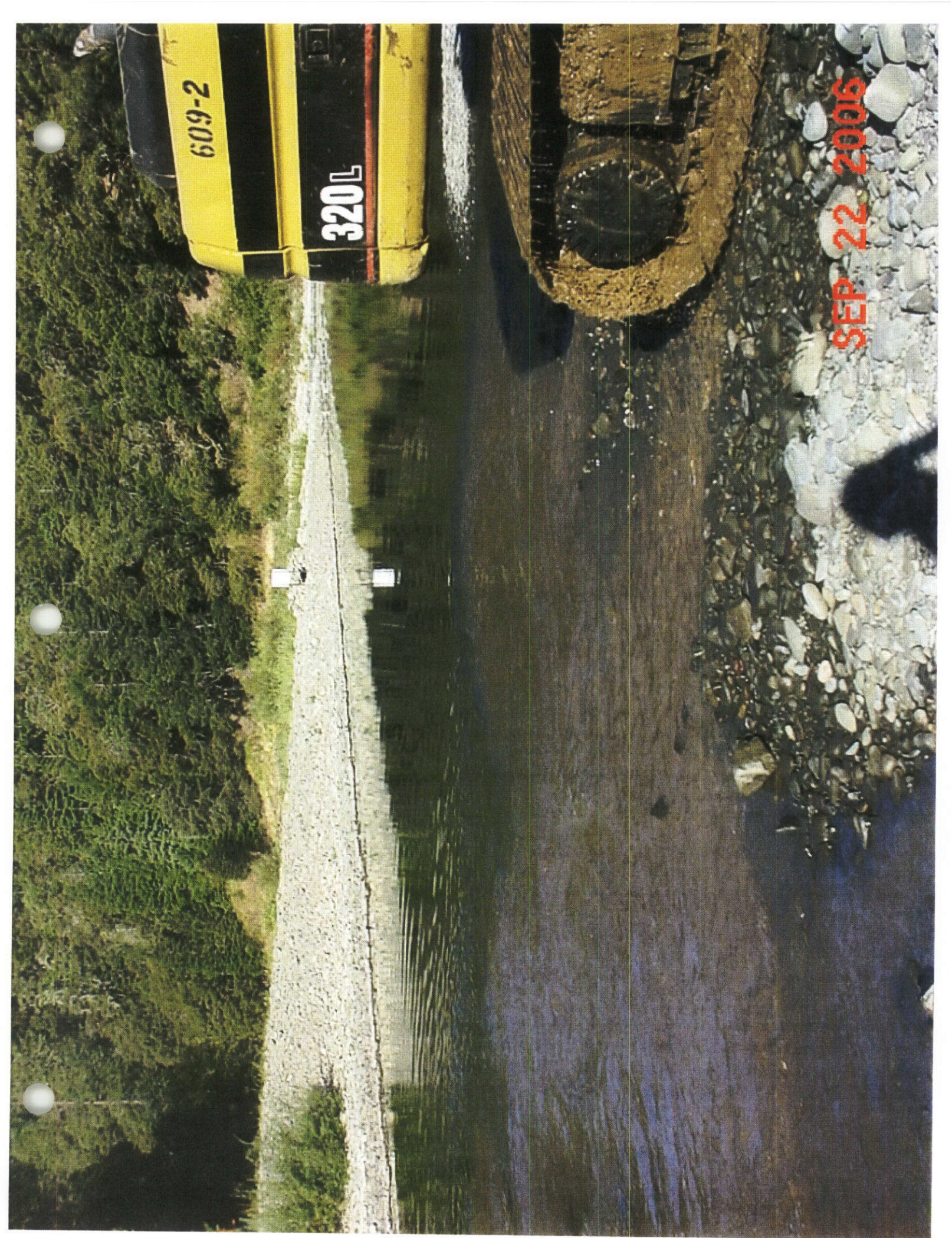


SEP 22 2006

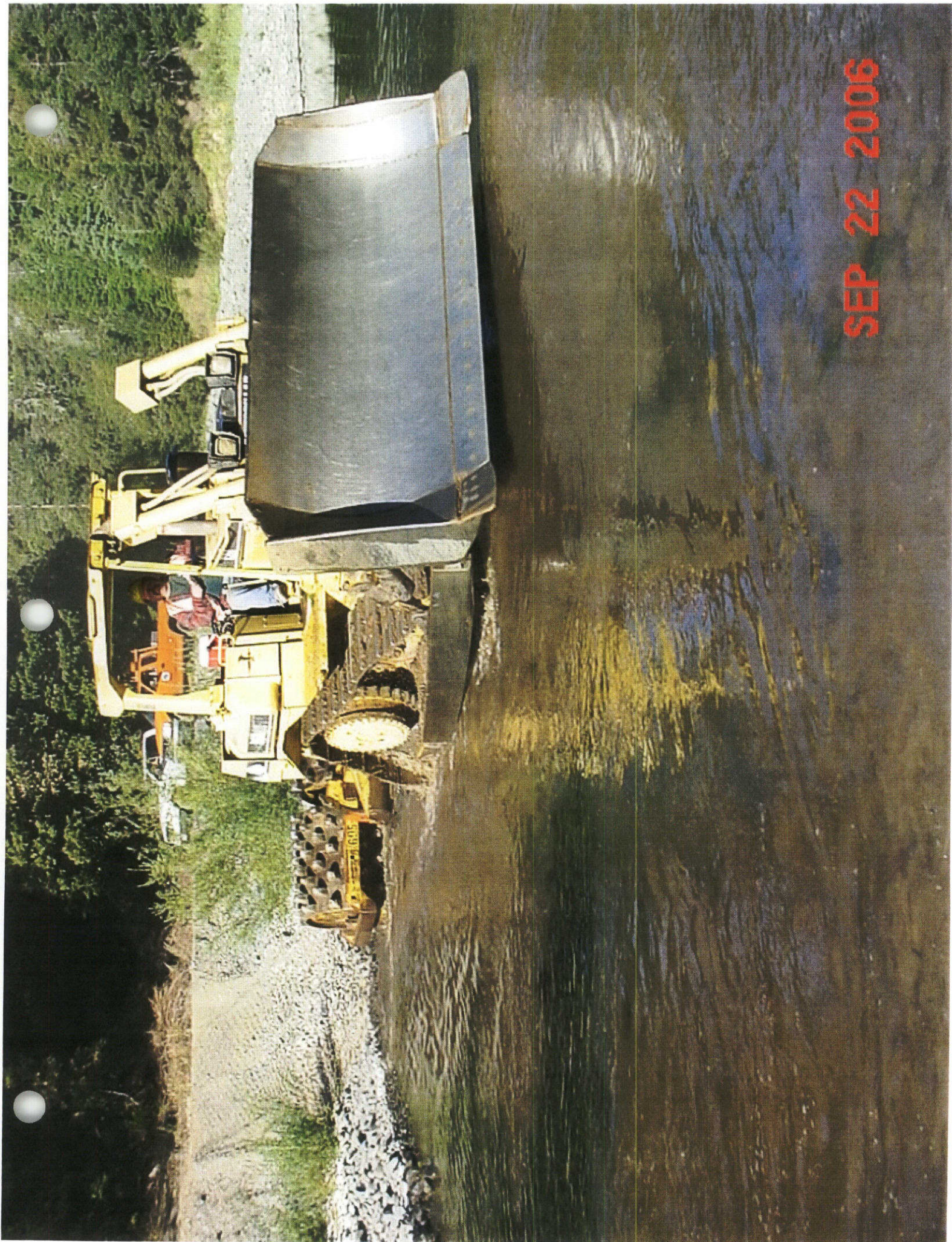
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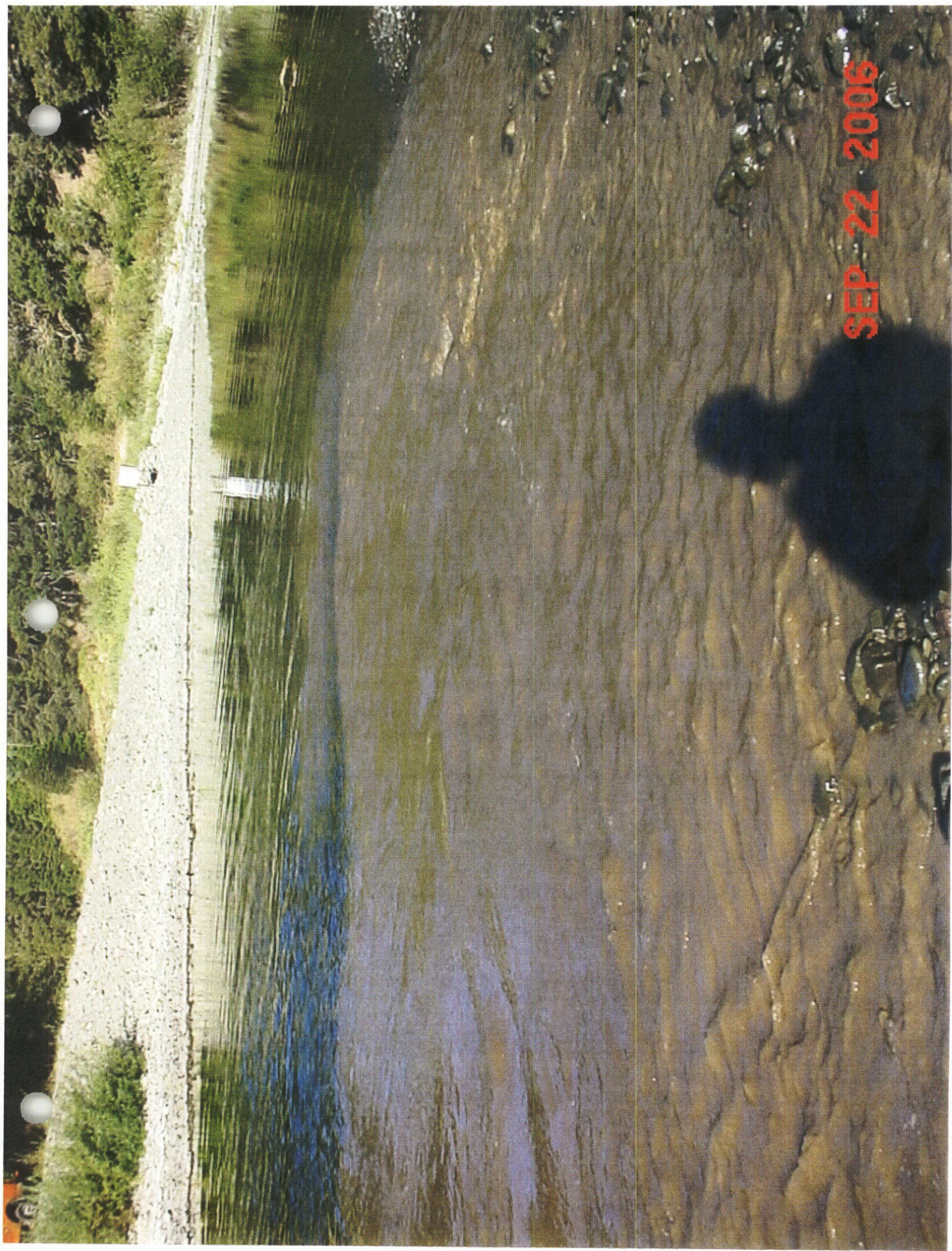
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SEP 22 2006



SEP 22 2006



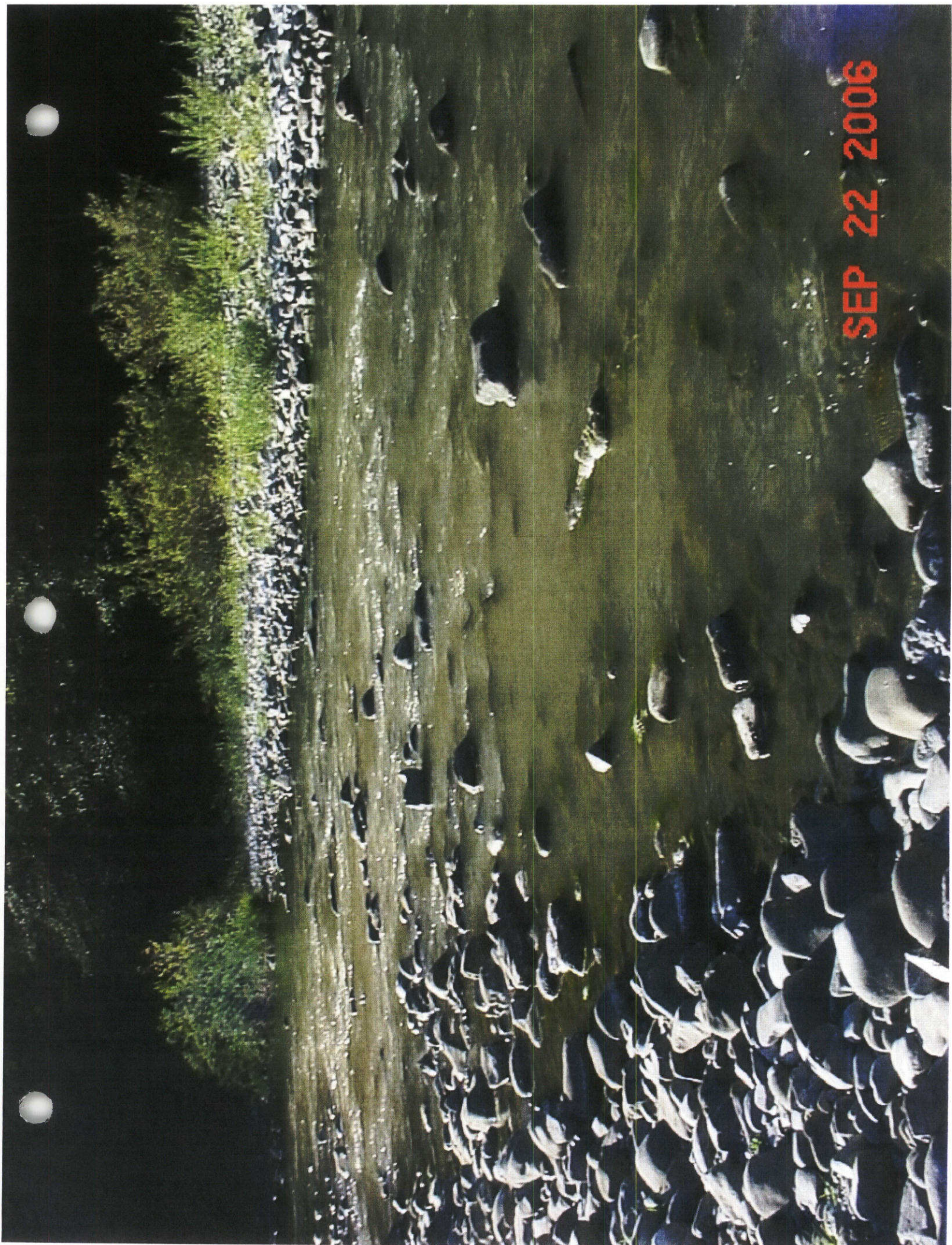


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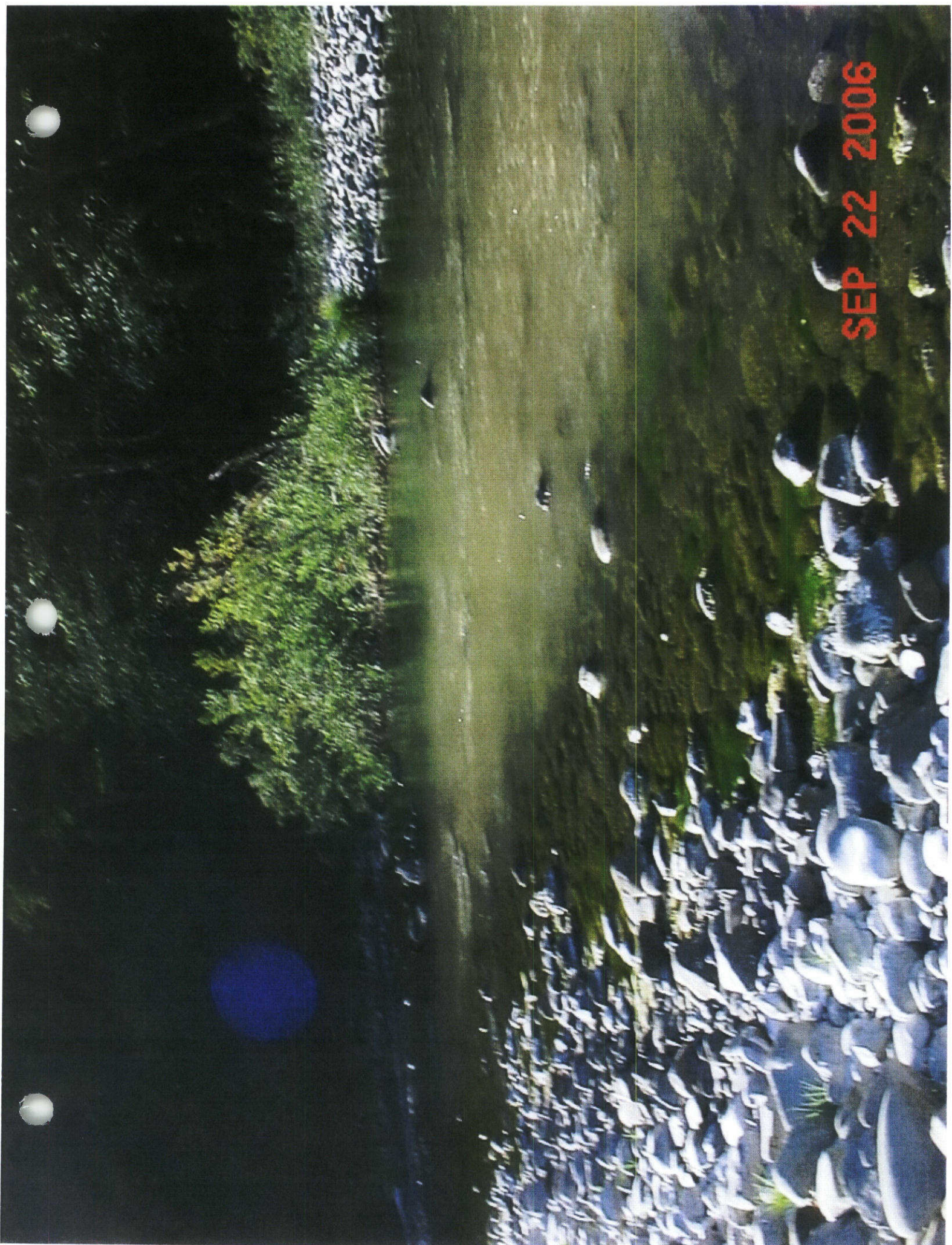
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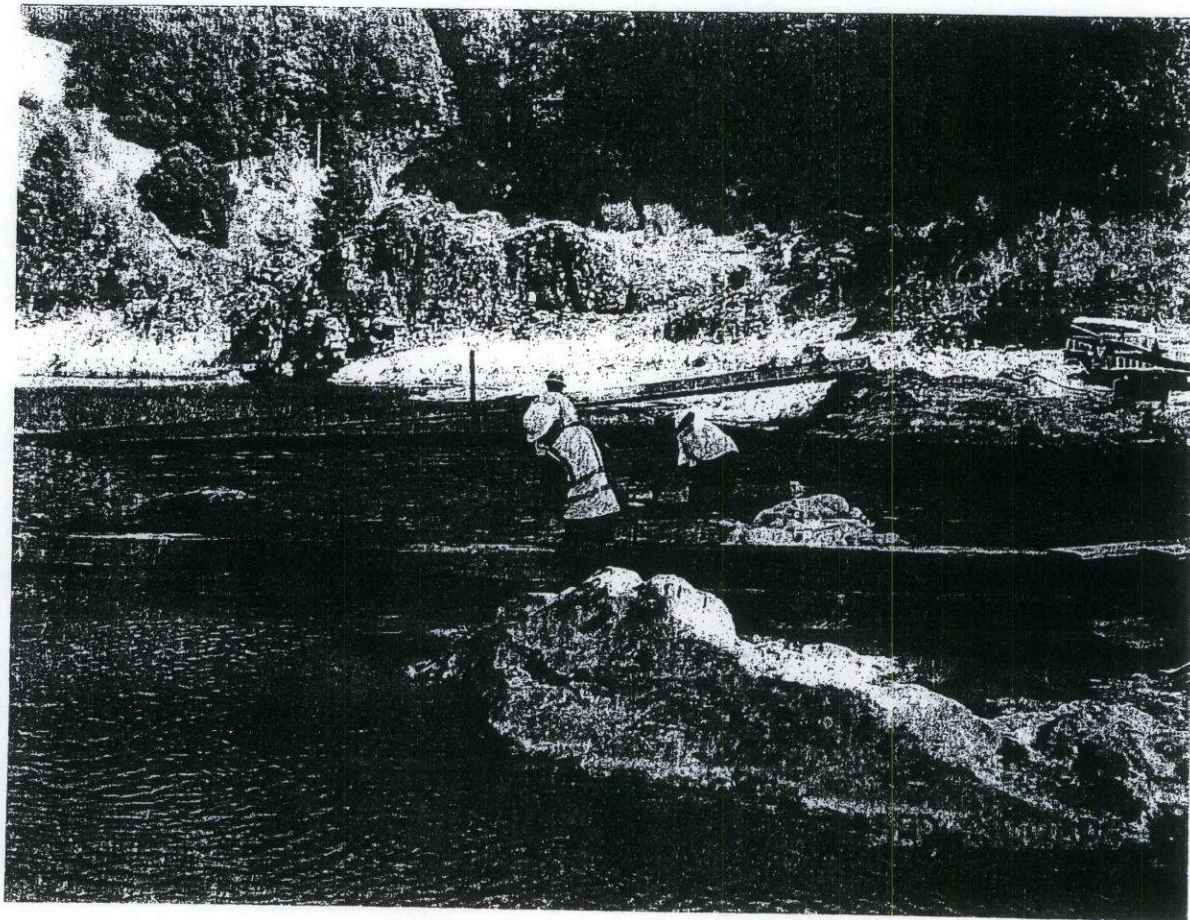
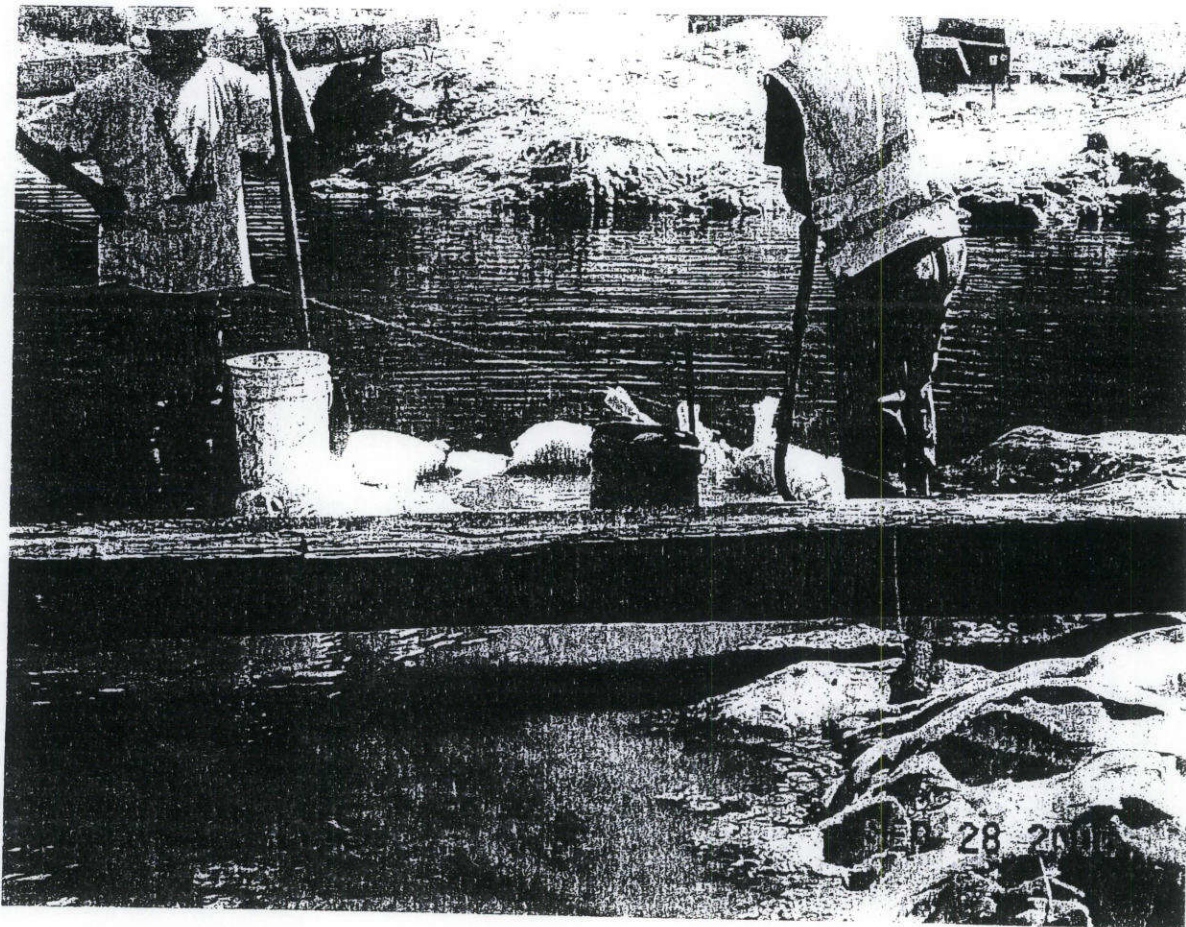


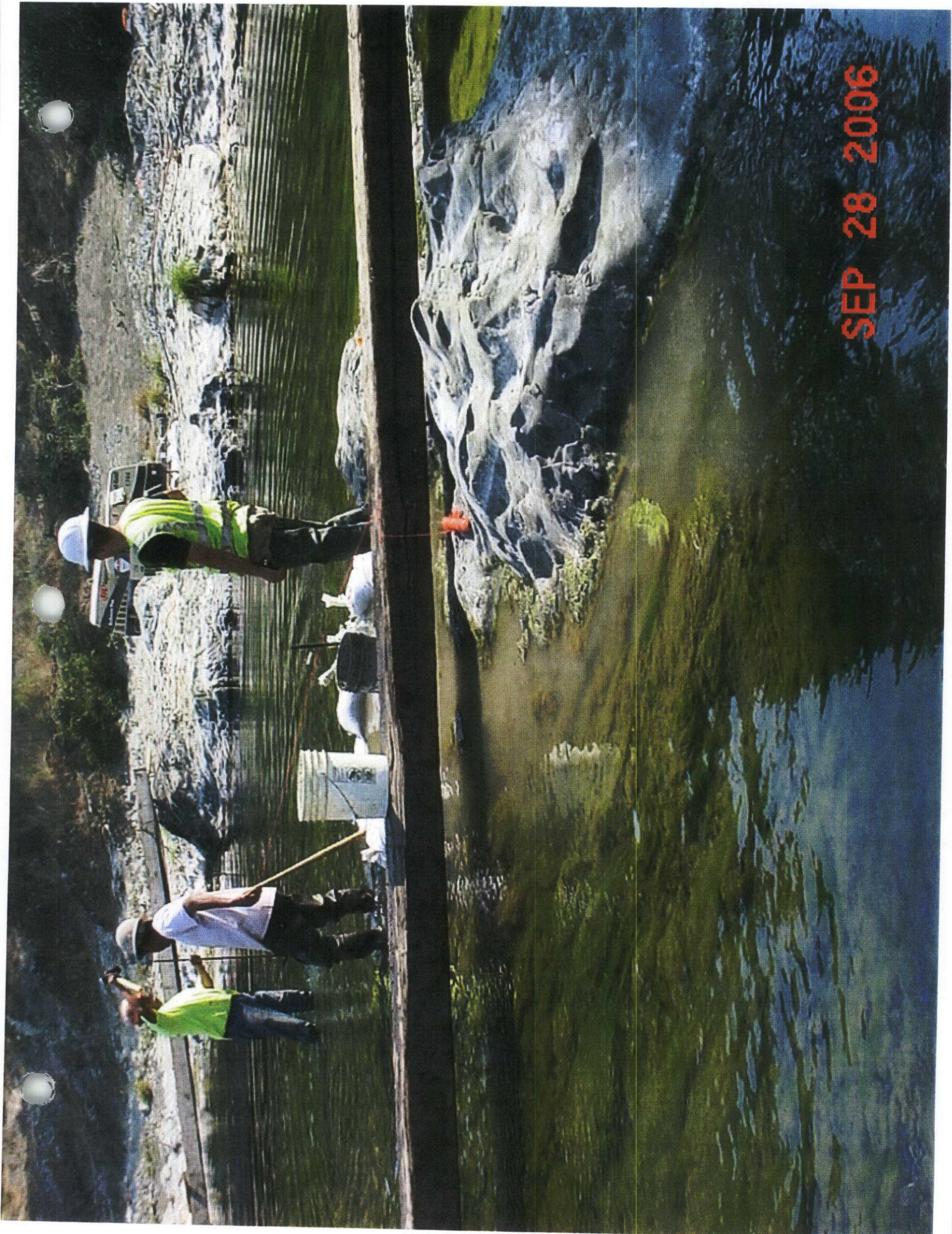
Figure 1. Sediment plume 28 Sept. 2006 caused by workers in the channel moving gravels off bedrock to set CMP "footings cofferdams" for the pour of in-channel bridge false work footings.



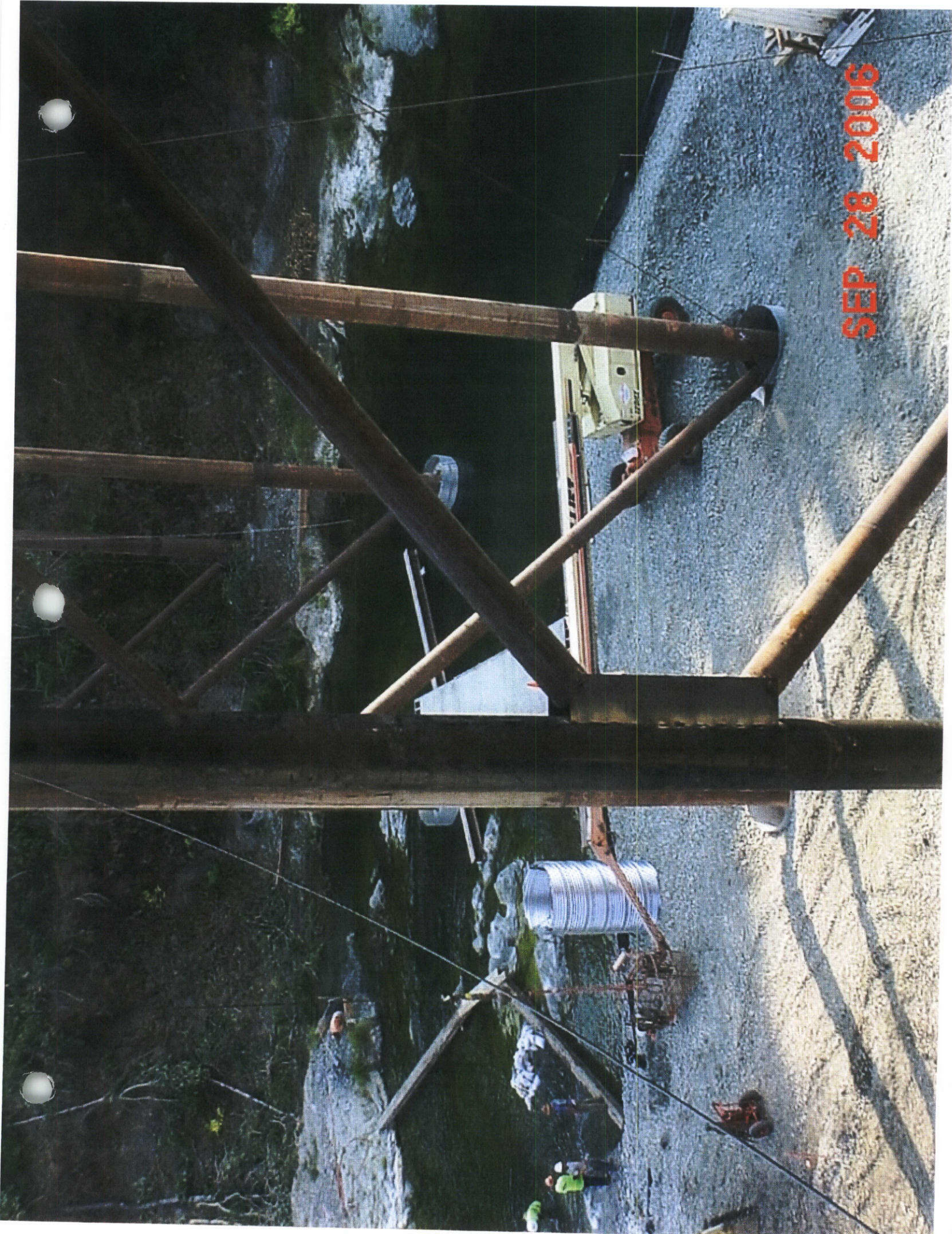
For the most part the plume caused by the in-stream prep-work was minimized by the workers taking frequency breaks and allowing the plume to partially dissipate before continuing. Duration in pulses over 4 hours and maximum extent about 100 feet downstream.

The second plume- caused during the actual pour of the first 2 in-stream false work footings lasted from 17:04 when the first footing was poured without mishap, to ca. 18:26 (ca. 84 minutes) after the second footing pour.

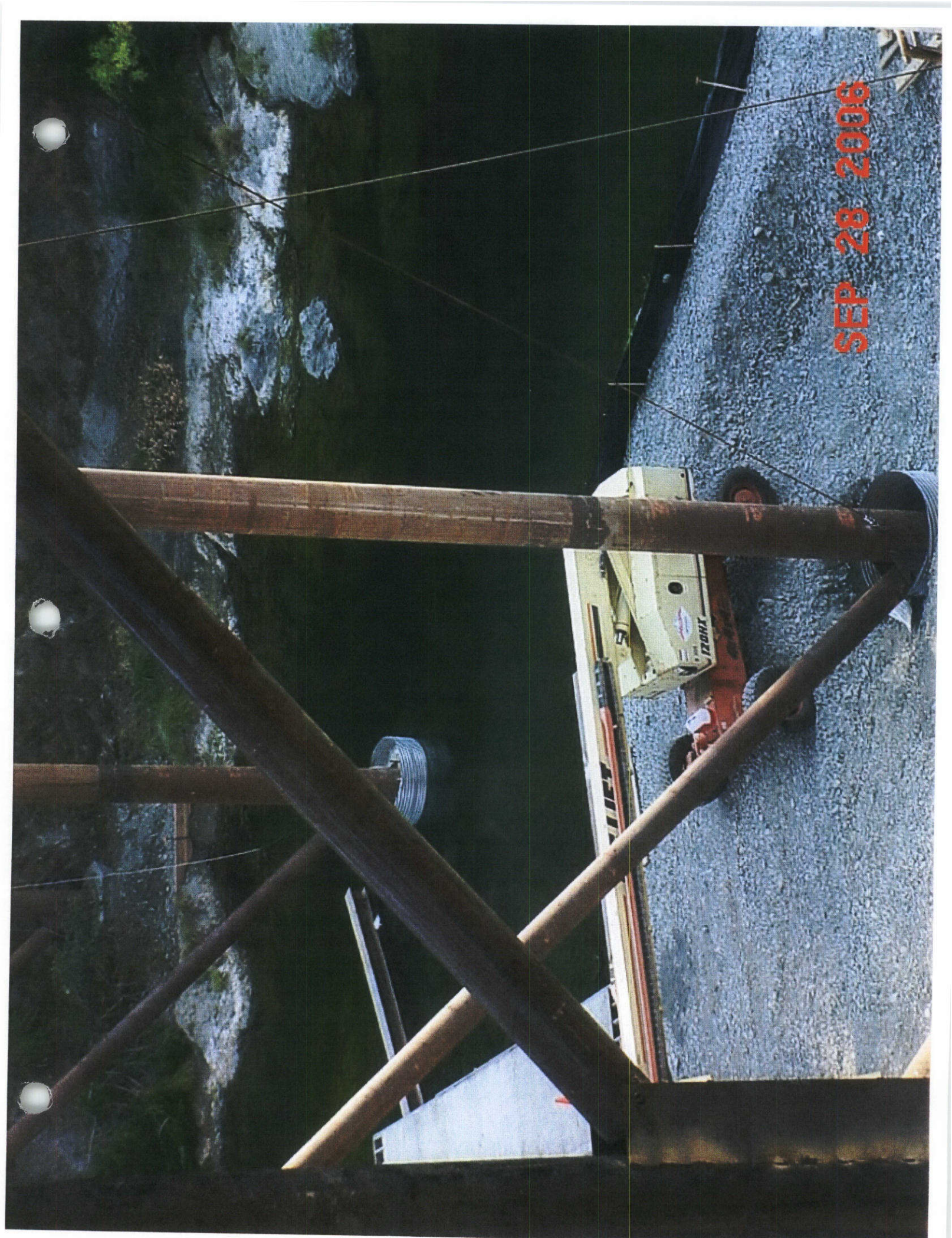
The Second footing pour did not go so well and the funnel came apart and took 2.5 buckets versus 1 for the previous footing pour, causing more crew disturbance in the creek as they struggled to get the funnel back together and this plume overlapped with the first pour plume so this pulsed-plume lasted about 84 minutes total duration and extended ca. 150 feet



SEP 28 2006



SEP 28 2006



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.395
Sheet 2 of 2
Date Sept 29, 2006
Circle Day S M T W T F S
Shift Hours Start 0700 Stop 1730

SISTANT RESIDENT ENGINEER'S DAILY REPORT

STRUCTURES

Location and Description of work See page 1.

1 Item 43: Sub CONTR, Ladd continued the mining operation for pier 3. Ladd spent the shift continuing to erect the the A - Frame for the "Betsy Cryderman" excavator (digging arm). Ladd drilled down into the rock formation and installed 1" ϕ DYWIDAG type rod 4'-0 in length. The rod was set with epoxy, Lockset Resin Cartridge (exp 07-30-07). Around the perimeter, Ladd set split sets and attached rope for hand railing. Once this was completed, Ladd began layout on the heading for drilling for the next set of charges. Total pier excavated to date per plan = 30.834m³. THIS PORTION OF THE WORK IS NOT COMPLETE.

2 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, the CONTR employed a backhoe, excavating down approx 8'-0 below the bar for FTG #1. No cofferdam (shield) assembly was employed. *Per direction from MCM's Field Superintendent James Ham, the operator was directed to knock down the spoils and push them into the swell. Please see the mini - memo dated September 27, 2006.* After the spoils were leveled, the operator then switched back to bent 2-7's FTG #4 (#3?) and resumed excavating inside the cofferdam (shield). At bent 2-1, the CONTR performed layout and began excavating down to rock on all four FTG's. At bent 2-5, the CONTR continued removing rock for FTG's 1 and 2. Once this was completed, the CONTR mapped the bottom surface and cut the 6'-0 ϕ CMP to approx shape. The CMP was then hoisted over to the FTG and set into place. Sandbags were then placed on the outside perimeter only, no sandbags were placed on the inside of the CMP. CONTR began placing seal coarse concrete @ 1701hrs. Concrete was placed via concrete bucket. CONTR began by placing the seal coarse in the #3 FTG. *During placement, it was apparent that the CONTR did not have a good seal around the CMP. Concrete escaped from the CMP leaving a plume in the river approx 150'-0 in length.* During placement for the #4 FTG, the CONTR's tremie on the hopper came off. While trying to reattach the tremie, the CONTR worked around the CMP standing on the sandbags. A plume was evident but how much was concrete or how much was alga was hard to determine. After the tremie was reattached, the CONTR resumed placing the seal coarse. *To prevent the water from overflowing the CMP, the water (untreated) was pumped onto the gravel bar, approx 60'-0 from the rivers edge. Once the seal coarse operation was completed, the CONTR cleaned the hopper, tremie and shovels in the glory hole for 2-7's FTG. This was also observed by SR Garry Tolen.* No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. Approx 2.869 m³ of seal coarse concrete was placed (0.867m³ in FTG 3 and 2.002m³ in FTG 4). **CONTR's Submittal is incomplete and has NOT BEEN APPROVED! CONTR is performing work at his own risk.** THIS PORTION OF THE WORK IS NOT COMPLETE.

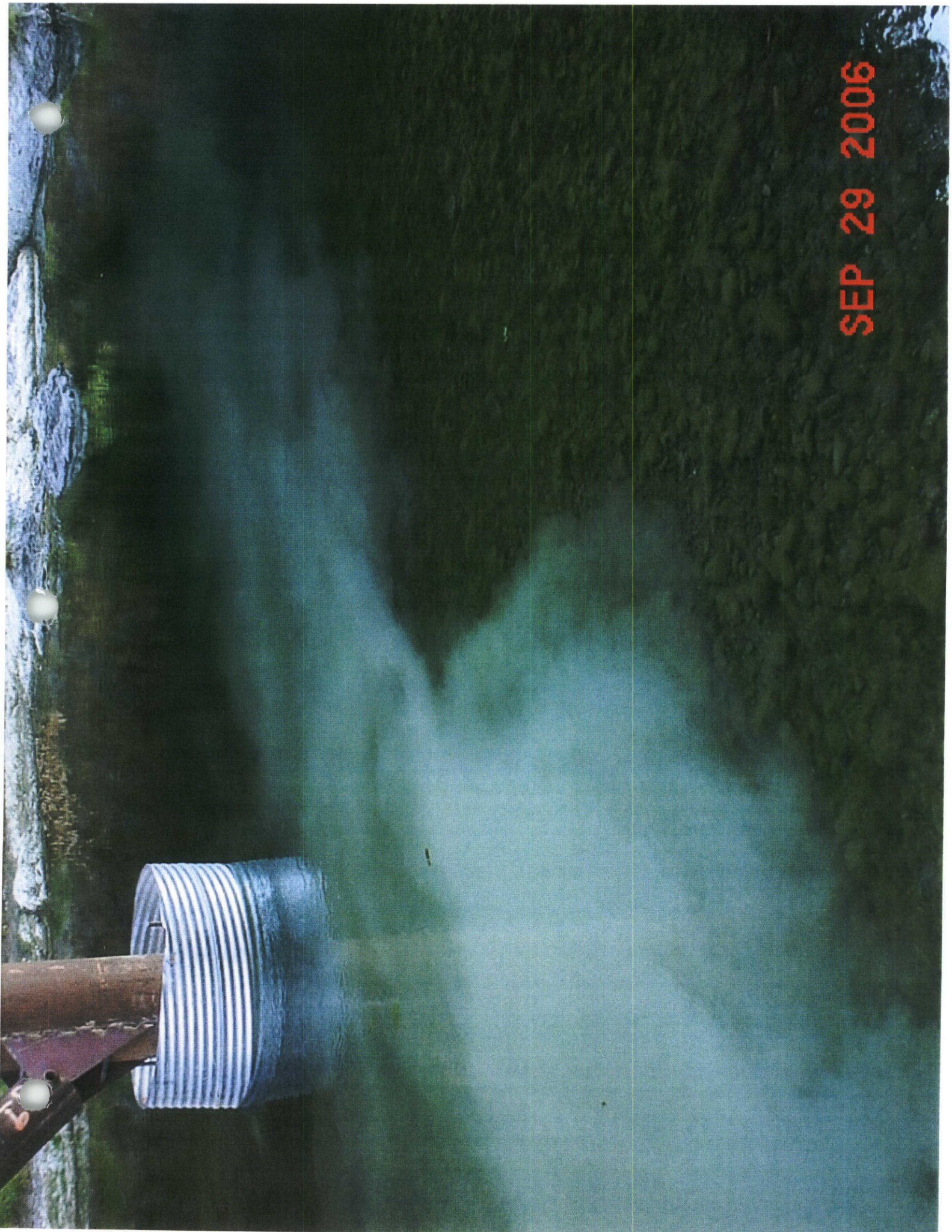
3 Item 164: CONTR (MCM) continued to erect the trestle. At bent 7, the CONTR continued and completed connecting the stiffener/connection plates and cross bracing (L3 x 3 x ³/₈) on the W36 X 182 and W36 x 260 stringers at the bent / cap connection. Connection plates and cross bracing were attached via 2F, 3F and 4F fillet welds via the FCAW (Lincoln NR-232 electrode wire) processes. A total of 7 pairs have been connected. THIS PORTION OF THE WORK IS NOT COMPLETE.

ASR NOTE: THIS is Controlling Item Work.

4 MISC: CONTR performed miscellaneous duties in and around the worksite. The CONTR performed maintenance, repair and service on equipment and tools. THIS PORTION OF THE WORK IS ONGOING.

NOTE: ASR Qi Fu was on site in the field performing surveillance of the Work during this shift.

SEP 29 2006



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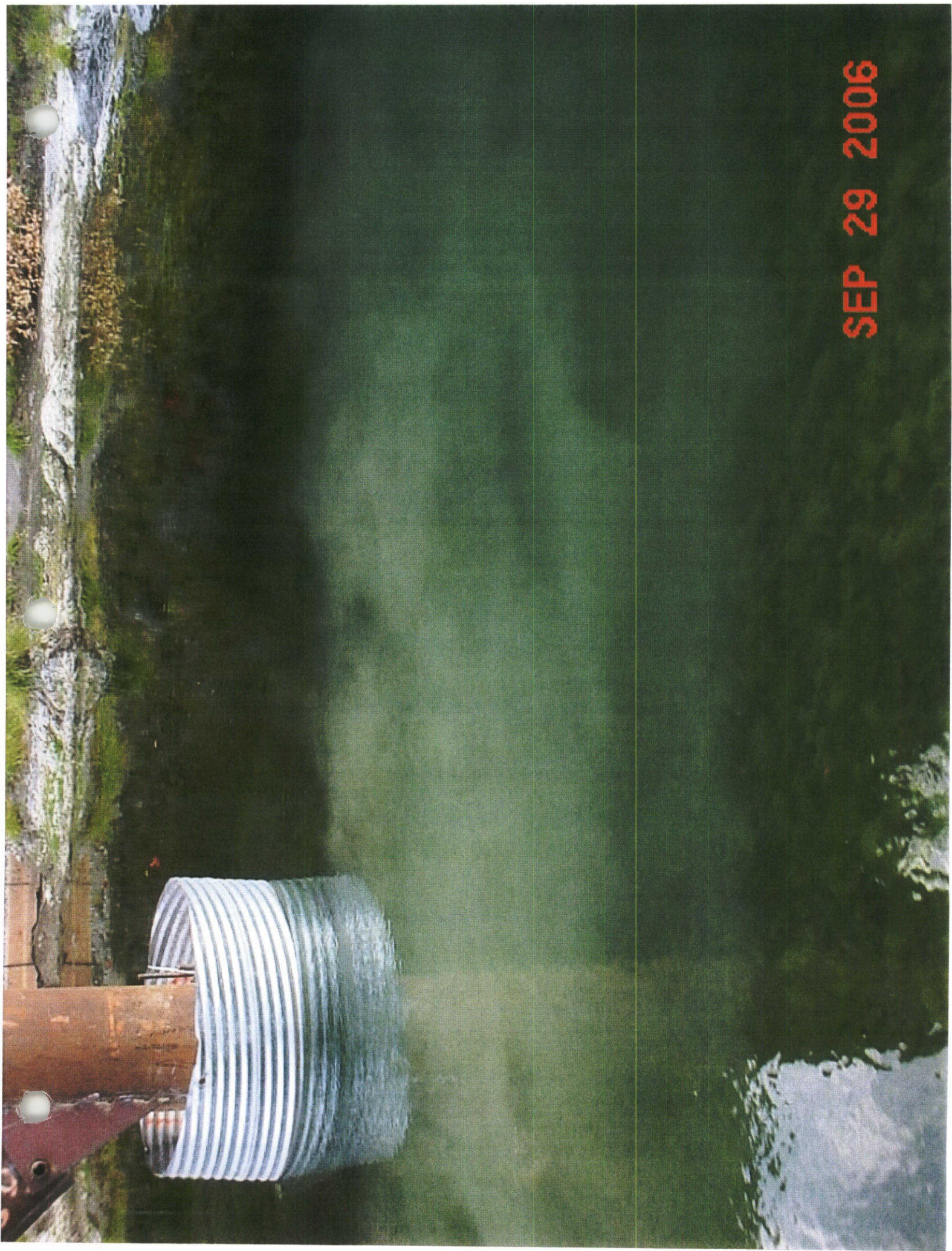
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Signature

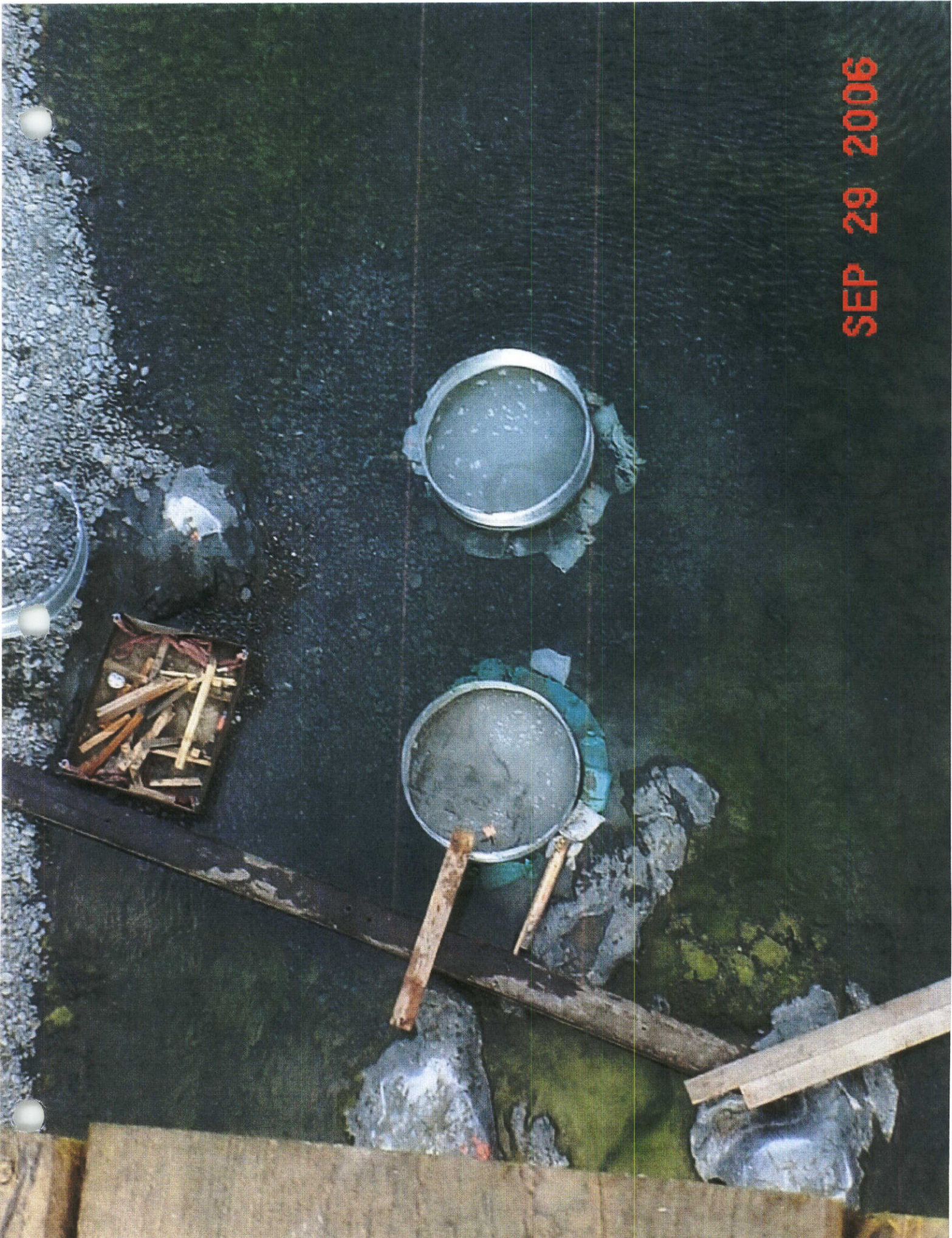
SEP 29 2006



SEP 29 2006



SEP 29 2006



October 9, 2006.

Confusion Hill Realignment With Two Bridges Project

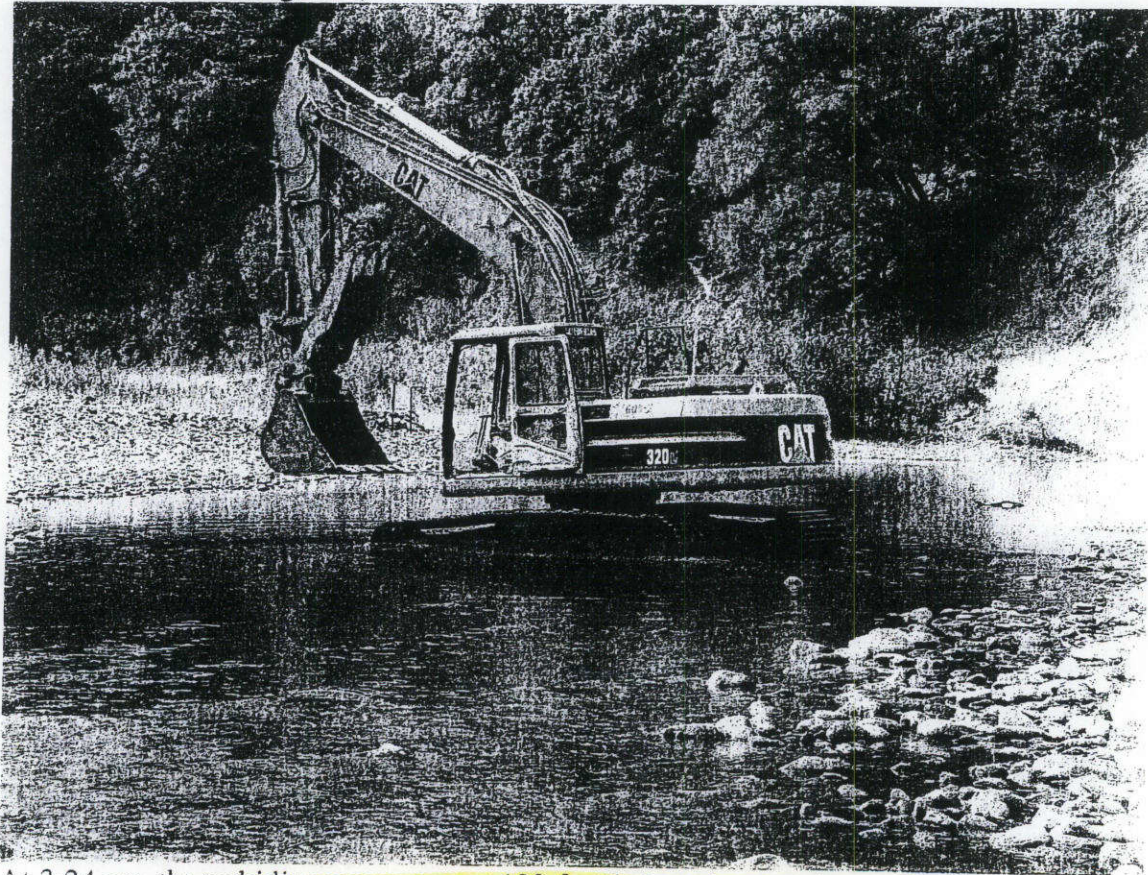
Mr. Dan Lagan and Ms. Corrine Gray,

Re: Weekly Biological Monitoring for October 2 through 7, 2006.

During the first week of October false bridge footing construction continued while brush and earth moving activities accelerated on the peninsula on the west side. Stock pile areas and access to the north bridge developed rapidly.

Work on the south bridge Pier 2 foundation was also a main focus of activities. With impending rain, BMP (silt fences, etc) installation needs became a concern. In stream construction procedures to prevent discharges was also addressed. Biological monitoring duties included spot checks of silt fence installation and in-stream and gravel bar activities below the false work on the north side and tunnel blasting compliance.

Monday October 2. Activities included observations of false work footing construction at the north bridge and monitoring water quality prior to and immediately following the return crossing of the Excavator 320, across the designated fording area at bottom of the south access road (Figure 1).



At 3:24 pm, the turbidity measurement 100-feet below the crossing area maintained a reading of 2.0 NTU's on the Horiba U-10 water quality meter. Water quality

6.5 MONITOR BENTONITE USE AND CONTAINMENT

No bentonite was used this monitoring season.

6.6 MONITOR VEHICLE ACCESS ACROSS RIVER

Methods. All known vehicle crossings were observed by the biological monitors. Three vehicle crossings were monitored this season over the South Side Project Area South Fork Eel River mainstem. Bradford Norman monitored the September 6 and 22, 2006 wet-channel crossings and Carl Page monitored a third on October 2, 2006. All occurred at the same place, along the tail end of a large bedrock-formed lateral scour pool at the top of a shallow riffle, at the South-Side of the project area. Biological monitors gathered background turbidity and water quality data at the crossing site prior to the 3 crossings to provide baseline data. During or immediately after the crossings they estimated visual turbidity and took digital photos.

A record of these activities and the observations has been presented in the weekly biological monitoring reports (Page 2006; Norman 2006). Further documentation of these activities is presented in the Digital Photographic Record Set of Digital Photo CDs, Appendix B.

Proactive Measures. Having the biological monitors on site ensured that no salmonids were in the area during the crossing. The same crossing site was used for each of the 3 wet-channel crossings observed, thereby limiting the affected area of disturbance.

Contractors were notified at project meetings that the equipment should be thoroughly cleaned of dirt, mud, and grease before crossings. The cleaning was to be done prior to staging at the river's edge. Vehicles were then to be inspected by the biological monitors (i.e., checking the tracks and undersides of heavy equipment) at the staging areas on the river bank prior to wet-channel crossings (referred to as "staging of equipment"). Monitors were also responsible to ensure that no sensitive fish species would be harmed from the crossing, which usually involved walking in front of the equipment as it crossed. Another proactive measure was for the vehicles to use a slower gear when crossing to reduce the potential for disturbance.

Biological monitors were able to inspect the equipment and walk the vehicle across the river for two of the crossings (September 6 and October 2). However, we were unable to do either for the second crossing (see description below).

Problems Encountered and Actions Taken. All 3 wet-channel crosses created a sediment plume to varying degrees of high turbidity (See Table 5), but the durations and intensities of each varied by the speed and number of vehicles per crossing.

The first wet-channel crossing occurred on September 6 and resulted in a sediment plume with a maximum extent of over 200 feet in length that lasted 25 minutes (Figures 38, See Discharge Table 5). This was a one-way crossing event involving three vehicles. The second wet-channel crossing event (one-way) occurred on September 22 and resulted in the largest sediment plume

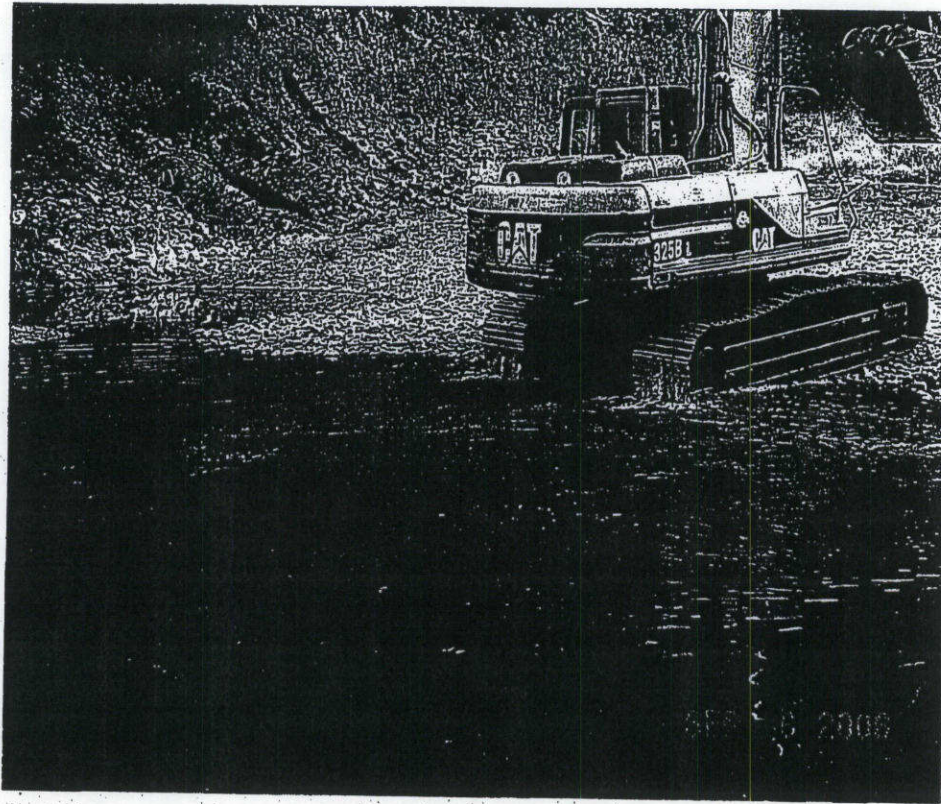


Figure 38. Wet-channel crossing number 1 (Note there is no mud on tracks after it goes through the mainstem).

of all three crossings, about 400 feet in length and lasting about 50 minutes (Figure 39, See Discharge Table 5). This was caused by in-stream sediment disturbance from heavy equipment (1 loader, 1 bulldozer with attached sheep roller, and 2 dump trucks) and from deposition of soils into the river from uncleaned or incompletely cleaned heavy equipment. For both of these crossings the value of "3" on the visual scale was recorded within the plume at the crossing site, representing a high amount of acute turbidity. The visual turbidity value 50 feet upstream of the crossing was "0" and the value 100 feet downstream was "3".

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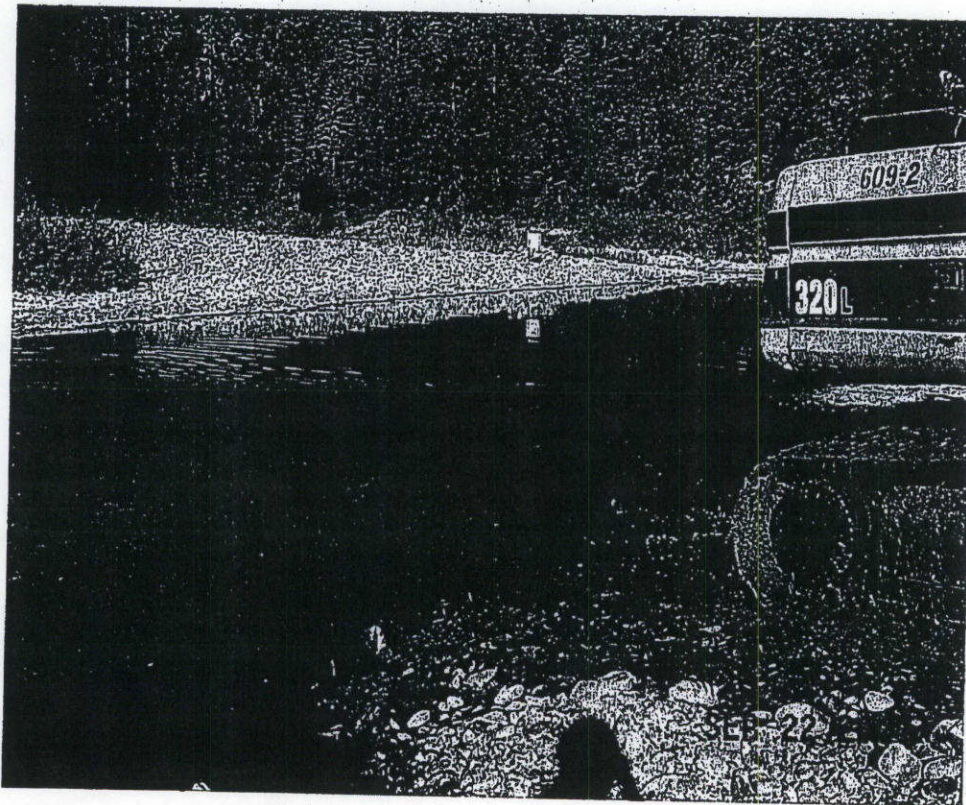


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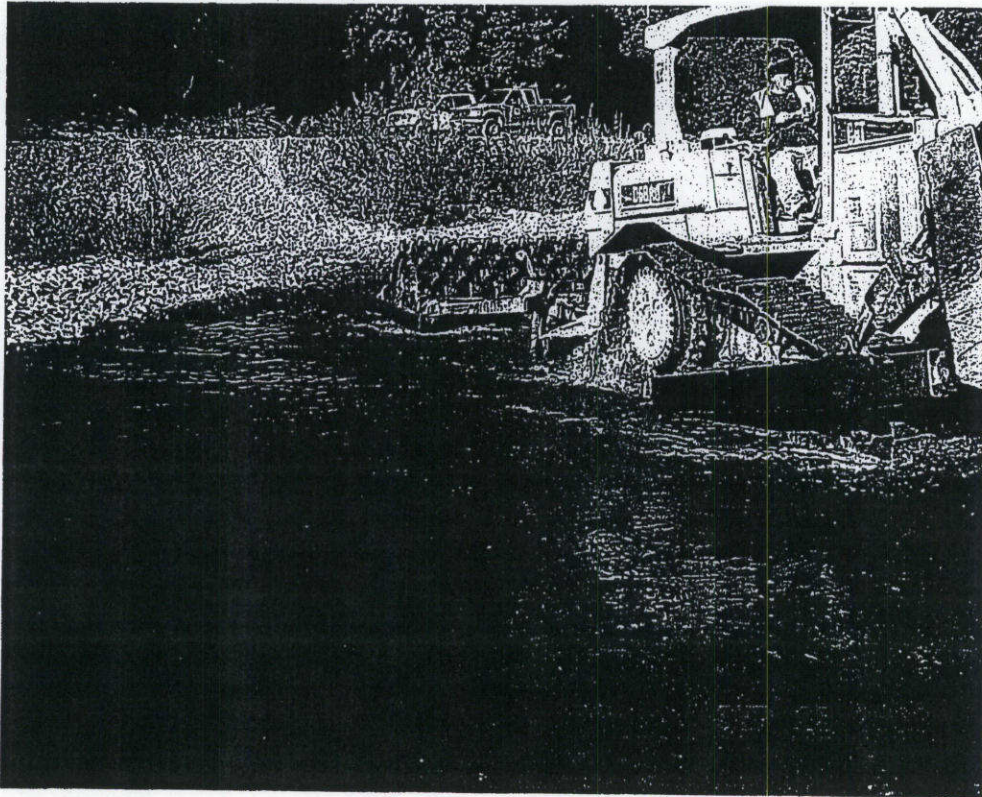


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EPTEMBER 4, 2008

DÉPARTMENT OF
TRANSPORTATION
Form HC-10A4 (Rev. 7/85)

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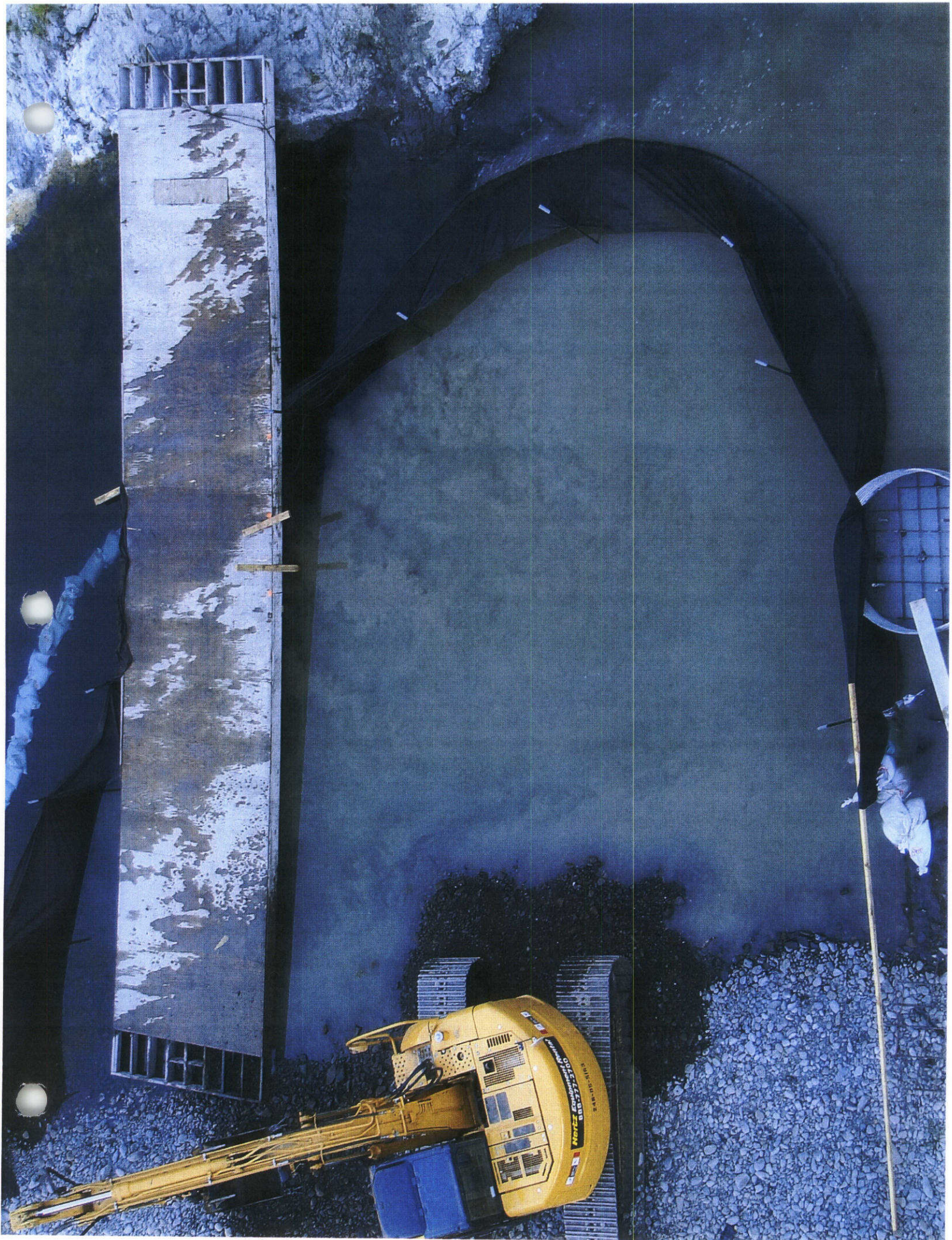
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Sheet 2 of 3
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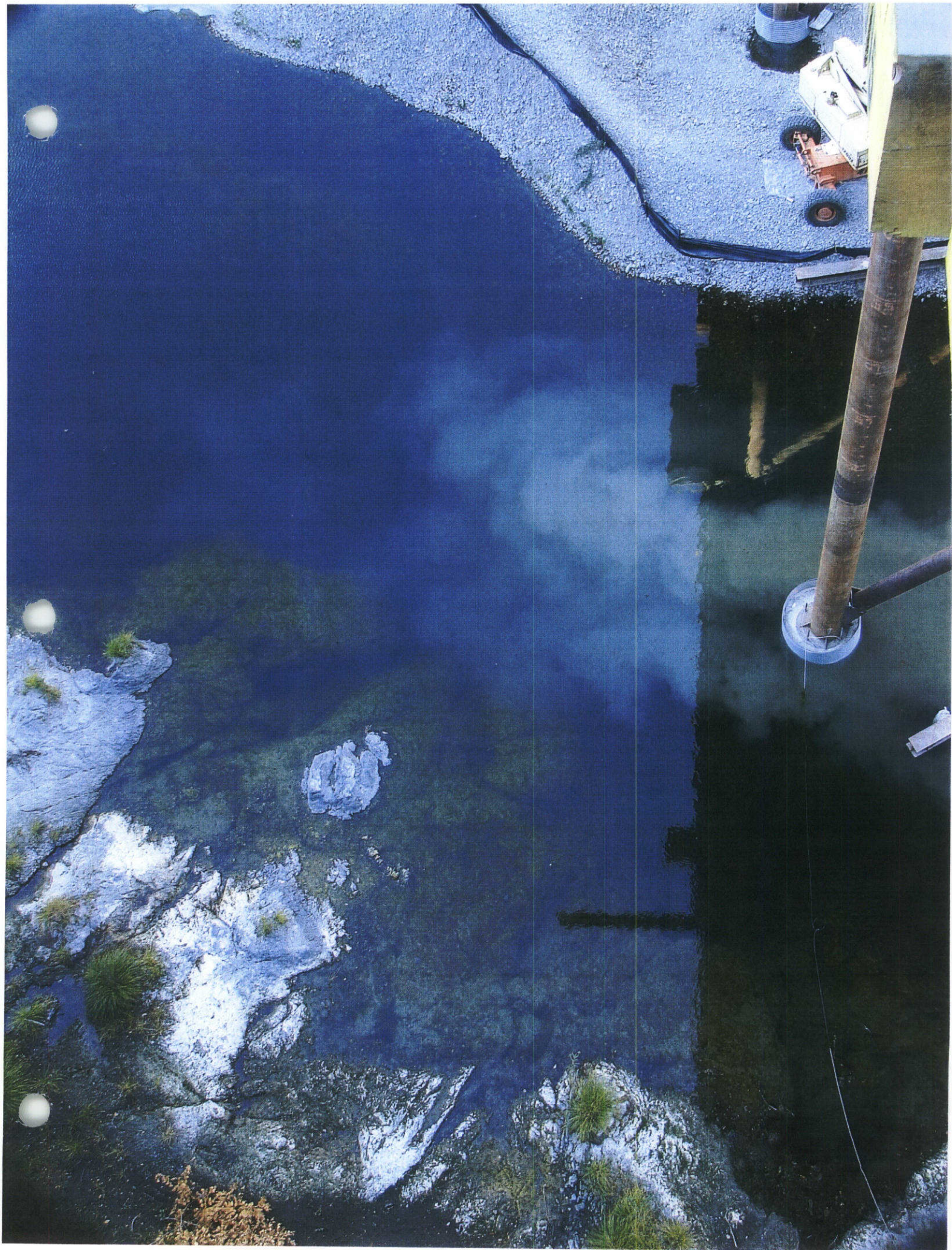
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ROVIDED BY:
WRCB
EPTEMBER 4, 2008

DEPARTMENT OF
TRANSPORTATION
Form HC-10A4 (Rev. 7/85)

Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.400A
Sheet 2 of 3
Date Oct 7, 2006
Circle Day S M T W T F S
Shift Hours Start 0730 Stop 1630

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

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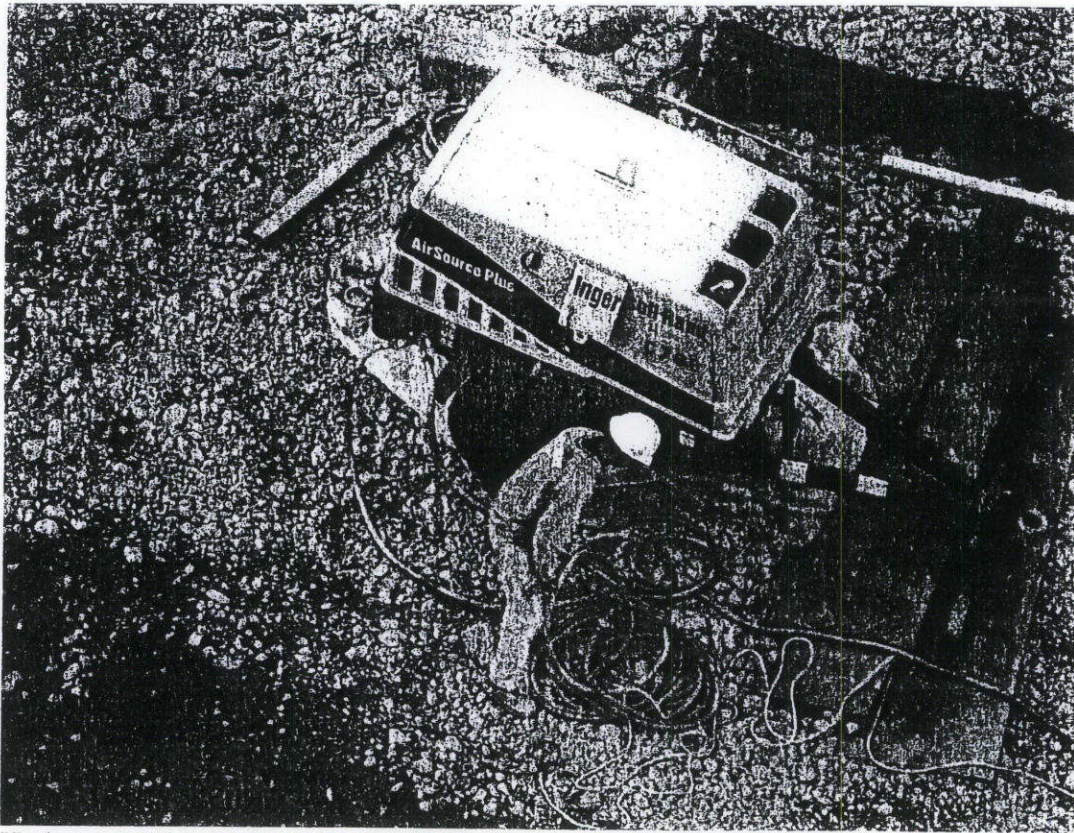
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Hydro-acoustic monitors did not detect any recordable pressure waves.

Thursday October 12. The regular morning meeting, during which seven locations for future were identified for storm water monitoring, occurred, allowing an initial survey of the work area before daily activities began. Oil and diesel stains on the gravel bar were identified for cleanup. The second shot for the week took place before noon, and again no fly rock was observed. I discovered a large oil stain under one piece of machinery at noon, not cleaned up by 1:30, raised concerns.

Some construction workers increasingly prove hostile to inspections, needing close monitoring, and important questions. Keeping the gravel bar clean is a constant battle to control the accumulation of debris, oil, and hydraulic fluids. Construction sprawl out over the gravel bar is also being controlled, to the best of my authority.

Friday October 13. Activities included monitoring gravel bar construction of the footings and cementing. The in-stream footings construction has been delayed by the complicated slow progress of securing a strong footing onto bedrock many feet down. SCUBA was employed to remove cobble in deeper footings (Figure 4).

Saturday October 14. Construction of the remaining in stream footings was the main focus of work during the day. The area around the footing to be excavated was isolated from active flow with the use of a fabric material, fence posts, and sand bags. This initial attempt produced a notable plume outside the containment area, and was ceased until

improvements were made. The second attempt proved ineffective due to subsurface flow through the isolation area and porosity of the fabric. Complete isolation of the footing work area to contain silt, seems impractical. Future work however will now be conducted within the containment shroud, or steel box. The silt plume produced by the event is documented in Figure 5, and the downstream long pool in Figure 6.

Sincerely,

Carl Page
For IBIS Environmental

23 October 2006
Aquatic Resource Specialists
380 Cooper Avenue,
Crescent City, California 95531

To: Ms. Susan Leroy,
Caltrans District 1 Office
Eureka, California 95501

Ms. Leroy:

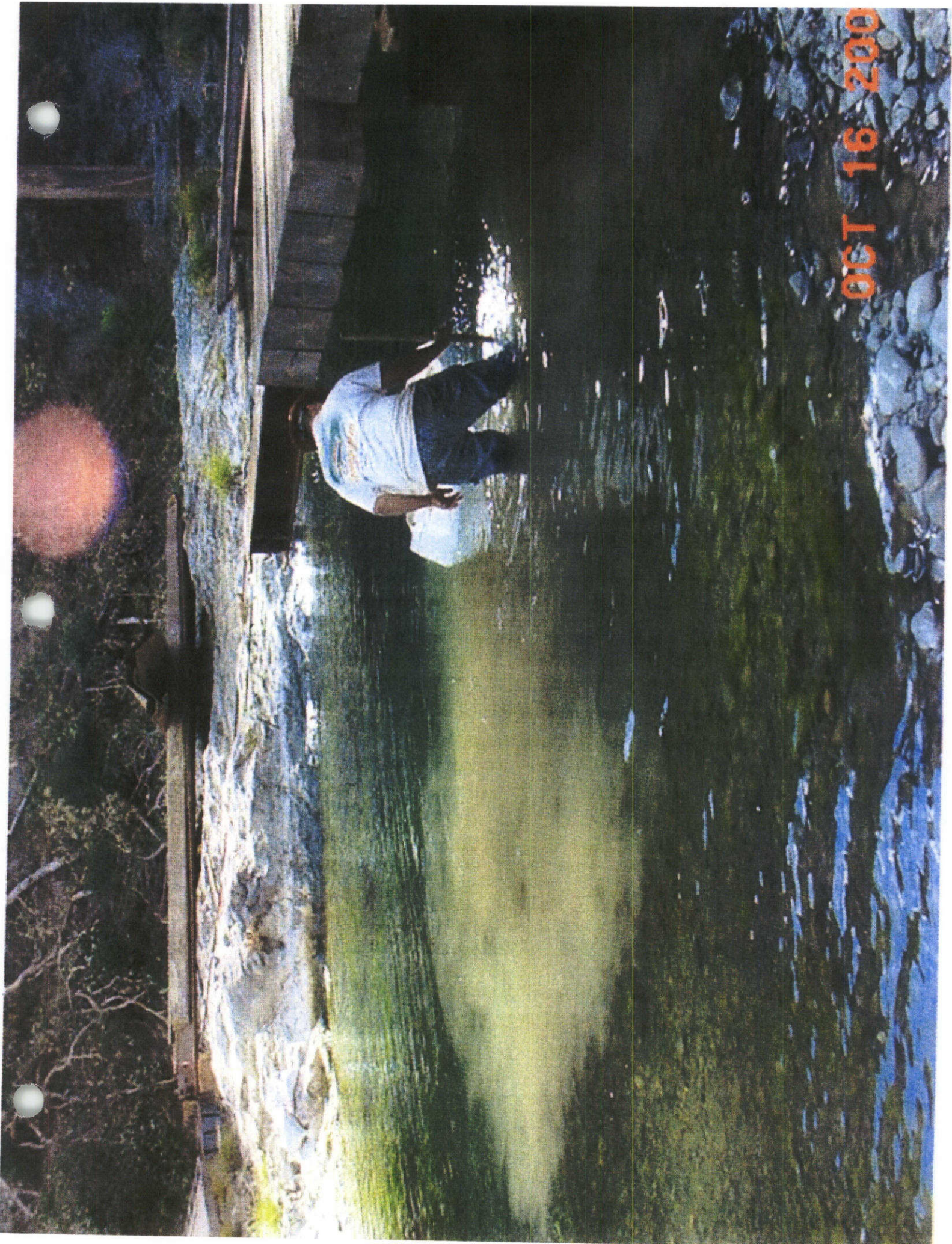
This letter contains my weekly biological monitoring report for the days of Monday, 16 October 2006 through Saturday, 21 October 2006.

Monitoring.

Table 1. Summary of work monitored by author for week of 16 – 21 October 2006, Confusion Hill Bridge Project.

Date	Excavations	Rock Crushing	Trestle Work	Cofferdam IN	Gravel Bar Restoration	False Work Footing Prep.	Blasting	Cofferdam REMOVAL	Footing Cemen Pour
Mon Oct 16	X		X	X		X			
Tues Oct 17	X		X	X		X			
Wed Oct 18	X	X	X	X		X	X		
Thurs Oct 19	X	X	X	X	X	X	X		
Fri Oct 20	X		X	X	X	X		X	X
Sat Oct 21	X		X	X	X	X		X	

October 16 th: Prep. Work for or cofferdam; questionable discharge of person working in channel. Plume=15 minutes; extended 8 feet long by 3 feet wide.



OCT 16 200

Job Stamp
01-397514
ER-37 B3(009)E
MEN-101-159.6/162.0(KP)

Report No. 405 1/3
Date 10/16/06
M T W T F S S Circle Day
Shift Hours Start 07:00 Stop 18:00

Prime Contractor: MCM

ASSISTANT RESIDENT ENGINEER'S DAILY Bridge No. 10-0300 Structures Construction **REPORT**

Location & Description of Operation MCM used vibrating hammer driving metal sheet to construct the 4th footing containment at bent 2-7 of the falsework, placed the CMP, then dredged until 18:00, but could not pour concrete. MCM rebuilt the platform by the river bank for a cofferdam. (1) The contractor started pour concrete at 16:45 for the trestle footings (bent 2) and falsework footings (bent 2-4) (2)

EQUIPMENT AND/OR LABOR:

EQPT. NO.	NO. MEN	DESCRIPTION (Of Equipment or Labor)	Item 1: Falsework							IDLE OR DOWN	REMARKS (Reason for idleness or other remarks)
			10.5								
B342	1	Operator	10.5								Robert Brown
B414	1	Operator	10.5								Derrick Canavari
	1	Pile Driver	10.5								Kip Worden
	1	Pile Driver	10.5								Justin Merrit
	1	Pile Driver	10.5								Alberto Espinoza
Rentel	1	Operator	10.5								Greg Stuart
	1	Laborer/Foreman	10.5								Francisco Cordero
	1	Laborer	10.5								Bert Harris
	1	Laborer	10.5								Loren Lair
	1	Laborer	10.5								Matt Erickson
	1	Laborer	10.5								Jose Santos
	1	Carpenter	10.5								Felipe Reyes
	1	Carpenter/Foreman	10.5								Rick Ortiz
	1	Carpenter	10.5								Eddie Adams
	1	Superintendent	10.5								James Ham

(Equipment List next page)

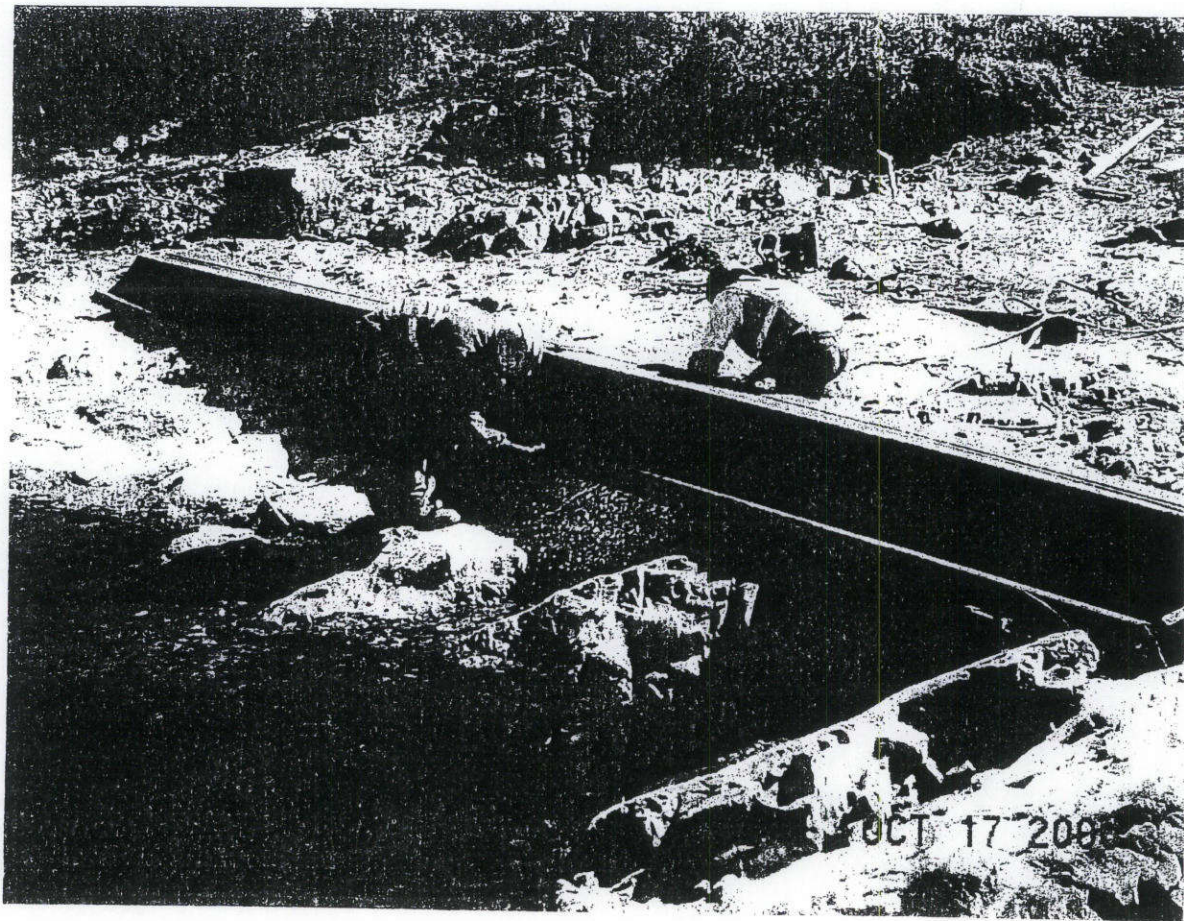
Remarks: (1) Garry & Brad talk to the contract at 10:00 about the rust metal scale found on the steel beams used on the river. The beams were cleaned by the contractor before reuse.
(2) At 17:00, when pour concrete at 1 footing by the river (bent 2-4), there were minor leak.

Hrs. for Qi Fu: (10.5)

P: In

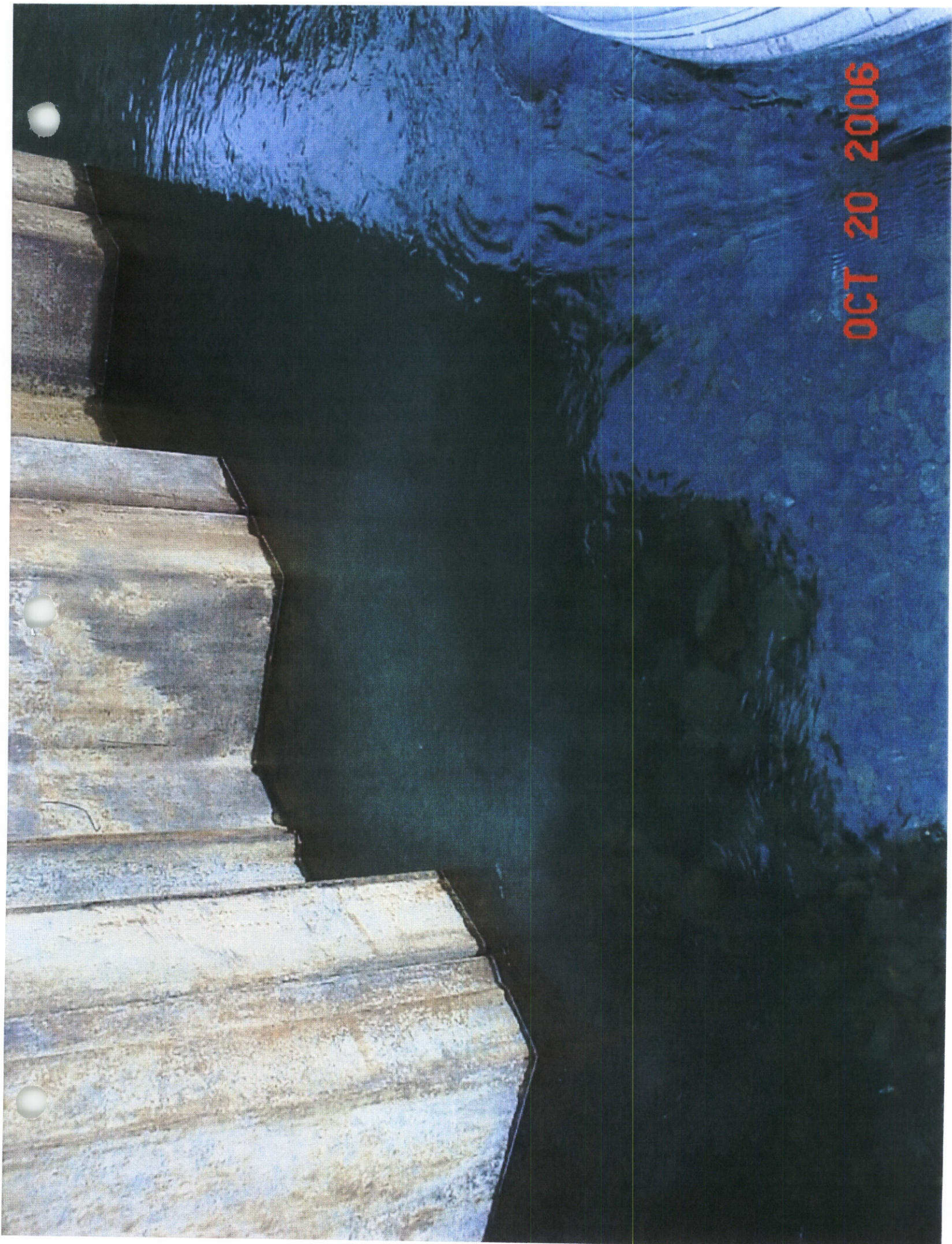
ASK

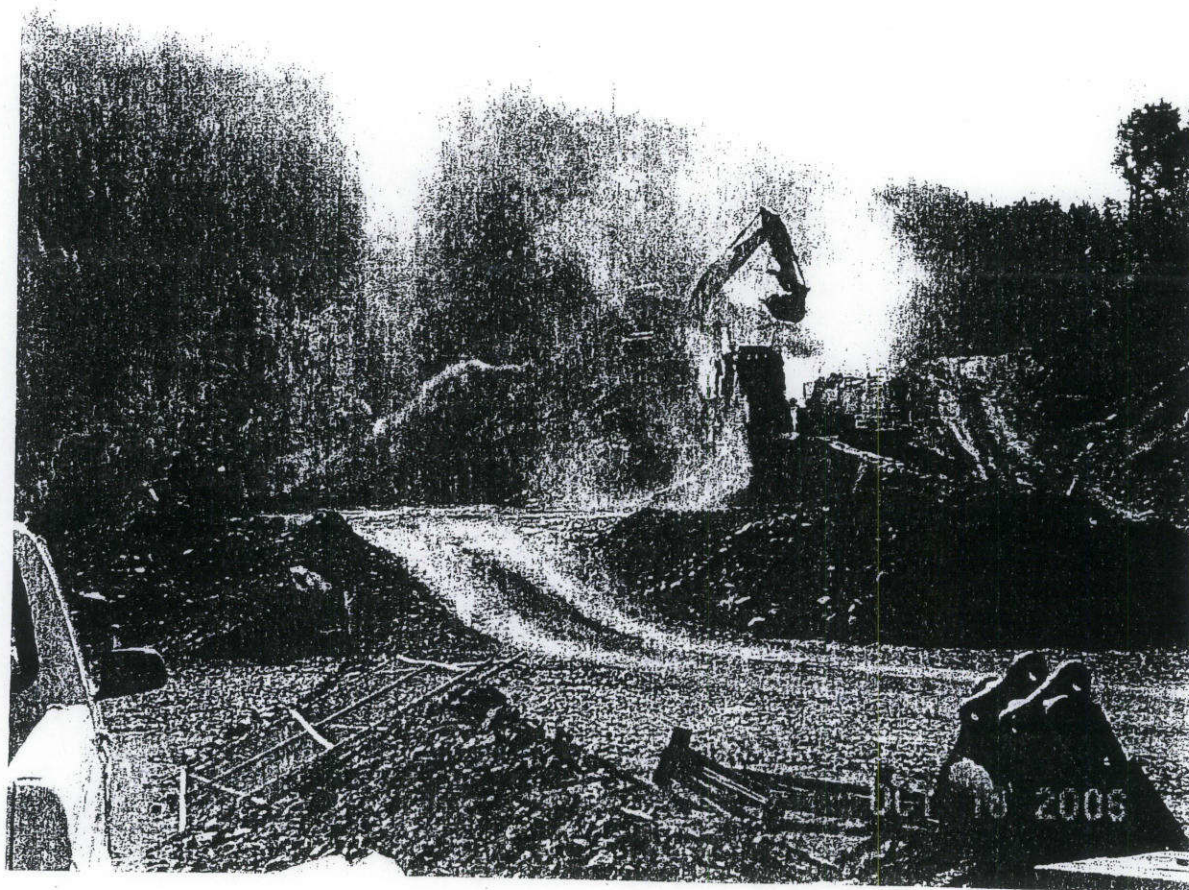
NK



October 18 th: Cofferdam construction with sheet piling installation with little to no sediment impacts other than a discharge of sediments already existing in the channel at about 25 feet Long by 6 feet wide for about 20 minutes over the few hours of pounding in individual sheets. Rock crushing operations produced some dust clouds. This was actually a series of pulses with breaks in between the pounding of the individual sheet piling pieces throughout the day.

OCT 20 2006

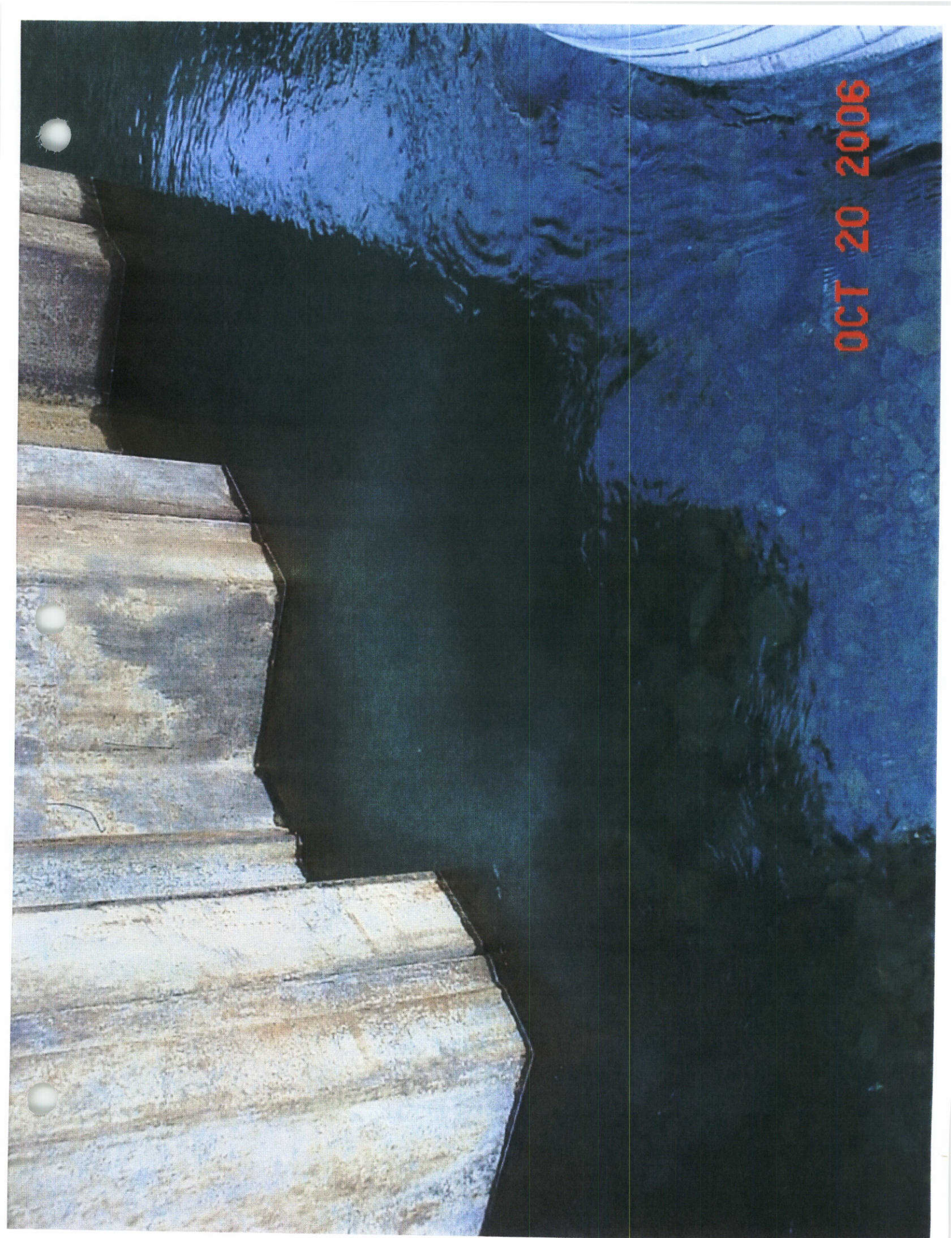




October 19 th: Gravel Bar clean up. Footing prep. was continued. Blasting took place – no adverse affects; no vibrations in water pools detected.

October 20 th: I observed one (1) very minimal sediment plume event during the seal-pour of the in-stream false work footings that lasted about 5 minutes and extended 2 feet downstream at about 4 feet wide and in the area of the downstream side of the coffer dam structure in the North Side Trestle/False work/Blasting Zone (BZ) area.

OCT 20 2006



- SWPPP Attachment K - Notice of Discharge for September 22, 2006
- SWPPP Attachment K - Notice of Discharge for October 2, 2006

- ii. Heavy equipment leaking fluids used within Waters of the United States or on the trestle above Waters of the United States;

Response: Caltrans, the contractor and their subcontractors did not use any equipment within the river. Heavy equipment used on the trestle consisted of the Manitowoc crane. The Manitowoc crane did lead fluids; however, leaks were contained by plastic placed under the crane. Leaks were observed on the trestle deck and were cleaned up with "Solid-A-Sorb" floor sweep specifically used for liquid absorbent. See Biological Monitoring Report for October 2 to 7, 2006 and Biological Monitoring Report for October 30 to November 2, 2006 in Attachment 1.a.

- iii. The discharge of water that has come in contact with wet cement or concrete to the sedimentation basin or from the coffer dams;

Response: Discharge of water that may have come in contact with wet cement occurred on September 29, 2006. This discharge was addressed in the October 30, 2006 correspondence from the Regional Water Board. The discharge occurred during construction of two in-stream foundations necessary for support of the false work. The in-stream foundations consisted of a six foot diameter corrugated steel pipe used as a coffer dam. The bottom of the cofferdam was cut to conform to the irregular river bottom. Sand bags were placed around the perimeter of the cofferdam prior to placement of the concrete seal course. During placement of the concrete, the water within the cofferdam is displaced and flows through the bottom of the cofferdam and the sand bag creating a minor turbidity plume. It appears the majority of the plume was generated from the fines within the sand bags and from disturbing fines on the river bottom. It is possible a small portion of the plume consisted of wet cement. When cement is placed as a seal course within a cofferdam, it is placed with a section of six inch plastic pipe. The plastic pipe is placed on the bottom in the middle of the cofferdam and then concrete is placed from the bottom middle outwards and upwards. Thus the displaced water escapes the cofferdam and the sand bag seal prevents concrete from leaving the cofferdam.

On August 29, during placing a concrete in a corrugated steel pipe within the river, the water level rose and to prevent it from overflowing into the river, the water was pumped to the dewatering basin. After placing the concrete seal course, the contractor cleaned the hopper, tremie and shovels in a footing excavation in the river bar.

- iv. Reports and photographs of inadequate construction storm water BMPs (i.e., bare soil with inadequate protection, inadequately protected inlets and outlets, and inadequate containment on the trestle, etc.);

Response: Construction site BMP deficiencies are discussed in the Biological Monitoring Reports in Attachment 1.a, SWPPP Attachment K - Notice of Discharge in Attachment 1.c, Written Recommendation 'emails' in Attachment 1.d, SWPPP Task Force Construction

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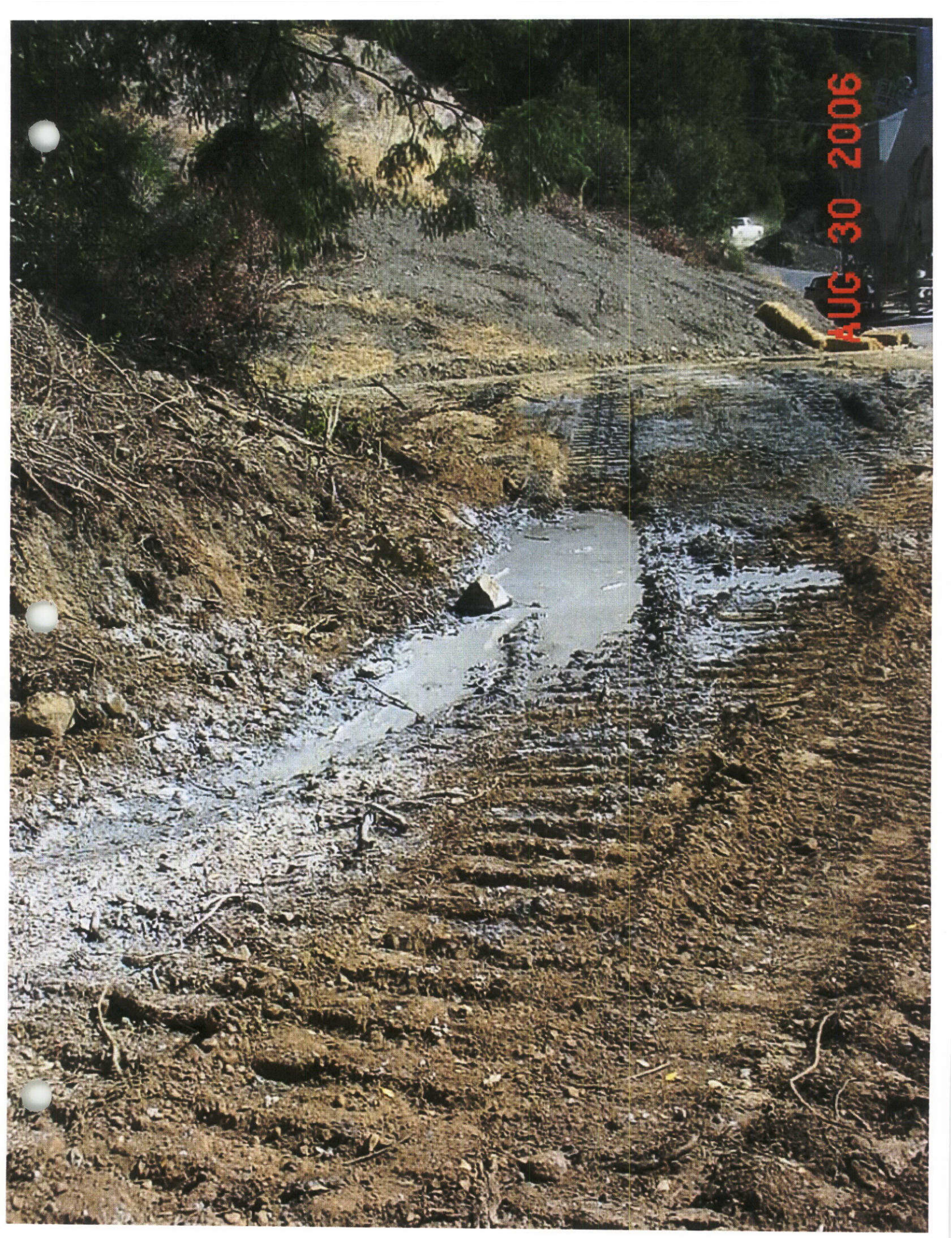
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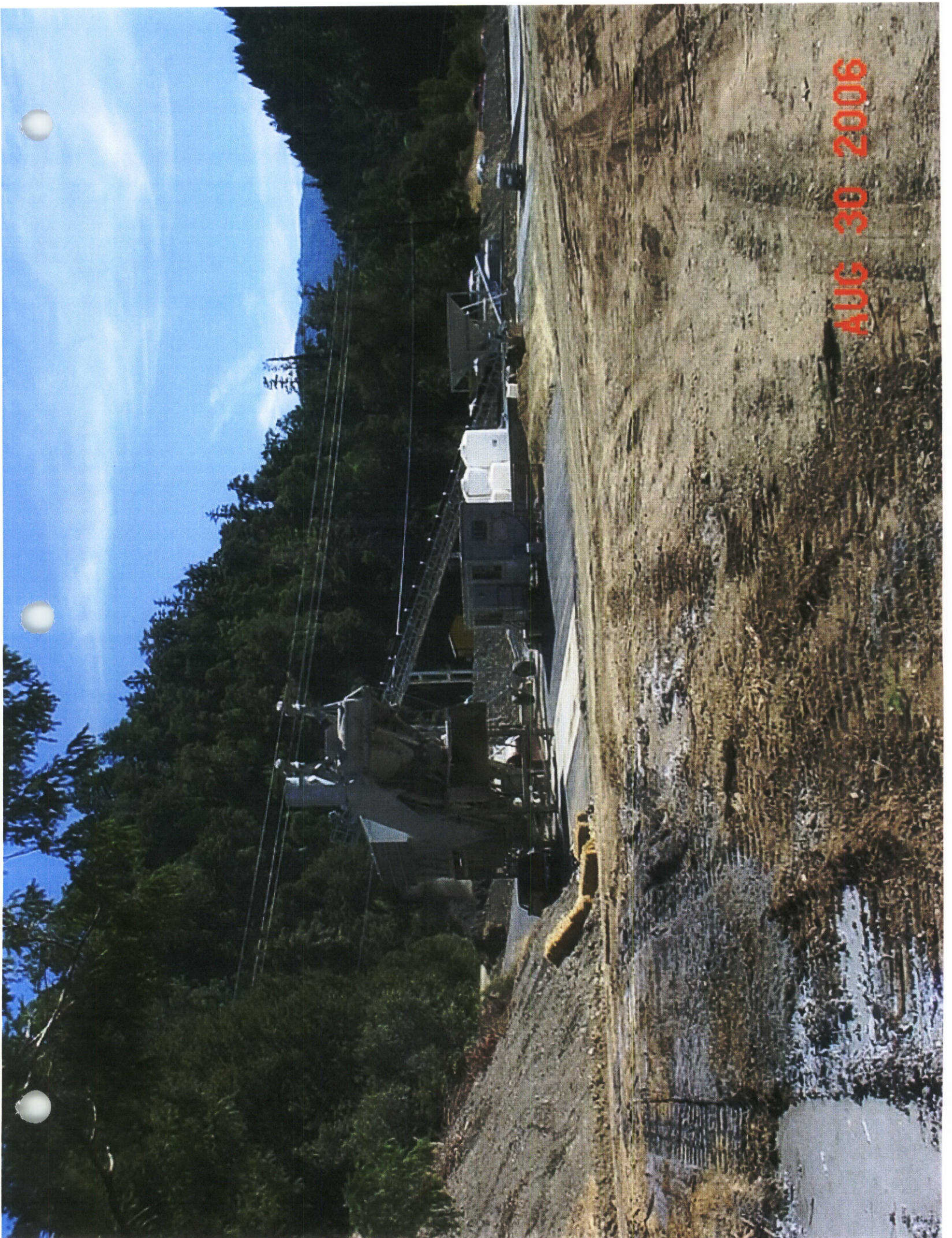
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AUG 30 2006



AUG 30 2006



Acting Structure Representative's
Daily Report

Report No. 379

Date: As Noted

M T W T F S S

#379 Thursday, Sept 7th, 2006 clear, wind calm to 6 mph, 57°-90°, high 90°
Controlling operation still considered P-3 N Br overburden excavation.

-0830 went to the river bar with Mitch Shands to talk to Supt. James Ham about his plan for grouting the trestle foundation anchor bolts due to water in the holes. He was going to place a standpipe in the holes to above water level to obtain static water then tremie pump grout and insert the HS rods which sounded like a reasonable plan.

-0900 returned to the office and found Claudio Avila and Bill Bertucci, Strs Geotechs. We talked about my concerns at A-1 S Br and reviewed the plan contour sheet and test borings. We then walked to the A-1 ftg excavation, then walked down the access road to below the A-1ftg. They expressed their concerns about the depth of rock in front of the abut and Claudio said he'd probably lower the pile tips and he would talk to designer Kevin Harper about lowering the bottom of footing and perhaps moving the abut back a few meters. I said I'd send the photos I'd sent Claudio, which he was unable to view with a dial-up connection, to Kevin. We then walked to the P-2 S Br excavation. I told them Ladd had an engineer looking at the work and would be submitting an Engr prepared plan soon. They were comfortable with the exc slopes and said they would be happy to review the plan when submitted. We returned to the office then drove to the N Br access road. We walked to P-3 exc site, then down to the river bar. They were comfortable with that excavation. We returned to the office a little before noon. Dan Van, 01 Geologist, stopped in and they talked for a while. About 1215 they headed for P-3 S Br and to find the survey crew to request a resurvey of the rock outcrop in front of A-1 S Br.

Shortly after 1230 there was a blast at the P-2 S Br exc. It seemed loud and shook our office. Gene Leo and I headed down the access road. We came across Harlan Davis, licensed blaster, who was leaving the site. He said they didn't fly any rock and the loud noise was from the bounce back from the opposite bank. We went down to the P-2 exc and viewed the blast area. We found no fresh rock on open ground around the blast area.

-1440 Ed Yarbrough came into the office. We discussed ramp safety issues. I told Ed that Claudio had measured 24° and 25° angles on 2 of the ramp sections. He said the Safety Orders were not real clear on ramps but Tim Strahan had emailed a contact at CalOSHA with questions on ramps, stairs, and hand railing. Tim came in -1450 and confirmed the inquiry and was said he was expecting an answer Monday.

Called Phil Gundlach, MF batch plant operator, he'll come down on Mon P.M. to talk about concrete.

Late this afternoon, Gene Leo was talking to Walt Dragaloski about the reports he had from biologist Brad Norman about discharges into the river at the N Br const area. One was from dewatering into a settlement basin and after about 8 hrs of pumping some turbidity was noticed emanating from the gravel bar. Walt asked to talk to me. I told Walt I hadn't seen the discharge from dewatering but Brad mentioned it once when I was on the gravel bar. My recollection was that it was mentioned to MCM and the pumping was stopped and the discharge ceased shortly thereafter. The other was during the seal course placement within the two CSP's for the trestle bent 3 foundations. I told Walt that bags filled with river bar gravel were placed outside the CSP's which had been cut to approximate the contour of the bedrock in the river, filter fabric was placed inside the CSP's and pushed into the gap between the CSP and the rock, then sandbags were placed inside and against the CSP's. A pump was running to lower the water level inside the CSP's, which was ineffective until the water level rose due to the placement of the concrete seal course. Pumping was halted after the conc placement started. The water was pumped to a settlement basin against the river bank. The conc was placed with a tremie pipe and during the first half yard of conc placement a small discharge was noticed. It could not be determined whether the cloud was from displaced water forcing silt out of the gravel bags on the outside of the CSP's or cement mortar leaking past the sandbags, filter fabric and gravel bags, but Sacramento pike minnows (per Brad) swimming outside the CSP's were unaffected. The discharges dissipated quickly within about 50 (Rt CSP) to 100' (Lt CSP) as near as I could tell. Although there was some discussion of measuring the turbidity, Brad mentioned that it didn't appear to him that there was a 20% increase at 100'. RE Ron den Heyer was also present during the conc seal placement. The next day the water was tested for pH, treated with muratic acid then pumped into the settlement basin. I estimate about 25 gal was pumped from the Lt CSP and perhaps 50 gal pumped from the Rt CSP based on the conc placed.
RWT 0700-1630 1 hr OT, office; MShands 0630-1700, 2 hrs OT, Insp;
JRiley no OT


Rich Thompson, Asst. Str. Rep.

SEP 8 2006



SEP 8 2006



SEP 18 2006



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.395
Sheet 2 of 2
Date Sept 29, 2006
Circle Day S M T W T F S
Shift Hours Start 0700 Stop 1730

STRUCTURES

ASSISTANT RESIDENT ENGINEER'S DAILY REPORT

Location and Description of work See page 1.

1 Item 43: Sub CONTR, Ladd continued the mining operation for pier 3. Ladd spent the shift continuing to erect the the A - Frame for the "Betsy Cryderman" excavator (digging arm). Ladd drilled down into the rock formation and installed 1" ϕ DYWIDAG type rod 4'-0 in length. The rod was set with epoxy, Lockset Resin Cartridge (exp 07-30-07). Around the perimeter, Ladd set split sets and attached rope for hand railing. Once this was completed, Ladd began layout on the heading for drilling for the next set of charges. Total pier excavated to date per plan = 30.834m³. THIS PORTION OF THE WORK IS NOT COMPLETE.

2 Item 95: CONTR (MCM) continued erecting falsework. At bent 2-7, the CONTR employed a backhoe, excavating down approx 8'-0 below the bar for FTG #1. No cofferdam (shield) assembly was employed. *Per direction from MCM's Field Superintendent James Ham, the operator was directed to knock down the spoils and push them into the swell. Please see the mini - memo dated September 27, 2006.* After the spoils were leveled, the operator then switched back to bent 2-7's FTG #4 (#37) and resumed excavating inside the cofferdam (shield). At bent 2-1, the CONTR performed layout and began excavating down to rock on all four FTG's. At bent 2-5, the CONTR continued removing rock for FTG's 1 and 2. Once this was completed, the CONTR mapped the bottom surface and cut the 6'-0 ϕ CMP to approx shape. The CMP was then hoisted over from the FTG and set into place. Sandbags were then placed on the outside perimeter only, no sandbags were placed on the inside of the CMP. CONTR began placing seal coarse concrete @ 1701hrs. Concrete was placed via concrete bucket. CONTR began by placing the seal coarse in the #3 FTG. During placement, it was apparent that the CONTR did not have a good seal around the CMP. Concrete escaped from the CMP leaving a plume in the river approx 150'-0 in length. During placement for the #4 FTG, the CONTR's tremie on the hopper came off. While trying to reattach the tremie, the CONTR worked around the CMP standing on the sandbags. A plume was evident but how much was concrete or how much was alga was hard to determine. **After the tremie was reattached, the CONTR resumed placing the seal coarse. To prevent the water from overflowing the CMP, the water (untreated) was pumped onto the gravel bar, approx 60'-0 from the rivers edge.** Once the seal coarse operation was completed, the CONTR cleaned the hopper, tremie and shovels in the glory hole for 2-7's FTG. This was also observed by SR Garry Tolen. No Mix Design for concrete has been submitted. Concrete was supplied by the Mercer Fraser batch plant located on the job site. Aggregate source and SMAR # unknown. Mix design was stated by the CONTR to be a 7sk mix. No samples were taken by the supplier and/or CONTR. Approx 2.869 m³ of seal coarse concrete was placed (0.867m³ in FTG 3 and 2.002m³ in FTG 4). **CONTR's Submittal is incomplete and has NOT BEEN APPROVED! CONTR is performing work at his own risk.** THIS PORTION OF THE WORK IS NOT COMPLETE.

3 Item 164: CONTR (MCM) continued to erect the trestle. At bent 7, the CONTR continued and completed connecting the stiffener/connection plates and cross bracing (L3 x 3 x ³/₈) on the W36 X 182 and W36 x 260 stringers at the bent / cap connection. Connection plates and cross bracing were attached via 2F, 3F and 4F fillet welds via the FCAW (Lincoln NR-232 electrode wire) processes. A total of 7 pairs have been connected. THIS PORTION OF THE WORK IS NOT COMPLETE.

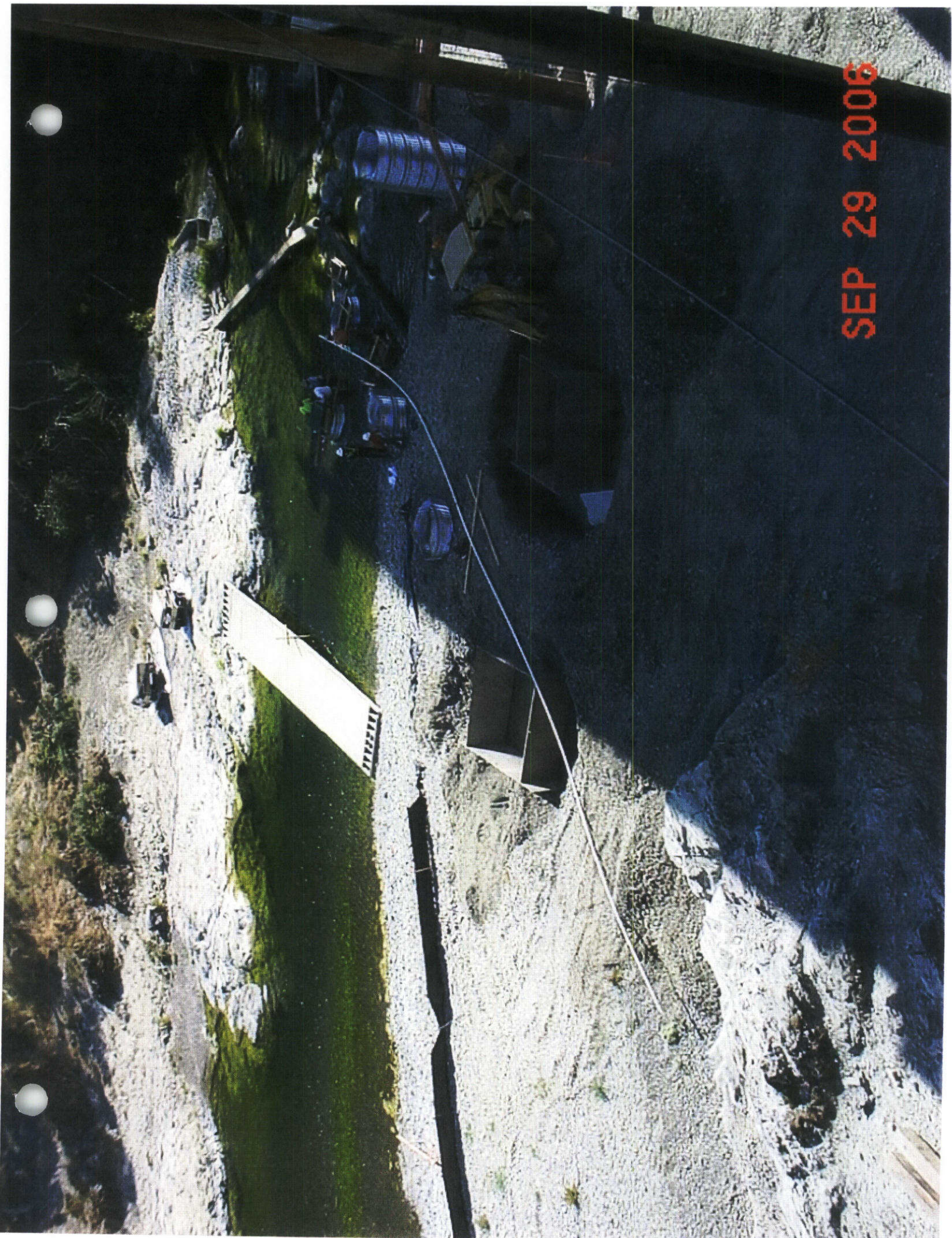
ASR NOTE: THIS is Controlling Item Work.

4 MISC: CONTR performed miscellaneous duties in and around the worksite. The CONTR performed maintenance, repair and service on equipment and tools. THIS PORTION OF THE WORK IS ONGOING.

ASR NOTE: ASR Qi Fu was on site in the field performing surveillance of the Work during this shift.


Signature

SEP 29 2008



SEP 29 2006



Job Stamp
01-314404
01-HUM-101-90.4/92.5 kp
BR 04-0017

Report No. 46.395
Sheet 2 of 2
Date Sept 29, 2006
Circle Day S M T W T F S
Shift Hours Start 0700 Stop 1730

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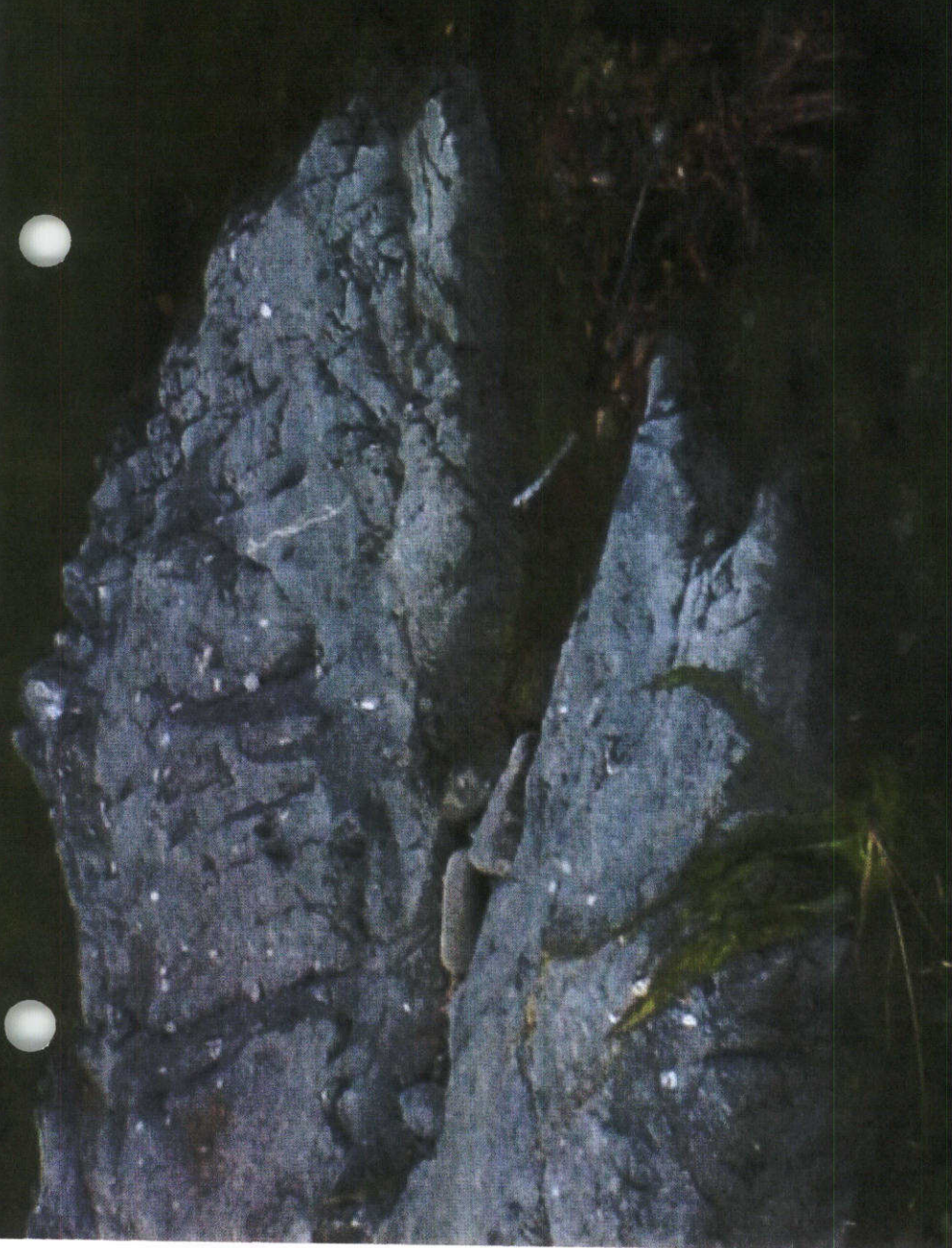
ASR NOTE: ASR Qi Fu was on site in the field performing surveillance of the Work during this shift.

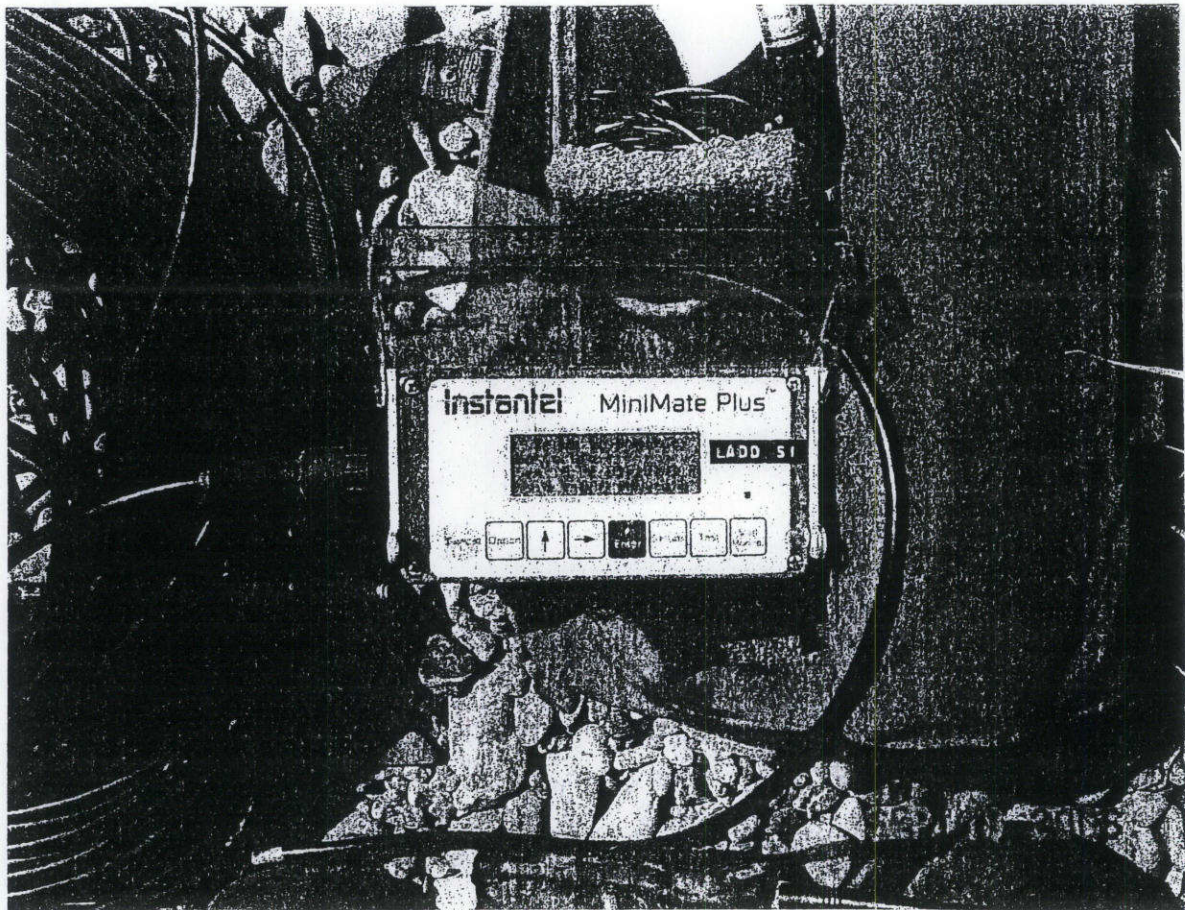

Signature

SEP 18 2006



SEP 18 2006





Figures 5a-5d. LADD BZ rock removal operations (5a and 5b) and the Hydro-acoustic monitoring apparatus in place prior to a blast (5c and 5d).

Trestle Construction. MCM Trestle Construction Operation continues to discharge sawdust, cigarette butts, plastic and paper packaging and empty water bottles, welding wire, loose nails, rust scab from recycled I-beams, welding rods, oily rags and gloves, cut wood pieces, and welding slag into the South Fork Eel mainstem on a daily basis. The operation has no closed waste receptacles on site that contain garbage in the often high winds that come through the canyon and I continue to pick much of it up, see it flying into the river, and report it.

88

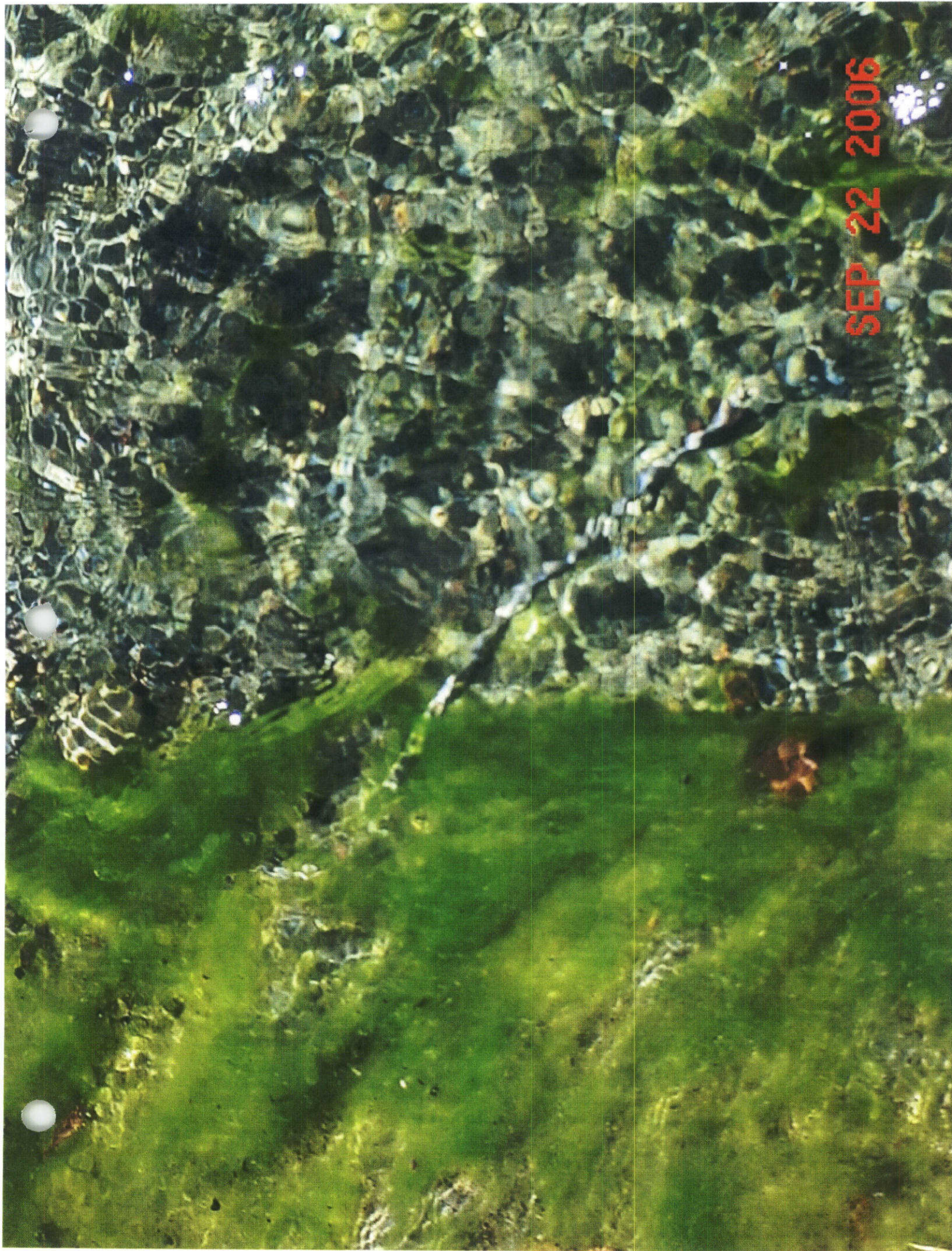


SEP 22 2006

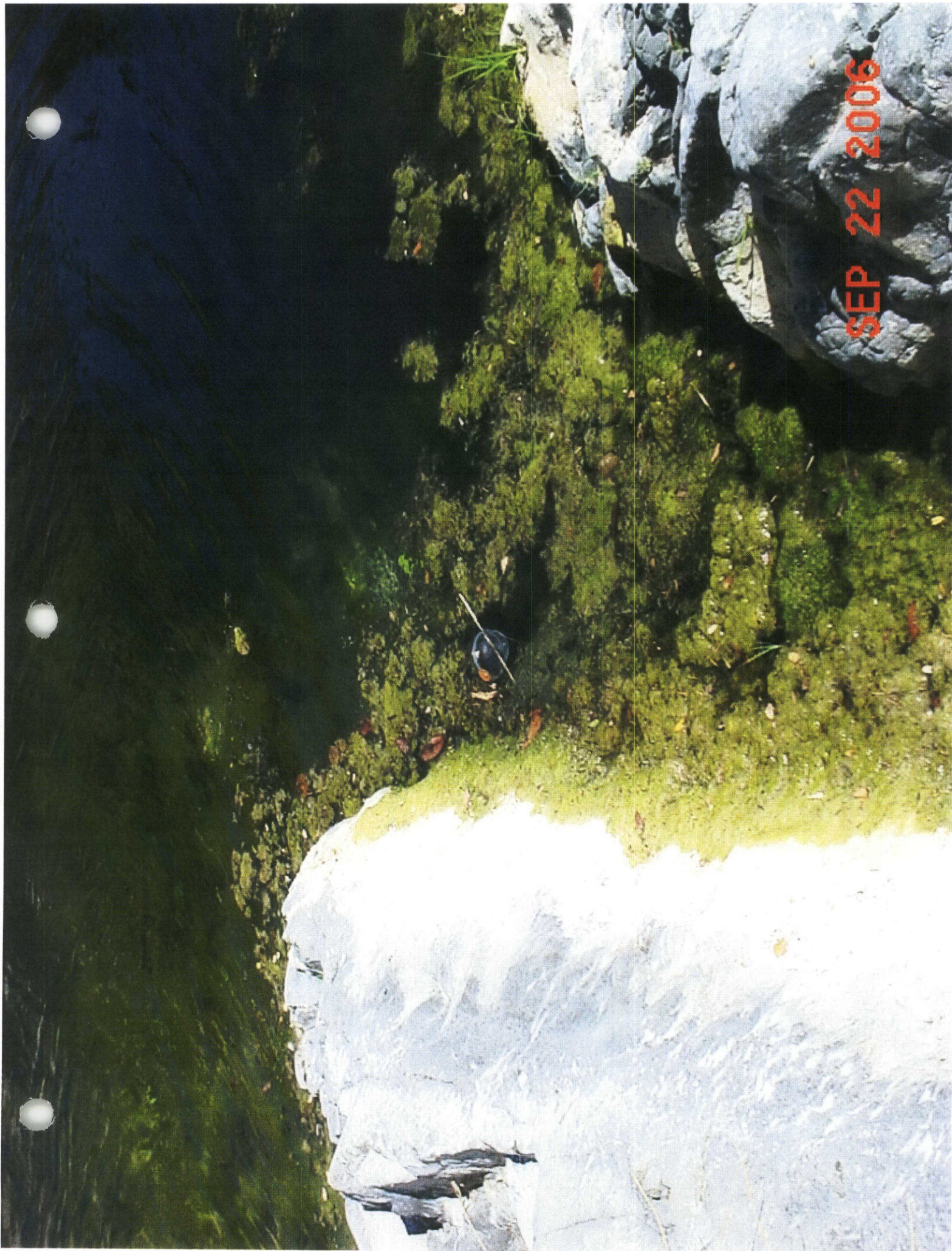
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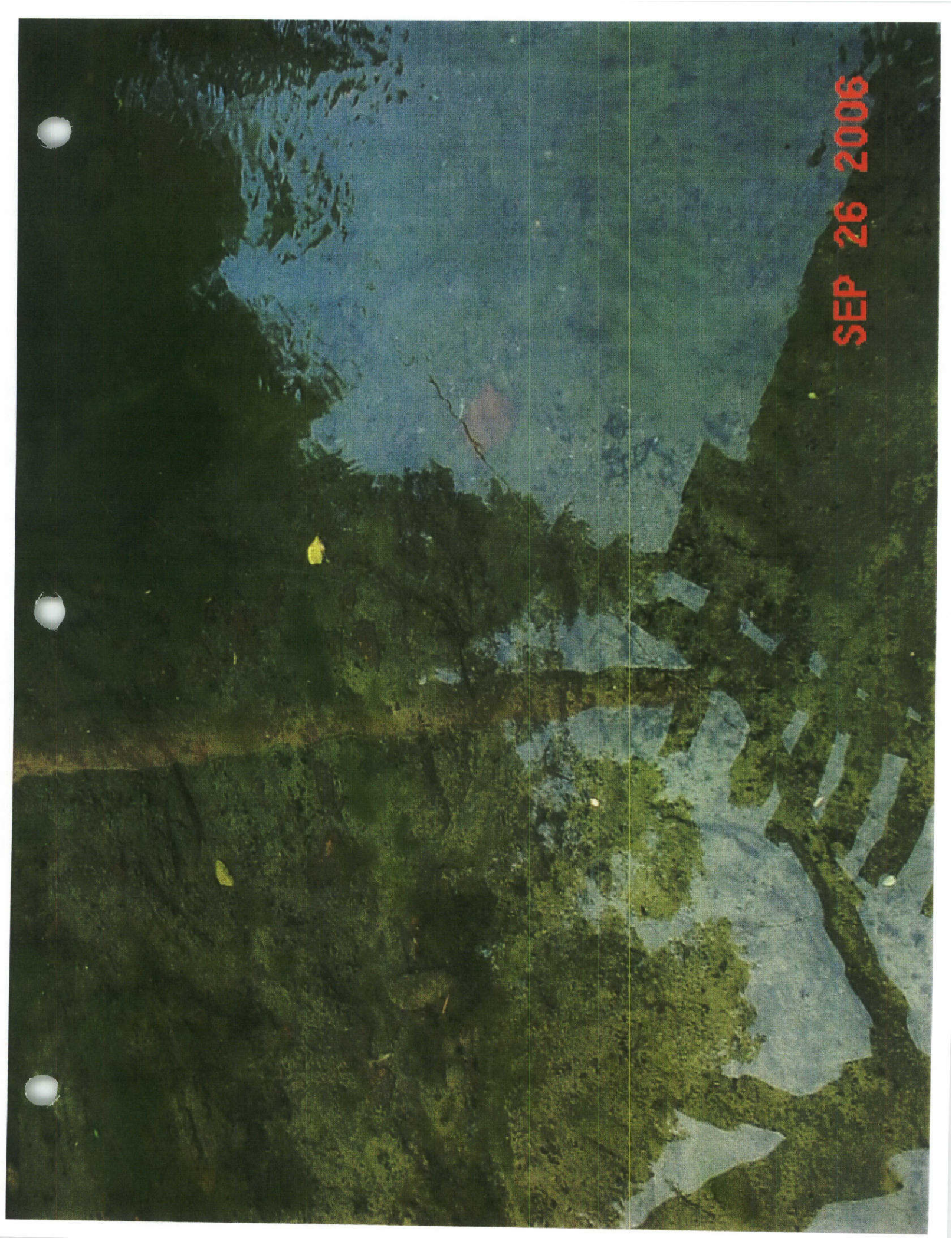


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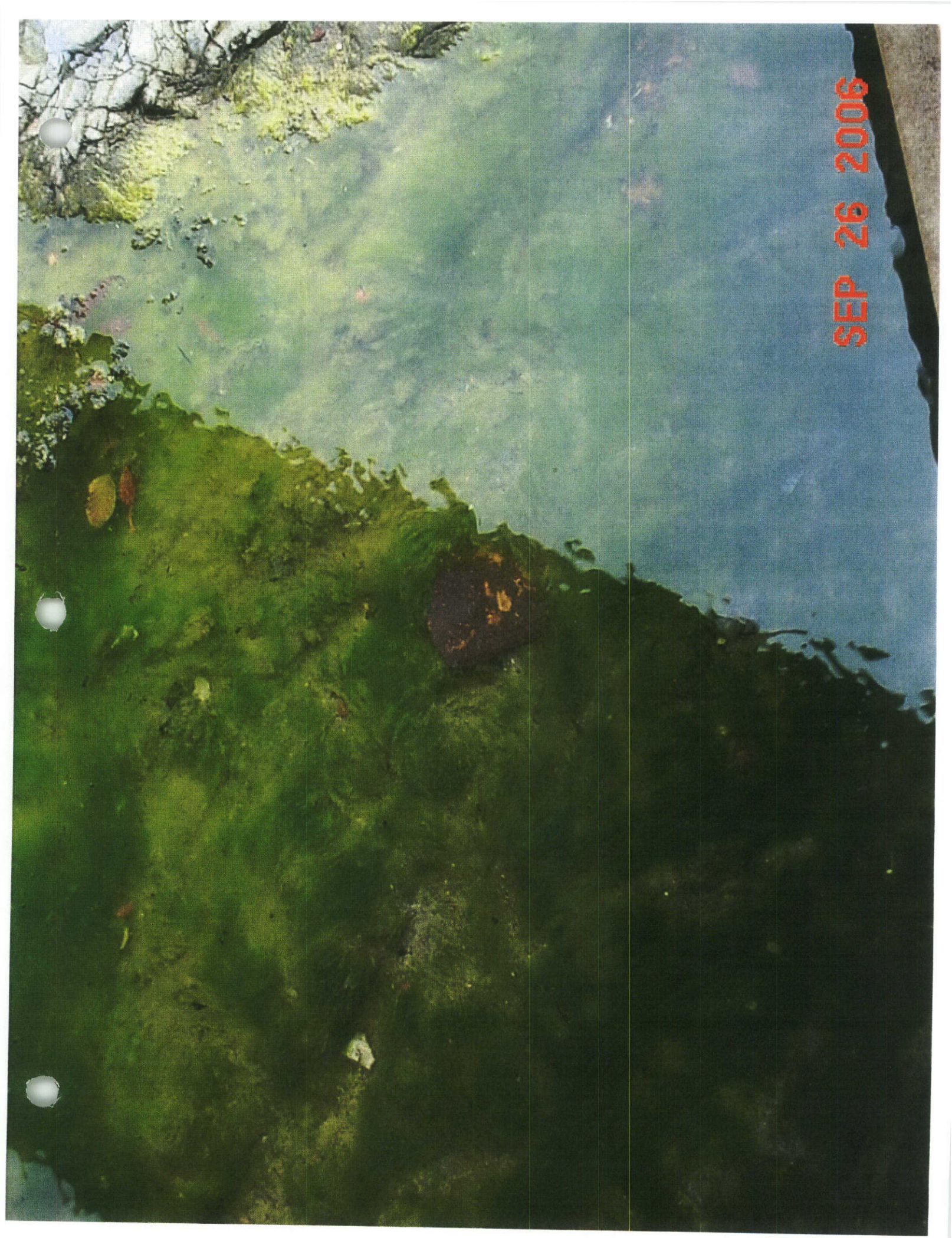
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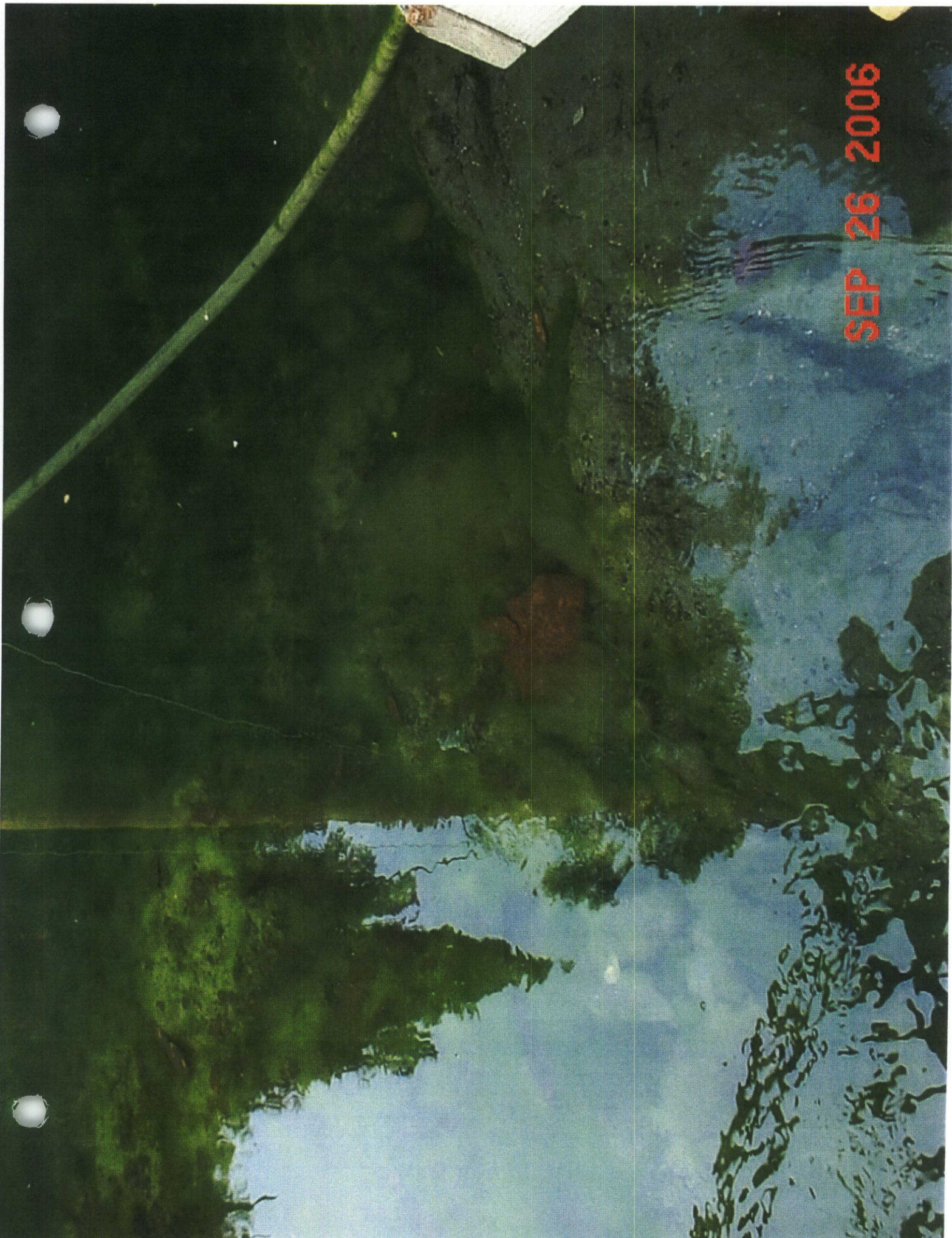
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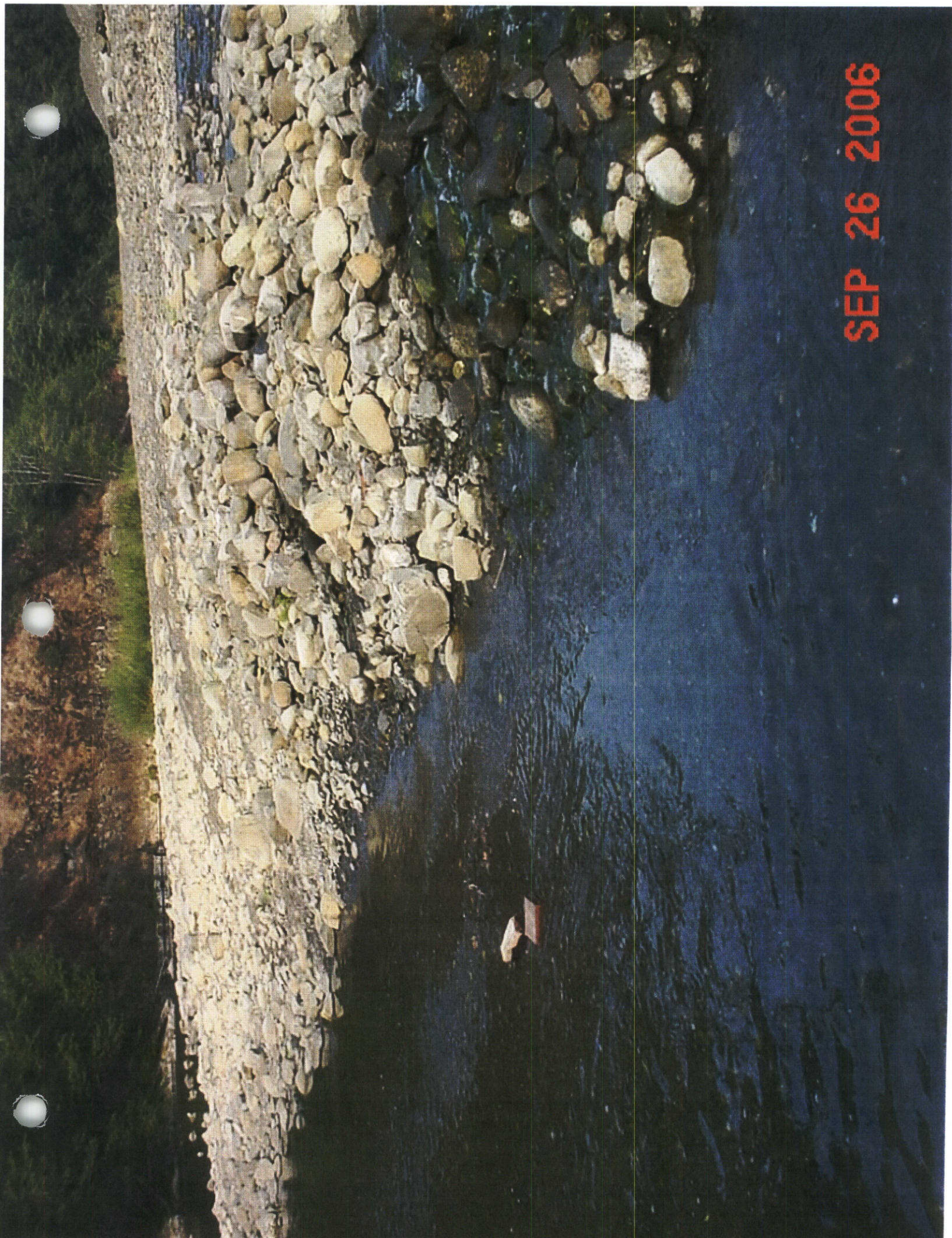
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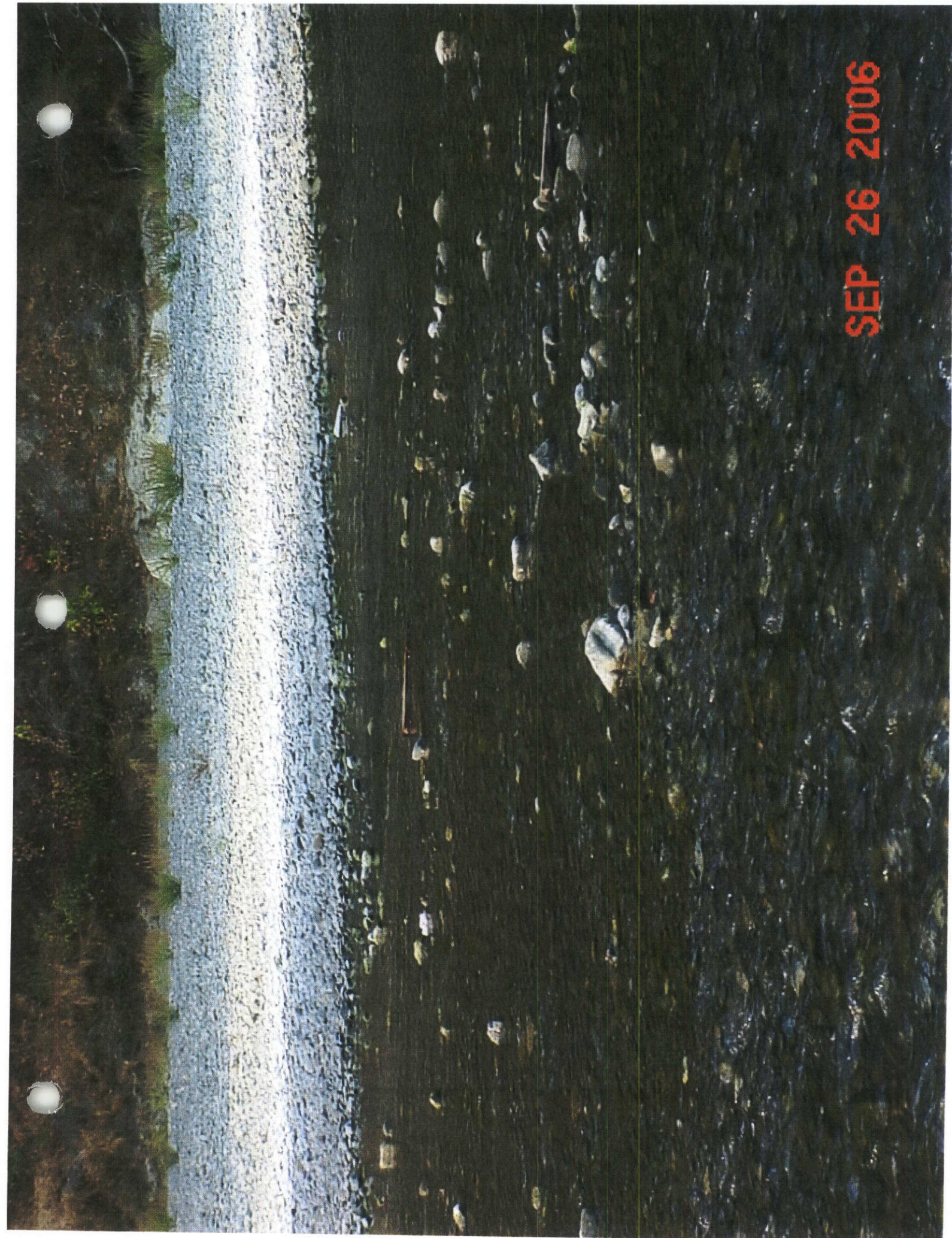
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SEP 26 2006



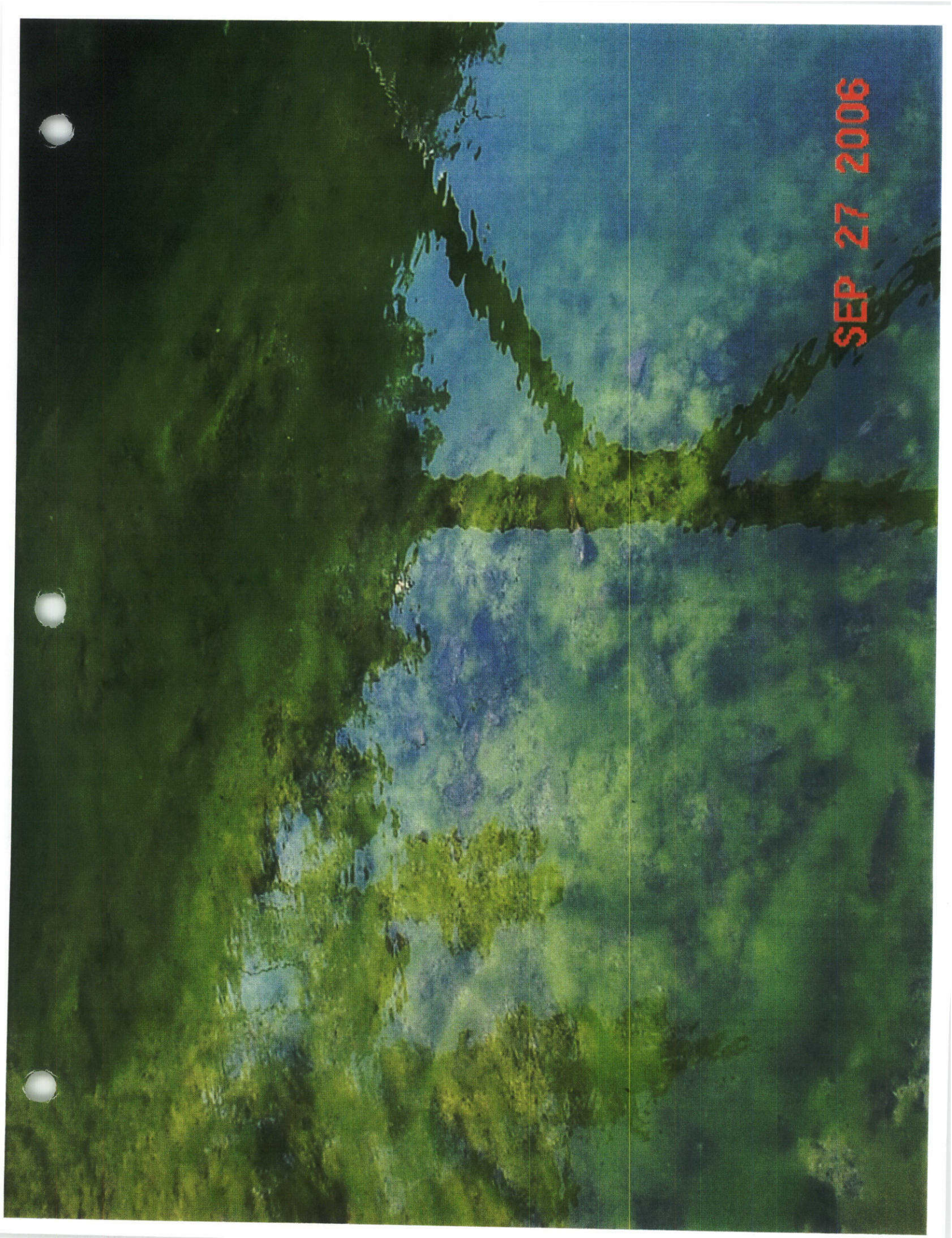
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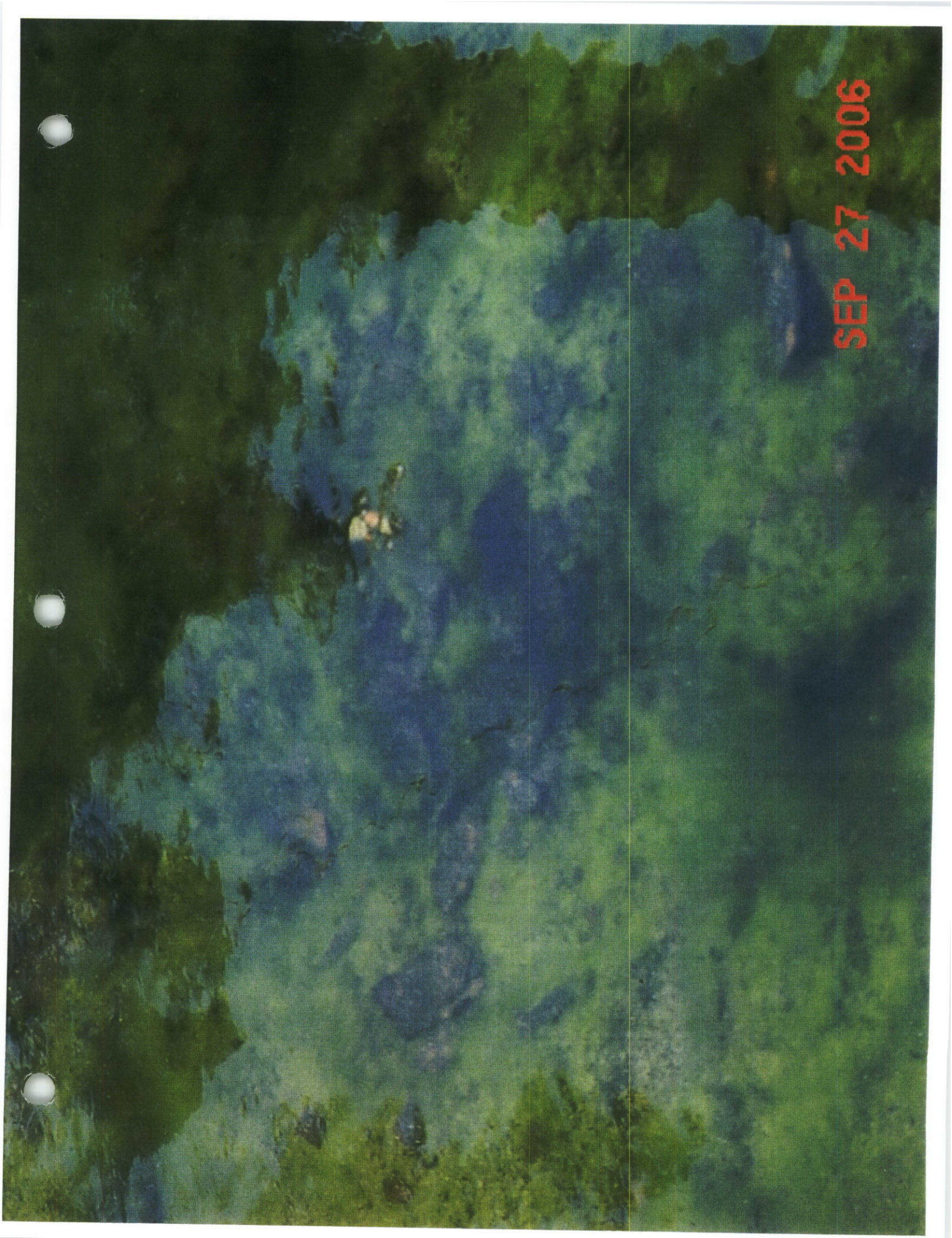
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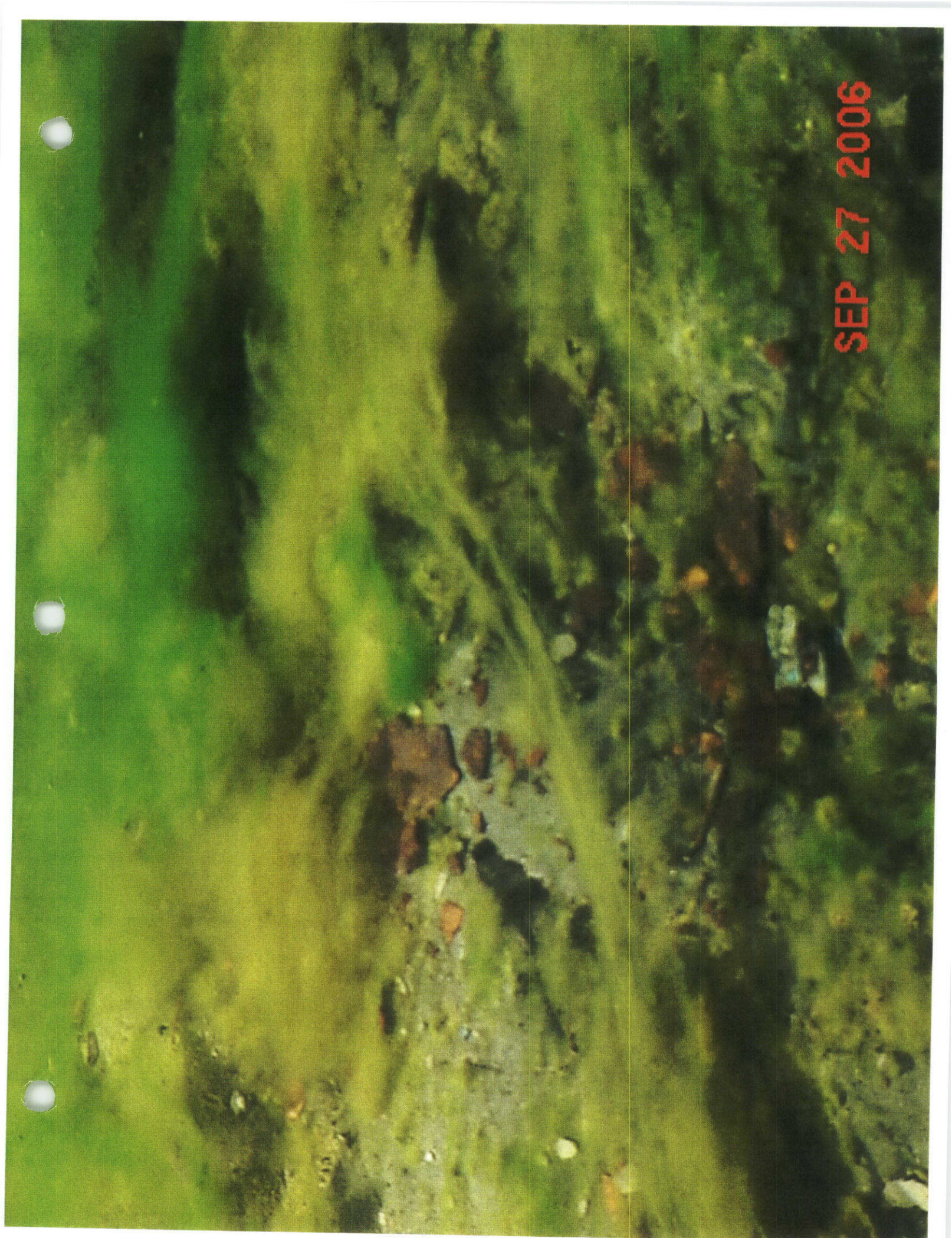
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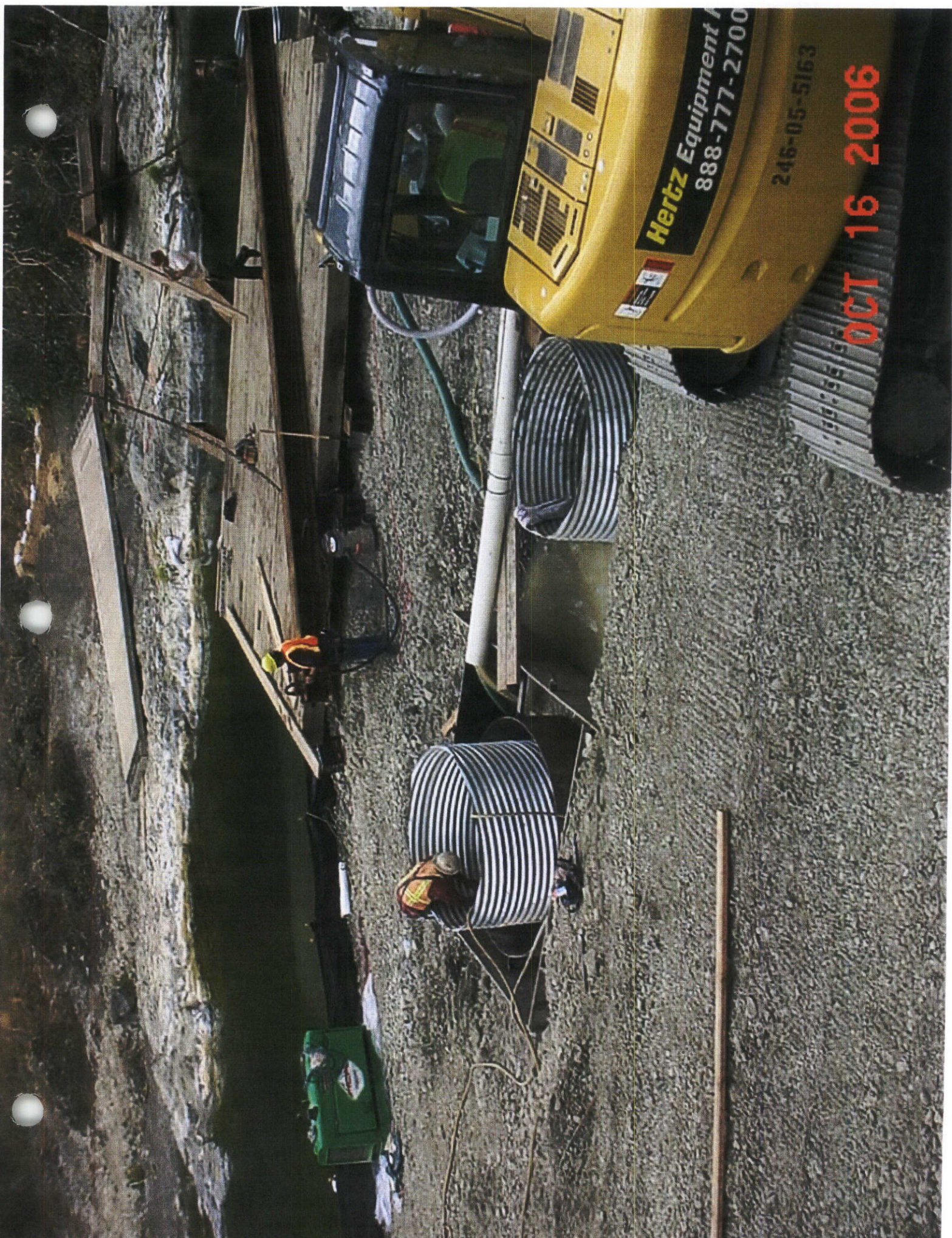


OCT 16 2008



OCT 16 2006

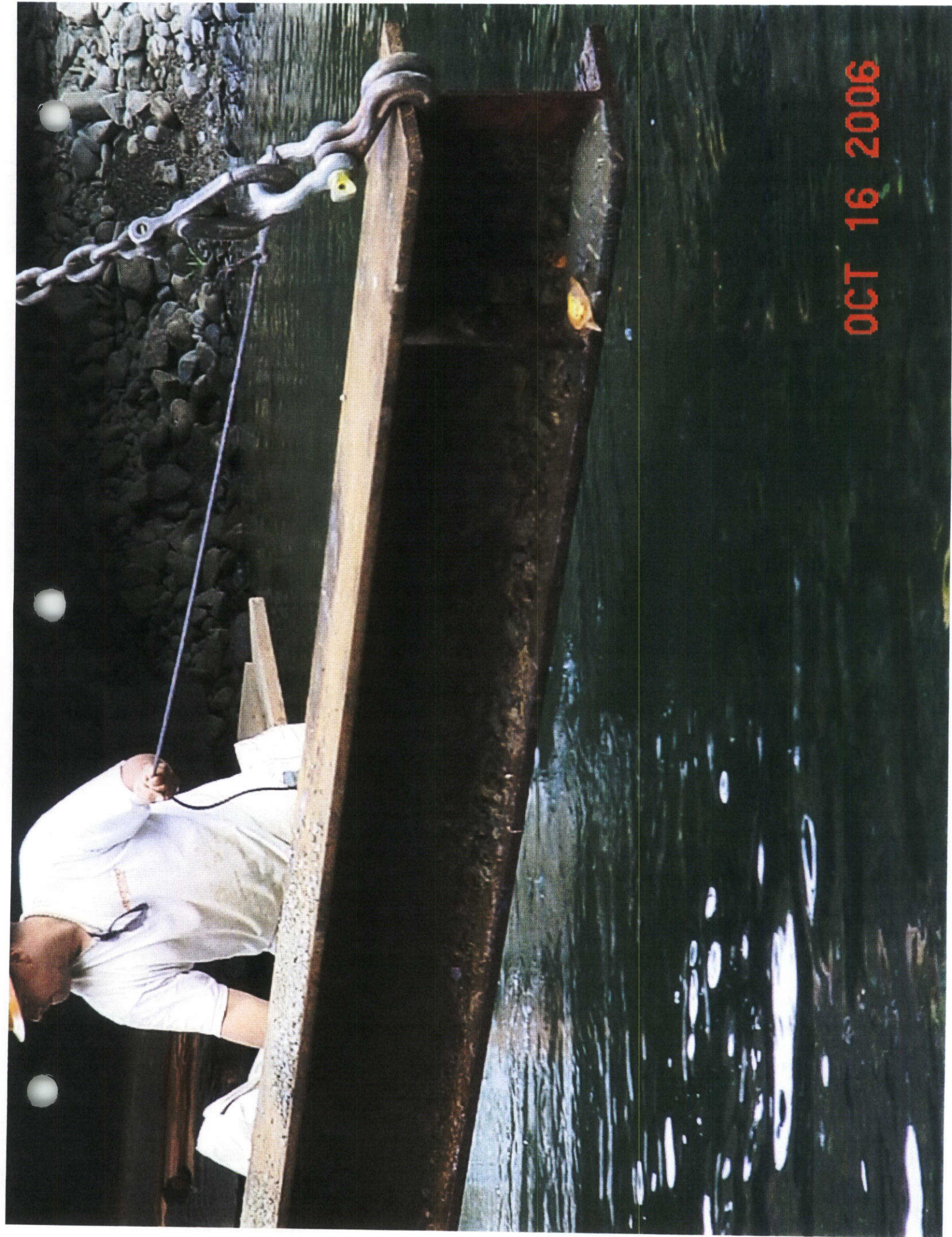




Hertz Equipment
888-777-2700

246-05-5163

OCT 16 2006



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OCT 16 2006



OCT 16 2006



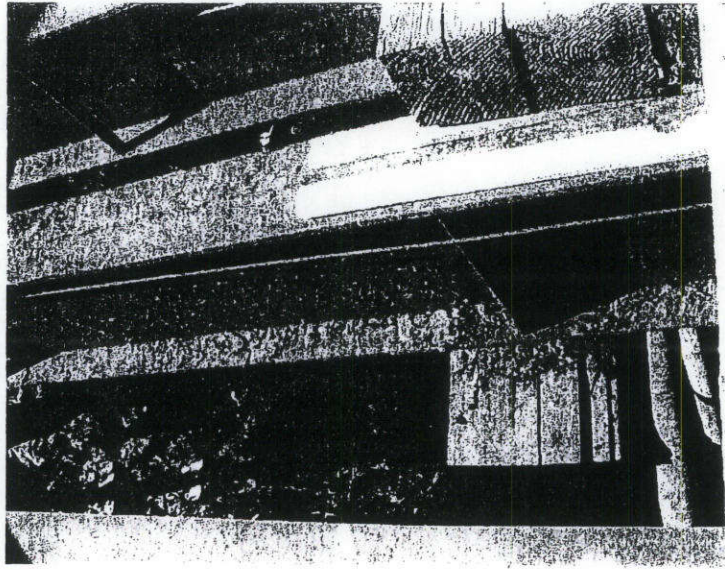


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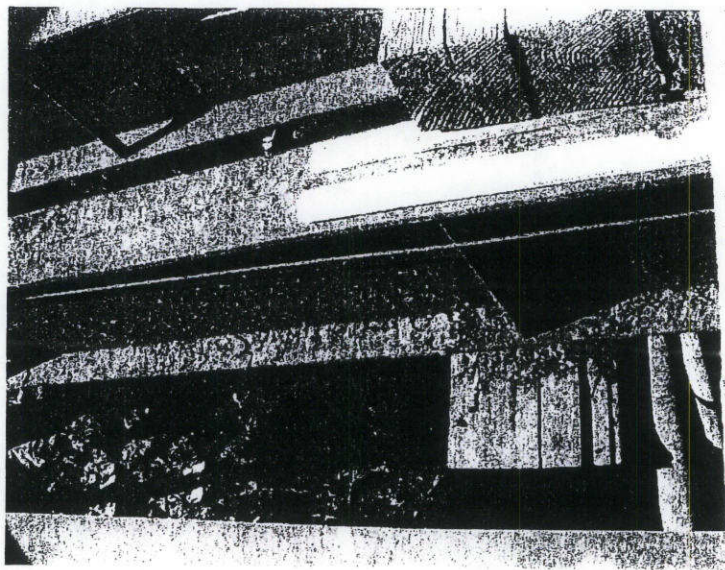


(Figure 2).

Large flakes of rusty metal from I-beams and slag from continuous welding on the gravel bar, are the other introduced products onto the gravel bar and river. — 92

Wednesday October 25. Water quality sampling in Red Mountain Creek and the South Fork Eel, both morning and evening continues to provide data for the year end report. A punch list was developed to return the gravel bar to it's natural state by the end of the month. They included removing various debris from Split-set and welding rods around railing and wood scraps, saw dust, plastic and food wrappings. Molten slag on rocks and in the sand on both sides of river needed removal as well. Large rust flakes on both banks and in the river have accumulated and require removal. Ineffective hay bail BMP's on the other side of river, below the high water mark, need removal also. Clearing produced tree limbs and brush on the southerly river bank and in the water. They have been asked to be taken out by the end of the month. — 93

Debris including rocks, rust flakes, metal scraps, and lunch materials on the decking needs constant attention. Efforts to seal cracks and spaces between trestle deck mats with caulking proved inadequate (Figure 3). Large flakes of rust from old I-beams can easily fall directly into the river unless cleaned up (Figure 4).



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AUG 17 2006



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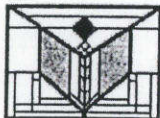
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Terry
Davis/D01/Caltrans/CAGov
08/28/2006 07:44 AM

To Walt Dragaloski/D01/Caltrans/CAGov@DOT
cc
bcc
Subject Re: SWPPP issues at Confusion Hill

Good report!

Walt Dragaloski/D01/Caltrans/CAGov



Walt
Dragaloski/D01/Caltrans/CAGov
08/25/2006 01:07 PM

To Ron Den Heyer/D01/Caltrans/CAGov@DOT, Gene
Leo/D01/Caltrans/CAGov@DOT
cc Terry Davis/D01/Caltrans/CAGov@DOT, Alex
Arevalo/D01/Caltrans/CAGov@DOT, Melinda L
Molnar/D01/Caltrans/CAGov@DOT
Subject SWPPP issues at Confusion Hill

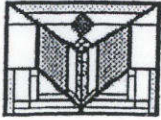
Ron,

On Tuesday, August 22, 2006, I performed a site inspection for SWPPP compliance. The following deficiencies were observed:

1. Equipment is being fueled on the riverbar at the north bridge. Our permit with the Regional Water Quality Control Board explicitly states that fueling must only occur outside of waters of the United States. At the PDT James Hamm acknowledged that they were fueling a compressor, generator, man-lift and backhoe.
2. A discharge of oil occurred from the backhoe directly onto the riverbar. Equipment that has even minor leaks must not be allowed to operate in sensitive areas such as the riverbar. This discharge should have been reported to the RE and cleaned up immediately. There were no BMP's in place to prevent the discharged oil from reaching the riverbar.
3. Careless discarding of welding rods is occurring onto the riverbar.
4. A temporary sedimentation basin has been constructed and used within 100 feet of the live stream channel. Page 144 of the Special Provisions states, "temporary sedimentation basins for dewatering...shall be located a minimum of 32 meters away from the live stream channel."
5. Fueling is occurring in the TCE near the RE's office without use of ANY BMP's. Ladd personnel were fueling the tracked hoe and claimed they had no training or knowledge of required fueling practices and have been fueling their equipment for weeks in such a manner.
6. There is no stabilized construction entrance at the south bridge approach where dirt is tracking onto the highway due to trucks entering and leaving the work site. The stabilized entrance should be constructed prior to dirt hauling activities in the area.
7. Linear sediment barriers should be constructed along highway 271 where disturbed soil areas exist.

In addition to the above described deficiencies, please consider the following requests and recommendations:

1. The Water Pollution Control Manager (WPCM) should amend the SWPPP by submitting the information described on Page 144 of the Special Provisions to graphically depict the dewatering process that the contractor is using to construct the temporary trestle at the north bridge. The graphic needs to show a sectional and plan view that details the removal techniques for pumping



Walt Dragaloski
11/07/2006 10:15 AM

To: Ron Den Heyer/D01/Caltrans/CAGov@DOT
cc: Gene Leo/D01/Caltrans/CAGov@DOT, Terry
Davis/D01/Caltrans/CAGov@DOT, Karen
Spliethof/D03/Caltrans/CAGov@DOT
Subject: Confusion Hill site visit 11/3/06 to review stormwater BMP's

Ron,

On Friday, November 3, 2006, I visited the Confusion Hill Bypass project site during a rain event to review construction stormwater BMP's. Please consider the following observations and recommendations:

1. A sediment plume was observed emanating from a culvert outlet located just upstream from the Bearpen Disposal area. This sediment plume was traced back to run-on, coming from the Hwy 101 undercrossing just north of the staging area on Hwy 271. I spoke with Justin Porteous about diverting the run-on across Hwy 271 and into an overside drain near the gate at the north end of the staging area. Justin responded that he would rather sample run-on and run-off instead of diverting the run-on. This will be costly over the duration of the project compared to placing an AC berm (bump) just north of the fencing. I called the Regional Water Quality Control Board to inform them of an observed sediment plume in the river that was coming from run-on and not project work. I recommend that an AC berm be placed diagonally across Hwy 271, north of the access gate.
2. The silt fence and haybale checkdam located below Ordinary High Water at the bottom of the Bearpen river access road are still in place. The BMP's need to be removed before the area is inundated by high flows.
3. The Bearpen access road is currently superelevated along the top portion and concentrates run-off along the inboard edge. The road then reverses the superelevation and causes concentrated run-off at the low point. Evidence of erosion can be seen on the upper part of the slope at the discharge location, despite receiving only a small amount of rainfall. No discharge of sediment was observed outside the disposal area limits nor evidence of erosion below the silt fence. The access road should be outsloped to allow sheet flow along the entire road and prevent concentrated run-off.
4. The silt fence along the top of slope, on the river side of the Bearpen river access gate, allows run-off to flow around the lower end. The silt fence should be extended towards the gate to filter all run-off.
5. Run-off from the staging area adjacent to Hwy 271 above Bearpen disposal area is being diverted by the crushed rock that was placed from the highway to the disposal area. The run-off is running down the disposal area road and discharging at the low point in the access road. The crushed rock approach should contain a swale to channel water across it or a berm should be placed at the top of the access road to the disposal area.
6. Currently there are 3 access points to the fueling/maintenance area at the north end of Hwy 271. Pea gravel has been placed at two of the access points to stabilize the entrances/exits. The pea gravel layer is very thin and susceptible to displacement by wheel loads and will be insufficient during higher intensity rainfall events. I recommend that one of the access points be closed off and a layer of crushed rock be placed at the remaining 2 access points to create stabilized construction entrances/exits.
7. Stormwater currently flows along the dike on the river side of Hwy 271 south of the Bearpen disposal area. The velocity of the water is unchecked and has the potential to transport sediment and gravel. Placement of checkdams along the dike would help to reduce the stormwater velocity and capture entrained sediment and gravel.
8. The concrete secondary containment structure for the fuel tank on the east side of Hwy 271 has no walls to prevent stormwater capture. The drip containment barrel for the fuel nozzle is currently located against the outside edge of the structure and is receiving rainfall directly into the barrel. In order to reduce the amount of water that the barrel captures for off-site treatment, I recommend that the barrel be moved away from the outside edge of the structure.
9. The gravel bag and haybale checkdams placed in the ditchline to the drain inlet located just north of the contractor's office trailers has been completely knocked over by the stormwater flows. Additionally, stormwater is also bypassing the drain inlet. The entrance to the ditchline should have a gravel bag berm to prevent bypass.
10. The temporary trestle is still without protection under the deck, or alternatively, no plywood has been



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placed on top of the deck. This deficiency has been identified earlier by myself and the Storm Water Task Force. I recommend that we get something installed before the next Task Force inspection. The contractor has attempted to place expanding foam into some of the cracks but not all cracks are filled and those that are filled still show daylight through portions appear to have lost adherence during deck loading. During deconstruction of the trestle, care will have to be taken to prevent a discharge of loose, hardened foam into the river.

11. The crane being used on the trestle has leaking fluids. This has been noted many times earlier. The contractor has attached a piece of plastic under the crane, but the plastic catches both oil leaks and stormwater. There is evidence on the trestle deck that oil that has leaked off of the plastic. I observed commingled oil with water on the plastic during my site visit. I recommend that the crane be repaired immediately or discontinue its use.
12. The access roads on the peninsula have not been stabilized with rock as required by the special provisions. I estimate that there are over 3 acres of unstabilized roadway on the peninsula.
13. There are NO BMP's on the large amount of DSA above the south abutment for the north bridge. I did not make any rough measurements, however, I believe that there are over 5 acres of DSA currently exposed above the south abutment. There is plenty of room for desilting basins and temporary erosion control should be applied to all areas that are inactive, or expected to be inactive due to rainy weather. The roadside berms that were constructed will confine stormwater to the steep road, increasing the velocity and volumes and potentially posing a serious threat of discharge at the lower end. I recommend that the berms be broken to allow run-off, waterbars be placed longitudinally, and concentrated flow directed to desilting basins. Additionally, during construction of the roadside berms, loose soil has been pushed down the slope at many locations. There are no BMP's in place to prevent this soil from mobilizing when contacted by stormwater. Silt fences should be placed at the lower edge of the clearing limits and temporary erosion control should be applied to the loose soil.
14. The current amount of DSA is estimated to be greater than the 5 acres allowed by the special provisions.
15. Two culverts have been placed on the lower peninsula access road. These culverts will concentrate run-off. The culverts do not extend to the bottom of the slope and do not appear to be well attached to the slope. There is no energy dissipation device at the bottom of the culverts, although silt fence has been placed on the flat section near the toe of the slope. I recommend that the culverts be extended to the toe of the slope, be well secured to the slope, and an energy dissipater be placed at the outlet.
16. The fiber rolls placed on the north end of the peninsula access road to the north bridge Abutment 1 are not entrenched or staked.
17. The inboard ditch adjacent to the steep section of paved road to the south bridge is susceptible to high flow velocity. During earlier visits, I discussed with Justin Porteous, the need to protect the v-ditch along the steep portion by lining it with rock. No rock lining has been placed.
18. Due to paving of the south access road, run-off velocity will be increased along the entire length of the outsloped road. There are no BMP's currently installed along the outer edge of the road. I recommend that silt fence be installed along the entire length of the outside edge in all locations where the road is out-sloped.
19. During construction of the work platform for the south bridge Pier 2, loose soil was pushed over the edge of the bank. The soil cascaded all the way to the toe of the slope, which is below the Ordinary High Water elevation. The loose soil along the entire chute should be stabilized or removed. The loose soil below OHW should be removed.
20. The construction entrances/exits were not constructed according to the special provisions. There is no evidence of large amounts of soil tracking onto the highway, however during higher intensity rainfall events and increased construction traffic, tracking may become an issue. I recommend that the stabilized construction entrances/exits be built according to the special provisions.
21. The detention basin adjacent to the concrete batch plant does not have any means of conveying water should it overflow. An old culvert used to be connected to the basin, however during improvement of the road, an excavator could not find the inlet. If the basin overfilled, a portion of the north bridge access road would be at risk of being washed into Red Mountain Creek. I recommend that an overflow drain be installed and joined into the existing culvert on the outer slope below the basin.
22. The falsework trestle footings and bents have been erected. The Notice of Violation sent by the RWQCB identifies direct discharge of welding slag to the river. Currently there is no written plan to prevent the discharge of welding slag. I recommend that the SWPPP be amended to provide a plan to

From: Walt Dragaloski <walt_dragaloski@dot.ca.gov>
To: "Mona Dougherty" <MDougherty@waterboards.ca.gov>
Date: 5/23/2007 5:18:42 PM
Subject: Re: 5/4 Confusion Hill discharge

Mona, Dean,

Please consider this email as notification of report of a discharge that occurred today at the Confusion Hill Bypass Project, WDID #1B05153WNME. The contractor used sand to sandblast rebar which was extruding from concrete on the North Bridge at Pier 3 without use of appropriate BMP's, without Caltrans oversight, and in disregard of the direction provided by the Resident Engineer prior to the activity. It is estimated that 6 bags of sand were used to clean the rebar and the waste was not contained and was allowed to fall directly to the gravel bar of the South Fork Eel River, below the Pier 3 falsework. Although I haven't seen photos yet, I was informed that the sand is well dispersed over the area below the work and that it may not be feasible to remove the sand without also removing naturally placed riverbar fines. The RE is meeting with the contractor this afternoon to discuss both the circumstances surrounding the event in addition to the consequences that may occur. I will provide additional information tomorrow regarding Caltrans reaction to the violation.

I'll be in touch with you tomorrow afternoon.
Thanks,

Walt Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5801 South Broadway, Eureka, CA 95503
(707) 445-8897 office
(707) 496-8356 cell

"Mona Dougherty" <MDougherty@waterboards.ca.gov>
05/23/2007 01:25 PM

To
<walt_dragaloski@dot.ca.gov>, "Dean Prat" <DPrat@waterboards.ca.gov>
cc

Subject
Re: 5/4 Confusion Hill discharge

Hi Walt,

I didn't receive anything besides the last email from you that the final report was on the way. And Dean emailed me that you had called him to report the spill. I don't believe Dean received anything else in the way of an incident report with the final details. If I could received that as soon as possible, that would be great. Thanks.

>>> Walt Dragaloski <walt_dragaloski@dot.ca.gov> 5/23/2007 9:34 AM >>>

Mona,

Sorry for the oversight. I was informed that the RE (Ron Den Heyer) notified the RWQCB regarding the discharge. Therefore, I did not follow through with an email notification.

Dean,

Did Ron den Heyer ever officially report the discharge?

Walt Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5601 South Broadway, Eureka, CA 95503
(707) 445-8697 office
(707) 496-6356 cell

"Mona Dougherty" <MDougherty@waterboards.ca.gov>
05/22/2007 01:12 PM

To

<walt_dragaloski@dot.ca.gov>
cc

Subject

Re: 5/4 Confusion Hill discharge

Hi Walt,

Can I get the official report? Thanks.

Mona Dougherty
Water Resource Control Engineer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403
707-570-3761
mdougherty@waterboards.ca.gov
Fax: 707-523-0135

>>> Walt Dragaloski <walt_dragaloski@dot.ca.gov> 5/8/2007 7:53 AM >>>

Yes. I was out at the site all day yesterday with Karen Mauer, Craig Martz, and other Caltrans staff. I will send the official report of

discharge to you by email later today.

Walt Dragaloski, P.E.
District 1 Construction Stormwater Coordinator
5601 South Broadway, Eureka, CA 95503
(707) 445-8697 office
(707) 496-6356 cell

"Mona Dougherty" <MDougherty@waterboards.ca.gov>
05/07/2007 03:32 PM

To
<walt_dragaloski@dot.ca.gov>
cc

Subject
5/4 Confusion Hill discharge

Hi Walt,

Dean told me about the discharge Friday. Will the follow-up email include an estimate of the volume of discharge based on the pipe size if no other information is available? Thanks.

CC: "Dean Prat" <DPrat@waterboards.ca.gov>, Terry Davis <terry_davis@dot.ca.gov>, Sebastian Cohen <sebastian_cohen@dot.ca.gov>, Gene Leo <gene_leo@dot.ca.gov>, Melinda L Molnar <melinda_l_molnar@dot.ca.gov>

Construction Dewatering (A-A)			
Date	Violation Established	Not Established	MCM Appendix
8/21/06	9	12, 17	1
8/29/06	9	12, 17	2
8/30/06	9	12, 17	3
8/31/06	9	12, 17	4
8/31/06	--	9, 12, 17	5
9/5/06	--	9, 12, 17	6
9/7/06	--	9, 12, 17	7
9/11/06	--	9, 12, 17	8
10/3/06	--	9, 12, 17	9
10/6/06	9	12, 17	10
10/7/06	--	9, 12, 17	11
11/13/06	9	7	12
11/14/06	--	7, 9	13
3/7/07	7,9	--	14
Leaky Equipment (A-B)			
Date	Violation Established	Not Established	MCM Appendix
8/22/06	9, 13	--	15
8/29/06	--	9, 13	16
9/9/06	--	9, 13	17
9/26/06	--	9, 13	18
9/27/06	--	9, 13	19
10/5/06	--	9, 13	20
10/6/06	--	9, 13	21
10/11/06	--	9, 13	22
10/12/06	--	9, 13	23
10/27/06	--	9, 13	24
10/28/06	--	9, 13	25
10/30/06	--	9, 13	26
10/31/06	--	9, 13	27
11/3/06)	--	9, 13	28
Slag Discharge (A-C)			
Date	Violation Established	Not Established	MCM Appendix
9/15/06	9		29
9/21/06	9		30
10/6/06	9		31
10/6/06	9		32
10/17/06	9		33

10/18/06		9	34
10/20/06		9	35
10/24/06	9		36
10/25/06	9		37
10/26/06	9		38
10/26/06	9		39
10/28/06	9		40
10/30/06	9		41
10/31/06		9	42
11/1/06	9		43

Turbid Discharges (A-D)

Date	Violation Established	Not Established	MCM Appendix
8/29/06	--	9	44
8/30/06	--	7, 9	45
9/1/06	--	9	46
9/7/06	--	7, 9	47
9/7/06	--	9	48
9/9/06	--	9	49
9/22/06	--	9	50
9/29/06	--	9	51
9/29/06	--	9	52
10/7/06	--	9, 17	53
10/7/06	--	9, 17	54
10/7/06	--	9, 17	55
10/16/06	--	9	56
10/20/06	--	9	57
1/5/07	9	--	58

Insufficient Turbidity Measurements (A-E)

Date	Violation Established	Not Established	MCM Appendix
8/29/06	--	19	59
8/30/06	--	19	60
9/1/06	--	19	61
9/1/06	--	19	62
9/6/06	--	19	63
9/7/06	--	19	64
9/7/06	--	19	65
9/9/06	--	19	66
9/22/06	--	19	67
9/28/06	--	19	68
9/29/06	--	19	69
9/29/06	--	19	70

10/2/06	--	19	71
10/7/06	--	19	72
10/7/06	--	19	73
10/7/06	--	19	74
10/14/06	--	19	75
10/16/06	--	19	76
10/16/06	--	19	77
10/18/06	--	19	78
10/20/06	--	19	79
Improper Disposal of Cement Waste (A-F)			
Date	Violation Established	Not Established	MCM Appendix
8/29/06	9	17	80
8/29/06	--	9, 10, 17	81
8/30/06	--	9, 17	82
9/8/06	9	17	83
9/13/06	9	17	84
9/29/06	9	17	85
9/29/06	--	9, 10, 17	86
Rubbish, Debris, Trash and Sediment Discharge (A-G)			
Date	Violation Established	Not Established	MCM Appendix
9/18/06	--	9	87
9/22/06	--	9	88
9/26/06	--	9	89
9/27/06	--	9	90
10/16/06	--	9	91
10/24/06	--	9	92
10/25/06	--	9	93
10/26/06	--	9	94
10/31/06	--	9	95
Individual Events (A-H)			
Date	Violation Established	Not Established	MCM Appendix
8/17/06	--	9	96
8/22/06	13	--	97
11/3/06	--	9	98
5/23/07	9	7	99

Memorandum

*Flex your power!
Be energy efficient!*

To: Diana Henrioulle
Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Date: December 15, 2005

Attention: Dean Prat

File: 1-Men-101
PM 98.9/R100.8
01-397510

From:  LENA R. ASHLEY
Chief, North Region Environmental Services - North

Subject: Application for 401 Certification for the Route 101 Realignment at Confusion Hill in Mendocino County, located from 2.5 km south of Red Mountain Creek to 0.5 km north of Red Mountain Creek KP 159.2/R162.2 (PM 98.9/R100.8)

The proposed emergency safety project is located in Mendocino County on US 101 at Confusion Hill. This project proposes to improve the reliability of US 101 by relocating a section of the roadway between postmile (PM) 98.9 and 100.8. These postmiles begin approximately 1.9 miles south of Red Mountain Creek and proceed north past the Tree House, Redwoods River Resort, Campbell Brothers' Confusion Hill and Red Mountain Creek to connect with a 4-lane freeway at 1640 feet north of Red Mountain Creek. The proposed project would relocate the route from the east side of the South Fork of the Eel River (SFER) to the west side of the SFER, and would consist of constructing two bridges, two retaining walls and a through-cut (see Figure 1). The purpose of the project is to provide a safe and reliable realignment at Confusion Hill consistent with environmental law and federal Emergency Relief funding. Due to the emergency status of this project an expedited project delivery schedule has been required.

The bridges are designed so that the bridge piers are out of the 100-year flood event; therefore, the project would have no permanent impacts to the bed bank or channel of the SFER. The roadway on the peninsula would be at least 150 feet above the SFER. These design features minimize permanent impacts to threatened and endangered species. The construction of the bridges will require installation of temporary trestles to mobilize people and equipment necessary to construct the bridges and the through-cut on the west side of the river. It is anticipated that the proposed construction activities will take three to four consecutive construction seasons to complete.

The south bridge will be a segmental, cast-in-place, prestressed box girder structure. It will span approximately 1355 feet and will be 43 feet wide and have a height of approximately 255 feet high in the center of the SFER. The bridge foundation will be large diameter cast-in-drilled-hole (CIDH) piles. The north bridge will be a cast-in-place prestressed box girder structure with pier shaft foundations. It would be approximately 150 feet high above the center of the SFER, approximately 580 feet long, and 43 feet wide. The bridge has two inclined piers with dimensions of 17 feet x 7 feet at the ground that flare to 17 feet x 14 feet at the top of the pier.

A separate contract will de-commission the existing roadway. Caltrans will create a series of terraced sedimentation basins below the active debris flow at PM 99.70, within the road prism of the deconstructed roadway. The purpose of constructing these basins is to intercept sediment from the active rockslide before it enters the SFER. These basins will remain in perpetuity, but will not be maintained. After creation of the sedimentation basins, all disturbed areas, where feasible, will be revegetated using native vegetation. The decommissioning will take place during the dry season and construction BMPs (e.g. soil stabilization and sediment control) will be implemented to further minimize the potential for sediment transport to the SFER. Please find attached a copy of the project initiation document for roadway decommissioning.

A third project will provide fish passage modification at Red Mountain Creek. Details are provided at the end of the project description.

Permanent Drainage Features

For the purposes of this application, references to live channel are hereby defined as within the limits of the water surface elevation occurring from May 15 through October 31.

Construction of the proposed alignment will include a new drainage system and minor modifications to the existing drainage. The new drainage system will consist of rock-lined ditches, down-drains, and a horizontal drain collection system. The minor modifications to the existing drainage facilities involve reconstruction to accommodate changes in grade and/or to improve drainage at the southern and northern conform portions of the project. There are a total of 6 drainage systems within the project area. Please find attached a set of six layouts depicting an overview of the proposed drainage systems (D-1 through D-6). The five layouts labeled DP-1-5 are profiles of the six systems. Drainage details are included and labeled as DD 1-4.

Bridge decks will be drained with deck drains that outlet above the 100-year flood event contour. This will provide adequate over land flow to filter the runoff before it reaches the SFER. The location of the deck drains and the drop from the deck drains to the

ground is listed in Table 1 attached to the drainage plans. On the South Bridge the deck drains outlet at a high enough elevation above the ground that they would not require rock energy dissipator pads. A rock energy dissipator pad will be constructed below the deck drain on the north bridge. Please see drainage detail 2 (DD-2) for details.

Drainage system 1: At the southern conform, the existing culvert at PM 99.25 will be raised and replaced with a larger culvert at a shallower slope and new drainage inlet to improve performance. The new drainage inlet (DI) will have the culvert set 2 feet (0.6m) above the bottom of the DI to facilitate sediment collection and removal. Additional rock slope protection will be added to the outlet to minimize scour and erosion. Asphalt concrete dikes will direct storm water runoff that is not intercepted by the culvert at PM 99.25 to rock energy dissipators just south of the South Bridge.

Drainage system 2: Drainage system 2 is a downdrain that drains the brow ditch above the through-cut on the peninsula. A profile is provided on plan DP-2.

Drainage system 3: Drainage system 3 is a buried pipe that carries the road runoff and the water from drainage system 2 to the rock lined ditch and towards the north bridge. The pipe will avoid infiltration and is needed to avoid headwater on the retaining wall at this location.

Drainage system 4: Similar to drainage system 2, drainage system number 4 is a downdrain that drains the brow ditch above the through-cut on the peninsula.

Drainage system 5: The northern conform has two culverts that will be modified to improve flow, reduce sedimentation and minimize erosion. The first culvert is located at PM R100.13 and has a sedimentation basin at its inlet that is currently silted in. The sedimentation basin will be cleaned out and maintained in the future. The culvert raised (to further increase sedimentation volume) and the deteriorating downdrain will be replaced. This culvert currently discharges onto the concrete apron at the outlet of Red Mountain Creek so no additional slope protection is necessary.

Drainage system 6: The second culvert being modified at the northern conform is located at PM R100.20 and will also be raised. In addition, its drainage inlets and downdrain will be replaced. Rock energy dissipators will also be placed at its outlet to reduce the potential for erosion. This culvert currently collects storm water from concrete ditches that run on both sides of the roadway. These existing ditches will be replaced with new asphalt concrete ditches that will improve drainage for the new alignment of the roadway.

The alignment will cross the hillside west of the SFER via a large through-cut; the amount of material to be excavated and removed is approximately 400,000 cubic yards. Excess material from the through-cut excavation will be disposed of at five disposal sites within the action area. These areas are depicted in the revegetation plan layout enclosed. The disposal sites within State right of way will be planted with native shrubs upon completion of the project.

Runoff from the new roadway will be collected in rock-lined ditches that will convey storm water into existing vegetated drainage swales. The end of the rock-lined ditch is approximately 30 feet above the 100-year flood event elevation. Cut slopes in the through-cut are very steep varying from 1v:1.5h to 1v:0.5h. In the area of the large through-cut where slopes are 1v:1.5h, brow ditches will collect storm water from the hillside and direct the runoff to two large down-drains (drainage systems 2 and 4). These down-drains will convey storm water discharge into large rock-lined ditches that will empty to an existing drainage swale. The rock-lined ditches also collect storm water runoff in the peninsula. At the through-cut north of the northern bridge, rock-lined ditches will also intercept storm water runoff from the roadway and discharge the storm water to the rehabilitated sedimentation basin mentioned above.

As stated above, geotechnical recommendations for cut slopes are 1v:1.5h except in areas of the cut where there is solid rock. There are three areas where the roadway cuts through rock outcroppings. These will be cut at a near vertical slope ratio of 1v:0.5h. These geotechnical recommendations were made to minimize environmental impacts, minimize the size of the slopes and to minimize the project scope and cost. Embankment slopes were recommended to be constructed at a slope ratio of 1v:2h. Benching of the cut slopes was determined to be inappropriate for this project location.

Four small structure approaches are also incorporated into the design in order to direct the water away from the abutments of the bridges.

Lastly, existing vegetation will be preserved to the maximum extent possible, and permanent erosion control in the form of seeding and planting for revegetation will be applied to all disturbed soil areas. This includes preserving vegetation to the maximum extent practicable within existing drainage channels downstream of highway drainage facilities.

Proposed Permanent Treatment BMPs

Because of the size and complexity of this project, approved treatment BMPs were considered. Originally, two sedimentation basins were anticipated. After geotechnical investigations were completed, it was determined infeasible to place a sedimentation basin on the peninsula due to the steepness of the existing slopes. The sedimentation basin planned for the north end of the project consists of rehabilitating an existing sedimentation basin located at the end of Route 271. At construction completion, runoff from the proposed Route 101 at the north end of the project will be collected and treated in this rehabilitated sediment basin.

Caltrans Statewide Permit and Construction General Permit

In 1999, Caltrans was issued an NPDES statewide permit (Order No. 99-06 DWQ) that covers Caltrans' highways, highway-related properties, facilities, and activities, such as maintenance stations, roadside rest areas, weigh stations, park-and-ride lots, and construction sites. In addition, the Statewide Permit covers both wet-and-dry weather discharges from storm water conveyance systems. In general, Caltrans is required to reduce pollutants in storm water discharges to the maximum extent practicable (MEP). For discharges from a construction site, toxic pollutants must be reduced using the best available technology (BAT) that is economically feasible, and conventional pollutants must be reduced using the best conventional technology (BCT).

As indicated in the Caltrans NPDES permit, Caltrans is currently covered under the NPDES General Permit for Discharges of Storm Water Associated with Construction Activities (Construction General Permit, Order No. 99-08-DWQ) for construction activities that disturb at least 0.4 hectare (1 acre) of soil. The Construction General Permit requires Caltrans to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce construction effects on receiving water quality by implementing erosion control measures. Because construction of the proposed project would disturb more than 0.4 hectare, the project would be required to prepare an SWPPP and implement effective construction BMPs to protect the quality of the receiving waters.

Examples of typical construction BMPs contained in SWPPPs include using temporary mulching, hydroseeding, or other suitable stabilization measures to protect uncovered soils; storing materials and equipment to ensure that spills or leaks cannot enter storm drain system or surface water; developing and implementing a spill prevention and cleanup plan; installing traps, filters, or other devices at drop inlets to prevent sediment from entering storm drains; and using barriers such as straw bales or plastic covers to minimize the amount of uncontrolled runoff that can enter drains or surface water.

Temporary Features Construction and Access

Access at the south end of the project

There are a number of existing roads that would be used for access. The access route at the southerly bridge crossing would utilize an existing river access road on the east side of Route 101 that extends from the entrance to Redwoods River Resort on Route 101 to the SFER. This section of road is currently accessible to passenger vehicles and light

trucks. This road will be expanded to accommodate construction equipment. No trees greater than 11 inches diameter at breast height would be removed. See Figures 2 and 3.

Access beyond that point (to get to the peninsula) would entail crossing the SFER. There would be temporary impacts to riparian vegetation, primarily willow species; these would be pruned to the ground level to encourage re-sprouting upon completion of the bridge construction. Some grading of the gravel bars would be required for heavy equipment access and staging. Please see Figure 1. Upon completion of work each season the riverbed would be graded as close as possible to its original (end of the winter season) configuration. In order to facilitate this effort, surveys of the gravel bar contours will be implemented each year.

Crossing the SFER on the south end of the project area may require two temporary trestles. One would be a seasonal trestle, and one would be a year-round trestle that would remain in place for the duration of construction. Trestles would accommodate movement of excavation equipment as well as large crane and drill rig equipment as necessary. In order to maintain the emergency schedule, trestle construction within the live stream channel would take place within a work window of May 15 and October 31 per NMFS to protect fish resources.

Minor alteration will be required on the west side of the river in order to gain access to the grassy meadow on the peninsula. This may be accomplished by either building a ramp that would be removed each season prior to October 31, or would be a temporary structure built to withstand the 100-year flood event. The contractor will be required to remove any fill material not built to withstand a 100-year flood event prior to October 31 each construction season.

Access via the cul-de-sac on route 271 at the north end of the project

Access would be developed from the north end at approximately the same time as access from the south is developed. See Figure 4. A year round temporary falsework trestle would be installed in the footprint of the North Bridge and would act as a platform from which to support the falsework for the North Bridge. This falsework trestle must remain in place throughout the year in order for the bridge to be completed by the spring of the second season so that the new bridge can be used for the remainder of project construction. Construction of the bridge is anticipated to continue year-round, weather permitting, which would require access to the peninsula during the winter when the river may be experiencing high flows.

An additional parallel high-level year-round access trestle would likely be installed to provide heavy equipment access to the peninsula and to haul excavated material to disposal sites during North Bridge construction. The falsework and access trestles must

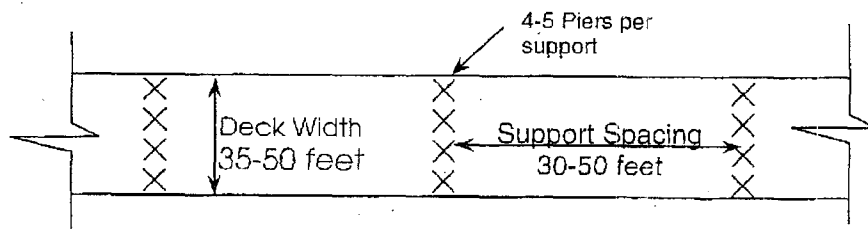
be separate to prevent vibrations from passing construction vehicles from damaging the concrete as it cures within the falsework. Trestle construction within the live channel would be accomplished within a work window of May 15 to October 31.

Trestle installation will not require the entire flow of SFER to be diverted.

Types of Trestles

Year-Round Trestles: Two options would be available for year-round trestles, in which one would have an approximate height of 3 feet above the 100-year flood water surface elevation. The second option would be a trestle designed to withstand the 100-year flood event but would be overtopped by the 50-year flood event. Trestle construction would most likely consist of wood, steel or concrete pile supports with steel beams and a timber or pre-cast concrete decking. The span lengths for an access trestle and falsework trestle are typically 30 to 50 feet, and would require four or five piles per support depending on the size of the pile and the height of the trestle. The trestles are constructed by vibrating, rotating or drilling the piles in place for the first span, spanning across the piles with a steel beam, spanning between the beams across the piles with girders, and then placing timbers across the girders for the deck surface. The trestle proceeds across the river from the previously built span. Pile installation and de-watering is discussed in further detail below. Gravel may need to be pushed into the channel to create a level rock platform for the drill rig or vibratory hammer equipment. These gravels could encroach into the channel but would not create a migration barrier. This modification would be in place for approximately one week at each trestle location. The width of the low flow channel during low flows at this location ranges from 60-100 feet, thus the number of piles in the channel at the low water crossing at the South Bridge would be four at a minimum and fifteen maximum if the pile supported alternative is used.

Sketch of Trestle Dimensions:



Seasonal Low-Water Crossing: Crossing the South Fork of the Eel River when the flow rate is low may be accomplished with a concrete bridge, railroad flat cars or an ACRO bridge with river rock abutments, or wood, steel or concrete piles and timber decking. The abutments may encroach several feet in to the channel, but would not inhibit fish passage at this location. The railroad flat car and ACRO bridge can be removed and stored on a riverine terrace above the 100-year flood event when not in use. As

mentioned above, the contractor may choose to install a seasonal trestle at the south end for additional movement of incoming and outgoing equipment.

Installation of the temporary piles

The State's contractor will be required to rotate, vibrate, drill, or use a combination of the two methods to install the piles for the temporary trestles required for mobilization of equipment and construction of the two bridges. Caltrans construction contracts typically specify an end result condition rather than specifically limiting a method of operation. However; due to concerns about noise generation during temporary pile installation and based on site conditions at Confusion Hill, our geotechnical and construction experts determined that either vibrating or drilling the piles for the temporary trestles, both on land and in the active channel, is appropriate at this location due to shallow depth to bedrock. The contractor may employ two methods; they are described below:

1. Sheet piles would be vibrated to the level of bedrock for a cofferdam. The cofferdam would be de-watered. Then they would either drill a hole for a second casing or vibrate a second casing to the bedrock. Finally, concrete would be poured into the second casing in order to form a concrete pile.
2. Casing would be vibrated or drilled to the bedrock or just below the bedrock. A tremmie tube would be used to pour the concrete pile. The tremmie tube pumps concrete into the bottom of the casing first, and then the concrete displaces the water as more concrete is poured through a small tube in the middle of it. Excess water would be pumped to a contained retention facility for treatment if the pH exceeds 9.0 pH units. All concrete would be contained within the casing. The casing could either be left in place or removed after the concrete has cured.

Pile installation may cause temporary increases in turbidity. These increases would be minor and of short duration. The concrete would be contained in the casing and the excess water would be pumped to a contained retention basin if the pH exceeds 9.0 pH units.

Construction activities within the live stream channel will be limited annually to May 15 through October 31. From May 15 through June 30, coho salmon, Chinook salmon, and steelhead smolts may be in the action area as all three species emigrate from the Eel River watershed through June. From July 1 through October 31 only juvenile steelhead are likely found in the SFER. The number of juvenile salmonids present in the SFER is likely less than would be found in streams and rivers with better rearing habitat conditions. Construction activities undertaken in the SFER from July 1 through October 31 may affect juvenile steelhead. The work window end date of October 31 will avoid

the immigration period for adult salmonids throughout the action area. NMFS anticipates no take of adult coho salmon, adult Chinook salmon, and adult steelhead.

Gravel may need to be pushed into the channel to create a rock platform for the drill rig or vibratory hammer equipment; the channel would not be de-watered, only temporarily modified. The width of the channel during May is generally 40-70 feet wide. It is anticipated that each trestle would require at least four piles and up to ten piles within the channel. It would be difficult to span the river with the falsework trestle because of the height (150 feet) that is required, and the weight that the trestle must support. The northern access trestle could span the river, but because it could be a year-round feature it would be designed to withstand a 100-year event and may require a minimum of four, a maximum of ten, piles in the low flow channel as well.

All of the piles would be removed to the level of bedrock upon completion of the project.

Another option, although unlikely, is that the access trestle at the North Bridge would be a seasonal low water crossing. The seasonal trestle would be designed to have the deck surface above the live channel and would be designed to allow recreational boaters clearance underneath. The approximate width of the trestle would also be 35-50 feet.

The road leading to the temporary access trestle from the north would extend from the cul-de-sac on Route 271 down the embankment on the west side of Route 101 along the top of existing Rock Slope Protection (RSP) along that section of river. The road leading to the temporary access trestle from the peninsula would extend from an existing road near the abutment of the North Bridge.

Construction de-watering

Encountered groundwater would be pumped to a contained retention facility (for potential reuse for dust abatement and/or moisture source for soil compaction) and/or to temporary sedimentation basins for disposal. Project specifications developed for this project will prohibit any direct discharges to the SFER and/or its tributaries for construction de-watering activities. It is proposed to utilize portions of the gravel bar for construction de-watering during the dry season. Temporary sedimentation basins would be located a minimum of 100 feet from the live stream channel.

Construction dewatering during the wet weather season could discharge to temporary sedimentation basins located above the 100-year flood water elevation, if permeability of underlying soils allows for full infiltration. If this method is determined to not be feasible given the site-specific constraints, the encountered groundwater will be pumped to a containment vessel for possible reuse on the site as described above. Project

specifications will require a minimum freeboard of 1 foot for all sedimentation basins (i.e. no over-topping of sedimentation basins). The contractor may also choose to employ other treatment technologies for construction de-watering, such as gravity filter bags and/or a system of in-line filters for sediment removal. These technologies are summarized in Caltrans Construction Site BMP Manual under BMP NS-2.

As per the National Marine Fisheries Biological Opinion, groundwater that comes in contact with wet concrete and that has a pH greater than 9.0 shall not be allowed to enter the ground or stream but shall be either: (1) pumped to a separate, lined basin, and then pumped to a truck or upland for disposal or treatment (not within the bank to bank of any waterway); or (2) pumped directly to a truck for disposal at a site that is not within the top of bank to top of bank of any waterway.

Groundwater that does not meet discharge requirements shall not be discharged on the site or to a storm drain system. The Contractor is responsible for either treating such water to meet the discharge requirements or hauling such water offsite to an appropriately licensed liquid disposal facility.

River Crossings

Installation and use of temporary trestles would avoid continuous wet crossings and their effects on water quality. Most vehicles and equipment would use out-of-stream temporary trestles; however a limited number of river ford crossings adjacent to the trestles would be required to stage equipment. One ford to the peninsula at each of the north and south temporary trestle locations would be required to stage equipment for installation of the temporary crossings. Equipment needed for the installation of the temporary trestles would include a drill rig or vibratory hammer rig, and an excavator or a dozer.

After removal of the temporary crossings heavy equipment would ford back to the east side of the river.

Concrete Batch Plant

Due to the isolated location of the project, it is anticipated that the contractor will assemble a portable concrete batch plant to provide on-demand concrete for the project. The batch plant will be located near the southern end of Route 271 and will be located about 80 feet above the stream and above the elevation of a 100-year flood event.

A pipe called a "slick line", typically a 6-inch-diameter steel pipe through which fresh concrete would be pumped, may also be constructed. A secondary containment pipe or trough would be utilized to prevent concrete spills into the river.

Water Drafting

Water may be required for use during construction. All water drafting operations would be accomplished within the guidelines set forth by the National Marine Fisheries Service Southwest Region's August 21, 2001 Water Drafting Specifications. Thus, water drafting would be less than substantial and would not qualify as streambed alteration.

Consultation with Federal Agencies

NOAA-Fisheries

Caltrans conducted formal consultation for impacts to Southern Oregon and Northern California Coast coho salmon, the California Coastal Chinook salmon, and the North Coast steelhead through the Federal Highway Administration. Daniel Logan of the Santa Rosa office is the contact person.

US FWS - Arcata

Caltrans conducted formal consultation for impacts to the Northern Spotted Owl, and informal consultation for the Marbled Murrelet and Bald Eagle. Ray Bosch is the contact person at the US FWS in Arcata.

Construction Site BMPs

The total disturbed soil area (DSA) for this project is estimated to be approximately 6.7 hectares (16.5 acres). Since this project has a DSA of greater than one acre a Storm Water Pollution Prevention Plan (SWPPP) will be required in accordance with the Statewide Construction General Permit (Order No. 98-08-DWQ). In accordance with Caltrans' Statewide NPDES Permit (Order No.99-06-DWQ), Section H. 8., part b., (in part), RWQCB staff have the authority to require the submittal of a SWPPP at any time, including up to 30 days prior to commencement of significant soil disturbance activities; to require changes to the SWPPP; and to enforce the provisions of the SWPPP. In addition, in accordance with adopted Modifications of the Construction General Permit (December 2002), a Sampling and Analysis Plan for both visible and non-visible pollutants will be incorporated as part of the SWPPP.

A Notice of Construction (NOC) will be filed with the North Coast RWQCB a minimum of 30 days prior to construction. To comply with the conditions of Caltrans' Statewide NPDES Permit, and to address the potential temporary water quality resulting from construction activities, Standard Special Provision (SSP) 07-345 will be included as part of the Plans, Specifications, and Estimates. SSP 07-345 will address water pollution control work and implementation of an SWPPP during construction. SSP 07-345 will also specify a maintenance schedule for inspection of construction site BMPs. The SWPPP required for the project will include the following elements:

- Project Description – Includes maps and other information related to construction activities and potential sources of pollutants.
- Minimum Critical Construction BMPs – These may include limiting construction access and egress, stabilized construction entrances and exits, erosion control blankets, concrete washouts, sediment controls including temporary detention basins for infiltration, silt fencing and fiber rolls.
- Erosion and Sediment Control – The SWPPP is required to contain a description of soil stabilization practices, control measures for slope stabilization, controls to reduce tracking of sediment onto the highway, controls to reduce wind erosion, and a schedule for implementation of sediment controls to be approved by the Resident Engineer. Current design plans require the installation of fiber rolls at the cut and fill areas near the widening section at Road A.
- Non-storm Water Management – The SWPPP will include provisions to reduce and control discharges other than storm water. Additionally, the SWPPP is required to contain a Sampling and Analysis Plan (SAP) for non-visible pollutants.
- Waste Management and Disposal – All excess materials and wastes must be disposed in accordance with State and Federal Laws. Local county regulations may also affect disposal of excess inert materials.
- Maintenance, Inspection, and Repair – The SWPPP requires a continuous program to ensure that all BMPs are in place and operating as designed. All inspections must be documented in the SWPPP.
- Amendments to the SWPPP – The Resident Engineer must approve all amendments to the SWPPP.
- Training – The SWPPP documents that trained personnel must perform all inspections, maintenance, and repair of BMPs.

In order to address BAT/BCT for Construction General Permit requirements, Caltrans has developed a Construction Site BMPs Manual. The Construction Site BMPs Manual identifies a suite of construction BMPs that can be divided into the following categories: Soil Stabilization, Temporary Sediment Control, Wind Erosion Control, Tracking Control, Non-Storm Water Management, and Waste Management and Material Pollution

Control BMPs. Minimum Critical Construction (MCC) BMPs are identified during the PS&E phase of the project. MCC BMPs are incorporated into the contract standard special provisions (SSPs) depending on various site-specific factors and expected phases of project construction.

The primary constituent of concern for the project is sediment both during and after construction. Construction activities will provide all the necessary erosion and water quality control practices to minimize the potential for sedimentation through the use of construction BMPs identified in Caltrans' Water Quality Handbook, Construction Site BMPs Manual. Caltrans' approved construction BMPs applicable to this project include measures for temporary sediment control (e.g. dewatering basins, dewatering tanks, silt fences, fiber rolls, temporary detention basins, stockpile management, etc.) and temporary soil stabilization (e.g. hydraulic mulching, hydro-seeding, straw mulch).

There is also a potential for spills and leaks of lubricant, oil and grease, and other fluids associated with vehicles and equipment during construction. Fueling or maintenance of construction vehicles would occur in the project area during construction and there would be a risk of accidental spills or releases of fuels, oils, or other potentially hazardous materials. An accidental release of these materials may pose a threat to water quality if contaminants enter storm drains and/or receiving waters. A spill on the roadway would trigger immediate response actions to report, contain, and mitigate the incident. The SWPPP will specify that spill pollution prevention BMPs be included as part of the on-site BMPs throughout the construction phase. Additionally, Caltrans has contingency plans, procedures, and emergency response crews trained for incident response. These procedures designate a chain of command for notification, evacuation, response, and cleanup of spills resulting from the use and/or transport of hazardous materials. The fuel storage and refueling sites will be located in upland locations, out of the bank of the river; however, it could be necessary to refuel a sky crane or other stationary equipment within the bank of the SFER. During the refueling of the sky crane, spill pollution prevention measures, such as absorbent mats would be implemented.

Mitigation at Red Mountain Creek

In order to compensate for potential impacts to salmonids as a result of the route relocation at Confusion Hill, Caltrans has agreed to provide funding to facilitate fish passage at Red Mountain Creek. Highway 101 crosses Red Mountain Creek at the north end of the project where the new alignment would conform to the existing alignment. During a wide range of typical stream flows, the existing culvert at Red Mountain Creek prevents ESA-listed salmonids from accessing historic spawning and rearing habitat located upstream of the structure. Modifying the culvert to pass fish will allow access to

under utilized habitat upstream of the culvert. Reintroducing listed salmonids into frequently unavailable upstream habitat will likely increase reproductive success, increasing the populations of salmonids that inhabit this stream. The fish passage project will incorporate NMFS and CDFG fish passage criteria and is subject to approval by those agencies. Fish passage modification would likely include installation of concrete/rock baffles in order to reduce the velocity inside the culvert. This would take place between July 1 and October 31 and would require de-watering the culvert. All concrete washings would be pumped to a contained sedimentation basin for treatment, or would be placed in a tank and hauled to an approved disposal site. No water with a pH that exceeds 8.5 would be discharged, and no surface water discharge would be allowed.

Construction activities undertaken in Red Mountain Creek during July 1 through October 31 may affect juvenile coho salmon and juvenile steelhead. The work window end date of October 31 will avoid the immigration period for adult salmonids throughout the action area. NMFS anticipates no take of adult coho salmon, adult Chinook salmon, and adult steelhead. The number of juvenile salmonids present in both the SFER and Red Mountain Creek is likely less than would be found in streams and rivers with better rearing habitat conditions. This project proposal is approved by the NMFS biological opinion, which has found that construction activities in the Red Mountain Creek undertaken from May 15 through June 30 may affect smolting coho salmon, Chinook salmon, and steelhead. Caltrans requested a consistency determination from the California Department of Fish and Game on November 21, 2005.

The project will be separately funded and will likely be constructed after completion of the Confusion Hill Realignment project.

Measures to avoid and minimize impacts to water quality:

- Measures were taken to design the alignment such that large trees were avoided and permanent structure foundations are outside the 100-year flood plain.
- Work in the live stream channel, including installation of the piles, is scheduled to occur between May 15 and October 31 at the northern trestle and June 15 to October 31 at the southern trestle to avoid impacts to salmonids. This is also during low flow.
- The removal of the trestles would occur between June 15 and October 31. Caltrans has reduced the amount of crossings to the minimum reasonable extent possible.
- The contractor will be required to adhere to water quality Best Management Practices identified in the 401 certification, the statewide National Pollutant Discharge Elimination System permit, and the SWPPP which is a requirement of the General Construction Permit.

- Erosion control measures will be implemented on all inactive disturbed areas following each construction season. Upon completion of the project the disposal areas within State right of way will be revegetated with native shrubs and trees.
- As per NMFS water that comes in contact with wet concrete and has a pH greater than 9.0 pH units must not be allowed to enter the ground or stream.
- Any drilling mud associated with the construction of the bridge piers would require disposal to an offsite-approved location.
- A biologist approved by Caltrans shall monitor live channel activities and performance of sediment control or detention devices for the purpose of identifying and reconciling any condition that could adversely affect salmonids or their habitat. The FHWA or Caltrans and their contractors, upon notification from the biologist, shall halt the work activity causing the condition affecting salmonids and recommend measures for avoiding the condition. Work can resume when NMFS agrees that the proposed measures are appropriate for avoiding the condition.
- Prior to any work within the 100-year flood plain of the South Fork Eel River, FHWA or Caltrans shall develop a biological monitoring plan, which shall be approved in writing by NMFS and CDFG. The biological monitoring plan shall include annual reporting requirements.
- Contractors must have a supply of erosion control materials onsite to facilitate a quick response to unanticipated storm events or emergencies.

An expedited project delivery and construction effort would be necessary to complete the project on the required timeline. If you have any questions or would like to schedule a field review, please contact Susan Leroy, Project Biologist, at (707) 441-6048.

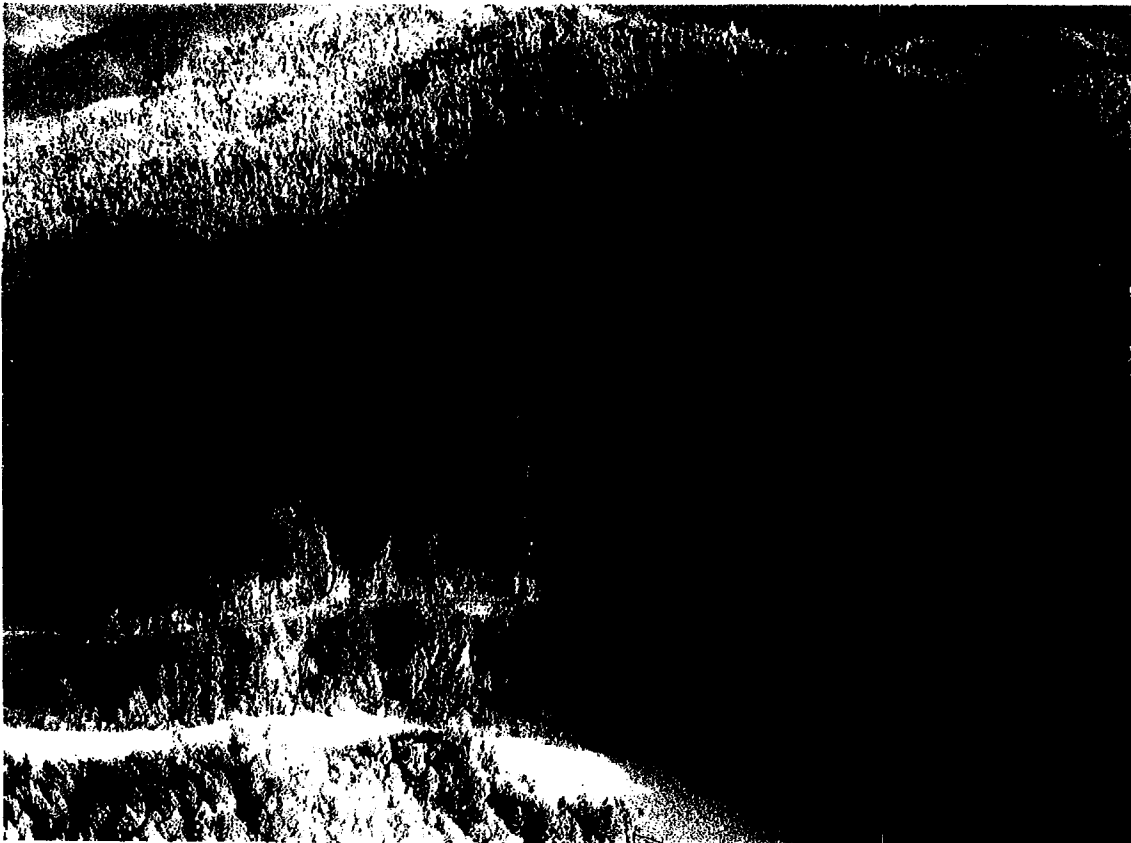
Enclosures:

Certification Fee
Figure 1 Overview of project
Figure 2 Overview of southern construction trestles
Figure 3 Close up of southern access trestles
Figure 4 Close up of northern access and false-work trestles
Regional Water Quality Certification Application
Project Initiation – Disposition of Roadway
Drainage plans
NMFS biological opinion
Copy of 1600 permit application
Revegetation Plan
National Park Service letter regarding Wild and Scenic River coordination

CONFUSION HILL HIGHWAY REALIGNMENT PROJECT

**Mendocino County, California
District 1-Men-U.S. 101, KP 159.2/R162.2 (PM 98.9/R100.8)
01-397510**

Final Environmental Impact Report and Environmental Assessment



**Prepared by the
U.S. Department of Transportation
Federal Highway Administration
and the
State of California Department of Transportation**



GENERAL INFORMATION ABOUT THIS DOCUMENT

What's in this document:

The California Department of Transportation and the Federal Highway Administration have prepared this final Environmental Impact Report/Environmental Assessment, which examines the potential environmental impacts of the alternatives being considered for the proposed project located in Mendocino County, California. The document describes why the project is being proposed, alternatives for the project, the existing environment that could be affected by the project, the potential impacts from each of the alternatives, the preferred alternative, and the proposed avoidance, minimization and/or mitigation measures.

What you should do:

- Please read this final Environmental Impact Report/Environmental Assessment. Copies of the document are available at the locations listed below. Individual technical studies can be requested by contacting Steve Croteau at 707-441-5615, or at Steven_Croteau@dot.ca.gov.
- 1) California Department of Transportation, 1656 Union St., Eureka, CA
- 2) Humboldt County Library, Eureka Branch, 1313 3rd St., Eureka, CA
- 3) Mendocino County Library, Ukiah Branch, 105 N. Main St., Ukiah, CA
- 4) Mendocino County Library, Willits Branch, 390 E Commercial St., Willits, CA
- 5) Garberville-Redway Chamber of Commerce, 733 Redwood Dr., Garberville, CA
- If you have any comments regarding the proposed project, please send your written comments to the Department by the deadline: January 21, 2006.
- Submit comments via postal mail to:

Steven Croteau, Associate Environmental Planner
California Department of Transportation, Environmental Management Branch
P.O. Box 3700, Eureka, CA 95502-3700

- Submit comments via email to steven_croteau@dot.ca.gov.

What happens next:

Caltrans and the Federal Highway Administration may: (1) choose to construct the preferred alternative, (2) undertake additional environmental studies, or (3) abandon the project.

For individuals with sensory disabilities, this document can be made available in Braille, large print, on audiocassette, or on computer disk. To obtain a copy of an alternative format please call (707)-441-5615. Voice, or use the California Relay Service TTY number, (707) 445-6463.

SCH# 2004052014
01-MEN-101 KP 159.2/R162.2
(PM 98.9/R 100.8)

The project would relocate the existing U.S. 101 alignment at the Confusion Hill slide in Mendocino County, KP 159.2 (PM 98.9) to KP R162.2 (PM R100.8), approximately 13 km (8 miles) north of Leggett


**FINAL ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL ASSESSMENT
WITH FINDING OF NO SIGNIFICANT IMPACT**

Submitted Pursuant to: (State) Division 13, California Public Resources Code
(Federal) 42 USC 4332(2)(C)

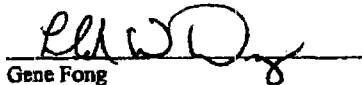
U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration, and

THE STATE OF CALIFORNIA
Department of Transportation

11-16-05
Date of Approval


Charles Fielder
District 1 Director
California Department of Transportation

12-20-2005
Date of Approval


for Gene Fong
Division Administrator
Federal Highway Administration

**Finding of No Significant Impact
For
Confusion Hill Highway Realignment Project**

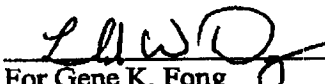
This project would relocate approximately 3 Kilometers [km] (1.9 miles) of U.S. Highway 101 from approximately 12.9 km (8 miles) north of Leggett to approximately 30 km (18.5 miles) south of Garberville in Mendocino County. All build alternatives would replace the existing two-lane conventional highway with a two-lane conventional highway on a new relocated alignment, and would include the construction of two new bridges across the South Fork of the Eel River. The new facility would have two 3.6-meter (12-ft) lanes with 2.4-meter (8-ft) shoulders, and the bridges would be approximately 12.2-meter (40-ft) wide and consist of two 3.6-meter (12-ft) lanes and 2.4-meter (8-ft) shoulders.

The Federal Highway Administration has determined that, after study and examination, the Alternative 2 will have no significant impact on the human environment, and has selected it as the preferred alternative. This Finding of No Significant Impact is based on the attached Environmental Assessment and associated technical studies. These documents have been independently evaluated by the Federal Highway Administration and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and mitigation measures. The documents provide sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

The Federal Highway Administration has cooperated with the California Department of Transportation and takes full responsibility for the accuracy, scope, and content of the attached Environmental Assessment.

12-20-2005

Date


For Gene K. Fong
Division Administrator
Federal Highway Administration

Summary

The proposed project is a joint project by the California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA) and is subject to state and federal environmental review requirements. Project documentation, therefore, has been prepared in compliance with both the California Environmental Quality Act and the National Environmental Policy Act. Caltrans is the lead agency under the California Environmental Quality Act and the FHWA is lead agency under the National Environmental Policy Act.

One of the primary differences between the National Environmental Policy Act and the California Environmental Quality Act is the way significance is determined. Under the National Environmental Policy Act, significance is used to determine whether an Environmental Impact Statement, or some lower level of documentation, will be required. The National Environmental Policy Act requires that an Environmental Impact Statement be prepared when the proposed federal action (project) *as a whole* has the potential to “significantly affect the quality of the human environment.” The determination of significance is based on context and intensity. Some impacts determined to be significant under the California Environmental Quality Act may not be of sufficient magnitude to be determined significant under the National Environmental Policy Act. Under the National Environmental Policy Act, once a decision is made regarding the need for an Environmental Impact Statement, it is the magnitude of the impact that is evaluated and no judgment of its individual significance is deemed important for the text. The National Environmental Policy Act does not require that a determination of significant impacts be stated in the environmental documents.

The California Environmental Quality Act, on the other hand, does require the Department to identify each “significant effect on the environment” resulting from the project and ways to mitigate each significant effect. If the project may have a significant environmental impact that cannot be mitigated to a level of “less than significant,” then an Environmental Impact Report must be prepared. Each and every significant effect on the environment must be disclosed in the Environmental Impact Report and mitigated if feasible. In addition, the California Environmental Quality Act Guidelines list a number of mandatory findings of significance, which also require the preparation of an Environmental Impact Report. There are no types of actions under the National Environmental Policy Act that parallel the findings of mandatory significance of the California Environmental Quality Act. Please see Chapter 3 of this document for a discussion regarding the effects of this project and California Environmental Quality Act significance.

As stated above, some impacts determined to be significant under the California Environmental Quality Act may not lead to a determination of significance under the National Environmental Policy Act. Because the National Environmental Policy Act is concerned with the significance of the project as a whole, it is quite often the case that a “lower level” document is prepared for

the National Environmental Policy Act. One of the most commonly seen joint document types is an Environmental Impact Report/Environmental Assessment (EIR/EA).

Overview of Project Area

The proposed project is located on U.S. 101, 13 km (8 miles) north of Leggett and 30 km (18.5 miles) south of Garberville in Mendocino County. The project is located in a rural area, surrounded by mixed evergreen forest and old growth redwood forest, and is adjacent to the South Fork of the Eel River. U.S. 101 is considered the “lifeline” of the northern California coast, being the only major north-south route serving the region.

Purpose and Need

Within the project limits, U.S. 101 bisects an ancient and active rockslide. The slide is approximately 1000 meters (3000 ft) wide at the roadway level and more than 350 meters (1100 ft) high measured from its toe at the river. Over the last 17 years, the roadway has regularly experienced slipouts, retaining wall failures, and debris flows. Within the last few years, debris flows and road closures have been occurring with greater frequency and magnitude. There is some urgency as geotechnical studies indicate the slide is progressively losing strength, which will result in continued debris flow onto the highway, and the potential for long roadway closures and more extensive highway repairs in the near future.

Ten closures during the 2002/2003 winter season discouraged tourists, hindered the movement of goods, kept children and teachers from their schools, impacted emergency response, and generated a high level of concern for residents needing to use this segment of roadway on a daily basis. A catastrophic slide at Confusion Hill could close U.S. 101 in both directions for six months or more. A one-direction closure could cost the traveling public an estimated \$1.7 million per month in travel delay and vehicle operating costs. A complete closure could require a 402 km (250-mile) detour and could cost an estimated \$7.1 million per month in travel delay and added vehicle operating costs. Maintaining U.S. 101 open and in good condition between the San Francisco Bay Area and Oregon is critical to the economic well being of the North Coast. The purpose of the project is to provide a reliable transportation route on this segment of U.S. 101, allowing for the local and interregional movement (e.g., Northwest California and Southern Oregon) of goods, emergency vehicles, residents, and recreational travelers.

The project is needed because the route is no longer dependable due to frequent closures and high maintenance costs, and there is no local detour available for highway traffic.

Proposed Action

The project would relocate approximately 3 km (1.9 miles) of U.S. 101 from approximately 12.9 km (eight miles) north of Leggett to approximately 30 km (18.5 miles) south of Garberville in Mendocino County (Figure 1.1). All build alternatives would replace the existing two-lane conventional highway with a two-lane conventional highway on a new relocated alignment, and would include the construction of two new bridges across the South Fork of the Eel River. The new facility would have two 3.6 meter (12-ft) lanes with 2.4 meter (8-ft) shoulders, and the bridges would be approximately 40-feet wide and consist of two 3.6 meter (12-ft) lanes and 2.4 meter (8-ft) shoulders.

Alternatives

Alternative 1 (Black Alignment): Alternative 1 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula west of the existing highway (Figure 1.4). This alternative would require acquisition of right of way in the locations of the through-cut and two bridge abutments. The alignment would require the removal of at least 18 three-foot or greater diameter at breast height redwood trees, six of which are directly in front of the Campbell Brothers at Confusion Hill business. The bridges at the northern and southern end of the project would be 43 and 77 meters high (140 and 253 ft.), and 162 and 425 meters long (531 and 1,395 ft.), respectively.

Alternative 2 (White Alignment): Preferred Alternative-Alternative 2 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula west of the existing highway (Figure 1.5). The White Alignment begins approximately 76 meters (250 ft.) south of the Black Alignment and includes a slight realignment of an existing curve at the south end of the project. In order to reduce project costs and impacts to redwood trees, an approximately 146 meters (480 ft.) long, 1.0 to 7.6 meters (3-25 ft.) high retaining wall is proposed at a curve at the southern limits of the project. This alignment would require the removal of at least four three-foot or greater diameter at breast height redwood trees, and U.S. 101 would diverge from its present alignment approximately 240 feet south of the Campbell Brothers at Confusion Hill business. An at-grade intersection would be constructed to maintain access to the Redwoods River Resort and the Campbell Brothers at Confusion Hill business. The bridges at the northern and southern end of the project would be 43 and 78 meters high (140 and 255 ft.), and 162 and 378 meters long (531 and 1,239 ft.), respectively.

Alternative 3 (Blue Alignment): Alternative 3 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula west of the existing highway (Figure 1.6). The Blue Alignment begins 15 meters (50 ft.) south of the White Alignment and includes a slight

realignment of an existing curve at the south end of the project. The Blue Alignment would require acquisition of a portion of the Redwoods River Resort, including the removal of a residence, lodge and store, and would realign U.S. 101 away from the Campbell Brothers at Confusion Hill business. An at-grade intersection would be constructed to maintain access to the Redwoods River Resort and the Campbell Brothers at Confusion Hill business. This alignment would also require removal of at least five three-foot or greater diameter at breast height redwood trees. The bridges at the northern and southern ends of the project would be 43 and 72 meters high (140 and 236 ft.), and 162 and 402 meters long (531 and 1,320 ft.), respectively.

Alternative 7 (No-Build): Under this alternative no work would be performed to address the unreliability of the route at this location. The current series of closures and repairs at this location would be expected to continue, causing regular delays, lengthy detours to the traveling public, and continued substantial expense to state and federal governments. This alternative does not meet the purpose and need of the project.

Preferred Alternative

After comparing and weighing the benefits and impacts of all of the feasible alternatives, and through extensive public involvement, the project development team recommended Alternative 2 (White Alignment) as the preferred alternative. Caltrans management and the Federal Highway Administration have concurred with this recommendation and Alternative 2 is selected as the preferred alternative.

Project Impacts

Table S.1 Summary of Potential Impacts

Potential Impact	Alternative 1 (Black Alignment)	<u>Preferred Alternative</u> Alternative 2 (White Alignment)	Alternative 3 (Blue Alignment)	No-Build Alternative
Cultural Resources	1 Prehistoric Site	None	1 Historic Site	None
Timberland	20-24 hectares (50-60 acres)	20-24 hectares (50-60 acres)	20-24 hectares (50-60 acres)	None
Relocation	None	None	1 business and 3 residences	None
Visual	Two bridges and a cut through the peninsula on the west bank of the South Fork of the Eel River	Two bridges and a cut through the peninsula on the west bank of the South Fork of the Eel River	Two bridges and a cut through the peninsula on the west bank of the South Fork of the Eel River	Permanent Man- made features along existing U.S. 101 (e.g., retaining walls, rock slope protection, and hillside netting)
Vibration	Short term construction impacts to resources located within 100 feet of new highway structures.	Short term construction impacts to resources located within 100 feet of new highway structures.	Short term construction impacts to resources located within 100 feet of new highway structures.	None
Redwood Trees greater than 3 feet diameter at breast height)	18	5	6	None
Natural communities	Redwood Forest	0.4 hectare (1 acre)	0.2 hectares (0.4 acres)	0.6 hectares (1.6 acres)
	Mixed Evergreen Forest	3.2 hectares (7.8 acres)	1.7 hectares (4.1 acres)	3.1 hectares (7.7 acres)
				None

Permits and Consultations

The following permits and consultations are anticipated for this project:

Agency	Permit/Approval	Status
National Oceanographic and Atmospheric Administration	Section 7 Consultation for Threatened and Endangered Fish Species	Biological Opinion received on 11/15/05
United States Fish and Wildlife Service	Section 7 Consultation for Threatened and Endangered Bird Species	Biological Opinion received on 11/15/05
California State Historic Preservation Officer	California State Historic Preservation Officer Concurrence on eligibility	Approval received March 22, 2005
National Park Service Wild and Scenic River	Concurrence letter stating there would be no effect on the South Fork of the Eel River	Approval received July 19, 2005
Army Corps of Engineers	404 permit for discharge of dredged or fill material into the South Fork of the Eel River	Obtained prior to construction
California Department of Fish and Game	Section 2080 for Threatened and Endangered Species	Biological Opinion Consistency Determination obtained after Final EIR/EA
California Department of Fish and Game	1602 Streambed Alteration Agreement	Obtained prior to construction
Regional Water Quality Board	National Pollution Discharge Elimination System (NPDES), storm water permit, and 401 certification compliance	Obtained prior to construction

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Chapter 1 Proposed Project

1.1 Purpose and Need

Introduction

Caltrans and the Federal Highway Administration propose to realign U.S. 101, between approximately 12.9 km (8 miles) north of Leggett (KP 159.2, PM 98.9) and 30 km (18.5 miles) south of Garberville (KP 162.2, PM 100.8) in northern Mendocino County. The total length of the project is 3.1 km (1.9 miles), starting near the Campbell Brothers at Confusion Hill and Redwoods River Resort businesses at the southern limits and ending near Red Mountain Creek at the northern limits (Figures 1.1 and 1.2). The project would realign U.S. 101 and construct two bridges across the South Fork of the Eel River. The existing segment of U.S. 101 is winding, with curves having design speeds as low as 30 mph. Lane widths are 3.6 meters (12 ft.), with shoulders of 1.2 meters (4 ft.) or less.

The project was initiated due to the existing highway's maintenance and operational deficiencies, and unreliability for the traveling public. Within the project limits, the existing alignment crosses an active rockslide, resulting in frequent rock and debris flow, road closures, and high maintenance costs.

U.S. 101 is considered the "lifeline" of the North Coast, being the only major north/south route serving the region. Functionally classified as a rural principal arterial, it is part of the California Freeway and Expressway System, and is included in the National Highway System. Further, U.S. 101 is designated as part of the "SHELL" system (Sub-system of Highway for the movement of Extra-Legal permit Loads), and is a "High Emphasis and Focus Route" on the Interregional Road System. Maintaining U.S. 101 between the San Francisco Bay Area and Oregon is critical to the economic well being of this region because it carries high volumes of year-round commercial trucking, and recreational traffic during the summer months.

The project is included in the 2004 State Highway Operation and Protection Program (SHOPP), and is proposed for funding through the Federal Major Damage Restoration Program. The project is also included in the 2003 Mendocino County Regional Transportation Plan.

Figure 1.1 Project Location

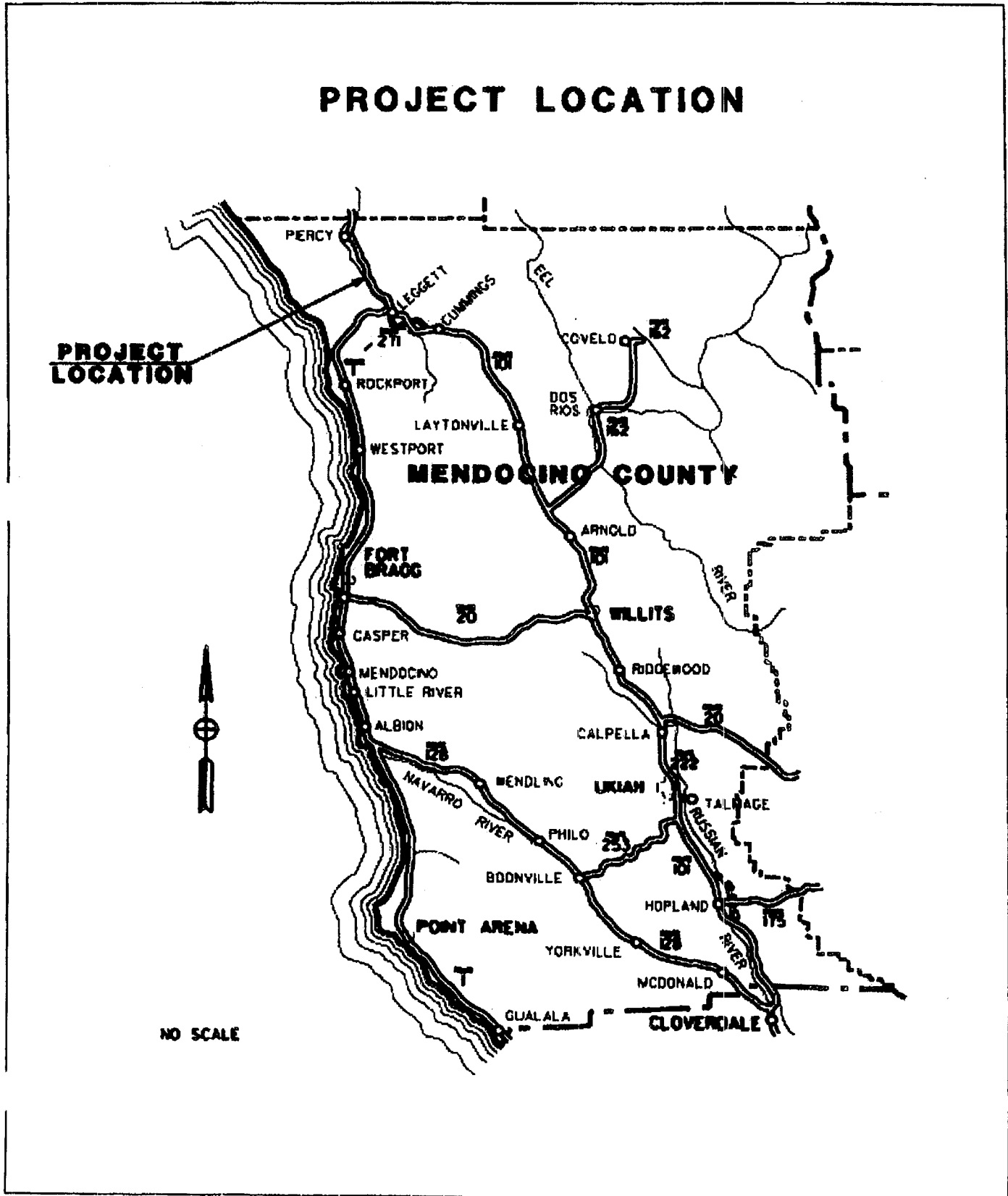
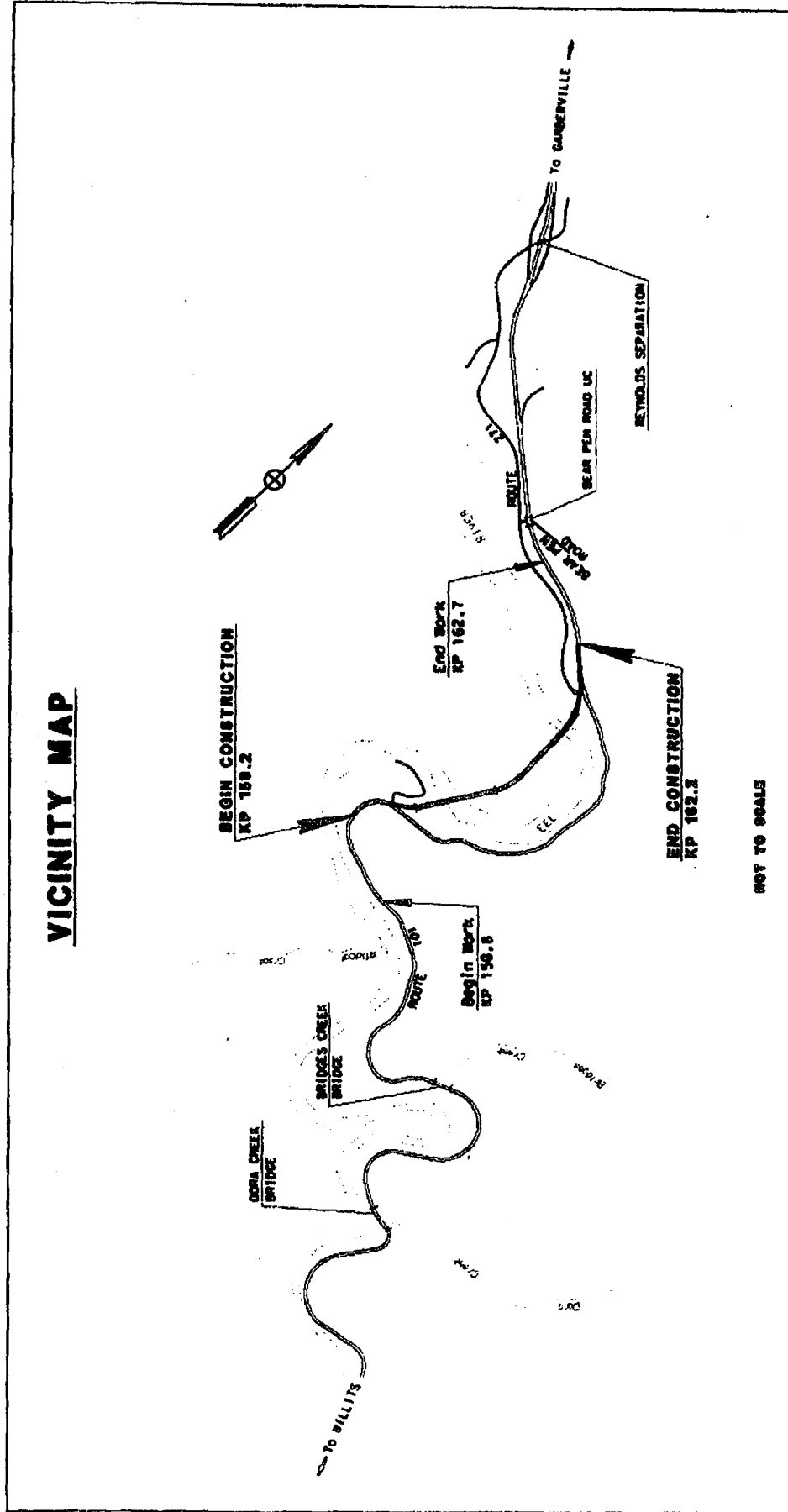


Figure 1.2 Project Vicinity



Purpose

The purpose of the project is to provide a reliable route on this segment of U.S. 101 at the Confusion Hill slide area, and to keep U.S. 101 open to vehicular traffic, including large commercial trucks, emergency vehicles, local residents, and seasonal recreational travelers.

Need

Within the project limits, U.S. 101 experiences frequent road closures due to rockslide activity. The slide is approximately 1000 meters (3000 ft.) wide at the roadway level and more than 365 meters (1100 ft.) high measured from its toe at the river. The slide is several thousand years old, and has caused increasing maintenance and repair work on the roadway for the last 17 years. Recent geotechnical investigations indicate the hillside has increasing instability, providing the potential for more frequent road closures and more extensive highway repairs.

Ten closures during the 2002/2003 winter season discouraged tourists, hindered the movement of goods, kept children and teachers from schools, impacted emergency response, and has generated a high level of concern for residents needing to use this segment of roadway on a daily basis. A catastrophic slide at Confusion Hill could close U.S. 101 in both directions for six months or more. A one-direction closure could cost the traveling public an estimated \$1.7 million per month in travel delay and vehicle operating costs. A complete closure could require a 402 km (250-mile) detour and could cost an estimated \$7.1 million per month in travel delay and added vehicle-operating costs. Between 1996 and 2003, over \$14 million in repairs and maintenance were spent within the project limits. Maintaining U.S. 101 open and in good condition between the San Francisco Bay Area and Oregon is critical to the economic well being of the North Coast.

1.2 Project Description

This section describes the proposed action and the design alternatives that were developed by a multi-disciplinary team to achieve the project purpose and need while avoiding or minimizing environmental impacts. The alternatives are Alternative 1 (Black Alignment), Alternative 2 (White Alignment), Alternative 3 (Blue Alignment), and the No-Build Alternative.

The project is located in Mendocino County on U.S. 101 from 12.9 km (8 miles) north of Leggett (KP 159.2, PM 98.9) to 29 km (18 miles) south of Garberville (KP 162.2, PM 100.8) in northern Mendocino County. The project covers a distance of 3.1 km (1.9 miles), starting near the Campbell Brothers at Confusion Hill and the Redwoods River Resort businesses at the southern limits and ending near Red Mountain Creek at the northern limits. Within the project limits, the

existing segment of U.S. 101 is winding, with curves having design speeds as low as 30 mph. Lane widths are typically 3.6 meters (12 ft.), with paved shoulder widths 1.2 meters (4 ft.) or less.

The project would construct a two-lane conventional highway facility to bypass the slide-prone area by realigning U.S. 101 to the west. The project would also include the construction of two bridges over the South Fork of the Eel River (Figures 1.1 and 1.2). The new facility (including the bridges) would have two 3.6 meter (12 ft.) lanes and 2.4 meter (8 ft.) shoulders. The bridges would be 12 meters (40 ft.) wide, and would also have 3.6 meter (12 ft.) lanes and 2.4 meter (8 ft.) shoulders. For build alternatives, the columns supporting the bridges would be slant leg or vertical, and would avoid the river channel by staying above the 100 year flood plain.

Construction of the north and south bridges is estimated to take approximately two and three years, respectively. The project would also require disposal sites to accommodate approximately 184,000 cubic meters (240,000 cubic yards) of excess material.

Existing U.S. 101

The removal of the existing roadway (decommissioning) and restoration of the surrounding topography would be included for all build alternatives. The restoration would include the removal of all man-made structures, as identified in Figure 1.8. In addition, potential rockslide debris would be removed from the slope (as much as possible without further destabilizing the hillside) to reduce the flow of debris into the South Fork of the Eel River. Removed material would be used as fill along the existing road alignment to recreate the natural topographic and drainage features in the area. Private Driveways would be perpetuated at the northern and southern limits of the project for local property access only (Figure 1.8). An analysis of the feasibility of including a vista point would also be included during the decommissioning project.

1.3 Alternatives

Alternatives

All build alternatives would include the relocation of U.S. 101 to the west of the existing route, and would have the same design features (e.g., lane and shoulder width). The alternatives differ only in highway alignment, project limits, and potential environmental impacts. All build alternatives have the same northern project limits. The southern project limits differ and are described below and shown in Figure 1.3. The typical cross-section of the new facility is shown in Figure 1.7.

Alternative 1 (Black Alignment): Alternative 1 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula on the west bank of the South Fork of the Eel River (Figure 1.4). This alternative would require acquisition of right of way in the locations of the through-cut and two bridge abutments. The alignment would require the removal of at least 18 redwood trees of three-foot or greater diameter at breast height, six of which are directly in front of the Campbell Brothers at Confusion Hill business. The bridges at the northern and southern end of the project would be 43 and 77 meters high (140 and 253 ft.), and 162 and 425 meters long (531 and 1,395 ft.), respectively.

Alternative 2 (White Alignment), Preferred Alternative: Upon the completion of the draft Environmental Impact Report/Environmental Assessment review period, the project development team recommends to management Alternative 2 as the preferred alternative. Alternative 2 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula on the west bank of the South Fork of the Eel River (Figure 1.5). The White Alignment begins 76 meters (250-ft.) south of the Black Alignment and includes a slight realignment of an existing curve at the south end of the project. An approximately 100 meter (328-ft.) long, 1.0 to 7 meter (23-ft.) high retaining wall would need to be constructed at the curve. This alignment would require removal of at least four redwood trees of three-foot or greater diameter at breast height, and U.S. 101 would diverge from its present alignment approximately 73 meters (240-ft.) south of Campbell Brothers at Confusion Hill. An at-grade intersection would be constructed to maintain access to the Redwoods River Resort and the Confusion Hill business. The bridges at the northern and southern end of the project would be 43 and 78 meters high (140 and 255-ft.), and 162 and 378 meters long (531 and 1,239-ft.), respectively.

Alternative 3 (Blue Alignment): Alternative 3 would relocate U.S. 101 by constructing two bridges and a through-cut on the peninsula on the west bank of the South Fork of the Eel River (Figure 1-6). The Blue Alignment begins 15 meters (50-ft.) south of the White Alignment and includes a slight realignment of an existing curve at the south end of the project. The Blue Alignment would require acquisition of a portion of the Redwoods River Resort, including the removal of a residence, lodge and store, and would realign U.S. 101 away from the Campbell Brothers at Confusion Hill business. An at-grade intersection would be constructed to maintain access to the Redwoods River Resort and the Confusion Hill business. This alignment would also require removal of at least four redwood trees of three-foot or greater diameter at breast height. The bridges at the northern and southern ends of the project would be 43 and 72 meters high (140 and 236-ft.), and 162 and 402 meters long (531 and 1,320-ft.), respectively.

Alternative 7 (No-Build): Under this alternative no work would be performed to address the unreliability of the route at this location. The current series of closures and repairs would continue with the potential for a catastrophic slide event that could disrupt service on U.S. 101 for six months or more. This alternative does not meet the project's purpose and need.

Chapter 2 Affected Environment

As part of the scoping and environmental analysis conducted for the project, the following environmental resources were considered, but no potential for adverse impacts to these resources was identified. Consequently, there is no further discussion regarding these resources in this document.

- Traffic, transportation, pedestrian, and bicycle facilities would not be adversely affected due to:
 - 1) Construction activities would occur off the existing U.S. 101 alignment except during the final tie-ins at the end of construction. U.S. 101 would remain open during construction. Furthermore, the project is not capacity increasing, therefore traffic volumes and travel-times would not be altered.
 - 2) Highway facilities and services would remain open during construction.
 - 3) Pedestrian or bicycle facilities would remain open during construction. Pedestrians and bicycles would be allowed on the new highway facility.
- Paleontological Resources: no temporary or permanent impacts would be anticipated because:
 - 1) The formations that occur in the project area are considered to have low, or no potential for yielding sensitive paleontological resources.
 - 2) The largest fossil repositories in California have not reported any sensitive paleontological resources from the project area.
- Hydrology and Floodplain: according to the Floodplain and Hydrology Report completed September 2004, all build alternatives would be constructed outside of floodplain areas, therefore no permanent impacts would be anticipated.
- Energy Resources: according to an Energy Study completed in November 2004, when comparing energy used during construction and operation with energy saved by not having to maintain the existing highway (e.g., debris removal, vehicle delays resulting in long-term idling, and long detours), the project would not result in substantial energy impacts.
- Special-Status Plant Species: protocol surveys found no listed plant species within the project limits.
- Disposal Sites: Five optional disposal sites were identified (Schendel, Wayside Gulch, Bear Pen 1& 2, and Snake Pit, see Figure 1.4). With the exception of Wayside Gulch, each location is currently composed of either weeds or bare earth. Wayside Gulch consists of mixed evergreen forest. These sites have been studied and cleared for potential environmental impacts with the exception of visual and biological resources (see section 2.7, Visual Resources and section 2.13, Biological Resources).

encroachment and disturbance during construction. Furthermore, an in-depth study, including possible excavations, would be conducted.

All Build Alternatives

A Native American monitor would be present during ground-disturbing work in the vicinity of the prehistoric site.

If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area would be diverted until a qualified archaeologist can assess the nature and significance of the find.

If human remains are discovered, State Health and Safety Code Section 7050.5 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and the County Coroner shall be contacted. Pursuant to Public Resources Code (PRC) Section 5097.98, if the remains are thought to be Native American, the coroner would notify the Native American Heritage Commission who would then notify the "Most Likely Descendent." The person who discovered the remains would be required to contact a Caltrans environmental representative, so that Caltrans may work with the Most Likely Descendent on the respectful treatment and disposition of the remains. Further, provisions of PRC 5097.98 are to be followed as applicable.

Likewise, federal provisions within 36 CFR 800.13 require appropriate steps be taken to minimize or mitigate any transportation impacts on a late archaeological discovery. All project work in the vicinity of the discovery area would cease immediately. The area would be secured and protected. A full assessment of the "find" and the level of its cultural significance would be made. If the "find" involves prehistoric artifacts or human remains, communications with the appropriate consulting parties would be initiated.

2.7.5 Cumulative Impacts

Due to avoidance and minimization measures, cumulative impacts on cultural resources would not be anticipated.

2.7.6 The State Office of Historic Preservation

The State Office of Historic Preservation (SHPO) was consulted regarding this project's National Register of Historic Places eligibility. Pursuant to Stipulation VIII.C.5 (30-day response time) of a programmatic agreement between the Federal Highway Administration (FHWA) and SHPO, Caltrans may proceed to the next step of the process based on Caltrans' determination of

National Register of Historic Places eligibility. The SHPO database file number for this project is FHWA050322C, and the SHPO log in date was March 22, 2005.

2.8 Water Quality and Storm Water Runoff

This section evaluates the potential for the project to affect water quality.

2.8.1 Regulatory Setting

The primary federal law regulating Water Quality is the Clean Water Act. Section 401 of the Act requires a water quality certification from the State Board or Regional Board when a project: 1) requires a federal license or permit (a Section 404 permit is the most common federal permit for Department projects), and 2) will result in a discharge to waters of the United States.

Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES) permit system for the discharge of any pollutant (except dredge or fill material) into waters of the United States. In 1987 the CWA was amended and added section 402(p) which defines storm water discharges as point source discharges and established a framework for regulating municipal and industrial storm water discharges under the NPDES permitting program. Under this framework, storm water permits are required for urban areas with populations of 100,000 or more (Phase I) – defined as municipal separate storm sewer systems (MS4s). The U.S. EPA defined MS4s to include roads and highways that traverse and serve urban population centers.

The State Water Resources Control Board (SWRCB) adopted a statewide Construction General Permit (NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity) to address construction projects which result in greater than 5 acres of disturbed soil area (later reduced to 1 acre). In order to develop a consistent statewide approach to these new regulations and permit requirements, the Department requested the SWRCB consider adopting a statewide permit that would cover both storm water discharges for MS4 requirements as well as requirements established under the statewide Construction General Permit for construction activities. As a result, all storm water discharges and non-storm water discharges from all Department properties, facilities, and activities are regulated under Order No. 99-06-DWQ, NPDES NO. CAS000003, NPDES Permit, Statewide Storm Water Permit and Waste Discharge Requirements for the State of California, Department of Transportation (Statewide General NPDES Permit).

NPDES permits for storm water discharges must meet all applicable provisions of section 301 and 402 of the CWA. These provisions require control of pollutant discharges to the Maximum Extent Practicable (MEP) for MS4 permit requirements and to the standard of Best Available

Technology Economically Achievable/Best Conventional Technology (BAT/BCT) for Construction General Permit requirements. The Department has a revised Storm Water Management Plan (SWMP, May 2003) that includes new and revised best management practices (BMPs). The permit regulates storm water discharges from the Department right-of-way both during and after construction, as well as from existing facilities and operations.

Some construction activities may require a site-specific NPDES permit. All Department projects that are subject to the Construction General Permit require a Storm Water Pollution Prevention Plan be prepared by the contractor for review and approval by the Resident Engineer. The Storm Water Pollution Prevention Plan identifies construction activities that may impact water quality and best management practices to minimize and/or eliminate any potential impacts.

The North Coast Regional Water Board (NCRWB) has adopted a Basin Plan for the North Coast Region. The Basin Plan defines beneficial uses of receiving waters, sets forth water quality objectives to protect and enhance these beneficial uses, and formulates water management programs to control discharges to these receiving water bodies. The Regional Water Quality Control Board designated the following beneficial uses in the Basin Plan for the South Fork of the Eel River:

- Municipal and Domestic Supply (MUN) – Existing
- Agricultural Supply (AGR) - Existing
- Industrial Service Supply (IND) - Existing
- Industrial Process Supply (PRO) - Potential
- Groundwater Recharge (GWR) - Existing
- Freshwater Replenishment (FRSH) – Existing
- Navigation (NAV) - Existing
- Hydropower Generation (POW) - Potential
- Water Contact Recreation (REC-1) - Existing
- Non-Contact Recreation (REC-2) - Existing
- Commercial and Sport Fishing (COMM) - Existing
- Aquaculture (AQUA) – Potential
- Warm Freshwater Habitat (WARM) - Existing
- Cold Freshwater Habitat (COLD) - Existing
- Wildlife Habitat (WILD) - Existing
- Rare, Threatened, or Endangered Species (RARE) - Existing
- Migration of Aquatic Organisms (MIGR) - Existing

- Spawning, Reproduction, and/or Early Development (SPWN) – Existing

Additional laws regulating water quality include the Porter-Cologne Water Quality Act, Safe Drinking Water Act and Pollution Prevention Act. State water quality laws are codified in the California Water Code.

2.8.2 Affected Environment

A Water Quality Study Report was completed in March 2005. The project area lies within northern Mendocino County, and is part of the California Coast Range Physiographic Province. Steep mountain ridges dissected by the South Fork of the Eel River characterize the project area. Slope percentages vary from less than one percent in the floodplain to extremely steep from the floodplain to the first river terrace, and then between almost flat and 50 percent on the upland where the new roadway would be constructed. The proposed project is not located within the Coastal Zone, nor could it affect resources within the Coastal Zone.

The project area has a warm temperate climate characterized by a distinctive seasonal precipitation regime. Summers are dry with little or no precipitation from June to September. Winters are cool and wet, with 1.4 meters (55 inches) of the 1.7 meters (68 inches) of total annual precipitation occurring between the months of November and March. Snowfall may occur in December or January, but the depth is minimal and rarely accumulates except at higher elevations.

Although the soils in the project area are mapped as deep and well drained, surface runoff is rapid and the hazard for water erosion is severe if the surface is left bare. The existing U.S. 101 roadway traverses a steep west-facing slope on the east side of the South Fork of the Eel River at Confusion Hill. The surface water resources for the project area include the South Fork of the Eel River, a tributary to the main stem Eel River. The South Fork of the Eel River watershed is approximately 1785 square km (689 square miles) in size, and the river runs for approximately 169 km (105 miles) before joining the main stem Eel River just south of Pepperwood, California. Red Mountain Creek enters the South Fork of the Eel River at the northern end of the project.

The South Fork of the Eel River is noted as having impaired water quality for sediment and temperature and is listed on the U.S. Environmental Protection Agency's Section 303(d) List of Water Quality Impaired Segments. Waters on the 303(d) list do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology.

A technical Total Maximum Daily Load (TMDL) for temperature and sediment was promulgated by the U.S. EPA for the SER in December 1999. Upon completion of the technical TMDL, the State is charged with ensuring the necessary actions are taken so that the loading of the pollutant of concern does not exceed the TMDL and associated load allocations. There are several mechanisms available to implement the actions necessary to meet a TMDL. These mechanisms include:

- Regulatory action(s) of the Regional Water Board, such as a permit, waiver, or enforcement order.
- Regulatory action(s) of another state, federal, or local agency. A Memorandum of Understanding may be appropriate to describe the specific regulatory actions to be taken.
- Non-regulatory action(s), such as third party agreements and self-determined pollutant control.
- Amendments of the Water Quality Control Plan for the North Coast Region (the Basin Plan), in the form of an Action Plan, which describes the steps that are necessary to meet the TMDL. A Basin Plan amendment is necessary when rule making is required to address the pollutant(s) and meet the TMDL. Additionally, TMDLs shall be incorporated into the State's continuing planning process, of which the Basin Plan is the primary venue, in accordance with Sections 303(d)(2) and 303(e)(3) of the federal Clean Water Act.

No water quality monitoring has been conducted in the South Fork of the Eel River within the vicinity of the proposed project by any of the water resources jurisdictional agencies. Stage heights have been recorded since 1963 at a gauging station maintained by the U.S. Geological Survey (1998) on the South Fork of the Eel River near Leggett (Station 11475800).

The groundwater underlying the project area is not included in any of the groundwater basins mapped by the California Department of Water Resources (2003). No groundwater quality data exists for the project region. Groundwater has not been monitored by a public agency primarily because no monitoring wells lie within a groundwater basin designated by the Department of Water Resources.

There are no public water systems in the area. The Redwoods River Resort receives its water from a private well located on the property. Other properties in the area, such as the World Famous Tree House and the Campbell Brothers at Confusion Hill businesses, also receive water from private groundwater wells.

2.8.3 Impacts

Build Alternatives

For all build alternatives, the primary potential for water quality impacts would come from two sources: soil erosion and suspended solids being delivered to the South Fork Eel River. There would be a low potential for non-stormwater contaminants from construction activities to enter the river. Stormwater runoff from the proposed project would drain into the South Fork Eel River. Because the amount of new surface roadway being built is slightly less than the existing U.S. 101 (thus decreasing the amount of impervious surface), and no increase in traffic volume is expected due to construction of the U.S. 101 realignment, stormwater runoff volumes would not increase with the implementation of the project. The project would also include up to five disposal sites (see Figure 1.4, section 1.3).

Based on the implementation of Caltrans water pollution prevention, all alternatives (including disposal sites) would be expected to have negligible water quality impacts, either on a temporary or permanent basis.

Removal of Existing U.S. 101

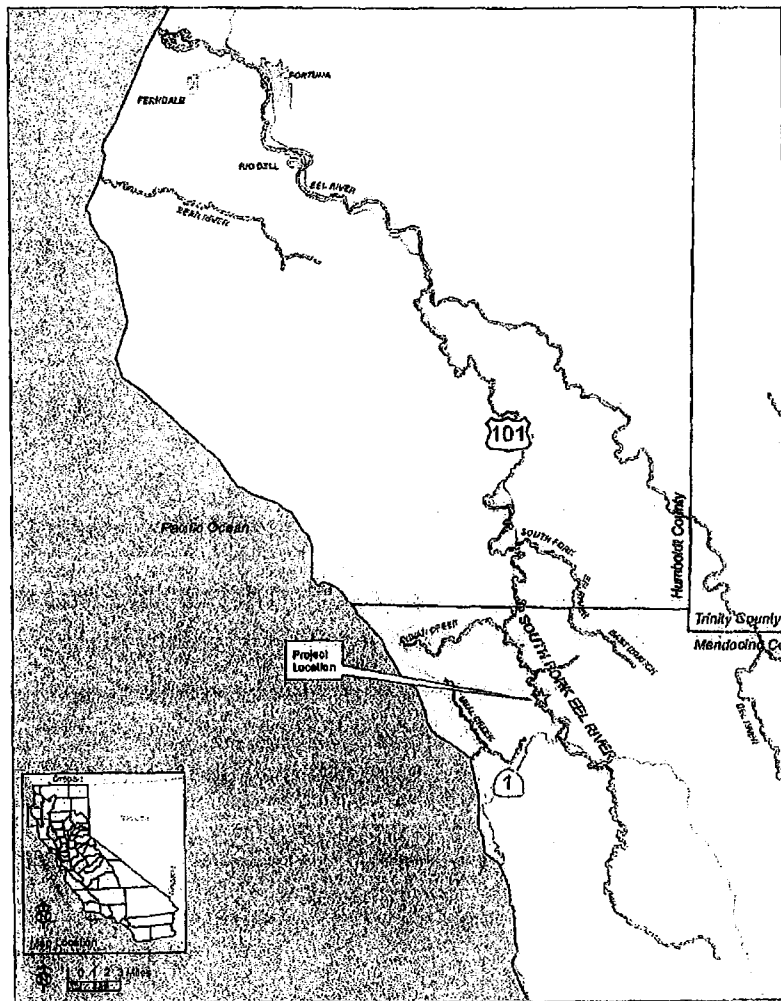
Removal of existing U.S. 101, including all infrastructure, would require demolition, grinding, and earthwork activities that would create debris and sediment on-site that could be transported by storm water into the South Fork of the Eel River. The recontoured, restored area would be vulnerable to erosion until vegetation provides effective ground cover to stabilize soils from erosion processes. If fill material were used to build up or recontour the restored area, the newly restored slopes would be sources of sediment that could move downslope into the river. Mitigation measures for these potential impacts are discussed in Section 2.8.4 (Construction Activities Water Pollution Prevention).

Temporary Impacts

During construction, temporary adverse impacts could occur due to increased erosion that could eventually be transported into nearby waterways. The potential also exists for spills and leaks of lubricants and other fluids associated with vehicles and equipment used during construction, and discharges of non-stormwater constituents generated from construction activities.

Other sources of temporary adverse impacts to water quality include temporary water crossings, pile driving and other construction activities in the floodplain/river, and equipment/materials that could either be discharged directly in the floodplain/river or be placed where they could be transported to receiving waters.

Figure 2.12 Regional Hydrology



2.8.4 Avoidance, Minimization, and Mitigation Measures

Mitigation measures for construction and long-term impacts would focus on the control of sediment, suspended solids, and non-stormwater discharges. The project design would incorporate temporary and permanent soil stabilization, sediment control, and waste management best management practices to minimize potential impacts to water quality. Implementation of long-term mitigation measures including design and treatment would also reduce and/or eliminate potential impacts to water quality.

Long-term Water Pollution Prevention

The following permanent water pollution prevention Best Management Practices, as determined to be appropriate by the stormwater, hydraulics, and landscape architecture specialists, would be incorporated into the project in order to avoid and minimize the impacts to the South Fork of the Eel River.

- Preservation of existing vegetation
- Concentrated flow conveyance systems
- Ditches, berms, dikes, and swales
- Overside drains
- Flared end sections
- Outlet protection/velocity dissipation devices
- Slope/surface protection systems
- Vegetated surfaces
- Hard surfaces

Water Pollution Prevention During Construction

Erosion control measures would be applied to all exposed areas during construction, and may include the trapping of sediments within the construction area through the placing of barriers (e.g., straw bales, mulches, or mats) at the perimeter of downstream drainage points or through the construction of temporary detention basins. Other methods of minimizing erosion impacts include limiting the amount and length of exposure of graded soil and hydromulching.

Caltrans-approved construction Best Management Practices applicable to this project for temporary soil stabilization include:

- Preservation of existing vegetation
- Hydraulic mulch
- Soil binders
- Straw mulch
- Geotextiles, plastic covers, and erosion control blankets/mats
- Wood mulching
- Earth dikes/drainage swales and lined ditches

Caltrans-approved construction Best Management Practices applicable to this project for temporary sediment control could include:

- Silt fences
- Sediment/desilting basins
- Sediment traps
- Check dams
- Fiber rolls
- Gravel bag berms
- Sandbag barriers
- Straw bale barriers

Where feasible, the previously listed water pollution prevention methods would be considered for aspects of construction, such as: temporary access roads, temporary bridges (including trestles), perimeter control around staging areas, equipment storage, contractor headquarters, pier construction and pile driving activities, construction-related vehicles including haul trucks for excavated material, disposal sites, and any other area where sediment or non-stormwater materials could be transported into a drainage or waterway, and for the decommissioning activities of the existing U.S. 101 roadway.

Emergency Spill Response

Fueling or maintenance of construction vehicles would occur in the project area during construction, and the risk of accidental spills or releases of fuels, oils, or other potentially toxic materials would exist. An accidental release of these materials could pose a threat to water quality if discharges were to enter culverts, the South Fork of the Eel River or its tributaries, and/or groundwater. The magnitude of the impact from an accidental release would depend on the volume and type of material spilled.

A spill on the roadway would trigger immediate response actions to report, contain, and mitigate the incident. The California Office of Emergency Services has developed a Hazardous Materials Incident Contingency Plan, which provides a program for response to spills involving hazardous materials. The plan designates a chain of command for notification, evacuation, response, and cleanup of spills. Caltrans also has spill contingency procedures and response crews.

2.8.5 Cumulative Impacts

Due to avoidance, minimization and mitigation measures, cumulative surface water impacts are not anticipated.

2.9 Geological Resources

This section evaluates the potential for the project to affect geological resources.

2.9.1 Regulatory Setting

For geologic and topographic features, the key federal law is the Historic Sites Act of 1935, which establishes a national registry of natural landmarks and protects “outstanding examples of major geological features.” Topographic and geologic features are also protected under the California Environmental Quality Act.

This section also discusses geology, soils, and seismic concerns as they relate to public safety and project design. Earthquakes are a prime consideration in the design and retrofit of structures. The Department’s Office of Earthquake Engineering is responsible for assessing the seismic hazard for Department projects. The current policy is to use the anticipated Maximum Credible Earthquake, from young faults in and near California. The Maximum Credible Earthquake is defined as the largest earthquake that can be expected to occur on a fault over a particular period of time.

2.9.2 Affected Environment

A Geotechnical Report was completed in November 2004. The project site is located on the west side of the northern Coast Ranges Geomorphic Province. The Coast Ranges Province is composed primarily of rocks of the Franciscan Complex. The Franciscan Complex has been divided into three parallel belts: the Coastal Belt, the Central Belt, and the Yolla Bolly Belt. Transform faults and east dipping thrust faults form the boundaries between these belts.

The Coastal Belt of the Franciscan Complex is divided into the Coastal terrane and the Yager terrane. Bedrock at the project site is Coastal terrane. Geologic mapping show the project area bedrock divided into three lithologic units. These units are a bedded sandstone unit, a massive sandstone unit, and an inter-layered shale and sandstone unit. In addition, there are three Quaternary age river terrace deposits, older inactive landslide deposits, and active landslide deposits on the site.

Two active rockslides were identified in the project area. The large slide on the east side of the South Fork of the Eel River is known as the Confusion Hill landslide (existing U.S. 101 crosses this slide). The Confusion Hill slide appears to be a deep seated wedge-type block failure within the bedrock. Two active debris flows are associated with the Confusion Hill slide. The debris flows are shallow superficial failures. Four topographic features were interpreted to be older inactive landslides. Trees growing on the inactive slides indicate they have not moved for

1 California Regional Water Control Board

2 North Coast Region

3 ---o0o---

4 In the Matter of:

COPY

5 ADMINISTRATIVE CIVIL LIABILITY
6 COMPLAINT NO. R1-2009-0095.

7 _____/

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10
11 Deposition Of:

12
13 DAVID F. LELAND

14
15 Tuesday, October 12th, 2010

16
17
18
19 Reported by: Stephanie Anne Fox, CSR #4640

20
21
22
23 COASTAL REPORTING SERVICES
24 131-A STONY CIRCLE, SUITE 500
25 SANTA ROSA, CALIFORNIA 95401
(707) 573-9766

1 The deposition of DAVID F. LELAND was taken
2 pursuant to subpoena duces tecum at the NORTH COAST
3 REGIONAL WATER QUALITY CONTROL BOARD, 5550 Skylane
4 Boulevard, Suite A, in the City of Santa Rosa, County of
5 Sonoma, State of California, on Tuesday, the 12th of
6 October, 2010, commencing at the hour of 9:14 a.m.
7 thereof, before Stephanie Anne Fox, CSR No. 4640, a
8 California Certified Shorthand Reporter.

9
10
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EXHIBIT

1	Subpoena Duces Tecum to the Person Most Knowledgeable for the Regional Water Quality Control Board	106
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1 DAVID F. LELAND,
2 being first duly sworn by said certified shorthand
3 reporter in all respects as required by law, in answer
4 to oral interrogatories propounded by Sean K.
5 Hungerford, Attorney at Law, made answer and proceedings
6 were had as hereinafter set forth:

7 BY MR. HUNGERFORD:

8 Q. Would you please state your name for the
9 record?

10 A. David F. Leland.

11 Q. That's L-e-l-a-n-d?

12 A. L-e-l-a-n-d.

13 Q. And have you had your deposition taken before,
14 Mr. Leland?

15 A. On this matter?

16 Q. On any matter.

17 A. No.

18 Q. Well, I'll just start with a couple of ground
19 rules. As you can see, all of the words that I say and
20 you say are being taken down by a court reporter. So
21 because of that, we just have to make sure that your
22 answers are audible. Shakes of the head, nods of the
23 head don't translate so well onto the record. So if you
24 could please speak clearly with yes, no answers, I would
25 appreciate that.

1 A. I will.

2 Q. What is your current position with the Regional
3 Water Quality Control Board?

4 A. I'm a supervising water resource control
5 engineer and the chief of the Watershed Protection
6 Division.

7 Q. And how long have you had that position?

8 A. Four years.

9 Q. And prior to that, did you have another
10 position with the Regional Board?

11 A. Yes.

12 Q. And what was that?

13 A. I was senior water resource control engineer in
14 charge of the TMDL Development Unit.

15 Q. And how long did you hold that position?

16 A. For six years.

17 Q. And prior to that, did you hold another
18 position at the Regional Board?

19 A. Yes. I was water resource control engineer,
20 and I held that position at two different Regional
21 Boards, for one year here, and for two years prior to
22 that, at Regional Board Two in Oakland.

23 Q. And prior to that, did you have another
24 position with the Regional Board?

25 A. No.

1 Q. Did you have a position with another company?

2 A. Yes.

3 Q. What was that?

4 A. Immediately prior was a position with Sierra
5 Environmental Services as an engineer. That was for
6 about a year in 19, well, about a year.

7 Q. Any other companies before Sierra Environmental
8 Services?

9 A. Yes. Prior to that, I held a position for nine
10 years. I had several different positions with Harding
11 Lawson Associates in Novato.

12 Q. And what type of business is that?

13 A. That's an environmental consulting business.

14 Q. Any other private companies before Harding
15 Lawson?

16 A. Yes. Prior to that, I held a position for six
17 years with Arthur D. Little, Incorporated, Cambridge,
18 Massachusetts. That also I was involved with
19 environmental consulting work.

20 Q. What years approximately are we?

21 A. We're back in 1981.

22 Q. 1981?

23 A. Yes, so '81 to '87.

24 Q. Let me turn to your education. What
25 post-high-school education did you receive?

1 A. I have a bachelor's degree from Middlebury
2 College in Vermont, and I have a master's in
3 environmental engineering degree from University of
4 Massachusetts.

5 Q. And the B.A. is in what discipline?

6 A. It was American literature.

7 Q. And the master's again?

8 A. Environmental engineering.

9 Q. Any other degrees or accreditations?

10 A. No. Let me correct that. Registered, I'm a
11 registered professional engineer in the State of
12 California.

13 Q. Thank you. For how long?

14 A. Since '91.

15 MR. HUNGERFORD: I'm going to pause, and
16 counsel has been kind enough to bring a number of
17 binders and folders. I'd like to just spend a moment
18 just describing what those are on the record.

19 MS. MACEDO: Do you want to describe them, or
20 do you want me to?

21 MR. HUNGERFORD: Well, if you could, that would
22 be great. I'd be happy to do it, but I'd be asking you
23 questions.

24 MS. MACEDO: Okay, and since I am not sworn in
25 and not the witness, I'll just make a statement. We

1 brought our Confusion Hill files on this matter. It's
2 my understanding that all the documents contained within
3 these files and approximately five binders have been
4 produced to counsel previously. They include both the
5 application process that Caltrans went through prior to
6 the start of the project as well as communications
7 received this year, so it's contemporaneous.

8 Attorney work-product or attorney-client
9 privileged materials have been removed.

10 The binders are the daily logs that are kept by
11 the resident engineer on the project, and also one is
12 the Stormwater Pollution Prevention Plan, and one is the
13 response by Caltrans to a 13267 order, so five
14 altogether.

15 MR. HUNGERFORD: And that describes everything
16 that's on the table?

17 MS. MACEDO: The files, both the certification
18 and then just subsequent files as they fill up and then
19 five binders.

20 MR. HUNGERFORD: Thank you, Julie.

21 MS. MACEDO: Sure.

22 BY MR. HUNGERFORD:

23 Q. Mr. Leland, you've described for me the
24 positions you've held at the Regional Board and your
25 past employment. Can you tell me currently, what are

1 your job duties with the Regional Board in your current
2 position?

3 A. As I mentioned, I'm chief of the Watershed
4 Protection Division. So in that role, I supervise four
5 seniors, and those seniors have responsibilities that
6 include NPDES permit issuance and renewal, supervision
7 of the NPDES permit programs and industrial stormwater,
8 construction stormwater issuance and renewal of waste
9 discharge requirement permits, the enforcement functions
10 in the office, the grant functions in the office, the
11 development of TMDLs, land disposal, and the management
12 of all the various permits that I've just mentioned
13 above.

14 Q. With the exception of any officers with the
15 Regional Board, are you more or less the highest
16 authority within this Regional Board for those
17 responsibilities?

18 A. With the exception of, when you say the
19 officers, I'm assuming you are referring to the
20 assistant executive officer?

21 Q. Right.

22 A. And the executive officer?

23 Q. Correct.

24 A. The answer would be yes.

25 Q. And just to close the loop on that last

1 question, as I understand it, any enforcement action or
2 other orders taken by the Regional Board require the
3 execution of an executive officer of the Regional Board;
4 correct?

5 A. No, that's not correct. Enforcement actions,
6 most of them require an action of the assistant
7 executive officer.

8 Q. Who is Mr. Rivera?

9 A. That's correct.

10 Q. Can you describe for me generally what
11 responsibilities you had for the administrative civil
12 liability complaint for the Confusion Hill project?

13 A. My responsibility was to review the complaint
14 prior to its being forwarded on to the assistant
15 executive officer for his review and signature.

16 Q. In this case, did you direct the preparation of
17 the complaint?

18 A. I was not primarily in charge of the direction
19 of the preparation of the complaint. As I mentioned, I
20 supervise a team of seniors who are responsible for
21 day-to-day management of those kinds of things.

22 So the preparation of the complaint was done in
23 our enforcement unit and was under the supervision of
24 the senior in charge of the enforcement unit at the
25 time.

1 Q. Who was that senior?

2 A. Tom Dunbar for a portion of that. I'd have
3 to -- There was a change in assignment somewhere in the
4 last four years. I don't have the facts with me as to
5 when that change occurred.

6 Q. And is Tom Dunbar still with the Regional
7 Board?

8 A. No, he's retired.

9 Q. So it would be a correct characterization that
10 Tom Dunbar directed the preparation of the complaint,
11 but prior to Mr. Rivera signing it, you reviewed it?

12 A. Yes. I was involved at various times in
13 discussions of particular issues that came up in the
14 preparation, in the preparation of complaint.

15 Q. Do you know if Mr. Dunbar took an active role
16 in drafting the complaint?

17 A. The drafting of the complaint was primarily
18 done by Kason Grady.

19 MS. ZAZZERON: Kason Grady?

20 THE WITNESS: K-a-s-o-n, G-r-a-d-y.

21 BY MR. HUNGERFORD:

22 Q. Do you know of any other people that assisted
23 Mr. Grady in drafting the complaint?

24 A. Yes. The way that we are structured here, the
25 construction stormwater for activities for Caltrans is

1 overseen by Mona Dougherty, and the 401 certification
2 for this project was drafted and overseen by Dean Prat.

3 The enforcement, our enforcement function is
4 separate from the permit oversight functions, and so
5 both Mona and Dean were also involved in the preparation
6 of the complaint.

7 Prat by the way is P-r-a-t.

8 Q. A mistake I've made.

9 Can you tell me what it was that attacked this
10 project to the attention of the Regional Board as a
11 potential enforcement matter?

12 A. The observations by both our staff and reports
13 from other agency staff onsite that violations were
14 occurring.

15 Q. And which staff members from the Regional Board
16 made those observations?

17 A. Dean Prat I believe was the one who primarily
18 made the observations.

19 Q. Any others that you're aware of?

20 A. Possibly Mona. I'm not completely clear about
21 that.

22 Q. Are Dean and Mona Board employees that tend to
23 perform site inspections?

24 A. Yes.

25 Q. You indicated that observations were made by

1 other agencies.

2 A. Yes.

3 Q. Which agencies were those?

4 A. The Department of Fish and Game primarily.

5 Q. Other than Fish and Game, any others?

6 A. I don't know.

7 Q. Do you know of any individual staff members
8 with the Department of Fish and Game that made
9 observations concerning this project?

10 A. I do not.

11 Q. Do you have an understanding of the nature of
12 the observations made by the Department of Fish and
13 Game?

14 A. In general, there were observations of various
15 sorts of discharges of waste of turbidity plumes, of
16 leaking, fuel leaking into surface waters of
17 construction debris of various kinds being discharged
18 into surface waters.

19 Q. Let me back up. Were any files or records
20 transferred from the Department of Fish and Game to the
21 Regional Board? And I'll clarify. When I say files or
22 records, I mean any letters, memoranda, reports,
23 photographs concerning this project.

24 A. My understanding is yes.

25 Q. Do you know if the Regional Board has a file of

1 files from the Department of Fish and Game in its
2 possession?

3 A. Whatever we have in those binders would
4 represent what we've received from Fish and Game is my
5 understanding.

6 MR. HUNGERFORD: And, counsel, I'll just ask,
7 your basic understanding, and I know you're not under
8 oath, is that any Fish and Game materials would be in
9 these records here on the table?

10 MS. MACEDO: That's right.

11 MR. HUNGERFORD: And also that they've been
12 previously produced?

13 MS. MACEDO: That's right.

14 MR. HUNGERFORD: Thank you.

15 BY MR. HUNGERFORD:

16 Q. Do you know, Mr. Leland, who made the decision
17 to begin the preparation of the complaint?

18 A. We would have discussed that internally amongst
19 several of us and would have made that decision with my
20 approval and Luis' approval, Mr. Rivera's approval?

21 Q. Who would have been part of those internal
22 discussions?

23 A. All of the people that we have mentioned, so
24 that would have been Mr. Dunbar, Mr. Prat, Mona
25 Dougherty and Kason Grady.

1 know, six months, a month, a year, less than five years,
2 I do think I'm entitled to that. So would "quite a long
3 time" be approximately --

4 A. I could say a year to two years.

5 Q. And that's uncharacteristically long as
6 compared to other ACL complaints?

7 A. Yes.

8 Q. Why did it take a longer time to prepare this
9 complaint?

10 A. I'd cite two reasons: One was the number of
11 violations that were being addressed, and the second was
12 the need for information and records from Caltrans which
13 extended, also extended the duration of time it took to
14 prepare the complaint.

15 Q. Did the Regional Board make various requests
16 for information from Caltrans?

17 A. That's my understanding.

18 Q. And who was the point person at the Regional
19 Board in those communications?

20 A. That would have been Kason Grady.

21 Q. Did the complaint also rely on information
22 received from Department of Fish and Game?

23 A. Did the complaint rely on information from Fish
24 and Game?

25 Q. Yes.

1 A. It's my understanding.

2 Q. Would Kason have been the point person working
3 with Fish and Game as well?

4 A. I believe so.

5 Q. Do you know whether any interviews were made by
6 anyone? I'm sorry; let me back up. Do you know if any
7 interviews were taken by anyone at the Regional Board,
8 of any person as part of the preparation of this
9 complaint?

10 A. I don't know.

11 Q. Is it customary for the Regional Board to
12 interview people that might have information about an
13 enforcement matter prior to preparing a complaint?

14 A. That would depend on the situation.

15 Q. How many different revisions of the complaint
16 were made in this case prior to finalizing?

17 A. I don't have a recollection of that.

18 Q. Do you know if there was more than one revision
19 or the final version was prepared the first time?

20 A. The final version was not prepared the first
21 time.

22 Q. Would draft versions of the complaint have come
23 to you?

24 A. Typically there would be multiple drafts, some
25 of which would come to me.

1 Q. You said typically. In this case, do you
2 recall multiple drafts?

3 A. The reason I said I don't know is because I
4 often don't see the interim drafts as they're prepared.

5 Q. Okay.

6 A. Those would be developed between the staff
7 member and his or her senior before coming to me.

8 Q. And in this case, that would have been Tom
9 Dunbar?

10 A. Again, it would have been the senior in charge
11 of the enforcement unit which was Tom Dunbar at the
12 beginning of this process and may have changed somewhere
13 in the course of this.

14 Q. Who would it have changed to?

15 A. I would have to -- There were several changes
16 in organization through that time, and so I would have
17 to -- I'd have to go back and reconstruct that history,
18 which I don't have.

19 Q. So you don't recall who it was that might have
20 replaced Tom Dunbar on this project, if anyone?

21 A. The lead for the enforcement function changed
22 from Tom Dunbar to Diana Henriouille, but Kason moved
23 from enforcement into NPDES, into the permitting unit,
24 and so it's the dates of these that I'm not certain of
25 in terms of who was supervising Kason and exactly what

1 time.

2 Q. And Diana Henriouille?

3 A. H-e-n-r-i-o-u-l-l-e.

4 Q. Thank you. Would the Regional Board have
5 retained any draft versions of the complaint?

6 A. To the best of my knowledge, no.

7 Q. Is it the Regional Board's practice to discard
8 or destroy draft versions of documents?

9 A. Yes, once the complaint is complete.

10 Q. And to your knowledge, that's what happened in
11 this case?

12 A. To the best of my knowledge.

13 Q. How would you characterize the size of the
14 monetary penalties in this case in relation to other
15 administrative civil liability complaints issued by the
16 Regional Board?

17 A. It would be on the large end.

18 Q. What created such a large figure here?

19 A. The number of violations.

20 Q. Are there any other large construction projects
21 in this Regional Board's jurisdiction that you can
22 recall that have merited similar-size violations?

23 A. Not that I can recall.

24 Q. You're aware that there's a number of
25 adjustment factors under Section 13385 that Regional

1 Boards tend to apply when determining the ultimate
2 amount of administrative civil liability to be assessed;
3 correct?

4 A. Yes, I am.

5 Q. And you're familiar with ten factors?

6 A. Yes.

7 Q. Who within the Regional Board made the
8 determination of how to apply those factors in this
9 case?

10 A. Again, that initially would have been done by
11 the staff member working on the complaint, in this case,
12 Mr. Grady, and then that proposal would have been
13 reviewed up the chain through the lead of the
14 enforcement unit and me and Mr. Rivera.

15 Q. When Mr. Grady or any other staff member in his
16 position is making this sort of determination as far as
17 the adjustment factors, what information does he rely
18 on?

19 A. Well, it depends on the factor.

20 Q. Are there any written policies followed by the
21 Regional Board to determine how much ACL penalties
22 should be adjusted?

23 A. At the time that this complaint was prepared, I
24 do not believe there was a written policy in place with
25 respect to that.

1 Q. Are there any unwritten guidelines that you're
2 aware of that Mr. Grady would have had at his disposal
3 to review?

4 A. There's a noisy door there, so --

5 Q. I'll state it again. Are there any unwritten
6 guidelines or policies that you're aware of that
7 Mr. Grady would have had at his disposal?

8 A. The lead of the enforcement unit in
9 consultation with his or her supervisors represents the
10 state of practice if you will in applying those factors
11 to discretionary penalties.

12 MR. HUNGERFORD: Do you mind reading that back?
13 I missed the first part.

14 (Record read: "The lead of the enforcement
15 unit in consultation with his or her supervisors
16 represents the state of practice if you will in applying
17 those factors to discretionary penalties.")

18 BY MR. HUNGERFORD:

19 Q. And the leads of the enforcement, those are
20 people?

21 A. Yes. Again, I'm just going back to my
22 uncertainty about the exact time frames of who was in
23 charge of reinforcement throughout the course of this
24 process.

25 Q. And I'm just trying to determine what Mr. Grady

1 would have had as far as guidance from the Regional
2 Board to make a determination of how much of a discount,
3 for example, to make off the relatively large ACL
4 penalty.

5 A. He would have the experience of his supervisors
6 and others in the office who had prepared ACL complaints
7 in the past, and would have or would rely on that
8 experience and decisions made in similar instances.

9 Q. Are the adjustment factors typically applied to
10 a penalty as a whole, or are they applied to the
11 individual violations within the ACL complaint?

12 A. That depends on the situation.

13 Q. In this situation, do you know how they were
14 applied?

15 A. My understanding is that they were applied to
16 groups of violations.

17 Q. Can you describe the process for how those
18 would have been applied to a group for this complaint?

19 A. The factors are general in nature. So it would
20 have been perfectly feasible to apply them to a group of
21 violations.

22 Q. So let's say, for instance, you have twenty
23 violations relating to excessive turbidity. For those
24 twenty violations for that group, would the Regional
25 Board apply the factors by taking a percentage of the

1 total value of claims or by -- I'm trying to get the
2 process for how a group of factors are considered as far
3 as the application of the adjustment factors.

4 A. Could you ask that again?

5 Q. Yes. That wasn't a very good question. How
6 does the Regional Board apply the adjustment factors to
7 a group of violations? Do they do it by, you know,
8 first determining whether or not these are serious or
9 not serious violations for instance?

10 A. In some cases, that would be true because some
11 of the factors have to do with the effect of the
12 violation on water quality. So that would be one factor
13 that would be considered.

14 Q. Is there a, within this Regional Board, is
15 there any practice for applying a particular percentage
16 of reduction to penalties based on the seriousness of
17 the violations as a group?

18 A. The factors are considered both individually
19 and together. So the seriousness of the violation is
20 one factor that's considered.

21 Q. And am I correct that Kason Grady is the person
22 that initially made the determination of what
23 adjustments to make?

24 A. That's my understanding.

25 Q. And then his decision or his proposal would

1 have gone to whom?

2 A. Well, I should add that he did that in
3 consultation with counsel.

4 Q. That's fine. Outside of any communications
5 with counsel, do you know any other staff members at the
6 Regional Board he would have consulted with?

7 A. I would be speculating.

8 Q. Well, I don't want you to guess, but you can
9 make assumptions based on your knowledge of your
10 interior structure.

11 A. He probably would have discussed that with his
12 immediate supervisor.

13 Q. Who at that time would have been Mr. Dunbar?

14 A. Again, my recollection of the dates of changes
15 in the leadership in the enforcement unit are uncertain.

16 Q. So the way that this complaint is structured,
17 is it possible to -- Well, let me back up. For this
18 complaint, is it correct that the adjustment factors
19 weren't applied to any individual violation?

20 A. That's my understanding, except in some cases,
21 there are some individual violations that are called out
22 separately in the complaint, and factors may have been
23 applied to those individually.

24 Q. And did you personally review the adjustment,
25 the application of the adjustment factors, as part of

1 your review of the complaint?

2 A. Yes.

3 Q. And did you feel that they were appropriate, or
4 did you send them back for revisions the first time you
5 saw them?

6 A. I don't recall.

7 Q. But at some point, you accepted that that was
8 an accurate description of the application of the
9 adjustment factors?

10 A. I would describe them as an appropriate
11 application of the adjustment factors.

12 Q. Better said. Are you aware of any water
13 quality measurements taken by the Regional Board or any
14 other person with respect to this complaint?

15 A. Not specifically.

16 Q. Who would be the person with that knowledge?

17 A. Either Kason Grady, Mona Dougherty or Dean
18 Prat.

19 Q. Are you aware of any actual adverse impacts to
20 water quality as a result of the activities described in
21 the complaint?

22 A. Could you describe what you mean by adverse
23 impacts to water quality?

24 Q. Yes. We'll approach it this way: Are you
25 aware of any violations of Basin Plan standards

1 resulting from the activities described in the
2 complaint?

3 A. I am aware of what appear to be violations of
4 Basin Plan standards.

5 Q. And what violations are those.

6 A. That would specifically be -- Well, there's
7 several. The turbidity of water quality objective, and
8 the basin plan prohibitions on the discharge of
9 construction materials, a variety of different materials
10 during construction activities would be two violations.

11 Q. Any violations of the toxicity standards?

12 A. Not that I'm aware of.

13 Q. Are you aware of any adverse impacts to
14 wildlife, including fish, as a result of the activities
15 described in the complaint?

16 A. Not specifically.

17 Q. I know you're familiar with the ten adjustment
18 factors, and I'm just going to go through them
19 categorically with you right now.

20 The first one looks at the nature or
21 circumstance, extent and gravity of the violations. Can
22 you tell me what factors in your understanding were
23 considered by the Regional Board in applying that
24 factor?

25 A. One of the primary factors in this particular

1 case is the fact that the South Fork Eel River is listed
2 on the Clean Water Act Section 303 D list as impaired
3 for sediment, excess sediment discharges.

4 Q. Do you know what lead to its listing? Were
5 there any particular activities or considerations that
6 created that 303 D listing?

7 A. There would be a number of different activities
8 that would have contributed to that listing, and they
9 would include construction, timber harvesting,
10 improperly maintained roads. Those are some examples.

11 Q. Are you aware of any of those activities
12 upstream of this project on the South Fork Eel?

13 A. I'm sure that there are dirt roads and timber
14 harvesting activities that take place upstream of that
15 location.

16 Q. Do you know when the South Fork Eel was listed
17 for sediment?

18 A. I don't know. It would have been in the 1990s.

19 Q. As far as the nature, circumstances and extent
20 factor, anything else that stands out to you apart from
21 the 303 D listing as a reason why this is a particularly
22 serious violation?

23 A. The listings themselves reflect potential for
24 impacts to beneficial uses. In the case of the South
25 Fork Eel, it supports a variety of aquatic life,

1 including some species that are listed under either the
2 Federal or the State Endangered Species Act, and that
3 creates a heightened sensitivity on our part.

4 Q. Are you aware of any Department of Fish and
5 Game enforcement action relating to this project?

6 A. Not specifically.

7 Q. The second factor under 13385 relates to
8 whether the discharge is susceptible to clean-up or
9 abatement; correct?

10 A. I'll take your word for it.

11 Q. Okay. Has the Regional Board ordered any
12 clean-up or abatement concerning this project?

13 A. In the case of that particular factor, my
14 recollection of our understanding of that, that most of
15 these discharges occurred, of the violations that were
16 related to discharges that occurred directly to the
17 river were not susceptible to clean-up and abatement.
18 So again, in that instance, we didn't order any clean-up
19 and abatement.

20 Q. What made them not susceptible to clean-up or
21 abatement?

22 A. They were directly to, in the cases, they were
23 directed to the river because they were directed to the
24 river.

25 Q. Well, being familiar with the complaint, you're

1 aware that there were violations alleging a number of
2 types of discharges into the river, including wood,
3 metal, welding slag and other materials. Why weren't
4 any of these susceptible to clean-up?

5 A. I guess I don't have an answer for that.

6 Q. Has the Regional Board issued any investigative
7 orders under 13267 for this project?

8 A. I don't recall.

9 Q. Any notices of violation for this project?

10 A. Yes, I believe there were two.

11 Q. Can you describe them for me?

12 A. Not in a lot of detail. There were two that
13 were issued, one sometime in the early stages. Well,
14 they were both issued in the early stages of the
15 project, and had to do with the types of violations I
16 believe that we've been talking about.

17 Q. Do you recall the specifics of either
18 violation?

19 A. I don't recall the specifics.

20 Q. Did the existence of the two NLVs have any
21 impact on the amount of penalties claimed in this
22 complaint?

23 A. I'm not sure what you're asking exactly.

24 Q. Well, you mentioned that the ten adjustment
25 factors under 13385 as you observed are kind of general

1 and categorical in nature, and they look at the nature
2 of the activities in addition to the conduct of the
3 discharger, and so I think it's a reasonable question
4 whether or not the notices of violation here early on in
5 this project played any role in the preparation of that
6 complaint.

7 A. When we issue a notice of violation, it would
8 have been true in these cases, we intend those to act as
9 instruction if you will to the discharger to improve
10 operations to end those violations, end the practices
11 that are leading to the violations. So the response to
12 the violation would certainly be a factor that we would
13 consider in the complaint.

14 Q. In this case, do you have any understanding of
15 the type of response given by the discharger?

16 A. We did not feel that the patterns of activities
17 that led to the initial violations that were documented
18 in the NLVs were adequately reflected in changes and
19 practice after the NLVs were issued.

20 Q. Is it fair to say, then, that that condition,
21 the response to the notice of violation that you just
22 described, you know, had an effect that made it more
23 likely at least that the Regional Board to issue the
24 complaint?

25 A. No, I don't think it made it more likely that

1 we would have issued the complaint.

2 Q. Was that pattern of conduct in response to the
3 notices of violation something that was relied on by the
4 Regional Board in preparing this complaint?

5 A. It was one of the pieces of information that we
6 used in applying the factors that we're talking about.

7 Q. I'll represent another one of the 13385
8 adjustment factors is the ability of the violator to
9 pay. To your knowledge, how was that factor applied in
10 this complaint?

11 A. It was applied by looking at the -- The primary
12 approach was by looking at the value of the project.

13 Q. Do you know what the value of the project was?

14 A. My recollection is it was somewhere in the
15 seventy-million to eighty-million-dollar range.

16 Q. And when you say look at the value of the
17 project, does that in this case just mean the total
18 price bid out to contractors?

19 A. I believe that that's what the number that I
20 just gave you reflects.

21 Q. Did you do any more detailed investigation in
22 this case on the ability of the discharger, in this case
23 Caltrans, to pay?

24 A. Not that I'm aware of.

25 Q. Did you look at any more detailed accounting of

1 the project costs that would have allowed you to
2 determine what types of profits might have been made by
3 any of the contractors?

4 A. I did not.

5 Q. Do you know if anyone else did for the Regional
6 Board?

7 A. I don't know.

8 Q. Other than the total project value, was there
9 any other information that the Regional Board took into
10 consideration as far as the ability of the violator to
11 pay?

12 A. It's my recollection that that's the main
13 factor that we used.

14 Q. Does the Regional Board have an understanding
15 as far as any monies that are ultimately paid in
16 response to this complaint, what the source of that
17 money would be?

18 A. I'm not sure that I understand the question.

19 Q. Let's assume that we go through a hearing, and
20 there's a final order on this complaint which, you know,
21 orders every penny of the ACL penalties. Where does the
22 Regional Board think that money is going to come from?

23 MS. MACEDO: I'll object as to relevance.

24 MR. HUNGERFORD: You can still answer.

25 MS. MACEDO: Yes.

1 THE WITNESS: Either from Caltrans contractors
2 or possibly subcontractors.

3 BY MR. HUNGERFORD:

4 Q. Are you familiar with who the contractors are
5 on this project?

6 A. MCM is the prime contractor.

7 Q. Are you familiar with any of the other
8 contractors?

9 A. I've heard some of the names, and in the
10 meetings with other subcontractors, the only other one
11 that I can remember is Ladd.

12 Q. I'll represent that another one of the
13 adjustment factors under 13385 is the effect of the
14 violator's ability to stay in business. How, if at all,
15 was that factor applied for this project?

16 A. I don't recall specifically.

17 Q. Do you recall whether anyone considered whether
18 this project would affect Caltrans' ability to stay in
19 business?

20 A. I don't think we had any concerns about that.

21 Q. Did anyone consider the contractor's ability to
22 stay in business?

23 A. I would say yes, that was considered in a
24 general way. We talked about specific numbers for this
25 project, but MCM is generally known to be a large and

1 successful construction firm in the state.

2 Q. Did anyone at the Regional Board perform any
3 type of analysis that would have provided the Regional
4 Board with information on how much of a profit MCM would
5 have made on this particular project?

6 A. Not that I'm aware of.

7 Q. Did anyone perform any investigation of MCM's
8 financial position?

9 A. Not that I'm aware.

10 Q. You just had a general understanding that MCM
11 is a large, successful contractor?

12 A. That's correct.

13 Q. Would it be fair to say that you had the same
14 level of analysis for any other contractors, you know,
15 such as Ladd?

16 A. I would say that during the preparation of the
17 complaint, I wasn't aware of the names of any of the
18 other subcontractors so that I was not aware that there
19 was any even general analysis done on the
20 subcontractors.

21 Q. The next adjustment factor under 13385 relates
22 to any voluntary clean-up efforts undertaken. Do you
23 have any understanding as to how that factor might have
24 been applied in this case?

25 A. I don't specifically.

1 Q. I'll make a representation to you that it's
2 MCM's position that it paid out of its own pocket for
3 various features on this project that made the project
4 more environmentally sensitive. Is that something that
5 you're aware of?

6 A. I have heard MCM represent that to us in
7 meetings that we have had, but I wasn't aware of that at
8 the time.

9 Q. For example, the meeting that we had a few
10 months back, we did speak about that; correct?

11 A. I recall that we did.

12 Q. Prior to that meeting, had you heard that?

13 A. I couldn't say for sure. It's possible that
14 that came up during the other Confusion Hill enforcement
15 action that we took that predated this complaint.

16 Q. Notwithstanding the violations that have been
17 alleged in the complaint, is the Regional Board aware of
18 any positive or good things that were done as part of
19 this construction project from its standpoint?

20 A. I couldn't cite any specifically.

21 Q. Do you have any general understandings that
22 there were any good features added to this project?

23 A. No.

24 Q. I'll represent one of the other 13385 factors
25 is whether there's a history of violations on the part

1 of the discharger. Is that a factor that was applied by
2 the Regional Board in this case?

3 A. Yes, it was.

4 Q. How specifically?

5 A. We reviewed prior violations by Caltrans during
6 the construction of other projects.

7 Q. And which other projects were those?

8 A. They're cataloged in the complaint.

9 Q. So I should just refer to the complaint?

10 A. For a complete list of the projects that we
11 considered.

12 Q. Any that stick out in your mind as I thumb
13 through the complaint?

14 MS. MACEDO: I'll object and say the document
15 speaks for itself.

16 MR. HUNGERFORD: You can still answer.

17 MS. MACEDO: Would you like to review the
18 complaint before answering?

19 THE WITNESS: I'd prefer to do it that way.

20 MR. HUNGERFORD: Well, here's an easier way.
21 I'll just go through the complaint myself, and I'll ask
22 you them.

23 THE WITNESS: Okay.

24 BY MR. HUNGERFORD:

25 Q. So there are a number of other projects

1 described in the complaint that, based on the
2 allegations, the Regional Board relied on to inform the
3 administrative penalties. The first one is a Dry Creek
4 Bridge Replacement Project. Are you familiar with that
5 project?

6 A. Not specifically.

7 Q. So you can't tell me what the nature of the
8 violations were there based on your --

9 A. I could not recite those to you.

10 Q. The next one would be a Van Duzan River Bridge
11 Project. Are you familiar with that?

12 A. I'm somewhat familiar with that.

13 Q. What's your basic understanding of that
14 project?

15 A. A bridge replacement project during which there
16 were a number of violations that occurred during
17 construction of the project.

18 Q. Would you consider them serious violations?

19 A. I, I don't have the facts at hand.

20 Q. The next one listed in the complaint is an
21 investigative order under 13267 for disposal of
22 landslide material in the South Fork Eel River. Are you
23 familiar with that event?

24 A. I'm not familiar with the specific event, but
25 I'm familiar with the general situation at the location

1 of the slide that the Confusion Hill, that the project
2 that we're talking about replaced. There was a pattern
3 of disposal of slide material into the South Fork Eel
4 River.

5 Q. And that's on this particular project, correct?

6 A. It's on the section of road that's replaced by
7 this project.

8 Q. So again, prior to this project, Van Duzan
9 Bridge Project, there was a road that passed next to the
10 river?

11 A. Yes.

12 Q. And am I correct that before the bridge was
13 built, there was a patten of disposal of material into
14 the river by objectives?

15 A. That's my understanding.

16 Q. Do you know how this 13267 order was resolved,
17 or is it still outstanding?

18 A. I don't know how it resolved, how it was was
19 resolved.

20 Q. Do you have an understanding of how much or
21 what type of disposal was taking place?

22 A. I don't specifically in terms of amounts.

23 Q. The next event described in the complaint is
24 the Hard Scrabble Creek Bridge Replacement Project. Are
25 you familiar with that project?

1 A. Yes, I am, somewhat.

2 Q. Can you describe your understanding of that?

3 A. There were several concerns that we had about
4 that project. The ones that were addressed in the
5 violation had to do with the discharge of contaminated
6 water into Hard Scrabble Creek as a result of inadequate
7 BMPs being replaced.

8 Q. Where is Hard Scrabble Creek?

9 A. I believe it's in Del Norte County.

10 Q. And then the next event listed by the complaint
11 is another ACL complaint relating to the Confusion Hill
12 project; correct?

13 A. Yes.

14 Q. And are you familiar with that event?

15 A. You need to refresh my memory on the specifics
16 there.

17 Q. I'll describe what the allegations say. It
18 says that on March 6th, 2008, and I'll paraphrase, the
19 Regional Board adopted an ACL order with the total civil
20 liability of \$20,000 for one day of discharge of one
21 hundred and seventy gallons of sediment slurry to the
22 river and four days of a failure to submit a written
23 report of a discharge.

24 Other than what I've just read to you, do you
25 have any independent understanding of what happened on

1 that event?

2 A. My recollection is not clear on that at this
3 point.

4 Q. All right. The next event in the complaint
5 again relates to Hard Scrabble Creek, and that is -- I
6 won't ask you any more about that.

7 So we've listed off a number of, or I'm sorry;
8 the complaint has listed off a number of other past
9 violations involving objectives. To your knowledge, was
10 MCM involved in any of those other events?

11 A. To my knowledge, no.

12 Q. Now, in looking at the history of past
13 violations --

14 A. Could I correct that?

15 Q. Sure.

16 A. I believe that MCM actually was involved in the
17 Van Duzan Bridge Project.

18 Q. And to your knowledge, did the Regional Board
19 focus on MCM's actions or conduct as it relates to that
20 violation or series of violations?

21 A. I don't recall.

22 Q. As part of looking at this factor of history of
23 violations, did the Regional Board look at violations by
24 any of the contractors on the Confusion Hill Project?

25 A. You mean actions of contractors on other

1 projects?

2 Q. Exactly.

3 A. We would certainly have considered the, if my
4 recollection is correct, MCM's involvement in the Van
5 Duzen Project.

6 Q. Other than Van Duzen, to your knowledge, were
7 there any other MCM projects other than Confusion Hill
8 that were considered as part of the preparation of this
9 complaint?

10 A. Not to my knowledge.

11 Q. On the Van Duzen Project, who do you believe
12 would be the most capable person within the Regional
13 Board to discuss that enforcement issue?

14 A. Dean Prat would probably be the best person to
15 talk to about that.

16 Q. And finally, well, not finally, the 13385
17 factors also look at the degree of culpability of the
18 violator. As you sit there, can you explain whether
19 that factor was applied in any way here on this project?

20 A. My recollection is that it was considered.

21 Q. In what way?

22 A. I'd have to look at the complaint to, again to
23 remember specifically.

24 Q. 'Cause I understand it's a very difficult
25 factor to apply beyond the specifics that we've been

1 talking about.

2 Economic savings is another factor that is
3 supposed to be applied under 13385. Do you know how
4 that factor was applied in this complaint?

5 A. We would have looked at the potential for
6 economic savings as a result of not doing certain
7 actions that could have prevented or mitigated
8 particular violations.

9 Q. Is this written up in any document or report?

10 A. Not to my knowledge.

11 Q. Can you give me an example of any actions that
12 were not taken on this project that led to violations
13 being claimed or the application of adjustment factors?

14 A. Could you say that again?

15 Q. Sure. Are you aware of any examples of actions
16 on this project that the Regional Board felt should have
17 been taken that weren't?

18 A. I can give a couple of examples --

19 Q. Sure.

20 A. -- that I believe respond to your question.

21 Q. Go ahead.

22 A. One had to do with refueling areas and managing
23 refueling areas according to the best management
24 practices. That requires a certain amount of care and
25 attention and maintenance, and records that we have

1 indicate that that care and attention was not taken.

2 Another example is the issue of loss of welding
3 slag and other materials from the construction of one or
4 perhaps both of the bridges which was performed without
5 any containment in place for a long time, and only after
6 a long time was some containment put in place to capture
7 those materials and prevent the discharge.

8 Q. How did the Regional Board compute the economic
9 savings for not managing refueling areas as well as the
10 Regional Board would have liked?

11 A. I'm not sure that there was a computation on
12 that.

13 Q. To your knowledge, there was no computation?

14 A. I don't have any knowledge of it.

15 Q. What about for containment of welding slag?
16 Was there any computation of the savings that might have
17 been made by not doing things differently?

18 A. Not to my knowledge.

19 Q. Other than refueling and welding slag, are
20 there any other examples that you can recall?

21 A. The concrete wastewater discharge or disposal
22 would be another example.

23 Q. Can you describe what exactly took place there
24 at the concrete wastewater disposal?

25 A. I can describe my understanding, that the

1 waste, the concrete washwater was disposed in an unlined
2 pit in violation of or in contradiction to the
3 application that we had, and therefore, was a violation
4 of the permit, and that resulted in the discharge of
5 material to the South Fork Eel River, and that
6 management of that in a way that would have been
7 compliant with the application and the permit would have
8 been, could have been costly 'cause it may have required
9 transfer of that water or lining of the pond, the
10 disposal pit that was created or other actions that
11 would have required effort and expense on the part of
12 Caltrans and the contractors.

13 Q. Was any study or analysis made of the savings
14 that was allegedly gained?

15 A. Not to my knowledge.

16 Q. Do you know how many occasions concrete
17 wastewater was disposed of improperly?

18 A. I don't know.

19 Q. As far as management practices for concrete
20 wastewater, what would the Regional Board's expectation
21 have been?

22 A. Well, our base expectation would be that the
23 project be implemented in accordance with the proposal
24 in the application that we received from Caltrans which
25 is the basis for the 401 certification, and our further

1 expectation is that if that proposal proves not to be
2 working, that Caltrans would make adjustments and direct
3 its contractor to make adjustments to improve the
4 practice so that there were no discharges occurring.

5 Q. In general terms, is that the way that
6 management practices are applied, that you apply them,
7 and then if there are any problems, then you adjustment
8 them until --

9 A. That's typical, yes.

10 Q. Other than refueling, welding slag and concrete
11 wastewater, any other examples you can recall of things
12 that could have been done differently that rendered some
13 form of economic savings for the project?

14 A. I'm sure there are, although I would have to
15 refer to the complaint to identify additional examples.

16 Q. Okay. But it's accurate to state that the
17 Regional Board didn't conduct any actual economic
18 analysis of savings made by the project?

19 A. Again, to my knowledge, that's correct.

20 Q. Let me ask you, how then does the Regional
21 Board apply this adjustment factor in the context of
22 this complaint when there's no, when there's a
23 requirement of the 13385 you consider the economic
24 savings, but no analysis is made that would identify
25 that savings? How is this factor applied?

1 A. I don't see why it would be necessary to have
2 exact numbers on a specific situation to make that kind
3 of judgment. We would rely on our experience with other
4 construction projects to make that sort of judgment.

5 MR. HUNGERFORD: Could we take a short break if
6 it's all right with you?

7 MS. MACEDO: Yes.

8 (Recess held.)

9 MS. MACEDO: We're on?

10 MR. HUNGERFORD: Back on.

11 BY MR. HUNGERFORD:

12 Q. I'm going to spend just a little bit of time
13 going through some of the allegations in the complaint,
14 not in a great amount of detail but just at least go
15 through groups, and I have a few specific questions. I
16 know that you might not be the best person to talk about
17 the nitty-gritty stuff, and so I'll probably save those
18 questions for later.

19 Let me start with, do you have a copy of the
20 complaint in front of you? That might help.

21 A. I do not.

22 MR. HUNGERFORD: Julie, do you have an extra
23 one? I only have one copy.

24 MS. MACEDO: Are we marking this as an exhibit?
25 If so, I'm happy to make a copy.

1 MR. HUNGERFORD: I don't think we need to mark
2 it as an exhibit.

3 MS. MACEDO: Okay.

4 BY MR. HUNGERFORD:

5 Q. Why don't you start with page eight, paragraph
6 sixteen? So paragraph sixteen describes provisions of
7 the Basin Plan, specifically an action plan for logging,
8 construction and associated activities; correct?

9 A. Yes.

10 Q. And then it goes on to have a number of
11 specific provisions from the Basin Plan; correct?

12 A. Yes.

13 Q. Are there any, to your knowledge, specific
14 violations relating to the action plan for logging,
15 construction and associated activities?

16 A. Yes.

17 Q. Which ones are those?

18 A. Well, there are a variety of these, the
19 construction, the discharge of soil, silt, bark, slash,
20 sawdust, or other organic and earthen material from any
21 logging, construction, or associated activity of
22 whatever nature into any stream or watercourse in the
23 basin.

24 Q. Well, let me approach the question this way:
25 As you're aware, the complaint has a number appendices

1 of that are tables listing individual violations; right?

2 A. Yes.

3 Q. And each one of those, those individual
4 violations listed, is given one or more conditions that
5 have been violated in the second-to-last column.

6 A. Yes.

7 Q. Now, my read-through is that all of those
8 conditions that are listed in that column are conditions
9 of the certification. Is that your understanding as
10 well?

11 A. Yes, the additional conditions do refer to the
12 certification.

13 Q. And so this action plan for logging,
14 construction and associated activities that's described
15 in paragraph sixteen, do these form the basis for
16 specific violations independent of the certification in
17 the complaint?

18 A. My recollection is that some of the additional
19 conditions in the certification are verbatim statements
20 of the action plan for logging.

21 Q. And I think that that's right. They're either
22 verbatim, or they've channeled them in some way, but are
23 there, to your knowledge, any specific violations that
24 are based exclusively on the action plan for logging and
25 not the certification conditions?

1 A. Well, again, I'm not able to separate those, if
2 the action plan for logging is cited in the
3 certification and the certification also includes a
4 statement that any violations of the Basin Plan
5 constitute violations of the certification, so they're
6 tightly linked.

7 Q. Is the action plan for logging cited in the
8 certification?

9 A. I believe that the language on there, I think
10 it's condition nine as a matter of fact, but we should
11 check that.

12 Q. Well, I can certainly see that they share the
13 same language from the logging to the certification, but
14 I'm trying to determine how the, other than that, how
15 the logging action plan relates to the allegations. For
16 example, in the complaint, can you identify in the
17 appendices, in the tables, any specific violations that
18 relate to the action plan for logging and not for the
19 certification?

20 A. I guess I'm confused by the question. If the
21 language in the certification is the same as the
22 language in the action plan, I'm not sure how you're
23 making a distinction there.

24 Q. Well, let me ask you this: Look at condition
25 one under paragraph sixteen, referring to discharge of

1 soil, silt, bark, et cetera; correct?

2 A. Yes, uh-huh.

3 Q. That seems to overlap with, but is not
4 identical to, condition nine of the certification. Do
5 you agree with that?

6 A. I don't have the language of the certification
7 in front of me.

8 Q. You can see the language in the certification
9 in the complaint two pages prior.

10 A. Okay. It's actually one page prior, but I'm
11 looking at that.

12 MS. MACEDO: Is it paragraph nine?

13 THE WITNESS: Number nine, yes.

14 BY MR. HUNGERFORD:

15 Q. Those are identical conditions, correct,
16 paragraph nine of the certification and paragraph four
17 on the action plan for logging?

18 A. Yes, that's correct. I see that.

19 Q. So what's your understanding of the
20 relationship between the certification and the action
21 plan for logging?

22 A. The language in the certification is intended
23 to reflect the language in the action plan.

24 Q. So let me tell you just the way I think I
25 understand it, and I'd like your view on whether this is

1 correct. I believe that the certification was developed
2 in part on reliance on the action plan in the specific
3 provisions there, but they don't copy them verbatim. Is
4 that basically correct?

5 A. That appears to be the case.

6 Q. It's also my understanding that the complaint
7 is based on specific conditions in the certification
8 which, although they are based on conditions in the
9 action plan for logging, don't specifically allege
10 violations of the action plan for logging. Is that also
11 a correct characterization?

12 Condition thirteen of the cert which states
13 project activities shall comply with provisions of the
14 North Coast Regional Water Control Plan, the Basin Plan,
15 would cover the action plan independently of paragraph
16 nine of additional condition nine.

17 Q. Okay.

18 A. And I'm looking on page seven of the complaint.

19 Q. Okay. Now, that's additional condition
20 thirteen. Additional condition thirteen relates to
21 fueling, lubrication and maintenance.

22 A. Maybe we have an error, then. Is it additional
23 condition seventeen, then? Should it say seventeen in
24 the complaint and not thirteen?

25 Q. There was a change in the certification on

1 April 18th, '06 which modified thirteen.

2 A. Again, I don't have the full text of the
3 certification in front of me, but there is an additional
4 condition that refers to the, that states what I just
5 stated.

6 Q. Okay.

7 A. That's my recollection.

8 MR. HUNGERFORD: Julie, looking at the
9 complaint, it does appear that there might be --

10 MS. MACEDO: A typo?

11 MR. HUNGERFORD: A typo. Thirteen in the
12 certification that I have, it isn't carried through in
13 the complaint. It's different.

14 MS. MACEDO: On the complaint, page and
15 paragraph number?

16 MR. HUNGERFORD: Page seven of the complaint,
17 paragraph additional condition thirteen.

18 THE WITNESS: Paragraph fifteen actually.

19 MR. HUNGERFORD: That's something we can sort
20 out later. I just want to bring it to your attention.

21 BY MR. HUNGERFORD:

22 Q. So then looking at the additional condition in
23 the certification, we have a number of categories, A
24 through H, that are listed by way of overview on page
25 ten of my version of the complaint. Do you see that?

1 A. Yes.

2 Q. And are you basically familiar with these
3 categories?

4 A. Yes.

5 Q. Construction dewatering violations, can you
6 describe for me -- First, this is the first category,
7 which is A. Can you describe for me generally what
8 these relate to?

9 A. As it states, the discharge of turbid water
10 from unlined dewatering basins.

11 Q. Into unlined dewatering basins?

12 A. And then ultimately into the river.

13 Q. Is the lining of the basin a requirement of the
14 certification?

15 A. Compliance with the application is a
16 requirement of the certification.

17 Q. And the application in this case, did it
18 require lining of the basins?

19 A. It required that the basin be located a minimum
20 of one hundred feet away from the stream channel.

21 Q. We'll get into that requirement in a second,
22 but as far as lining goes, was lining part of the
23 application?

24 A. I don't know.

25 Q. You mentioned that the application said that

1 basins would be a hundred feet away from the river;
2 correct?

3 A. Yes.

4 Q. Do you know how far -- Well, back up. Is it
5 fair to say that there's one basin that underlies a
6 number of the allegations in the complaint called
7 Isolated Pool B?

8 A. That's my understanding.

9 Q. And to your knowledge, are there any other
10 basins used for this project that underlie this series
11 of dewatering violations?

12 A. My understanding is that there was a second
13 pool that was created that was even closer to the river,
14 and that's documented on page eleven of the complaint.

15 Q. Okay. Does that have a name such as Isolated
16 Pool B?

17 A. Not to my knowledge.

18 Q. So speaking of Isolated Pool B, do you know
19 how far away from the river that was?

20 A. The information in the complaint states that it
21 was about seventy feet from the river.

22 Q. In each direction?

23 A. In the closest direction I presume is what that
24 means.

25 Q. So let's go through the conditions that relate

1 in this group of violations. Condition nine, my version
2 of condition nine starts, "No debris, soil, silt, sand,"
3 et cetera. Does that comport with what your version
4 says in the complaint?

5 A. I'm referring to language in the complaint, and
6 I see, "No debris, soil, silt, sand, dark, slash,
7 sawdust, rubbish, cement or concrete washings, oil or
8 petroleum products, or other organic or earthen material
9 ... shall be allowed to enter."

10 Q. That's good enough. And so the use of Isolated
11 Pool B within a hundred feet of the river, how does that
12 violate condition nine?

13 A. The discharge of water to Isolated Pool B
14 resulted in a plume appearing in the river, and the
15 presence of the -- Regardless of whether that pool was
16 lined or unlined or its distance away from the stream,
17 the indication that there was a discharge of turbid
18 water occurring in relation to the activities to the
19 discharge of water into Isolated Pool B would indicate
20 that the best management practices proposed in the
21 application were inadequate to prevent a discharge.

22 Q. Now, you mention turbidity created as a result
23 of use of Pool B, and I believe you have another set of,
24 another group of allegations that relate to turbidity.
25 Specifically with respect to the use of Isolated Pool B,

1 discharges into Isolated Pool B, how is condition nine
2 violated?

3 A. Well, in fact the discharge of turbid water to
4 Isolated Pool B, which was not installed in accordance
5 with the application itself, would constitute a
6 violation action whether or not there was any turbid
7 water that reached the river.

8 Q. This group of violations also relies on
9 additional condition twelve, correct? And I'm looking
10 at page ten of the complaint.

11 A. Yes.

12 Q. And my version of page twelve, I'm sorry, my
13 version of condition twelve starts with, "If
14 construction dewatering is found to be necessary," which
15 is different than what the complaint says on page seven.

16 MR. HUNGERFORD: Can we go off the record for a
17 second?

18 (Off-the-record discussion held.)

19 MR. HUNGERFORD: Back on.

20 BY MR. HUNGERFORD:

21 Q. So, Mr. Leland, you have a copy of the
22 certification; correct?

23 A. Yes, dated February 16th, 2006.

24 Q. Now, I'll represent to you that there were
25 April 2006 modifications to paragraphs four and

1 thirteen. I don't know that they are going to be
2 pertinent to our discussion today. They're relatively
3 minor changes, but I just wanted to alert you of that
4 since you don't have it in front of you.

5 A. Thank you.

6 Q. So we're talking about series A, construction
7 dewatering violations, and we were talking about
8 condition twelve, additional condition twelve of the
9 certification, if you could take a look at that, please.

10 A. Okay.

11 Q. A moment ago, we were talking about the use of
12 Isolated Pool B. How did the use of Isolated Pool B
13 violate condition twelve from the certification?

14 A. I, I don't think I'm able to answer that
15 question.

16 Q. Well, in this group of violations, I'll
17 represent that looking at the tables that are
18 appendicized to the complaint, there are several
19 violations involving the use of Isolated Pool B that
20 allege violations of condition twelve. So I would like
21 your understanding, to the extent that you could provide
22 it, for why the use of Isolated Pool B violates
23 condition twelve.

24 A. I don't think I'm the best person to answer the
25 question. I think it would be -- Probably Kason would

1 be in a better position to answer that specifically.

2 Q. Just to review, you did say earlier that you
3 were responsible for reviewing and approving the
4 allegations of the complaint; correct?

5 A. Yes.

6 Q. But as you sit there, you cannot explain to me
7 why it is that condition twelve is violated by the use
8 of Isolated Pool B; is that correct?

9 A. That's correct.

10 Q. This group of violations also relates to
11 condition seventeen of the certification, if you could
12 take a look at that for a moment.

13 A. Actually, if we go back to condition twelve, in
14 reviewing the complaint, it does state quite clearly
15 that Isolated Pool B lies within the definition of
16 surface waters, and so that's a violation of condition
17 twelve.

18 Q. Where is that definition of surface waters?

19 A. I don't know.

20 Q. And I'm just speaking just as a layman because
21 I mean clearly, there were not surface waters, albeit
22 within the hundred-year flood plain, but there were not
23 surface waters or discharges to surface waters. So, you
24 know, where is that definition?

25 A. Yes, and I'm saying that I don't know, that

1 there are several definitions that are used in
2 determining where surface waters are, and you mentioned
3 the hundred-year flood plain. There are other
4 definitions, one of which is referred to here as the
5 Vanquill (phonetic) Channel. There are also definitions
6 that relate to ordinary high water that come into the
7 401 certification arena. So there are -- I probably
8 should nuance this and say that there are several
9 definitions of surface waters that could apply.

10 Q. Well, here's the important thing that I want to
11 know. Where in the certification does it define what is
12 surface waters?

13 A. The certification references a number of other
14 documents. It doesn't include, it doesn't include all
15 of the definitions. It doesn't include all of the
16 provisions of the Basin Plan that might apply for
17 example. So it's necessary to go back to other
18 documents and guidance to find all of the applicable
19 information that is included in the certification.

20 Q. I'm looking at additional condition twelve, and
21 it refers to disposal to surface waters, and then it
22 also refers to land disposal. Now, certainly as applied
23 in this project, all the parties involved believed that
24 the disposal to Isolated Pool B was land disposal rather
25 than discharge to surface waters. Do you believe that

1 that was an unreasonable interpretation of condition
2 twelve?

3 A. Yes.

4 Q. Based on what?

5 A. Disposal was permitted in accordance with the
6 terms of the application. Disposal was not done in
7 accordance with the terms of the application.

8 Q. Did the application define surface waters to
9 your knowledge?

10 A. I don't know that it did, but the
11 certification, the certification allows, allows -- It is
12 a permit to discharge, functional, and so in this case,
13 we, consistent with the application, we allowed certain
14 discharges to occur. This discharge did not occur in
15 accordance with the terms of the application.

16 Q. Let's assume that the application doesn't
17 define surface waters. How would Caltrans or any of the
18 contractors know that surface waters means something
19 other than, you know, simply water which has a surface,
20 which, if this case, would be the active stream itself?

21 A. I think the point here is that the contractor
22 and Caltrans should have known that they were
23 discharging in violation of the terms of the
24 application, outside of the application that they gave
25 us, and that they therefore had an obligation to come

1 back to us and seek permission to violate or to deviate
2 from the application that forms the basis of the
3 certification.

4 Q. You're speaking now of the hundred-foot
5 requirement, correct?

6 A. That's correct.

7 Q. But we still haven't figured out how we define
8 surface waters and how Caltrans and their contractors
9 should have understood that term.

10 A. And we have discussed this with Caltrans on
11 other occasions, although I couldn't tell you exactly
12 when or what the nature of those discussions were, and
13 we've also offered trainings to Caltrans to explain what
14 surface water means in our regulatory construct.

15 Q. Can you reference for me one of those training
16 sessions?

17 A. I can't specifically, but Mona would be able
18 to. Mona Dougherty would be able to identify specific
19 dates.

20 Q. Looking at page eleven of the complaint, I want
21 to just point your attention to a couple of statements.
22 The first is in the first paragraph on page eleven, and
23 it states that, "On August 29, August 30 and September
24 7th 2006, sediment transport occurred from subsurface
25 flow through the gravel bar directly to the river due

1 the hydrostatic head pressure from dewatering discharges
2 to Isolated Pool B." Do you see that language?

3 A. Umm-umm.

4 Q. How did the Regional Board make the
5 determination that that was the physical mechanism that
6 created turbidity outside of Isolated Pool B in the
7 active river?

8 A. I don't understand that there would be any
9 other possibilities.

10 Q. Well, if we assume that the gravel bar has
11 subsurface water, you can't see below the gravel itself,
12 and if you exert pressure on one part of the gravel bar,
13 then the head pressure will affect the subsurface water,
14 another part of the gravel bar, which in this case, it
15 would seem reasonable to me at least, it would have
16 pushed out clean water from the gravel bar into the
17 river channel. Do you follow me?

18 A. So far.

19 MS. MACEDO: No.

20 BY MR. HUNGERFORD:

21 Q. So one explanation for the turbidity that was
22 recorded outside of the Isolated Pool B in the active
23 channel was not that turbid water from the discharge was
24 actually exiting but rather that the pressure of the
25 water being placed in Pool B in turn affected other

1 subsurface water which pushed that out into the river
2 channel, thereby motion of the water creating turbidity.
3 Does that seem like a reasonable explanation of the
4 observations recorded in the complaint?

5 MS. MACEDO: I'm going to object as an
6 incomplete hypothetical.

7 MR. HUNGERFORD: You can answer.

8 THE WITNESS: I don't see why it makes any
9 difference.

10 BY MR. HUNGERFORD:

11 Q. Well, I think it makes a difference because in
12 the one scenario, it's clean water that's being moved
13 out of the gravel bar into the river by head pressure,
14 and in the other scenario, it's turbid water from the
15 dewatering discharge which is moving into the active
16 river, and I think there is a difference.

17 A. My understanding of the language in the
18 complaint is that there was sediment transported out of
19 the gravel bar into the river, not clean water.

20 Q. If the clean water was pushed out of the site
21 of the gravel bar, at that point, the gravel bar was
22 adjacent to the river channel, it would have created, it
23 would have moved sediment there at that portion of the
24 river bed; wouldn't it?

25 A. As I said before, I don't see that there's

1 functionally a difference if the action resulted in
2 conditions that led to a discharge of turbid water into
3 the river. How that action actually resulted in that
4 discharge is immaterial.

5 Q. I tend to disagree with you because some of the
6 allegations in the complaint are based on the nature of
7 discharges in the Isolated Pool B, you know, what types
8 of materials were put in Isolated Pool B. If the
9 Regional Board's allegation is that water quality in the
10 Isolated Pool B, you know, subsurface traveled into the
11 river, that's one thing. I think it's a different thing
12 if the pressure created by putting water in Pool B
13 pushed out otherwise clean water from underneath the
14 gravel bar, and the movement of that water created
15 turbidity. The turbidity issue doesn't change, but the
16 nature of the discharge in the river does. Do you see
17 my distinction?

18 MS. MACEDO: There wasn't any question pending
19 until he asked about the distinction.

20 THE WITNESS: I see a distinction, but I don't
21 see that the net outcome is any different. An action
22 was taken that caused a violation of the water quality
23 objective.

24 BY MR. HUNGERFORD:

25 Q. My hypothetical, as an engineer, does it make

1 sense to you, or does it seem not possible?

2 A. It's possible, it would be necessary actually,
3 that when water, if water is initially placed to a
4 create head difference, that some, that the water
5 between the place where the water is added and the
6 discharge point would have to be displaced before the
7 water in the, in this case Isolated Pool B could reach
8 the river. I mean that's a physical requirement.

9 However, after some period of time, water
10 placed in Isolated Pool B would be discharging directly
11 to the river.

12 Q. Let me direct your attention on page eleven to
13 the second full paragraph. About halfway down, it
14 describes potentially serious water quality impacts. Do
15 you see that?

16 A. You're in the second paragraph?

17 Q. Yes, of page eleven, roughly halfway.

18 A. Yes.

19 Q. Are you aware of any serious water quality
20 impacts caused by this project?

21 A. We would consider violation of Basin Plan water
22 quality objectives to be serious water quality impacts.

23 Q. And which objectives in the Basin Plan were
24 violated through the use of Isolated Pool B?

25 A. Well, my understanding is that there were

1 turbid water discharges.

2 Q. The Basin Plan has a standard for turbidity,
3 correct?

4 A. Yes, it does.

5 Q. It has a numeric and a subjective standard?

6 A. I believe that's correct.

7 Q. And what is the numeric standard?

8 A. Twenty percent of background.

9 Q. And were there any determinations made that
10 that standard was breached by the use of Isolated Pool
11 B?

12 A. The obligation on the part of the, of Caltrans
13 contractors was to make the measurements, and that's the
14 subject of another suite of allegations in the
15 complaint, and those measurements were either not made
16 or made with improperly calibrated instruments. So we
17 have no good information on that.

18 Q. And again, you're speaking out of a different
19 set of allegations which we'll get to.

20 A. Yes, but which relates to this.

21 Q. Which do relate to this, but in the complaint,
22 you've structured this complaint in a way that separates
23 the two and that identifies violations for the use of
24 Isolated Pool B and separately addresses the measurement
25 issue. So I'll get to that later, but we're discussing

1 actual serious water quality impacts in the use of
2 Isolated Pool B. You mentioned the numeric turbidity
3 standard. What about impact to beneficial uses? Are
4 you aware of any?

5 A. The Basin Plan in the Clean Water Act is
6 structured around identification of both beneficial uses
7 and water quality objectives that intended to protect
8 those beneficial uses.

9 We rely on compliance with the water quality
10 objectives to protect beneficial uses. So our
11 presumption is that violation of the water quality
12 objectives has the potential to harm the beneficial
13 uses. So independent confirmation of that is not
14 necessary.

15 Q. Well, let me back up then a moment. The way I
16 interpreted your answer to the last question was that
17 you couldn't make a determination as to whether the
18 twenty percent turbidity standard had been breached in
19 this case through the use of Isolated Pool B. Do I
20 understand that correctly, or did I misunderstand?

21 A. No, you understood that correctly.

22 Q. So standing there, you can't tell me whether
23 the twenty percent turbidity standard was violated
24 because there was no measurement; correct?

25 A. That's correct.

1 Q. And so not knowing whether the numeric
2 turbidity standard is violated, how then can you make a
3 determination that the beneficial uses requirement was
4 violated?

5 A. I didn't say that it was.

6 Q. Well, then let me ask you, are you aware of any
7 turbidity violations from the use of Isolated Pool B
8 that violated your beneficial uses requirement in the
9 Basin Plan?

10 A. Again, as I stated previously, the violation of
11 water quality objective is presumed to have the
12 potential to affect beneficial uses adversely.

13 Q. I feel like we're going in circles because as I
14 understand it, you haven't been able to make a
15 determination as to whether the water quality objective
16 was violated from the use of Isolated Pool B, and not
17 being able to make that determination, how then can we
18 determine that beneficial uses were also adversely
19 affected?

20 A. The language in the second paragraph qualifies,
21 uses the qualifier potentially. My understanding in
22 reading this, and this is why I brought up the other
23 violations related to measurement and the obligations to
24 measure, that we are not able to make precise
25 determination about violations because measurements that

1 were required to have been taken in association with the
2 event were not taken.

3 Q. You maybe recall from reading the files that
4 underlie the complaint, particularly from the biological
5 monitor, that there was some actually fairly precise
6 visual observations made of the turbidity created by the
7 use of Isolated Pool B, and that in most cases at least,
8 and possibly all of them, that turbidity was less than
9 the hundred-foot, twenty-percent standard specified in
10 the certification; do you recall that?

11 A. No, I don't.

12 Q. Well, I'll represent to you that on at least
13 one occasion, that a turbidity plume was allegedly
14 created from the use of Isolated Pool B. It was less
15 than ten feet in length and lasted for a reasonably
16 short period of time. Based on that observation, can
17 you make a determination as to whether the numeric
18 turbidity in the Basin Plan was violated?

19 A. Making a determination about the numeric
20 objective specifically would require measurements with a
21 properly calibrated instrument.

22 Q. Well, I don't want to confuse the measurement
23 requirement with the certification. This gets to a more
24 basic question that I have, which is: Putting aside the
25 certification, how is the twenty percent standard

1 applied? Is it twenty percent, you know, two inches
2 from the source of turbidity, or is it a number of feet,
3 or is a reasonable zone of delusion permitted?

4 A. Well, we don't have any specific provisions in
5 our Basin Plan for zones of delusion, so it would be
6 typically an upstream measurement compared to
7 measurements within the plume.

8 Q. Hypothetically, if I were to walk out in South
9 Fork Eel River right now and set foot or walk across the
10 river, then I would most likely create a certain amount
11 of turbidity from my footsteps. It's likely to be
12 small, but I would still create some turbidity. How
13 would you make a determination as to whether that would
14 violate the turbidity standard of twenty percent in the
15 Basin Plan?

16 A. I'm not sure I understand your question.

17 Q. If I'm standing in the South Fork Eel River or
18 if I'm walking across the river, I'm likely to create
19 some turbidity; correct?

20 A. That's possible.

21 Q. How would the Regional Board determine whether
22 or not that turbidity violates the twenty percent
23 standard?

24 A. This is an issue that is often -- Well, it's a
25 challenging issue frankly as to is there a diminimous

1 level, how do we manage under a circumstance like that,
2 and --

3 Q. I don't want to belabor this.

4 A. Do we permit certain activities that have, you
5 know a diminimous impact?

6 Q. Well, I'm not talking about diminimous impacts.
7 I'm talking about an issue that's equally difficult and
8 challenging from the standpoint of people that are
9 subject to the Basin Plan and to conditions that are
10 based on the Basin Plan.

11 In this case, you know, we have clear
12 observations of plumes that are less than ten feet in
13 length created potentially by the use of Isolated Pool
14 B, and so my question to you is: How can you determine
15 or how do you determine whether or not those violate the
16 Basin Plan, the Basin Plan's twenty percent standard to
17 be exact?

18 A. I think the other relevant question is: Did we
19 we have the opportunity to have that conversation? I
20 don't know about the specific circumstances here,
21 whether these were reported to us, whether there was
22 discussion about whether or not the BMP or the
23 management practice that was put in place was adequate,
24 whether any adjustments should be made, but that is
25 certainly a part of the process, of our expectation of

1 the process, is if a suite of management practices is
2 put in place that then results in, even if it's an
3 apparent violation of the Basin Plan, that that would
4 initiate discussion with the Regional Board to come to
5 some agreement as what was appropriate to do in that
6 particular circumstance.

7 Q. I don't want to get caught up in the -- That's
8 why my hypothetical is taking it out of this ACL
9 complaint 'cause I don't want to get caught up in the
10 traffic of the complaint, you know, to hinder us from
11 answering this basic question, which is how the twenty
12 percent turbidity standard in the Basin Plan is applied,
13 and so again, I go back to my question of where I'm
14 walking across the river, and I'm creating turbidity,
15 and let's say it's a twenty-foot plume downstream. How
16 can you term whether or not that violates the Basin
17 Plan?

18 A. I would say that technically, it could be
19 considered a violation of the Basin Plan, and I say
20 "could" because it would require, you know, arguably
21 measurements that set the numeric standard.

22 Q. So let's assume that at some point, four feet
23 away from my feet, it exceeds twenty percent of -- The
24 twenty percent standard is reached. Is that then a
25 violation?

1 A. If it violates the twenty percent standard. As
2 I said, we don't have a provision for measurements on
3 it. It could be considered a violation, yes.

4 Q. Let me go down to page eleven to the next
5 paragraph. Towards the bottom of the paragraph, there
6 is reference to, "a designated environmentally sensitive
7 area in the river," and a silty discharge into a
8 backwater pool. Do you know what designated
9 environmentally sensitive area is being referenced
10 there?

11 A. No, I don't.

12 Q. Category B references leaky equipment
13 violations; correct?

14 A. Yes.

15 Q. And there are two conditions here that are
16 violated, that are alleged to have been violated from
17 these activities. One is nine, and the other is
18 thirteen. The first one is nine. Just take a quick
19 moment to re-familiarize yourself with that.

20 A. Okay.

21 Q. Now, many of the equipment violations, leaky
22 equipment violations that are alleged, or at least some
23 of them, relate to situations where equipment was
24 considered leaky, at least by the biological monitor.
25 However, there's no record of any uncontrolled dripping

1 of equipment, you know. For example, drips were
2 controlled by absorbent rags or plastic sheeting or the
3 trestle deck.

4 In those situations where no oil, grease,
5 fluids from machinery actually reaches the river or the
6 gravel bar, how is condition nine of the certification
7 violated?

8 A. In some instances, discharge of materials to a
9 place where it may be washed by rainfall into waters of
10 the State constitutes a violation.

11 Q. Well, let's assume that we've completely
12 captured any leaks by the use of plastic sheeting which
13 is something, just by its nature, that we're going to
14 clean up on a daily or twice-daily basis. Would that
15 then exclude that event from being a violation under
16 condition nine?

17 MS. MACEDO: Objection, incomplete
18 hypothetical, but you can answer.

19 THE WITNESS: My understanding is that it
20 would.

21 MS. ZAZZERON: Would you read the question
22 back, please?

23 Record read: Question, "Well, let's assume
24 that we've completely captured any leaks by the use of
25 plastic sheeting which is something, just by its nature

1 that we're going to clean up on a daily or twice-daily
2 basis. Would that then exclude that event from being a
3 violation under condition nine?" Answer, "My
4 understanding is that it would."

5 BY MR. HUNGERFORD:

6 Q. Condition thirteen relates to fueling and
7 lubrication, correct?

8 A. Yes.

9 Q. And you did mention earlier that you understood
10 there were some problems with fueling of the vehicles in
11 this project; is that right?

12 A. Yes.

13 Q. Just again, briefly describe for me what your
14 understanding was of the problems that occurred with
15 fueling and lubrication of this project.

16 A. One as described in the complaint is inadequate
17 implimentation of BMPs.

18 Q. Well, let me be more specific. Is the
19 allegation that equipment was refueled in the wrong
20 location?

21 A. I'd have to spend more time with the underlying
22 violations to be able to answer that.

23 Q. Do you have any basic understanding as to
24 whether or not equipment was refueled in the wrong
25 place?

1 A. I understand that that happened on some
2 occasions.

3 Q. And where was equipment supposed to have been
4 fueled that's required by the certification and/or the
5 application?

6 A. I don't know specifically.

7 Q. Who would be the best person to talk to at the
8 Regional Board about this particular issue?

9 A. The BMPs that are cited refer back to the storm
10 water permit, so Mona Dougherty would probably be the
11 best person.

12 Q. Category C relates to slag discharge
13 violations. That's on page thirteen. That begins on
14 page thirteen, and they rely exclusively on one
15 condition, number nine of the certification; correct?

16 A. Yes.

17 Q. Now, when we spoke a little earlier, you
18 mentioned that there were BMPs that were put in place at
19 some point in time with respect to containing slag;
20 correct?

21 A. Yes.

22 Q. Do you know what BMPs those were?

23 A. They're described in the complaint I believe.

24 Q. Do you recall what they are independently or
25 from your review of the complaint?

1 A. There were several BMPs that were tried, one
2 that involved foam and another that involved some
3 additional sheeting or something like that as a
4 collection device.

5 Q. For slag?

6 A. I believe so, if I'm not mistaken.

7 Q. I think some buckets and blankets were
8 described, and I'm referring now to page thirteen, the
9 first paragraph under section C.

10 A. Perhaps I'm misremembering.

11 Q. Well, take a moment just to read that first
12 paragraph under Slag Discharge Violations.

13 A. Uh-huh, yes, I see the language you're
14 referring to.

15 Q. So my question is: What containment, if any,
16 would the Regional Board have expected for the welding
17 slag?

18 A. Something that prevented the discharge of
19 welding slag into the river.

20 Q. Do you know what the chemical composition of
21 welding slag is?

22 A. I don't specifically.

23 Q. Do you have any basic understanding as to
24 whether or not discharge of welding slag into the river
25 would have any adverse impacts on water quality?

1 A. I don't specifically. I can see that the BMPs
2 that I was applying to the slag actually had to do with
3 refueling on the upper deck.

4 Q. Do you have any basic understanding as to how
5 much slag was deposited or fell into the river or the
6 gravel bar over the course of the project?

7 A. I don't have a sense of the volume of the
8 material.

9 Q. To your knowledge, has anyone from the Regional
10 Board attempted that analysis?

11 A. I don't know; I don't know.

12 Q. All right. We have section D on page fourteen,
13 Turbid Discharge. Are you there with me?

14 A. Uh-huh, Yes, I am.

15 MR. HUNGERFORD: Give me a moment here. This
16 is out of order. Do you want to go off the record for a
17 second?

18 MS. MACEDO: Sure.

19 (Recess held.)

20 MR. HUNGERFORD: We're back on.

21 BY MR. HUNGERFORD:

22 Q. So when we left off, Mr. Leland, we were on
23 page fourteen of the complaint, and we just started to
24 talk about category D, violations described as turbid
25 discharge to the river. Are you with me?

1 A. Yes.

2 Q. I only have a couple of questions for you about
3 this. One is in the first paragraph under section D.
4 It says, "drilling debris without containment." Do you
5 know what the refers to?

6 A. Not specifically.

7 Q. When I read it, I thought that maybe it was
8 slag without, discharges without containment, but I
9 wasn't totally sure, and you can't tell me one way or
10 another, huh?

11 A. I could guess that it might be drilling
12 associated with the bridge piers, but that would just be
13 a --

14 Q. Speculation on your part?

15 A. Somewhat speculative on my part.

16 Q. On concrete discharges, I'm assuming that's
17 semitoxic material discharges, and that's again
18 subsection four in that first paragraph. Are you aware
19 of any discharges of semitoxic material directly into
20 the river?

21 A. Not specifically.

22 Q. Give me a moment. Let me ask you about one
23 situation which was described in the complaint. There
24 was an allegation about cleaning tools in one of the
25 CSPs in which concrete had already been poured. Do you

1 recall that?

2 A. What's a CSP?

3 Q. Well, it's corrugated --

4 MS. BRENKUS: Steel.

5 BY MR. HUNGERFORD:

6 Q. Corrugated steel pipe. Are you familiar with
7 what the corrugated steel pipe was?

8 A. Why don't you explain to me what you mean?

9 Q. I'll give you my best explanation of it, not
10 being one of the contractors. When you would create a
11 footing for one of the structures that would go into the
12 river, either for the permanent structure or for the
13 temporary structure that was used for equipment access,
14 you would excavate out the bottom if it was within the
15 active river. You would then place corrugated steel
16 pipes, and correct me if I'm wrong, into the river,
17 pushing them, cutting them as best you can to the bottom
18 of the river, and then you would shore up the inside
19 and/or outside of the sandbags.

20 You would then pour concrete into that to
21 establish your foundation. What you'd be left with
22 after the pour is essentially, you know, a dammed up
23 area in the middle of the river inside these kind of a
24 corrugated steel piping unit, and inside of that, you'd
25 have concrete which would have been poured and is in the

1 process of hardening, and then, of course, you have
2 water that would have been displaced through the pouring
3 of concrete still in the CSP. So you'd have the water
4 which would remain above the concrete but separated from
5 active river by the CSP barrier. Does that make sense?

6 A. Uh-huh, I think so.

7 Q. There's one allegation where tools were cleaned
8 within a CSP after the concrete pour. Does that ring a
9 bell?

10 A. No, it doesn't.

11 Q. Well, let me ask you this: The allegation, as
12 I understand it, is that after the concrete was poured
13 and the water that was displaced by the concrete was
14 standing on the surface of the concrete yet separated
15 from the river by a barrier, that the contractor cleaned
16 off some of his tools in the turbid water that was
17 standing on top of the poured concrete. Is that
18 something that sounds like a violation of the
19 certification to you?

20 A. I suppose that would hinge on the definition of
21 whether those waters are, you know, water of the U.S. or
22 not. If they were, whether they are once they're inside
23 the pipe or not, how they were handled afterwards would
24 have a bearing on that.

25 Q. I'm just curious because my impression of that

1 violation is that at that point, you have a water that's
2 already come into contact with wet concrete which is
3 completely contained and separated from the gravel bar
4 or the active river, and you're cleaning off tools
5 within that already compromised, if you will, water, and
6 it seemed like a difficult violation to allege, and so I
7 wanted your views on that.

8 A. What happens to the water after that? I mean
9 is it pumped out into the river?

10 Q. No.

11 A. Well, how is it handled 'cause that's germane
12 to the issue?

13 Q. I believe the allegation is based solely on the
14 cleaning of tools within that contained area.

15 A. As I said, I'm not familiar of that particular
16 of violation.

17 Q. Okay.

18 A. So it's hard for me to comment.

19 Q. Based on my description to you, it looks like
20 the certifications we're dealing with are numbers seven
21 and nine. Let me see if I can find that particular
22 violation. I thought I had it here. I'll come back to
23 that one. Oh, hold on. We'll get to it. It comes up
24 in a later table.

25 Moving along, category E relates to

1 insufficient turbidity measurement violations, correct?

2 A. Yes.

3 Q. And this is on page fourteen of the complaint?

4 A. Right.

5 Q. And all of these violations, this entire set,
6 relate to additional condition number nineteen of the
7 certification. I'm going to let you just turn to that.
8 Take a moment and tell me when you're re-familiar with
9 it.

10 A. Okay.

11 Q. Let's focus on the first paragraph within
12 additional condition nineteen. Towards the end it says,
13 "Field turbidity measurements shall be collected
14 whenever a project activity causes turbidity of the
15 South Fork Eel River to be increased above background
16 concentrations in order to demonstrate compliance
17 receiving water limitations." Do you see that?

18 A. Yes.

19 Q. What are field turbidity measurements? What
20 comprises field turbidity measurements?

21 A. It would be a measurement taken with a
22 measuring device that measures turbidity.

23 Q. It could be. Are there any other types of
24 field turbidity measurements that can be taken?

25 A. I'm not sure what you're getting at.

1 Q. For example, would visual turbidity
2 measurements quality as field turbidity measurements?

3 A. That would be -- I would call that a field
4 turbidity observation.

5 Q. Are you aware of any scales that are commonly
6 used to determine turbidity in water based on visual
7 observations?

8 A. No, I'm not.

9 Q. Are you familiar with URS Corporation?

10 A. I've heard of them.

11 Q. Do you know what they did for this particular
12 project?

13 A. No, I do not.

14 Q. Well, I'll represent to you that they prepared
15 a report that described activities taking place on this
16 project and specifically discussed turbidity with
17 respect to a number of equipment crossings, and I'm just
18 going to hand this to you and ask you to take a look at
19 this focusing on the bottom part of the first page where
20 it says "Problems encountered and actions taken," if you
21 could read that for a moment.

22 A. Okay. I've skimmed the two pages that you've
23 given to me.

24 Q. Can I have it just for a moment? I just have
25 one copy. I'll hand it back. You'll note on page two,

1 it refers to visual measurements of turbidity on a
2 scale, on a numeric scale; correct?

3 A. Yes, it does.

4 Q. Does it appear to you, based on that
5 information, that for this project, at least at one
6 point in time, there was used a visual method for
7 measuring turbidity?

8 A. That appears to be the case.

9 Q. Would that appear to be a or would you agree
10 that that is a type of field turbidity measurement that
11 appears to have been used here?

12 A. I'd still call it an observation, but I suppose
13 you could call it a measurement.

14 Q. Referring back to section or additional
15 condition nineteen, what would prevent a visual
16 observation or measurement from being utilized as a
17 field turbidity measurement within the meaning of that
18 condition?

19 A. I don't see how the visual observation scale
20 that is alluded to here would allow comparison to a
21 numerical water quality objective with a twenty percent
22 above background. Perhaps it could, but again, I'm not
23 familiar with the scale or with what the definitions of
24 the different numbers are.

25 Q. Is there anything about this additional

1 condition nineteen that specifically requires actual
2 mechanical equipment in the form of an NTU meter as the
3 sole means for measuring turbidity in the field?

4 A. I am sure that if there were some alternative
5 means of establishing difference from background of
6 twenty percent besides a turbidity meter that had been
7 reviewed and approved by us, that that would be okay.

8 Q. Why would it need to be reviewed and approved
9 by you?

10 A. So that we would have confidence that it was
11 actually providing appropriate measurements.

12 Q. Is there any language in the certification that
13 requires the discharger to get concurrence from the
14 Regional Board that their method of measuring turbidity
15 in the field is the correct method?

16 A. I don't know that there's -- I would have to be
17 more familiar than I am with the applicant's project
18 description as to what types of instruments were being
19 used before I could provide you an answer on that.

20 Q. Let me ask you this: Hypothetically, if visual
21 field turbidity measurements were taken that were
22 adequate to inform Caltrans and the Regional Board as to
23 whether the turbidity standard specified in the
24 application of the Basin Plan was being met, would that
25 satisfy the requirements of the certification?

1 A. If we had an agreed-upon method of
2 characterizing turbidity that would allow us to make
3 that determination and we were in agreement on that,
4 then that would be okay I would think.

5 MS. MACEDO: I'm going to interpose an
6 objection. It calls for speculation.

7 BY MR. HUNGERFORD:

8 Q. Again, you referenced a need for an agreement,
9 and I don't see any requirement in the certification
10 that Caltrans needed to get the Regional Board's okay on
11 whatever method it used to comply with this requirement.
12 Is that a requirement that exists somewhere in this
13 certification?

14 A. The certification presumes that the applicant
15 will implement the project in accordance with the
16 project description.

17 As I mentioned just a minute ago, I'm not
18 familiar enough with the application and all of the
19 other specifications associated with that as to whether
20 a particular type of monitoring device was specified or
21 not.

22 Q. So we would need to look at the application for
23 that?

24 A. Yes.

25 Q. And what if the application didn't specify any

1 particular type of device or method of monitoring?

2 A. That's speculative.

3 Q. Well, I'll represent to you that I don't
4 believe the application contained that information.

5 A. All right.

6 Q. In that event, is it possible that a visual
7 method for monitoring turbidity in the field would meet
8 the requirements of this condition, number nineteen?

9 A. Again, if it was presented to us and it was
10 approved by us, then it could.

11 Q. Okay. Thank you. Skipping down to category G
12 on page fifteen toward the bottom, are you there? Are
13 you with me?

14 A. Uh-huh, yes, I am.

15 Q. So this set of violations or this group of
16 violations relates solely to condition number nine of
17 the certification which, in general terms, prevents the
18 discharge of debris, soil, sand, bark or other materials
19 other than authorized by the permit; correct?

20 A. Yes.

21 Q. And you may have seen this. In the photographs
22 and the information that's been provided to us by the
23 Regional Board, there are various photographs of wood
24 floating in the river or metal on the river bed,
25 something like that, that nature of event. My question

1 is this: If the contractor has in place BMPs to pick up
2 and clean rubbish from the site that may have
3 inadvertently fallen in the river or on the gravel bar,
4 is there a violation if a piece of wood falls in the
5 river and is subsequently cleaned up?

6 A. The language of condition nine is pretty clear.
7 It says, "No debris, soil, silt," et cetera, et cetera,
8 "shall be allowed to enter into or be placed where it
9 may be washed by rainfall into waters of the State."

10 Q. And then it goes on to say, "other than
11 authorized by this permit," correct?

12 A. Yes.

13 Q. Now, the application certainly states that BMPs
14 be put in place to prevent this type of material from
15 being introduced into the river and to require the
16 clean-up of any materials that inadvertently, you know,
17 find their way into the river, and I'll make that
18 representation. If those BMPs are followed, is it still
19 a violation?

20 A. Certainly having BMPs in place would be a
21 mitigating factor that we would consider when deciding
22 whether or not a particular violation was worthy of a
23 penalty, a monetary penalty.

24 Q. So hypothetically, if, as a result of a strong
25 gust of wind, a piece of cardboard were to come loose

1 and find its way into the river and then be cleaned up
2 within the space of a few minutes, that would be a
3 violation in your view, and the clean-up would simply be
4 a mitigating factor?

5 A. Technically.

6 Q. Let me skip down to paragraph twenty on page
7 seventeen, and the allegation here is that Caltrans
8 violated its storm water permit for a hundred and
9 forty-one days by not adopting or implementing
10 sufficient refueling BMPs or containment on the trestle
11 deck; correct?

12 A. Yes.

13 Q. Are you familiar with the nature of the
14 refueling BMPs that were not allegedly followed?

15 A. Not specifically.

16 Q. Let turn back to the question I had earlier on
17 the cleaning out of materials. I'm going to have you
18 take a look at, this is the page from table one of the
19 appendices to the violation, and see under August 29th,
20 and we've marked it there, it references the clean-out
21 of tools and other materials in the corrugated steel
22 pipe containment area. Do you see that?

23 A. Yes. This is the one that's circled around the
24 X?

25 MS. BRENKUS: Yes.

1 MR. HUNGERFORD: Yes.

2 THE WITNESS: Okay.

3 BY MR. HUNGERFORD:

4 Q. Do you have any recollection at all of the
5 circumstances surrounding that particular violation
6 other than what's stated there?

7 A. I don't.

8 Q. All right. I'm not going to ask you anything
9 else on that, then.

10 MR. HUNGERFORD: That's all that I have for
11 right now.

12 MS. MACEDO: Do you need some time, Ardine, to
13 prepare?

14 MS. ZAZZERON: No.

15 MR. HUNGERFORD: It's possible I might have a
16 couple of follow-up questions afterwards.

17 MS. MACEDO: That's fine.

18 EXAMINATION:

19 BY MS. ZAZZERON:

20 Q. Mr. Leland, I want to follow up on a question
21 that Mr. Hungerford just asked you about a wood chunk,
22 if a wood chunk falls into the river and the BMPs are in
23 place and it is picked up after several minutes. Do you
24 recall that question?

25 A. (Witness nods head.)

1 Q. Yes?

2 A. Yes.

3 Q. In your experience in watershed protection and
4 as a reviewer of ACLs, would you say that such an
5 incident as Mr. Hungerford described would warrant
6 application of a maximum penalty?

7 A. I would say it's certainly a case where we
8 would use our discretion in deciding what the penalty
9 should be. It probably would not warrant a maximum
10 penalty.

11 Q. With respect to Isolated Pool B, how was the
12 one hundred foot distance determined?

13 A. I don't know specifically.

14 Q. Is the hundred foot a number or some kind of a
15 guideline that crops up in or exists in water board
16 materials or manuals?

17 A. I, I don't know specifically. It could have
18 come from Caltrans project descriptions as something
19 that was proposed as a BMP for that particular type of
20 activity, in which case, we would have evaluated that
21 and made a decision, and it may be from professional
22 judgment based on observation of similar situations on
23 construction sites, or it could have come from some
24 other source. I don't know specifically.

25 Q. The use of Pool B, if it had been located

1 within one hundred feet of the live stream channel, that
2 would have been okay; is that correct?

3 MS. MACEDO: You said within one hundred feet?

4 THE WITNESS: If it was located within.

5 BY MS. ZAZZERON:

6 Q. If it was outside of the one hundred foot
7 distance to the stream channel, the use per se would not
8 have been a violation; is that correct?

9 A. If it had been located beyond one hundred feet
10 and there had been no evidence of any turbidity
11 discharge or other discharge, then it would have been
12 okay, but of course, the process here is if a BMP that
13 is proposed turns out to be inadequate, in this case, if
14 it met the one hundred feet but then didn't perform
15 according to expectation, then the process would be for
16 Caltrans to come back to us and say, "Look, we're having
17 a problem with this BMP. We need to try something else.
18 Let's figure something out. Here's our proposal," or
19 "Let's figure out something that would work better." So
20 there's an obligation to be in compliance with the
21 certification, to be in compliance with the terms of the
22 application, the project description that was presented
23 to us, and to come back to us if that isn't working, and
24 that could be -- In this case, it could have been in two
25 different ways: One was couldn't find a hundred feet to

1 get away from the river, so it had to be within seventy,
2 but also we need to do it to make this work, or
3 alternatively, it's placed beyond a hundred feet, but it
4 still doesn't work for some reason.

5 Q. Okay. Now, the goal of the BMP, and correct me
6 if I'm misstating this, is to basically define measures
7 that are practicable and to minimize threats of harm to
8 the water? Is that one way of describing what a BMP is?

9 A. Yes, to avoid violations of water quality
10 objectives in the Basin Plan.

11 Q. In your experience and your knowledge in
12 watershed protection, what would make one hundred feet
13 preferable to let's say seventy-five feet or fifty feet
14 with the placement of Pool B?

15 A. Well, I'm not the person with the on-the-ground
16 experience with that kind of thing, but I am -- I would
17 presume that experience of our people who do inspections
18 and make observations of this indicates that, in most
19 situations, a hundred feet is adequate.

20 Q. Who would be the most knowledgeable person of
21 that to tell me the answer to that question?

22 A. Dean or Mona. Dean Prat or Mona Dougherty
23 would be.

24 Q. And Mr. Grady?

25 A. I think Dean or Mona would be the best people

1 to talk to about it.

2 Q. Mr. Leland, did you ever visit the project site
3 while construction was active?

4 A. I drove by there a number of times, but I did
5 not stop.

6 Q. What is your understanding when construction
7 commenced, the date?

8 A. Sometime in 2006 I believe.

9 Q. And when was it complete?

10 A. I don't know.

11 Q. To your knowledge, is the project still
12 ongoing?

13 A. I believe it's completed now, but that's just
14 'cause I don't see any activity there when I drive by
15 there.

16 Q. You testified earlier that Kason Grady got
17 documents directly from Caltrans; is that correct?

18 A. I don't think I said anything with respect to
19 that, but I understand that that is true, that I believe
20 he did get documents directly from Caltrans.

21 Q. Do you have personal knowledge that he obtained
22 documents directly from Caltrans, and that doesn't
23 include the department's response to the order?

24 A. What do you mean by personal knowledge?

25 Q. Do you know for a fact, did Mr. Grady tell you

1 he received documents directly from Caltrans?

2 A. I believe that that is the case, yes.

3 Q. Did you have any conversations or electronic
4 correspondence with anyone from Caltrans during the
5 course of the project about the project?

6 A. No, I did not.

7 Q. How about any representatives or employees of
8 the Department of Fish and Game?

9 A. No, I did not.

10 Q. Are you familiar with Karen Maurer?

11 A. I've heard her name.

12 Q. Have you ever spoken or corresponded with
13 Ms. Maurer directly?

14 A. I have not.

15 Q. With respect to the length of the project, it's
16 your understanding it commenced sometime in 2006, and it
17 is at this time complete; is that correct?

18 A. Yes.

19 Q. The violations set forth in the ACL, with
20 respect to those, is it accurate to say that there are
21 three that occurred in 2007?

22 MS. MACEDO: I'll object and say that the
23 document speaks for itself. Are you talking about just
24 the ACLC, the violations of the ACLC?

25 MS. ZAZZERON: Yes.

1 THE WITNESS: I have no account.

2 BY MS. ZAZZERON:

3 Q. Other than the violations or the charges set
4 forth in the ACL from, dated I believe August 2009, is
5 the Board intending to pursue any other charges arising
6 out of the Confusion Hill Project against the department
7 or any of the contractors?

8 MS. MACEDO: I'll object. It calls for
9 speculation or attorney work product. You can answer if
10 you know.

11 THE WITNESS: I don't know.

12 BY MS. ZAZZERON:

13 Q. Were there any NOV's issued after November 2006
14 with respect to this project?

15 A. My understanding is that there were just the
16 two NOV's that were issued.

17 Q. Is it accurate to say that the vast majority of
18 charges contained in the complaint arise from events
19 that allegedly occurred in 2006?

20 A. That appears to be the case.

21 Q. Based on your knowledge of the project, would
22 you agree that the patterns and practice with respect to
23 compliance with water quality standards improved over
24 time at this project?

25 A. That would appear to be the case, although it's

1 a bit speculative on my part.

2 Q. Do you have knowledge of any violations that
3 occurred after March of 2007 at the project site?

4 A. Not specifically.

5 Q. How about generally?

6 A. I couldn't speak to that.

7 Q. Does that mean you have no knowledge as to
8 whether any violations occurred after March of 2007?

9 A. That means I came prepared to discuss the ACL
10 complaint and not any other aspects of the project.

11 Q. Has anyone informed you, other than your
12 attorney from the Board, that violations occurred after
13 March of 2007 on the project?

14 A. I don't have any specific knowledge of that.

15 Q. I asked did anyone tell you that any violations
16 occurred.

17 A. I don't recall specifically.

18 Q. Do you have any written materials that reflect
19 that a violation, again other than anything your
20 attorneys may have given you, any written documentation
21 that reflects a violation that may have occurred after
22 March of 2007?

23 A. I'm not aware of anything specifically.

24 Q. With respect to the complaint, the prior
25 history section which is on page nineteen, how far back,

1 in terms of let's say months or years, does the Board
2 reach with respect to applying or referencing incidents
3 for prior violations?

4 A. That would depend on the particular situation
5 and circumstances.

6 Q. Can you explain what you mean by that?

7 A. I think in general, we would be looking for if
8 there was a pattern of violation that was persistent and
9 long-term, it would be appropriate for us to go back as
10 far as what needed to demonstrate that. I don't think
11 there's an outside limit on that. It would depend on
12 the situation.

13 Q. Just to be clear, again under prior history of
14 violations, the first category refers to violations
15 identified on November 27th, 2006. Those violations are
16 encompassed in the current complaint; is that correct?
17 We're not talking about a separate proceeding?

18 A. I believe that's correct, yes.

19 Q. Please give some examples of what you would
20 consider damage to beneficial uses of the waters. You
21 can use real-life examples. You don't have to name
22 names, but just give some example if you could.

23 A. With respect to aquatic life, the smothering of
24 fish nests would be an example with sediment. The
25 increased turbidity at a time when fish were present or

1 any aquatic species that would disrupt their ability to
2 feed, that would be another example of that. Stranding
3 of fish in pools would be an example; excursions of any
4 water-quality parameter, like low pH or high pH
5 conditions, when aquatic species are present. Effects
6 on dissolved oxygen would affect aquatic species.

7 Q. Say that again.

8 A. Effects on dissolved oxygen.

9 Q. How does that happen?

10 A. That would be very typically associated with
11 something like a municipal wastewater plant discharge
12 would cause biological activity that would depress
13 dissolved oxygen.

14 Q. In terms of visual evidence for lack of a
15 better term, how would one know that fish nests have
16 been smothered?

17 A. You could, if you knew where a nest was, you
18 could make visual observations of that.

19 Q. Could you make a visual observation if you
20 didn't know where the nest was? We're not talking about
21 something that you can walk through the river and just
22 go, "Ah-haa, a smothered fish nest"?

23 A. You should be able to do that, yes.

24 Q. And how about sediment disrupting ability of
25 fish to feed, how would you know that's taking place?

1 A. Well, if there were fish present and you had a
2 turbidity situation, you would know that, fish or other
3 aquatic species.

4 Q. How would you know it had disrupted the ability
5 to feed? Would they be dead?

6 A. Well, one has to reply to a certain extent on
7 scientific studies that have been done that indicate
8 that under certain turbidity conditions, that the
9 ability of different species to feed is compromised. So
10 you're making a connection there between the observation
11 of an effect on water quality and the impact on a
12 beneficial use.

13 Q. So for the records documenting the Confusion
14 Hill Project, did you ever see any reports or any
15 records of smothered fish nests?

16 A. I'm not the best person to speak to you about
17 the details of all the documentation that we received
18 about that, so I'm not personally familiar whether
19 there's any such documentation.

20 Q. Well, without getting into specifics, to your
21 knowledge, did any reports of the project document
22 actual damage to wildlife?

23 A. As I said, I'm not personally familiar with the
24 records to be able to answer that.

25 Q. Who would be the most knowledgeable person

1 regarding that topic?

2 A. Probably Kason.

3 Q. Turning to condition number nine of the 401
4 certification, with respect to the phrase "other than
5 that authorized by this permit," are you familiar with
6 what that means?

7 A. Well, just in the broadest sense, that the
8 proposal, the application becomes the project that is
9 proposed as conditioned by us represents what's
10 authorized by this permit.

11 Q. Did the permit authorize placement where it
12 could be washed by rainfall into the waters of the State
13 of debris?

14 A. I would hope not.

15 Q. What about soil?

16 A. I would hope that the project description along
17 with all of the best management practices and the
18 construction manuals and the stormwater pollution
19 prevention plan that constitutes Caltrans' project in
20 total would not result in those kinds of discharges.

21 Q. How about soil or silt?

22 A. I'm not sure what you're asking.

23 Q. My question is: The phrase "other than that
24 authorized by this permit," what is allowed by this
25 permit with respect to the items identified in number

1 nine?

2 A. I'm not sure that -- There are only some
3 limited things that are authorized that would be
4 permitted.

5 Q. Can you identify what that phrase actually
6 refers to?

7 A. The other conditions in the certification and
8 the documents that provides it.

9 Q. I apologize if Mr. Hungerford might have asked
10 you this earlier, but did you have any role in preparing
11 the certification for the project?

12 A. No, I did not.

13 Q. Did you review it?

14 A. No, I did not.

15 Q. That was Mr. Dunbar?

16 A. No, Mr. Prat prepared the certification.

17 Q. Back to your prior history of violations, the
18 first subcategory there refers to reports and
19 photographs provided by Department of Fish and Game.
20 Did Fish and Game ever pursue any enforcements action
21 against the department or the contractor?

22 A. I don't know.

23 Q. With respect to equipment violations, that's at
24 the bottom of page twelve, the last paragraph references
25 a trestle. The paragraph mentions that the trestle deck

1 had, quote/unquote, large gaps between the timbers and
2 holes. Mr. Leland, please quantify what is meant by
3 large gaps.

4 A. I'm not able to quantify.

5 Q. How long was the trestle; do you know?

6 A. No, I don't know.

7 Q. So you don't know how deep it was?

8 A. No, I don't.

9 Q. All right. Would that be Mr. Grady or Ms.
10 Dougherty?

11 A. Or Mr. Prat or Ms. Dougherty.

12 MS. ZAZZERON: I don't know if the subpoena
13 duces tecum was marked or not as an exhibit.

14 MR. HUNGERFORD: No.

15 MS. MACEDO: I don't think it was marked so
16 far.

17 MS. ZAZZERON: Are you okay with having it
18 marked?

19 MR. HUNGERFORD: Yes, please, absolutely.

20 (Defendant's Exhibit A was marked for
21 identification.)

22 BY MS. ZAZZERON:

23 Q. Mr. Leland, have you ever seen this document
24 that's now been marked Exhibit A prior to my just
25 handing it to you?

1 A. Yes.

2 Q. Thank you. Under the category for the person
3 most knowledgeable, I think with respect to A -- Do you
4 have a copy?

5 A. I don't think.

6 MS. MACEDO: I do in my office.

7 MS. ZAZZERON: Sean, do you have a spare?

8 MR. HUNGERFORD: Yes. Give me a moment.

9 MS. MACEDO: Do you want me to go get mine?

10 MR. HUNGERFORD: Here, we have one. There you
11 go. Do you need another one?

12 MS. MACEDO: No, I'm fine. Why don't you
13 switch so he has the marked copy?

14 BY MS. ZAZZERON:

15 Q. So I am looking at page three there under
16 categories. I think with respect to A, the preparation
17 drafting and any revisions to the certification, I
18 believe we just established through your testimony that
19 you are not the person most knowledgeable; is that
20 correct?

21 A. That would be correct.

22 MS. MACEDO: I'm going to object to I suppose
23 this line of questioning in terms of it calls for a
24 legal conclusion in determining who the person most
25 knowledgeable is. You can ask who may have knowledge

1 about these subjects, but Mr. Leland was designated to
2 testify on behalf of the Regional Board. As is evident
3 from his testimony, he gave names of people you're
4 already deposing, of percipient witnesses that I have no
5 problem with you deposing, but Mr. Leland has spoken on
6 a variety of subjects covered in the subpoena.

7 MS. ZAZZERON: Yes. For the record, though, we
8 talked off the record and would like to make an accurate
9 record as to what categories Mr. Leland may actually be
10 the most knowledgeable about, which he's not.

11 MS. MACEDO: I concur, and that's fine.

12 MS. ZAZZERON: Okay.

13 MS. MACEDO: I'm happy to do it on the record
14 and with the witness here, but I'm not taking
15 Mr. Leland's representation that someone is going to be
16 designated the person most knowledgeable.

17 MS. ZAZZERON: No, I wouldn't be asking that.

18 MS. MACEDO: Okay.

19 BY MS. ZAZZERON:

20 Q. Number B, preparation, drafting and any
21 revisions to the ACL complaint, you reviewed the ACL
22 complaint; correct?

23 A. Yes.

24 Q. You did not prepare or draft any revisions; is
25 that correct? Maybe you did. I don't know.

1 A. I did not prepare or draft the complaint.

2 Q. That was Mr. Grady?

3 A. Yes.

4 Q. Would you say you're the most knowledgeable in
5 the Regional Board about Category C?

6 MS. MACEDO: I'll just have a standing
7 objection regarding a legal conclusion.

8 THE WITNESS: My understanding of person most
9 knowledgeable is with respect to the processes and
10 policies that were used in assessing violations and
11 preparing those and doing a complaint. That's why I'm
12 here.

13 BY MS. ZAZZERON:

14 Q. Okay. Would you say you're the most
15 knowledgeable in the Region about specifically C, which
16 is all facts, documents and recorded observations
17 supporting the construction dewatering violations?

18 A. Probably not.

19 Q. And if you could review -- I don't want to get
20 too redundant here, but if you could review D through O
21 and tell me if any of those you are or for any of those
22 if you are the most knowledgeable person in the Regional
23 Board.

24 A. Well, down through J, my answer would be the
25 same as I gave for C.

1 Q. Okay.

2 A. I would include K, storm water permit
3 violations, in that as well.

4 With respect to L, calculation of civil
5 liability, I could be the person most knowledgeable with
6 respect to that.

7 With respect to M, adverse impacts to water
8 quality caused by activities, and N, I could be, but
9 that also depends on observations, so that the same
10 comments that I made with respect to A through J would
11 apply to that.

12 With respect to O, I'm probably not because I
13 didn't make the inspection myself.

14 Q. Are you acquainted with Bradford Norman?

15 A. I don't believe so.

16 Q. Ever heard the name?

17 A. I don't believe so.

18 MS. ZAZZERON: Sean, I'm going to review my
19 notes, but if you have any --

20 MR. HUNGERFORD: I have a couple of just very
21 brief follow-ups.

22 FURTHER EXAMINATION:

23 BY MR. HUNGERFORD:

24 Q. On the windblown debris, something we talked
25 about a few minutes ago, are you aware of any other

1 enforcement action taken by the Regional Board which
2 asserted penalties or violations based on windblown
3 debris?

4 MS. MACEDO: I'm sorry. The windblown debris,
5 was that the hypothetical?

6 MR. HUNGERFORD: No, no, that was a question.
7 It wasn't a hypothetical. I'll start over.

8 BY MR. HUNGERFORD:

9 Q. Are you aware of any other notices of violation
10 or administrative civil liability penalties that the
11 Regional Board has issued based on windblown debris?

12 A. I can't think of any offhand. That doesn't
13 mean that there aren't any.

14 Q. And just to be clear, to your personal
15 knowledge, you're not aware of any single fish that's
16 been harmed or killed as a result of this project;
17 correct?

18 A. That's correct, although I would refer to my
19 previous testimony that water quality objectives are
20 intended to protect beneficial uses, and demonstrating
21 specific harm to any beneficial use, whether it's fish
22 or any other beneficial use, and there are many, is not
23 required to determine that there's been a violation.

24 Q. Understood. However, that fact would certainly
25 be relevant to the calculation of administrative civil

1 liability penalties; wouldn't it?

2 A. I believe that's correct.

3 Q. One last question, I want to make sure I
4 understand your statements with respect to the use of
5 Isolated Pool B. When we spoke, I believe you said that
6 the problems with that sedimentation basin were that it
7 was within a hundred feet of the river and also that it
8 was within the hundred year floodplain which made that
9 part of the surface water. Am I stating your testimony
10 correctly?

11 A. Yes, that it was within an area that we would
12 consider to be surface water, yes.

13 Q. So hypothetically, if Isolated Pool B were
14 situated in such a way that it were a hundred feet away
15 in all directions from the river, it still would be a
16 violation to have used that pool because it was within
17 the hundred year floodplain?

18 A. No, I don't think that that's correct. If it
19 was proposed in the application and we permitted it
20 based on the application, then it could have been okay
21 if it worked, if there was no evidence of discharge.

22 Q. So if it was clear in the application that
23 there would be a sedimentation basin located within the
24 hundred year floodplain but greater than a hundred feet
25 away from the active river, then that would be

1 acceptable from the Regional Board's standpoint?

2 A. As an initial best-management practice. This
3 would be an example of except as authorized, other than
4 that authorized by this permit.

5 MR. HUNGERFORD: Thank you very much.

6 MS. ZAZZERON: I think I just have one more.
7 One might have some progeny, but --

8 FURTHER EXAMINATION:

9 BY MS. ZAZZERON:

10 Q. Now, on the top of page eleven of the
11 complaint, it's under paragraph nineteen, it states that
12 the use of Pool B, quote/unquote, substantially and
13 directly impacted water quality. What was the
14 substantial and direct water quality impact, if you
15 could describe that?

16 A. Well, I couldn't describe it to you
17 specifically, but it appears there was a sediment
18 transport that was initiated by that activity.

19 MS. ZAZZERON: That's all I have.

20 - - -

21 (Whereupon, today's proceedings concluded at
22 1:58 p.m.)

23 - - -

24

25

CERTIFICATE OF WITNESS

I, DAVID F. LELAND, hereby declare that I have read the foregoing testimony recorded on pages 1 through 113, inclusive, and that the same is a true and correct transcript of my testimony, except as I have corrected any answer in ink, initialed such correction, and stated on the margin my reason for making same.

DAVID F. LELAND

Date: _____

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COASTAL REPORTING SERVICES

CERTIFIED SHORTHAND REPORTERS

131-A STONY CIRCLE, SUITE 500

SANTA ROSA, CA 95401

(707) 573-9766

October 18th, 2010

Mr. David F. Leland
C/O Julie Macedo
Senior Staff Counsel
1001 I Street
P.O. Box 100
Sacramento, CA 95812

Re: Administrative Civil Liability Complaint # R1-2009-0095
Deposition of David F. Leland
Taken: October 12th, 2010

Dear Mr. Leland:

The original transcript of your testimony at the above-referenced deposition is now available for reading and signing.

Please contact your attorney who has access to a copy; otherwise, we have the original transcript in our offices.

The original transcript will remain available for 35 days after the date of this letter at our offices. During this period, you may, either in person or by a signed letter to us, change the form or the substance of your answer to any question and may either approve the transcript of the deposition by signing it or refuse to approve the transcript by not signing it. If you choose to read it at our offices, please call and make an appointment first.

Thank you!

COASTAL REPORTING SERVICES

Reporter: Stephanie Anne Fox, CSR #4640

/SAF

cc: (To All Counsel)

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 NORTH COAST REGION

3 IN THE MATTER OF:
4 ADMINISTRATIVE CIVIL LIABILITY
5 COMPLAINT NO. R1-2009-0095

SUBPOENA DUCES TECUM TO
THE PERSON MOST
KNOWLEDGEABLE FOR THE
REGIONAL WATER QUALITY
CONTROL BOARD

7 TO: PERSON MOST KNOWLEDGEABLE, REGIONAL WATER QUALITY CONTROL
8 BOARD

9 YOU ARE COMMANDED to appear at the place, date and time specified below to testify
10 at the taking of a deposition in the above-referenced matter.

11 YOU ARE ALSO COMMANDED to produce and permit inspection and copying of the
12 documents identified in Attachment A to this Subpoena at the place, date, and time specified below.

13 You have been subpoenaed by MCM Construction, Inc. ("MCM"), a designated party in the
14 aforementioned proceedings. MCM is represented by Diepenbrock Harrison, 400 Capitol Mall,
15 Suite 1800, Sacramento, California, 95814. Inquiries concerning the mechanics of the scheduled
16 deposition should be directed to Sean K. Hungerford, Esq., of Diepenbrock Harrison at (916) 492-
17 5000.

18 PLACE: NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD
19 5550 SKYLANE BLVD., STE. A
20 SANTA ROSA, CA 95403-1072

21 DATE: Tuesday, October 12, 2010

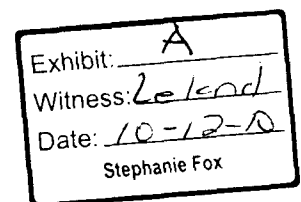
22 TIME: 9:00 a.m.

24 DATED: October 5, 2010

DIEPENBROCK HARRISON
A Professional Corporation

26 By: 
27

SEAN K. HUNGERFORD
Attorney for MCM CONSTRUCTION, INC.



ATTACHMENT A TO THE SUBPOENA DUCES TECUM TO
THE PERSON MOST KNOWLEDGEABLE

I. INSTRUCTIONS

1. Please produce DOCUMENTS as they are kept in the usual course of business and organize and label them to correspond with the categories in these requests.

2. In the event any requested DOCUMENT has been destroyed, lost, discarded or, otherwise disposed of, please identify such DOCUMENT as completely as possible, including without limitation the following information: (a) date of disposal; (b) manner of disposal; and (c) person approving of the disposal.

II. DEFINITIONS

The following definitions shall apply to each category of documents set forth below:

3. "ACL COMPLAINT" shall mean and refer to Administrative Liability Complaint No. R1-2009-0095, publically released on August 13, 2009.

4. "COMMUNICATIONS" shall mean and refer to the written or verbal exchange of information by any means, including, without limitation, telephone, telecopy, facsimile, or other electronic medium (including e-mail), letter, memorandum, notes or other writing method, meeting, discussion, conversation or other form of verbal expression.

5. "DOCUMENT(S)" shall mean and refer to any and all written, printed, typewritten, photographic, graphic, or recorded materials (by tape, video or otherwise), however produced or reproduced, data stored in a computer, data stored on removable magnetic and optical media (e.g., magnetic tape, floppy disks, and recordable optical disks), e-mail, and voice mail, which relate or pertain in any way to the subject matter to which the Interrogatory refers. "DOCUMENT(S)" shall further include, without limitation, all preliminary, intermediate and final drafts or versions of any DOCUMENT, as well as any notes, comments, and marginalia appearing on any DOCUMENT, and shall not be limited in any way with respect to the process by which any DOCUMENT was created, generated, or reproduced, or with respect to the medium in which the document is embodied. DOCUMENT(S) shall include all "writing" and tangible forms of expression falling within the

1 scope of California Evidence Code section 250, within YOUR custody, possession or control.

2 6. "PERSON(S)" shall mean and refer to any natural person, proprietorship, public or
3 private corporation, limited or general partnership, trust, joint venture, firm, association,
4 organization, board, authority, governmental entity, or any other entity, including a representative of
5 such PERSON(S).

6 7. "RELATING TO" shall mean and refer to relating to, pertaining to, referring to,
7 evidencing, in connection with, reflecting, respecting, concerning, based upon, stating, showing,
8 establishing, supporting, bolstering, contradicting, refuting, diminishing, constituting, describing,
9 recording, noting, embodying, memorializing, containing, mentioning, studying, analyzing,
10 discussing, specifying, identifying, or in any other way bearing on the matter addressed in the
11 request, in whole or in part.

12 8. "SITE" shall mean and refer to the Confusion Hill Bypass Project Site, as described
13 in the ACL COMPLAINT.

14 9. "YOU" or "YOUR" shall mean the Deponent, including without limitation YOUR
15 employer or prior employer and its agents, employees, representatives, attorneys, accountants,
16 investigators, and insurance companies, and their employees, and anyone else acting on your
17 behalf). With respect to YOUR DOCUMENTS, it includes any DOCUMENTS in YOUR
18 possession, custody or control.

19 10. "PERSON" shall mean any entity or natural person.

20 11. "CERTIFICATION" means the Clean Water Act Section 401 Certification issued by
21 the Regional Water Quality Control Board for the Confusion Hill project that is the subject of the
22 ACL COMPLAINT.

23 **III. CATEGORIES ON WHICH PERSONS MOST KNOWLEDGABLE WILL BE**
24 **EXAMINED**

25 A. The preparation, drafting and any revisions to the CERTIFICATION.

26 B. The preparation, drafting and any revisions to the ACL COMPLAINT.

27 C. All facts, DOCUMENTS and recorded observations supporting the "construction
28 dewatering" violations described in section 19A of the ACL COMPLAINT.

1 D. All facts, DOCUMENTS and recorded observations supporting the "leaky
2 equipment" violations described in section 19B of the ACL COMPLAINT.

3 E. All facts, DOCUMENTS and recorded observations supporting the "slag discharge"
4 violations described in section 19C of the ACL COMPLAINT.

5 F. All facts, DOCUMENTS and recorded observations supporting the "turbid
6 discharge" violations described in section 19D of the ACL COMPLAINT.

7 G. All facts, DOCUMENTS and recorded observations supporting the "insufficient
8 turbidity measurement" violations described in section 19E of the ACL COMPLAINT.

9 H. All facts, DOCUMENTS and recorded observations supporting the "improper
10 disposal of cement waste" violations described in section 19F of the ACL COMPLAINT.

11 I. All facts, DOCUMENTS and recorded observations supporting the "rubbish, debris,
12 trash and sediment discharge" violations described in section 19G of the ACL COMPLAINT.

13 J. All facts, DOCUMENTS and recorded observations supporting the "individual
14 event" violations described in section 19H of the ACL COMPLAINT.

15 K. All "storm water permit" violations described section 20 of the ACL COMPLAINT.

16 L. The calculation of recommended civil liability listed in sections 21 and 22 of the
17 ACL COMPLAINT, including the application of the adjustment factors listed in section 21 and any
18 other factors considered in determining the amount of civil liability.

19 M. Any adverse impacts to water quality caused by the activities described in the ACL
20 COMPLAINT.

21 N. Any adverse impacts to wildlife and/or wildlife habitat caused by the activities
22 described in the ACL COMPLAINT.

23 O. Any visual observations or inspections of the Site made by the Regional Water
24 Quality Control Board's employees, members, staff, contractors or other representatives.

25 **IV. DOCUMENT REQUESTS**

26 1. All DOCUMENTS and evidence which the Regional Water Quality Control Board
27 intends to offer to support the claims and allegations in the ACL COMPLAINT, including but not
28 limited to:

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- a. Impacts to water quality;
- b. Impacts to wildlife and wildlife habitat, including protected species;
- c. Application of the adjustment factors listed Water Code section 13385, subdivision (e); and
- d. Letters, reports or other DOCUMENTS prepared by other governmental agencies.

2. All DOCUMENTS RELATING TO the claims and allegations in the ACL COMPLAINT, including but not limited to:

- a. Impacts to water quality;
- b. Impacts to wildlife and wildlife habitat, including protected species;
- c. Application of the adjustment factors listed Water Code section 13385, subdivision (e);
- d. Letters, reports or other DOCUMENTS prepared by other governmental agencies; and
- e. Other memoranda, reports, notes, summaries, working files, electronic mail, and test samples or results.

1 Re: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2009-0095
2 Confusion Hill Bypass Project, Mendocino County
3 California Regional Water Quality Control Board, North Coast Region

4 **PROOF OF SERVICE**

5 I, Gilberto J. Castro, declare:

6 I am a citizen of the United States, employed in the City and County of Sacramento,
7 California. My business address is 400 Capitol Mall, Suite 1800, Sacramento, California 95814. I
8 am over the age of 18 years and not a party to the within action.

9 I am familiar with the practice of Diepenbrock Harrison for collection and processing of
10 correspondence, said practice being that in the ordinary course of business, correspondence is
11 sealed, given the appropriate postage and placed in a designated mail collection area. Each day's
12 mail is collected and deposited in the United States Postal Service.

13 On October 5, 2010, I served the attached,

14 **SUBPOENA DUCES TECUM TO THE PERSON MOST KNOWLEDGEABLE FOR**
15 **THE REGIONAL WATER QUALITY CONTROL BOARD**

16 ☒ (BY U.S. MAIL) I placed such sealed envelope, with postage thereon fully prepaid for first-
17 class mail, for collection and mailing at Diepenbrock Harrison, Sacramento, California,
18 following ordinary business practices as addressed as follows, and/or

19 ☐ (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the
20 addressees at the addresses listed below; and/or

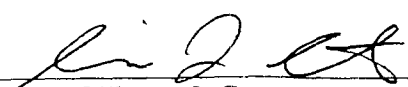
21 ☒ (VIA FEDERAL EXPRESS) I caused each such envelope to be delivered via Federal
22 Express overnight service to the addressees at the addresses listed below; and/or

23 ☐ (VIA FACSIMILE) I caused each such document to be sent by facsimile machine number
24 (916) 446-4535 to the following persons or their representative at the addresses and the
25 facsimile numbers listed below; and/or

26 ☒ (VIA EMAIL) I caused each such document to be sent by electronic mail to the addressees
27 at the email addresses listed below.

28 SEE ATTACHED MAILING LIST.

Executed on October 5, 2010, at Sacramento, California.


Gilberto J. Castro

1 Re: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2009-0095
2 Confusion Hill Bypass Project, Mendocino County
3 California Regional Water Quality Control Board, North Coast Region

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Redding, CA 96001
tahocabin@aol.com

1 California Regional Water Control Board

2 North Coast Region

3 ---o0o---

COPY

4 In the Matter of:

5 ADMINISTRATIVE CIVIL LIABILITY
6 COMPLAINT NO. R1-2009-0095.

7 _____/

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10
11 Deposition Of:

12
13 KASON VERNE GRADY

14
15 Thursday, October 21st, 2010

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19 Reported by: Stephanie Anne Fox, CSR #4640

20
21
22
23 COASTAL REPORTING SERVICES
24 131-A STONY CIRCLE, SUITE 500
25 SANTA ROSA, CALIFORNIA 95401
(707) 573-9766

The deposition of KASON VERNE GRADY was taken pursuant to agreement at the NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD, 5550 Skylane Boulevard, Suite A, in the City of Santa Rosa, County of Sonoma, State of California, on Thursday, the 21st of October, 2010, commencing at the hour of 9:17 a.m. thereof, before Stephanie Anne Fox, CSR No. 4640, a California Certified Shorthand Reporter.

APPEARANCES

For the California Regional Water Quality Control Board,
North Coast Region:

State Water Resources Control Board
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(916) 341-6847

By: Julie E. Macedo
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For MCM Construction, Inc.:

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By: Sean K. Hungerford
Attorney at Law

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3 General Engineering Contractors
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5 By: Edmundo A. Puchi
6 Assistant General Counsel

7 For the State of California, Department of
8 Transportation:

9 State of California
10 Department of Transportation
11 Legal Division
595 Market Street, Suite 1700
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(415) 904-5700

12 By: Ardine Zazzeron
13 Deputy Attorney
14 and
Douglas C. Jensen
Attorney at Law

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INDEX

Witness: KASON VERNE GRADY

Page No.

-- Examination By:

Mr. Hungerford

5

- - -

No Exhibits Submitted

- - -

1 KASON VERNE GRADY,
2 being first duly sworn by said certified shorthand
3 reporter in all respects as required by law, in answer
4 to oral interrogatories propounded by Sean K.
5 Hungerford, Attorney at Law, made answer and proceedings
6 were had as hereinafter set forth:

7 EXAMINATION

8 BY MR. HUNGERFORD:

9 Q. Would you please state your name for the
10 record?

11 A. Kason Verne Grady.

12 Q. Spell that, please.

13 A. K-a-s-o-n, V-e-r-n-e, G-r-a-d-y.

14 Q. And, Kason, have you had your deposition taken
15 before?

16 A. No.

17 Q. Well, let me give you kind of a quick tutorial
18 on the ground rules.

19 Everything that we say is being taken down by a
20 court reporter. So the important thing for you to
21 remember is just to be clear in your answers. Nods of
22 the head, back and forth, up and down, don't translate
23 so well to the record, and so please make sure that your
24 answers are audible, and we'll try as best we can not to
25 talk over each other. Does that sound good?

1 A. Yes.

2 Q. From time to time, your attorney may interpose
3 objections. Generally, that means you still need to
4 answer the question unless she instructs you otherwise.
5 Do you understand that?

6 A. Yes.

7 Q. Let me begin with just a couple of personal
8 questions. Where did you go to high school?

9 A. Vintage High School.

10 Q. Where's that located?

11 A. Napa.

12 Q. And what year did you graduate?

13 A. 2000.

14 Q. And after high school, what education have you
15 had?

16 A. I have a bachelor's science in chemical
17 engineering from the University of California, Los
18 Angeles.

19 Q. And what year did you graduate with that
20 degree?

21 A. 2005.

22 Q. And after your B.A. in science from UCLA,
23 anything else in terms of formal schooling?

24 A. No.

25 Q. Any accreditations or certifications you've

1 received?

2 A. No.

3 Q. When did you begin working for the North Coast
4 Regional Board?

5 A. In January of 2007.

6 Q. Between graduating in 2005 and January of 2007,
7 were you employed?

8 A. Yes.

9 Q. Doing what?

10 A. I was a water consultant engineer for Nalco.

11 Q. Can you spell that, please?

12 A. N-a-l-c-o.

13 Q. Are you an engineer?

14 A. Yes.

15 Q. Is there a particular type of engineering
16 certification or license that you have?

17 A. No.

18 Q. Are you a licensed engineer?

19 A. No.

20 Q. What did you do for Nalco?

21 A. I was a process water consultant. I worked at
22 Shell Oil Refinery in Martinez, California.

23 Q. What generally were your responsibilities?

24 A. We oversaw the process water treatment for the
25 boiler operations at the oil refinery.

1 Q. And then you began working for the Regional
2 Board in January of 2007?

3 A. Yes.

4 Q. And what was your first position with the
5 Regional Board?

6 A. Water resources control engineer in the
7 Enforcement Unit.

8 Q. Has your position changed since then?

9 A. Yes.

10 Q. What was the next title you held at the
11 Regional Board after that?

12 A. The title has remained the same, although I've
13 changed units.

14 Q. So previously you were with the Enforcement
15 Unit, and which unit are you with now?

16 A. Core Regulatory.

17 Q. Co-regulatory?

18 A. Core.

19 Q. Core Regulatory?

20 A. Yes.

21 Q. When did you make that change? It can be
22 approximate.

23 A. It was approximately the summer of 2008.

24 Q. What were your duties with the Enforcement
25 Unit?

1 A. Duties, I would review self-monitoring reports
2 submitted by various municipalities, mostly cities,
3 municipal dischargers, wastewater treatment plants, as
4 well as, in this case, storm water permits and 401
5 permits.

6 Q. And you would review those in an enforcement
7 context?

8 A. Yes.

9 Q. And then with the Core Regulatory Unit, did
10 your responsibilities change?

11 A. Yes, they became more broad beyond enforcement.
12 Although I still do some enforcement, it's in a
13 different context. Now I write and manage permits for
14 various facilities and industries.

15 Q. What type of permits?

16 A. NPDES as well as WDR. That stands for National
17 Pollutant Discharge Elimination System Permits. It's a
18 Federal permit, as well as WDR. That's Waste Discharge
19 Requirement Permits that are State permits for
20 discharges of wastewater to surface waters and to land.

21 Q. Any 401 certifications?

22 A. No.

23 Q. And you are currently with the Core Regulatory
24 Unit?

25 A. Yes.

1 Q. Who else is in the Core Regulatory Unit with
2 you?

3 A. Charles Reed, Cathy Goodwin, Lisa Bernard.

4 Q. Let me stop you. How many people roughly?

5 A. Seven.

6 Q. Okay.

7 A. That's a rough estimate. That's not -- Five to
8 ten.

9 Q. That's fine. Feel free to give me your
10 estimates. I don't want you to guess at anything as we
11 go on today.

12 A. Sure.

13 Q. But if you can make an estimate, that's fine.

14 A. Sure.

15 Q. Last week we had a deposition of Mr. Leland.
16 He indicated that you were the main drafter of the
17 Confusion Hill complaint. Is that correct?

18 A. Yes.

19 Q. At the time that you drafted the complaint,
20 were you with the Core Unit?

21 A. No.

22 Q. You were with the Enforcement Unit?

23 A. (Witness nods head.)

24 Q. Yes?

25 A. Yes. Sorry.

1 Q. Who was our supervisor in the Enforcement Unit
2 at the time you drafted the complaint?

3 A. Tom Dunbar.

4 Q. Did that change at all at any point in time?

5 A. While I was in the Enforcement Unit?

6 Q. Yes.

7 A. No.

8 Q. Do you remember roughly the date that you went
9 from the Enforcement Unit to the Core Unit?

10 A. I believe it was in August of 2008.

11 Q. And who was your supervisor when you
12 transferred to the Core?

13 A. John Short.

14 Q. John Short?

15 A. Yes.

16 Q. Just how it sounds?

17 A. Yes.

18 Q. Has he remained your supervisor?

19 A. Yes.

20 Q. In the Enforcement Unit, are there any other
21 supervisors, or were there any other supervisors 'cause,
22 as I understand it, Mr. Dunbar has now left?

23 A. Well, when you're saying supervisors, perhaps I
24 can clarify that we call them seniors, and David Leland
25 is the supervisor. He has always been the supervisor,

1 and he supervises both the Enforcement Unit and the Core
2 Regulatory Unit as well as I believe the Nonpoint Source
3 Unit, but maybe not. We've done some restructuring
4 internally, so I'm not quite sure all the units that
5 David Leland supervises and has supervised over time.
6 That's changed. So I can't speak to that, but he has at
7 least supervised the Enforcement Unit and the Core
8 Regulatory Unit for the entire time I've been here.

9 Q. Thank you.

10 A. And the seniors, there was only one senior
11 while I was in the Enforcement Unit, which was Tom
12 Dunbar. It has changed, and that changed about the same
13 time I moved out of that unit. The new Enforcement
14 senior is Diana Henriouille.

15 Q. And that was because Tom Dunbar retired,
16 correct?

17 A. Yes.

18 Q. Are there any other seniors other than John
19 Short and Mr. Leland for the Core Unit?

20 A. Well, again, Mr. Leland is not a senior. He's
21 a supervisor.

22 Q. Seniors or supervisors.

23 A. For the Core Regulatory Unit?

24 Q. Yes.

25 A. No.

1 Q. When did you first hear of the Confusion Hill
2 Project?

3 A. I don't recall exactly. It was probably in the
4 summer of 2007.

5 Q. What was the reason that you first heard of the
6 project?

7 A. Mona Dougherty had written a notice of
8 violation. Dean Prat had also written a notice of
9 violation, and there were just a lot of documents that
10 needed to be reviewed to determine whether or not we
11 were going to write an administrative civil liability
12 complaint.

13 Q. And you participated in reviewing those
14 documents?

15 A. Yes.

16 Q. Who directed you to do this work?

17 A. Tom Dunbar.

18 Q. And did you have a general understanding of why
19 Mr. Dunbar believed an ACL complaint might be
20 appropriate?

21 A. Yes.

22 Q. What was that?

23 A. We were aware at the time that there were many
24 discharges of, and a lot of evidence, photographs and
25 just what we see here before us today for the most part;

1 I believe we had that at that time, that there were
2 violations of the 401 certification and the stormwater
3 permit.

4 Q. Did you perform any investigation to collect
5 documents or interview people in connection with
6 preparing the complaint?

7 A. Beyond what we see here?

8 Q. Yes, and just to clarify for the record, what
9 we see here is a stack of papers on the table.

10 A. Which is what we refer to as the file, the
11 Regional Water Board record.

12 Q. Well, let me ask it this way: This stack of
13 papers that we have on the table, do you have a basic
14 understanding for where they all came from?

15 A. Yes.

16 Q. And without going through each one of these
17 documents, were these materials that were obtained from
18 Caltrans?

19 A. Some of them.

20 Q. Who obtained them from Caltrans?

21 A. I believe Mona did.

22 Q. So it's your understandings Mona made a request
23 to Caltrans?

24 A. Yes. In her notice of violation, there was a
25 13267 order that requested submittal of a technical

1 report that would include specific documents.

2 Q. And so this stack on the table, at least in
3 part, came from the documents produced in response to
4 that order?

5 A. In part, yes.

6 Q. Other than Caltrans, did these materials come
7 from any other agency?

8 A. Yes.

9 Q. What agencies?

10 A. The Department of Fish and Game.

11 Q. And how did the Regional Board obtain those
12 documents from Fish and Game?

13 A. I believe, as I recall, I believe it is Mona
14 that mentioned they were hand delivered here, as I
15 recall.

16 Q. So Mona took the laboring oar to initially
17 obtain documents from Fish and Game?

18 A. I believe so. I got them from Mona.

19 Q. Do you know of any particular individuals with
20 the Department of Fish and Game that the Regional Board
21 communicated with as part of obtaining these documents?

22 A. I do not know who was contacted.

23 Q. Do you know of any individual Department of
24 Fish or Game employees or representatives that you
25 worked with as part of preparing or investigating this

1 complaint?

2 A. Yes. I believe I spoke to Karen Maurer on at
3 least one occasion, and we exchanged a couple of
4 e-mails.

5 Q. And what, to your knowledge, was Ms. Maurer's
6 capacity at that time with Fish and Game?

7 A. She was a warden.

8 Q. What was the substance of your communications
9 with her?

10 A. She had prepared an arrest investigation
11 report, and I asked her for that and associated
12 documents.

13 Q. And she provided it?

14 A. Yes.

15 Q. And so at least to a certain extent, the
16 documents that the Regional Board has were from your
17 interactions with the Department of Fish and Game; is
18 that correct?

19 A. Yes.

20 Q. Is it possible for you to identify -- I don't
21 want you to get up right now -- which documents in this
22 rather large pile are from the Department of Fish and
23 Game?

24 A. Yes.

25 Q. Are the documents collected by yourself and by

1 Mona from Fish and Game together in one sub file?

2 A. No.

3 Q. Is it possible to determine what you collected
4 and what Mona collected from Fish and Game?

5 A. Yes.

6 Q. Any other agencies other than Department of
7 Fish and Game that you had contact with as part of
8 preparing the complaint?

9 A. Not as I recall.

10 Q. Other than public agencies, were there any
11 other individuals or organizations that you had contact
12 with as part of preparing the complaint?

13 A. Individuals or agencies?

14 Q. Individuals not associated with any public
15 agency.

16 A. Yes.

17 Q. Who?

18 A. Carl Page.

19 Q. And who is Mr. Page?

20 A. He is, was the biological monitor on this
21 project.

22 Q. Is he self-employed to your knowledge?

23 A. To my knowledge, yes.

24 Q. Meaning he's not with an environmental outfit
25 of any kind?

1 A. Well, I believe he owns his own environmental
2 outfit called Aquatic Resources Specialists.

3 Q. Other than Mr. Page, any other individuals not
4 associated with any public agency?

5 A. I don't believe so.

6 Q. Did you contact Mr. Page?

7 A. Yes.

8 Q. And what was the purpose of contacting him?

9 A. To determine if we had all of the information
10 that he had provided to Caltrans.

11 Q. Do you remember when this communication
12 occurred?

13 A. Not really.

14 Q. Was his answer that he had or that he hadn't?

15 A. Can you expand the question?

16 Q. Did he say that he had provided all of his
17 information to Caltrans?

18 A. Yes.

19 Q. So did you obtain anything additional from
20 Mr. Page?

21 A. Yes. He, he was being open and cooperative and
22 offered his field notes. He sent them here. I took a
23 brief look at them but sent them back.

24 Q. Sent them back to Mr. Page?

25 A. Yes.

1 Q. Are his fields notes in the stack of documents
2 on the table?

3 A. No.

4 Q. Is there any particular reason why you sent
5 them back and didn't keep a copy?

6 A. I didn't feel that they were necessary.

7 Q. And to your knowledge, are his field notes in
8 the Regional Board's materials having been provided by
9 Caltrans?

10 A. To my knowledge, his field notes for the most
11 part are not, but the substance were included in his
12 reports that he developed for Caltrans and were
13 submitted to the Regional Water Board in the response to
14 the 13267 order.

15 Q. So other than Caltrans, Department of Fish and
16 Game and Mr. Page, did you speak with or have contact
17 with any other organizations or persons not employed by
18 any public agency?

19 A. In the development of the complaint?

20 Q. In either your investigation of the
21 circumstances underlying the complaint or the
22 development of the complaint.

23 A. I don't believe so.

24 Q. Did you have primary responsibility for
25 drafting the complaint?

1 A. Yes.

2 Q. So it's fair to say that most of the complaint
3 is your work product?

4 A. Yes.

5 Q. Did anyone else participate?

6 A. Yes.

7 Q. Can you identify who?

8 A. Yes.

9 Q. Who?

10 A. We worked on it as a team as we do on all of
11 our projects. It starts with the line staff, and we
12 work as a team with management. So it's Tom Dunbar,
13 Mona Dougherty, Dean Prat, David Leland, and our
14 attorneys.

15 Q. Anyone else other than those four people and
16 your attorneys?

17 A. Luis Rivera is the assistant executive officer,
18 and he's involved in reviewing the complaint.

19 Q. Did Tom take any active role in writing the
20 complaint?

21 A. No.

22 Q. How about Mona?

23 A. No.

24 Q. Dean?

25 A. No.

1 Q. Same answer for Mr. Leland and Mr. Rivera?

2 A. Correct. In terms of writing, they would
3 comment, but writing it, no.

4 Q. How many drafts of the complaint would you
5 estimate you went through before reaching a final
6 version?

7 A. I guess I find that hard to answer because I
8 don't know what you mean by draft.

9 Q. Was there a process? Well, I'm making an
10 assumption that the first time you wrote the complaint,
11 that wasn't the final version and that certain revisions
12 were made. Is that a fair statement?

13 A. Yes.

14 Q. That there was a process of writing a revision
15 that occurred until the final version that we have now?

16 A. Yes.

17 Q. Was there one person who was primarily
18 responsible for reviewing and commenting on drafts of
19 the complaint?

20 A. One person?

21 Q. Sure.

22 MS. MACEDO: Was there?

23 MR. HUNGERFORD: Yes.

24 THE WITNESS: No.

25 BY MR. HUNGERFORD:

1 Q. Mr. Dunbar, did he review and comment on the
2 complaint?

3 A. I don't remember the timing, whether he was
4 around at that time or not. I don't believe he was, he
5 was here. I think he had retired by the time that the
6 complaint was drafted.

7 Q. How long did it take to draft the complaint
8 from the time you started with it until the time that it
9 was issued?

10 A. I don't recall when I started.

11 Q. Can you give me an estimate, roughly a year?

12 A. I can't give you an estimate. I don't remember
13 when I officially started. I could have started pieces
14 of it from the very beginning and then --

15 Q. Well, you mentioned -- Sorry.

16 A. Go ahead.

17 Q. You mentioned in the summer of 2009 is when it
18 first came to the Regional Board's attention that --

19 MS. MACEDO: Strike that. '8.

20 THE WITNESS: Yes.

21 MR. HUNGERFORD: I'm sorry; you're correct.

22 BY MR. HUNGERFORD:

23 Q. Reaching back, it was the summer of 2008 that
24 it first came to the Regional Board's attention that
25 there was potential administrative civil liability here;

1 correct?

2 A. No, I believe it was summer of 2007.

3 Q. Summer of 2007, Okay. And this complaint was
4 issued in 2009, correct?

5 A. Correct.

6 Q. And so in the intervening year plus, were there
7 drafts of the complaint that were prepared and then
8 revised?

9 A. They were -- I wouldn't officially call them
10 drafts. I guess I'm not understanding what you mean by
11 drafts. In the final version, you develop it, and then
12 there's some comments, and then you have your final
13 version. So anything that would be a draft would be
14 that, so there would be one draft.

15 Q. Well, maybe I'm asking it awkwardly. What I
16 want to know is how it is that other people participated
17 in the preparation of the complaint other than yourself.
18 Now, I understand that you took the lion's share of the
19 drafting that others participated in, but what I would
20 like to get is an understanding of how other people
21 participated in the preparation of the complaint.

22 A. Sure.

23 Q. And so as I understand what you've told me, Tom
24 Dunbar didn't take a significant role in participating
25 in preparing this complaint; is that correct?

1 A. Yes.

2 Q. What about Mona, did she take any noteworthy
3 role in preparing the complaint?

4 A. In preparing the complaint, no.

5 Q. Offering feedback on drafts of the complaint?

6 A. Yes.

7 Q. Or allegations?

8 A. Yes.

9 Q. And did she have any particular field of
10 expertise that she lended in preparing the complaint?

11 A. Yes. I would refer to Mona on violations and
12 issues related to the stormwater permit.

13 Q. What about Dean?

14 A. And I would refer to him equally when it came
15 to the 401 certification.

16 Q. And can you describe Mr. Leland's role in
17 preparing or revising the complaint?

18 A. He's involved in general structure. He also is
19 involved in the analysis of the factors.

20 Q. When you say the factors, you're talking about
21 the adjustment factors on the 13385; correct?

22 A. Yes.

23 Q. Mr. Rivera?

24 A. Same.

25 Q. Who was responsible for approving the final

1 version of the complaint?

2 A. Approving, I believe both David Leland and Luis
3 Rivera.

4 Q. Is there any formal process that the North
5 Coast Board follows for preparing administrative civil
6 liability complaints that's contained in guidelines or
7 policies?

8 A. Well, there's an enforcement policy.

9 Q. That's a state enforcement policy, correct?

10 A. Yes.

11 Q. Any other enforcement policies on the Regional
12 Board level?

13 A. No.

14 Q. How many administrative civil liability
15 complaints have you prepared other than this one?

16 A. I can give you an estimate but --

17 Q. Fire away.

18 A. Five to ten.

19 Q. Five to ten?

20 A. (Witness nods head.)

21 Q. Yes?

22 A. Yes.

23 Q. Were any of those construction projects?

24 A. I don't believe so.

25 Q. Were they self-monitoring violations?

1 A. Yes.

2 Q. All of them other than this?

3 A. Yes. Let me perhaps retract that. I'm not
4 necessarily thinking of a specific case right now, but I
5 have been involved in enforcement actions that don't
6 involve self-monitoring reports, but I don't believe
7 I've done any complaints.

8 Q. When you say enforcement actions, you're
9 referring to enforcement actions other than ACL
10 complaints?

11 A. Yes.

12 Q. Correct?

13 A. Correct.

14 Q. Like clean-up and abatement orders?

15 A. Correct.

16 Q. So this is the only complaint that you've
17 helped prepare for a construction project, correct?

18 A. Yes.

19 Q. In terms of dollar value of the other
20 complaints that you've prepared, generally speaking,
21 were they comparable to the dollar value of the
22 complaint for Confusion Hill?

23 A. They were, they were less than this dollar
24 amount.

25 Q. What was the range of the other complaints, if

1 you can provide one, in terms of dollar value?

2 A. It's difficult to provide an accurate one
3 without reviewing all of them, but anywhere from -- It
4 really, really could have been anywhere from a few
5 thousand to a couple hundred thousand, a few hundred
6 thousand.

7 Q. Are you aware of any other administrative civil
8 liability complaints issued by the North Coast Board
9 prepared by anyone other than yourself that relates to a
10 construction project?

11 A. Yes.

12 Q. Which one?

13 A. Well, Mona has also issued a complaint on this
14 project.

15 Q. Any others?

16 A. There was a complaint issued, I believe it was
17 by Dean on the Van Duzen Construction Project, and there
18 has been a complaint on the Hard Scrabble Creek Project.

19 Q. And briefly, what was that project about?

20 A. It was, I believe it was a bridge construction
21 similar to this, generally similar. Understand they all
22 are unique.

23 Q. Sure. So other than the Van Duzen and Hard
24 Scrabble and Confusion Hill, are you aware of any other
25 construction-related administrative civil liability

1 complaints?

2 A. Not really.

3 Q. Do you have a copy of the complaint handy?

4 A. Yes, I do.

5 MR. HUNGERFORD: Can we go off the record a
6 second?

7 (Off-the-record discussion held.)

8 BY MR. HUNGERFORD:

9 Q. I'm going to take this time now to go through
10 individual violations, and I'm going to try to do it as
11 efficiently as I can, but there are a lot, and there's a
12 lot of material probably to cover in the next few hours.
13 So I'll try to move quickly, but let's just get into it.

14 A. Okay.

15 Q. I'm going to start with it this way: As part
16 of the complaint, the Regional Board prepared a number
17 of tables or appendices, and I take it, Kason, that you
18 had a role in drafting the appendices; correct?

19 A. Correct.

20 Q. And so you're familiar I assume with the way
21 the appendices are structured?

22 A. Right.

23 Q. So there's one set of master appendix of
24 violations, and there's a number of tables that follow,
25 you know, appendix A dash A, A dash B and so on;

1 correct?

2 A. Yes.

3 Q. I'm going to go through not the master appendix
4 but the ones that follow beginning with A dash A and
5 take the violations categorically according to the way
6 that they were prepared in the complaint.

7 A. Okay.

8 Q. So the first on table or on Appendix A-A is an
9 August 21st, 2006 violation for construction dewater.
10 Do you see that there?

11 A. Yes.

12 Q. Why don't you begin by just briefly describing
13 for me the nature of this violation?

14 A. There's a photo identifying what appears to be
15 construction dewatering to an isolated pool on the
16 gravel bar adjacent to the Eel River.

17 Q. Do you have a copy of that photo handy to refer
18 to?

19 A. Yes.

20 Q. Oh, great. That will make it much easier. So
21 the allegation is that this condition violates
22 additional conditions nine, twelve and seventeen of the
23 certification; is that correct?

24 A. Yes.

25 Q. With respect to condition nine, can you explain

1 to me how this condition constitutes a violation of --
2 Let me rephrase that. I'm using "conditions" too many
3 times.

4 With respect to condition nine of the
5 certification, can you explain to me how this event or
6 this condition on the ground violates that condition of
7 the certification?

8 A. Well, construction dewatering includes, is a
9 process by which you get rid of water on a construction
10 project that has certain pollutants in it, and those
11 pollutants are covered under additional condition number
12 nine which states, "No debris, soil, silt, sand, bark,
13 slash, sawdust, rubbish, cement, concrete washing, oil
14 or petroleum products or other organic or earthen
15 material from any construction or associated activity of
16 whatever nature other than that authorized by this
17 permit shall be allowed to enter into or be placed where
18 it may be washed by rainfall into waters of the State."

19 Well, this construction dewatering is visually
20 turbid, and it was, it's being discharged to Isolated
21 Pool B apparently which, according to all information
22 that I have found, is less than a hundred feet away from
23 the active stream channel, which was what was proposed
24 in the application and further required in special
25 provisions by Caltrans.

1 Q. Let me ask you this: Other than the location
2 of this sedimentation basin, is there anything else
3 about the use of this basin on this date that violates
4 condition nine?

5 A. I don't believe so.

6 Q. Now, you have, as part of the complaint,
7 identified a couple of items of evidence in support of
8 this violation. One is the photograph --

9 A. Uh-huh.

10 Q. -- which is identified in the complaint?

11 A. Right.

12 Q. And the other is a quote which, according to my
13 documents, comes from an August 28th, 2006 e-mail to
14 Walt Dragaloski from Terry Davis. No, I'm sorry; I take
15 that back. The e-mail is to Ron Denheyer, and I'm
16 frankly not sure who it is from; it's not very clear.

17 Why don't you answer this 'cause there's not
18 really a question there: The quote that's associated
19 with this August 21st violation, where did it come
20 from?

21 A. It came from the response to the notice of
22 violation received on December 14th, 2006 in the binder,
23 and/or the final biological monitoring report and
24 associated photographic record. Those were lumped
25 together in the footnote that referenced that quote. So

1 I would have to -- The process of finding where that
2 came from is I would check the footnote, see where it
3 came from, and then go find it.

4 Q. So you have a document somewhere in your
5 records which has that quote, right?

6 A. Yes.

7 Q. And then you have a photograph?

8 A. Yes.

9 Q. Other than those two things, is there anything
10 else that this violation is based on?

11 A. Yes. So other evidence not referenced in
12 appendix A that's also used includes the rest of the
13 photographic record. So other photos that are not shown
14 here provide context to each violation, help -- In most
15 cases, these photos were taken by the biological
16 monitor, and they took many photos, and you can go
17 through and see the chronology, the timing. That
18 provides context to each event.

19 Q. And I'm aware that there's a large number of
20 photographs associated with the complaint. Are you
21 aware of any specific photographs that support this
22 particular violation?

23 A. There, there are probably other photographs,
24 just based on my memory of going through all of them or
25 most of them, that photographs in and around this event

1 would indeed provide context to what is occurring in
2 this situation.

3 Q. As you sit there right now, can you point any
4 out to me, or you're just saying that as a general
5 matter, other photographs provide context?

6 A. Yes. There are no specific ones. If I wanted
7 to point out the specific photos that may help, I would
8 have to get the CD on a laptop and go through them.
9 This was the most relevant one that I chose.

10 Q. Thank you. Let me turn your attention to
11 condition twelve. How does the use of Isolated Pool B
12 violate condition twelve?

13 A. Well, discharges to the gravel bar are
14 discharges to waters of the State and the U.S., and so
15 this condition says that, "If construction dewatering is
16 found to be necessary, the applicant will use a method
17 of water disposal other than disposal of surface
18 waters," and this is considered disposal of surface
19 waters.

20 Q. Anything else that violates condition twelve
21 with respect to this violation?

22 A. To answer that, I would probably consult with
23 Dean because he wrote the 401, and I'd also consult with
24 my legal counsel to determine how we would assess
25 compliance because it goes on to say, "...or the

1 applicant shall apply for coverage under the general
2 construction dewatering permit and receive notification
3 of coverage to discharge to surface waters."

4 So I guess that just reiterates the threshold
5 and the fact that the violation is such because you're
6 discharging to surface waters. When I say "you're," I'm
7 not -- I don't mean that.

8 Q. I understand.

9 A. So I guess the short answer is that, yes,
10 discharge to surface waters is the only problem here.
11 The whole issue with the general construction dewatering
12 permit speaks to the process that needs to be in place
13 or that is in place.

14 If you were to discharge in such a location, a
15 certain process needs to be followed that was not
16 adhered to in this situation.

17 Q. Where in the certification is surface waters
18 defined?

19 A. I've not reviewed it so thoroughly to look for
20 a definition.

21 Q. To your knowledge, is surface waters defined
22 anywhere in the certification?

23 A. Not to my knowledge.

24 Q. I'll provide you a layman's understanding of
25 surface waters, which is actually waters that have a

1 surface, that there's actual water there. If you're
2 discharging to a gravel bar outside of the active river,
3 to me at least, that doesn't seem like you're
4 discharging to surface waters. It seems like you're
5 discharging, you know, outside of surface waters. So
6 what definition of surface waters are you relying on
7 that includes areas outside of the active river?

8 A. To speak to that definition, I received counsel
9 from my legal counsel.

10 Q. And you don't have to tell me that, but
11 anything outside of what your attorneys have told you,
12 do you have independent understanding or definitions
13 that you can point me to of surface waters that include
14 areas outside of an active river?

15 A. It is my understanding that in general, at the
16 Water Board, we construe -- There are a few different
17 terms, top of bank, ordinary high water mark, that
18 define what surface waters are.

19 Q. Is there anything to your knowledge that would
20 have provided notice to Caltrans or any contractor
21 working on this project that surface waters included the
22 gravel bar?

23 A. I do not know specifically.

24 Q. Are you familiar with the application for the
25 certification?

1 A. Vaguely. I've read it at one point or a few
2 points in the past.

3 Q. I'll represent to you that the application
4 indicates that there were plans to construct a
5 sedimentation basin on the gravel bar. Do you recall
6 that?

7 A. As I recall, there were, there was quite a bit
8 of discussion between Dean and Caltrans staff about that
9 issue.

10 Q. Is that recorded or memorialized anywhere that
11 you're aware of, that discussion?

12 A. I believe so. I believe there are some e-mails
13 in the record that may be more focused on cementitious
14 discharges, but I believe it also addresses the issue of
15 discharging or dewatering on the gravel bar.

16 Q. I am familiar with those communications, and my
17 understanding is that they relate to cement discharges
18 rather than the definition of surface waters.

19 A. Uh-huh.

20 Q. Other than those communications that took place
21 between Caltrans staff and Dean, are you aware of any
22 other guidance offered by the Regional Board that would
23 have advised Caltrans contractors as to the meaning of
24 surface waters?

25 A. I'm not aware of any.

1 Q. Turn your attention to seventeen, condition
2 seventeen.

3 A. Yes.

4 Q. So if you can explain to me how the use of
5 Isolated Pool B violates condition seventeen of the
6 certification.

7 A. It was considered that use of an unlined basin
8 within a hundred feet of the active stream channel was
9 not a BMP and was not described in the application.

10 Q. How far away was this particular basin from the
11 active river?

12 A. I can give you an estimate that I've read
13 through the documents.

14 Q. Sure.

15 A. I never went out and measured it myself, but I
16 believe it's something like seventy feet.

17 Q. Is that in all directions?

18 A. It would not be in all directions.

19 Q. I'll represent to you that the distance from
20 the bottom of the basin downgradient to the active river
21 was greater than a hundred feet. Do you have any
22 information that contradicts that?

23 A. I do not.

24 Q. Do you know what the source of -- Well, let me
25 back up. The hundred foot requirement, is that a

1 requirement that came from the Regional Board, or is
2 that something that was proposed by Caltrans in the
3 application materials?

4 A. It was something proposed by Caltrans in the
5 application materials.

6 Q. Have you seen in your work with the Regional
7 Board similar sedimentation basins in proximity to
8 surface waters where a hundred foot buffer was used?

9 A. No, I've not.

10 Q. Have you ever heard of less than a hundred foot
11 buffer?

12 A. No.

13 Q. Do you know of any studies or science that
14 Caltrans might have based their hundred foot requirement
15 on?

16 A. No.

17 Q. Is there anything special about a hundred feet
18 that, in your understanding, makes that an appropriate
19 minimum distance?

20 A. Can you repeat the question?

21 Q. Is there anything special about the distance of
22 a hundred feet that makes that an appropriate buffer
23 from an active river for a sedimentation basin?

24 A. Not that I'm aware of.

25 Q. Can you tell me how much of the administrative

1 civil liability penalty was allocated to this particular
2 violation?

3 A. I believe \$30,000.

4 Q. And we'll get into this a little bit later, but
5 certain adjustment factors were applied; correct?

6 A. Yes.

7 Q. Were they applied on a per violation basis or
8 on a per category basis?

9 A. Per category.

10 Q. So does the Regional Board have any chart or
11 spread sheet or anything else that applies the
12 adjustment factors to individual violations?

13 A. No.

14 Q. Let's go to the August 29th, 2006 violation.

15 A. Okay.

16 Q. The complaint says, "After eight hours of
17 pumping from coffer dams set in bar to Isolated Pool B,"
18 correct?

19 A. Yes.

20 Q. So there's no photographs that are associated
21 with this violation, right?

22 A. Apparently not.

23 Q. Is it fair to say that there was no particular
24 violation, excuse me, no particular photograph on this
25 date that you felt appropriate to use to support this

1 violation?

2 A. I believe that would be a fair assessment. Had
3 I found one, I probably would have put it there.

4 Q. And you've also indicated that conditions nine,
5 twelve and seventeen were violated by the use of
6 Isolated Pool B on this date; correct?

7 A. Yes.

8 Q. Would that be for the same basic reasons that
9 you described for the August 21st violation?

10 A. Yes.

11 Q. Other than this quote that's included in the
12 complaint, is there any other specific evidence that
13 you're aware of that supports this violation?

14 A. I would just again refer to the contextual
15 evidence we have with the photographic record and the
16 engineering diaries and the record in its entirety.

17 Q. Sure, and I understand that you're saying that
18 contextually, it's all supportive; right?

19 A. And there may be more evidence in the file in
20 developing this. This was my best attempt of picking
21 the best evidence to express what happened.

22 Q. So at least at the time that you drafted the
23 complaint, there was no other piece of evidence other
24 than this quote that you were specifically aware of --

25 A. Yes.

1 Q. -- that supported this violation?

2 A. Yes.

3 Q. Turn to the August 30th, 2006 violation, again,
4 this is virtually the same statement for the August 29th
5 violation; correct?

6 A. Correct.

7 Q. And with the same conditions violated, correct?

8 A. Yes.

9 Q. I take it for the same basic reasons?

10 A. Correct.

11 Q. And you're not aware of any other specific
12 evidence for this date other than the quote?

13 A. Correct.

14 Q. Turning to the August 31st, 2006 violation, you
15 have two different violations. One of them has a
16 statement virtually identical to the August 29th and
17 August 30th violations; right?

18 A. Yes.

19 Q. And you also have a photograph, correct?

20 A. Correct. It references a photograph that
21 should be here, correct.

22 Q. Do you have that photograph?

23 A. Yes.

24 Q. I take it that the same violations were alleged
25 for this date, for this event as the other past three

1 violations; correct?

2 A. Yes.

3 Q. For the same basic reasons?

4 A. Uh-huh, yes.

5 Q. Now the photograph, take a look at that. What
6 is it about the photograph that provides support for
7 this violation?

8 A. There is water flowing into Isolated Pool B.
9 There's a pipe apparently coming from the river. It
10 appears to be construction dewatering.

11 Q. My understanding of this violation is it's
12 based on the use of Isolated Pool B; you know, it's less
13 than a hundred feet from the active river?

14 A. Correct.

15 Q. Which would be consistent with the past
16 violations we've discussed. For this violation that
17 we're talking about, is there anything else about that
18 photograph, other than the location of the basin, that
19 supports the violation?

20 A. No. That's the general process we went
21 through.

22 Q. If you turn to the next violation --

23 MR. JENSEN: Well, I have a belated objection
24 on that one because for that particular date, we're
25 talking about 8/31?

1 MR. HUNGERFORD: Yes.

2 MR. JENSEN: There was construction dewatering
3 to Isolated Pool B and construction dewatering directly
4 to the gravel bar. So we're not just talking about the
5 location of Isolated Pool B.

6 MR. HUNGERFORD: Well, that's a separate
7 violation.

8 MR. JENSEN: Oh, okay.

9 MR. HUNGERFORD: I was going to get into that.

10 MR. JENSEN: Oh, I'm sorry. I misunderstood
11 that.

12 MR. HUNGERFORD: That's okay.

13 BY MR. HUNGERFORD:

14 Q. So we have a second violation noted for August
15 31st, correct?

16 A. Correct.

17 Q. And the basis for this appears to be a
18 statement, a quote that begins with, "After this event,
19 the water was not pumped into the isolated pool," and I
20 won't finish the rest of the quote. What is it about
21 this statement that violated condition nine?

22 A. It would be the same as before as the rational
23 used for the other construction dewatering discharges
24 that we've just discussed, but in this instance, it was
25 fifteen feet from the river instead of approximately

1 seventy. It was less than the required hundred feet.

2 Q. So is it fair to say that the basis for the
3 violation on this date is because water was discharged
4 in a location that wasn't specifically approved by
5 certification?

6 A. Well, and to further clarify, additional
7 condition number nine goes further to state that --
8 Well, it goes further to state that, "shall be allowed
9 to enter into or placed where it may be washed by
10 rainfall into waters of the State."

11 However, we considered that this was
12 unauthorized by the permit, and therefore, it violates
13 condition nine.

14 Q. Does, to your knowledge, does the Regional
15 Board have any understanding of how much water was
16 pumped to, you know, that fifteen foot away from the
17 river location?

18 A. No.

19 Q. Do you know actually the date that that water
20 was pumped?

21 A. Other than this quote, to me implies it
22 occurred on the same date.

23 Q. It says, the quote begins with, "After this
24 event." So it doesn't specify a particular date,
25 correct?

1 A. Correct.

2 Q. And do you have any idea how long dewatering to
3 this fifteen foot away from the river location took
4 place?

5 A. No.

6 Q. If you turn to the September 5th, 2006 date.

7 A. Okay. September 5th, 2006?

8 Q. Yes.

9 A. Correct.

10 Q. And so in support of this violation, the
11 complaint notes a quote, and it begins with, "ASR note,"
12 and I won't finish the quote. There's no photographs or
13 any other documents provided in support of this
14 violation. Other than this quote, are you aware of any
15 evidence that specifically supports the violation?

16 A. The rest of that engineering diary would
17 provide context to that event.

18 Q. Does the quote that you have included refer to
19 an event observed by the author, or does it refer to a
20 conversation?

21 A. It refers to a conversation.

22 Q. Does it refer to a specific date of discharge?

23 A. It also refers to some of I believe the
24 author's observations. It appears -- Well, no, never
25 mind. I'd have to reread the entire engineering diary

1 to determine if it's all his referencing another
2 person's observations or his own.

3 Q. But it's fair to say that the quote at least
4 describes a second-hand conversation?

5 A. Yes.

6 Q. And it doesn't include any date for when the
7 particular observations were made?

8 A. Other than the date on the engineering diary
9 and maybe other associated date within that. This quote
10 does not reference a date itself.

11 Q. A moment ago, we talked about an August 31st
12 event where the quote indicated that water was pumped to
13 a gravel bar about fifteen feet away from the river. Do
14 you remember that?

15 A. Yes.

16 Q. Is it possible that this recorded conversation
17 refers to that event?

18 A. I wouldn't exclude it from possibility unless I
19 saw evidence otherwise.

20 Q. So as I understand your answer, it is possible
21 that this September 5th quote and violation is
22 duplicative of the August 31st event that was recorded?

23 A. Sure.

24 Q. If you turn to the September 7th, 2006 event,
25 and again, we have a conversation that has been recorded

1 in the quote; right?

2 A. Yes.

3 Q. Are you aware of any other specific evidence in
4 the form of photographs or other statements that
5 establish this violation on this date?

6 A. Other than this engineering diary, no.

7 Q. I take it you've just read the quote, correct?

8 A. Yes.

9 Q. Let me back up. It refers to a conversation
10 between Gene Leo and Walt Dragaloski about reports from
11 a biologist, Brad Norman; correct?

12 A. Yes.

13 Q. And then it goes on to describe the reports
14 authored by Mr. Bradford Norman; correct?

15 A. There's a few dot, dot, dots in there, so I'm
16 not quite sure that it goes on to talk about the reports
17 from Bradford Norman.

18 Q. So it's a little unclear what the quote exactly
19 means without more documents at your disposal?

20 A. Well, I attempted to include the beginning of
21 the quote to provide context of which engineering diary
22 this came from and to provide context that there was a
23 conversation going on, but to some degree, you're
24 correct, that the entire engineering diary would be
25 helpful for reviewing this --

1 Q. Is it fair to say that --

2 A. -- violation.

3 Q. I'm sorry; I cut you off. Is it fair to say
4 that this refers to second- and probably third-hand
5 conversations?

6 A. It's possible. I'd have to review the evidence
7 to see if that's true or not.

8 Q. This violation refers to September 7th, but the
9 quote, based on my reading, could refer to events from
10 other days. Do you have any reason to think that this
11 quote refers to events that took place on September 7th?

12 A. There is a possibility that it occurred on a
13 day a couple days prior, although in my review of the
14 engineering diaries, for the most part, the engineers
15 were discussing things that happened that day, or at
16 least it appeared as so, although you're correct it's
17 possible. I'd have to review the engineering diaries to
18 determine that.

19 Q. So to be clear, it's possible that this quote
20 discusses or describes events from a different day?

21 A. It's possible.

22 Q. Turn to the September 11th event, and again we
23 have a quote, and no other photographs or documents
24 referenced. Are you aware of any other specific
25 photographs or documents that support this violation on

1 this day?

2 A. No.

3 Q. Does the quote indicate where pumping was made
4 to? Evidently, there was some pumping done. Where was
5 that pumped to?

6 A. It does not state, but the general practice
7 that I'm aware of was to Isolated Pool B.

8 Q. But at least based on the quote, you don't have
9 any evidence of that?

10 A. No.

11 Q. Is it your understanding that the basis for
12 this violation is the use of Isolated Pool B similar to
13 other violations we've discussed?

14 A. Correct.

15 Q. But as you stated, at least based on the quote,
16 we don't actually know if Isolated Pool B was used on
17 this event?

18 A. That's correct.

19 Q. Who's Mitch Shands; do you know?

20 A. He's one of the employees onsite. I don't
21 recall whether he works for MCM or Caltrans or one of
22 the other subcontractors.

23 Q. Let's turn to the October 3rd violation.

24 Again, we have a quote. Other than the quote, are you
25 aware of any specific evidence in the form of

1 photographs or other documents that support this
2 violation on this day?

3 A. No.

4 Q. After reading the quote, or have you had a
5 moment to read the quote?

6 A. Yes.

7 Q. Does the quote refer to events of any
8 particular day?

9 A. No, it does not.

10 Q. So is it possible that this quote refers to
11 events of a date other than October 3rd?

12 A. It is possible. Would it be helpful to look --
13 I mean I'm answering that based on the information in
14 front of me in the complaint. Would it be helpful to
15 look at the originals? I don't know.

16 Q. You might be the best person to answer that. I
17 would certainly like to know, and this is just a general
18 comment on my end, and if there's anything else other
19 than the quotes or the photographs or other evidence
20 that's referenced in the complaint that you're
21 specifically aware that support a particular violation,
22 I'd like to know about it.

23 A. I just feel like for every single one of these
24 quotes, the entire engineer diary would be relevant to
25 answer some of your questions, and whether or not it's

1 possible it occurred on a different day, the language of
2 the engineer within that engineering diary would be
3 helpful in determining whether or not he's talking about
4 that day of the event or not.

5 Q. Well, I'm going to leave it to you to decide
6 and your counsel how you want to respond to the
7 questions. For each of these, I'll tell you I'm going
8 to ask you if you're aware of any other specific
9 evidence that supports the violation.

10 MS. MACEDO: I think that statement that he's
11 relying on the engineering diaries and not just the
12 isolated quote that was copied into an already long
13 complaint is his response. Is it possible that the
14 information of a two- or three-line quote refers to
15 another day? It's possible. Is it likely? He's
16 testified earlier that, no, the engineers usually did it
17 on the day, and the diaries are daily. Correct?

18 THE WITNESS: Yes.

19 MS ZAZZERON: I object to that
20 characterization, and I think that mistates his
21 testimony.

22 THE WITNESS: I could restate it.

23 MR. HUNGERFORD: I'm going to make a general
24 assumption here. Maybe this will help get us through
25 this, that if you've quote an engineering diary or any

1 other document, that the entirety of that entry for that
2 particular day is what you're referring to. Does that
3 sound fair?

4 MS. MACEDO: Yes. Let me say this: I'm happy
5 to stipulate I mean in terms of not only eventually for
6 the hearing but also for the convenience of the witness
7 in today's deposition. I do think in terms of the
8 appendix, it's set up as a system, and so when we have a
9 footnote, it refers to the documents at the end of that
10 particular appendix, and I think he testified that
11 that's where the quote came from in terms of your source
12 information, and it sounds like you want to know where
13 that quote came from.

14 MR. HUNGERFORD: I'll put it this way: If this
15 is a quote from an engineering diary, then that diary
16 for that date, I'm comfortable just accepting that as
17 being his answer, that that's what I should look to.

18 However, if there's also some other far-flung
19 report from Fish and Game for instance that relates to
20 the same day that might also provide support, I'm not
21 going to assume that that's part of his answer. Does
22 that make sense?

23 MS. MACDEO: Yes, that's fine, and the only
24 thing I would say is that our file has been made
25 available. We're not going to rely on evidence that's

1 not in the file at the hearing, and then if there's
2 evidence that either MCM or Caltrans has that you want
3 to use to dispute some of the conclusions that we made
4 in the complaint, that's fine, and we reserve the right
5 to change our answer based on the evidence that is
6 provided to us, but our conclusions are drawn from the
7 file evidence, and yes, the footnotes are the main
8 evidence to support each particular violation.

9 MR. HUNGERFORD: Sure.

10 BY MR. HUNGERFORD:

11 Q. Let's go to the October 6th day, and this lists
12 you have both a quote and a photograph; correct?

13 A. Correct.

14 Q. Do you know what the quote's from?

15 A. It's from a Regional Water Board inspection.

16 Q. And I'll represent to you that I have an
17 October 30th, 2006 report from the Regional Board to
18 Caltrans which contains this quote. Does that sound
19 like I attributed the quote correctly?

20 A. Correct. I believe it's from a notice of
21 violation that the Regional Water Board sent to
22 Caltrans.

23 Q. Are you aware of any field notes or documents
24 or reports that would have recorded this observation
25 apart from this written notice of violation?

1 A. Other than the photo that's referenced in the
2 appendix.

3 Q. Would it have been Regional Board practice, if
4 they went out for an onsite inspection, that they would
5 have some written record of the observations that they
6 made?

7 A. Not -- Well, I would say that it would be
8 general practice that inspectors take some sort of
9 notes. Whether or not they keep those notes or
10 formalize them in a notice of violation or an inspection
11 report is up to the individual inspector. So --

12 Q. So if such notes or recorded observations
13 existed, would they be in the stack of paper on the
14 table?

15 A. I believe they would be.

16 Q. And then you have a photograph. Why don't you
17 take a look at that report? Did you find it?

18 A. No, it's not in here. There it is. I did find
19 it.

20 Q. Okay. Let me see your version to make sure I'm
21 looking at the right one.

22 A. It appears to be the same.

23 Q. What is it about that photograph that supports
24 the violation alleged?

25 A. There appears to be a construction dewatering

1 to what I know to be Isolated Pool B.

2 Q. Can you indicate where that is on the
3 photograph?

4 A. There's a round corrugated metal pipe in a
5 depression in the gravel bar near the bank.

6 Q. And so again, this violation, like the others
7 that we've discussed in the last few minutes, it relates
8 to the location of Isolated Pool B being within a
9 hundred feet of the river; correct?

10 A. Yes.

11 Q. Outside of the photograph and the quoted
12 document, are you aware of any other specific evidence
13 supporting this violation on this date?

14 A. Other than the quote and the photo and, as
15 we've discussed previously, the engineering diaries that
16 are associated with that, then no.

17 Q. Do you know what staff member from the Regional
18 Board made the observation that was recorded in the
19 notice of violation?

20 A. Dean Prat.

21 Q. Was Dean the only Regional Board staff member
22 that inspected this project during its construction?

23 A. On this day, I believe he was the only one out
24 there on that day, and I did attend a couple of
25 inspections with him onsite later on. I do not recall

1 the dates.

2 Q. Other than Dean, did anyone else inspect this
3 site from the Regional Board, other than Dean and
4 yourself?

5 A. Mona Dougherty I believe inspected once, but it
6 could have been more.

7 Q. Is it fair to say that Dean --

8 A. She did inspect. Excuse me.

9 Q. Is it fair to say that Dean was primarily the
10 one making the inspections?

11 A. Yes.

12 Q. Turn to the October 7th.

13 MS. ZAZZERON: Could we take just a brief
14 break?

15 MR. HUNGERFORD: Sure, absolutely.

16 (Recess held.)

17 BY MR. HUNGERFORD:

18 Q. We've gone through a number of photographs over
19 the last few minutes. Do they all come from the same
20 source?

21 A. For the most part, I believe so.

22 Q. What source is that?

23 A. We received a stack of I think seven CDs from
24 Caltrans which was referenced by the final biological
25 monitoring report that was submitted by Caltrans, and

1 originally we didn't receive the photographic record.
2 It was just a reference. So I asked, and Caltrans
3 provided it.

4 Q. So the photographs were on CDs provided by
5 Caltrans?

6 A. Yes.

7 Q. Do you have any understanding of who took the
8 photographs?

9 A. I believe the biological monitors took the
10 photographs.

11 Q. Outside of the CDs received from Caltrans with
12 biological monitor photographs, are there any other
13 photographs in here or is there any difference source
14 for the photographs that you've used in the complaint?

15 A. There are some other photographs that I've
16 seen, but I don't believe I used any of them in the
17 complaint.

18 Q. Now, I notice that all the photographs in the
19 complaint have the same basic identifier in the way that
20 they're set up by date and by numerically within that
21 date the order of photographs. Do you know what I'm
22 talking about?

23 A. I believe so.

24 Q. Who assigned those identifiers to the various
25 photographs?

1 A. Well, so there's --

2 Q. For example, let's go back to August 31st. I'm
3 sorry; we'll just go back to the first one, August 21st.

4 A. Okay.

5 Q. The very first photograph we looked at had an
6 ID number of 060821-01.

7 A. Yes.

8 Q. Who assigned that ID number?

9 A. I did.

10 Q. You did?

11 A. Yes.

12 Q. And you did it for each one of these?

13 A. I did it in a group. There's a program that
14 you use that does it in a group.

15 Q. How did you know that a particular photograph
16 related to a particular day?

17 A. I'm not sure if Medidata is the right term, but
18 you go into the file properties of the file, and it says
19 the date taken, and in many instances, there's the date
20 stamp on the photo, and there's also a time associated
21 with it as well.

22 Q. So if I understand that correctly, there's an
23 electronic signature so to speak that you can review by
24 looking at the properties for each individual file?

25 A. Yes.

1 Q. And it will indicate to you when that
2 particular file was created?

3 A. Yes.

4 Q. And then you took that date and made an
5 assumption, probably a reasonable one, that that was
6 that date on which the photograph was taken?

7 A. Yes.

8 Q. Other than that, did you have any other method
9 for identifying what date was associated with what
10 photograph?

11 A. I don't believe. I think that was my main
12 source, either the properties of each file and, you
13 know, sometimes these date stamps which usually
14 reference the properties, and I tried to double check
15 that when possible.

16 Q. To your knowledge, does the Medidata still
17 exist on the CDs?

18 A. Yes.

19 Q. Have you made any effort to corroborate the
20 dates that you got off using that Medidata method with
21 the person who took the photographs?

22 Well, let me back up. The biological monitor,
23 have you ever made a request that the biological monitor
24 organize photographs by date?

25 A. No.

1 Q. So as they came to you in a CD, other than the
2 Medidata, was there any grouping of photographs by date?

3 A. Yes, they were in folders.

4 Q. Okay.

5 A. Each folder had a month to it as I recall.
6 Maybe sometimes they were in days, but I think it was
7 mostly by month.

8 Q. Electronic photos?

9 A. Yes.

10 Q. So they would have a monthly folder but not
11 individual days?

12 A. I don't recall.

13 Q. Let's backtrack a little bit. If you go back
14 to the September 11th, 2006 entry --

15 A. Is this still the construction dewatering?

16 Q. Yes.

17 A. September 11, 2006.

18 Q. So you used here a quote relating to Mitch
19 Shands?

20 A. Correct.

21 Q. Right?

22 A. Yes.

23 Q. Why don't you take an opportunity to review --
24 First of all, do you have the source document available
25 to you?

1 A. Maybe. Yes.

2 Q. Can you take a moment -- First of all, the
3 source document is an assistant resident engineer's
4 daily report; correct?

5 A. Correct.

6 Q. Assigned by John Railey it indicates on the
7 bottom?

8 A. Yes.

9 Q. Take a moment to review that and tell me if
10 there's anything other than the quote that you've
11 included in the complaint that supports the violation
12 the Regional Board has alleged?

13 A. Can you repeat your question?

14 Q. Having read that daily log, is there anything
15 else, other than the quote you've included in the
16 complaint, that supports the violation on this date?

17 A. I don't believe so.

18 Q. If you turn to the October 3rd violation --

19 A. Uh-huh.

20 Q. Again we looked at a quote involving Mitch
21 Shands, and if you could, take a look at the source
22 document for that quote.

23 A. Okay.

24 Q. Do you have that in front of you?

25 A. Yes.

1 Q. And is it a Tuesday, October 3rd, 2006 e-mail,
2 I'm sorry, entry?

3 A. Entry, yes, into the assistant structure
4 representative daily report.

5 Q. Take a quick look at that if you could, and
6 tell me if there's anything else in there other than the
7 quoted passage that supports that violation.

8 A. No, I don't believe there's any other language
9 that supports that violation in that report other than
10 just the information of the date and the person who
11 wrote it and just the information that verifies this
12 report, but in terms of the narrative, there's no other
13 language that I can see that further refers to the
14 violation that occurred.

15 Q. If you could move forward to the October 7th,
16 2006 violation, and you have a quote here. Can you tell
17 me what that quote's from?

18 A. Well, the appendix states that it's from the
19 response to the notice of violation or the biological
20 monitoring report and associated photographic record.

21 Q. Do you have the source document that includes
22 that quote?

23 A. It should be here.

24 Q. Can you take a look at it?

25 A. Okay.

1 Q. What is the source document?

2 A. It's the biological monitoring report contained
3 within the response to the notice of violation received
4 by the Regional Water Board on December 14th, 2006.

5 Q. And can you take a look at that particular
6 entry in the biological monitoring report?

7 A. Okay.

8 Q. You've got a quote that begins with,
9 "Dewatering of the footings on the gravel bar caused
10 some concern," and ends with, "seventy feet away from
11 the river." Do you see that?

12 A. Yes.

13 Q. Other than that quote, is there anything in
14 this report that supports the violation on this date?

15 A. I don't believe so unless maybe the next
16 sentence refers to it, which appears to be talking about
17 a different event but the main focus of the work during
18 the afternoon. So --

19 Q. This is allegedly a violation of conditions
20 nine, twelve and seventeen. What is it about this
21 quote, information in the quote, that establishes a
22 violation of those conditions?

23 A. Dewatering of the footings on the gravel bar.

24 Q. Where did the dewatering get put, the water
25 flow?

1 A. The quote does not state explicitly where the
2 water was put. It states that it was not being
3 deposited in, it says the approved area seventy feet
4 away from the river, which I'm assuming is referring to
5 Isolated Pool B which we would say was not approved, but
6 we have no evidence that dewatering ever occurred in an
7 approved location.

8 Q. In fact, you don't know where the dewatering
9 occurred at all?

10 A. No, other than dewatering of the footings on
11 the gravel bar, and there's, there is -- I have seen
12 within the evidence here that statements by either
13 Caltrans or the contractor that there is no place
14 greater than a hundred feet away from the active rate of
15 travel to dispose of the water, which would imply that
16 although it was perhaps not in Isolated Pool B, it was
17 at least within the one hundred feet.

18 Q. As you read the quote, it says, "Dewatering of
19 the footings in the gravel bar." The way I read that is
20 the footings on the gravel bar rather than dewatering on
21 the gravel bar. Is that a reasonable interpretation do
22 you think of that language?

23 A. I guess you could interpret it differently. I
24 had not done that because all other dewatering that I
25 had read about had occurred on the gravel bar.

1 Q. Other than this quote, are you aware of any
2 other photographs or specific documents that support
3 this violation on this date?

4 A. No.

5 Q. Can you turn to the November 13th date?

6 A. Uh-huh.

7 Q. And you have a series of quotes and one
8 photograph that you specify in the complaint as
9 supporting this violation; correct?

10 A. Correct.

11 Q. What is the source of the quote or quotes?

12 A. The engineering diaries.

13 Q. Can you turn to those, please, for that day?

14 A. Okay. So in the documents that I brought here,
15 I was able to find the first quote and not the second
16 one right away.

17 Q. Okay.

18 A. Perhaps I could find if you want me to look
19 further.

20 Q. With the first quote, what is the source of
21 that?

22 A. It is an assistant resident engineer's daily
23 structures report from November 13th, 2006, signed by
24 John Railey.

25 Q. Have you taken the opportunity to read that?

1 A. I just skimmed it to make sure it was the
2 correct one.

3 Q. And you see the quote in there?

4 A. Yes.

5 Q. Other than the quoted materials, is there
6 anything else in that report that supports this
7 violation on this date?

8 A. Well, yes, there's more to the quote than was
9 condensed into appendix A. It goes on for the rest of
10 that paragraph.

11 Q. Well, let me ask it this way: Is there
12 anything else in that document that provides any
13 substantively different basis for this violation than
14 what you've quoted?

15 A. I don't believe so.

16 Q. In the second quote, you mentioned you don't
17 have a copy of that document, at least not that you can
18 initially locate; correct?

19 A. Yes.

20 Q. I'm going to hand you a copy of an assistant
21 resident engineer's daily report signed by, it looks
22 like Karen, and I can't read the --

23 A. Spliethof probably.

24 Q. That would be it. If you could take a look at
25 that and the highlighted material, and let me know if

1 there's anything else in that document, other than the
2 quote, that supports the violation on this date.

3 MS. MACEDO: I know we're going through the
4 documents one by one. We can continue to do that, but I
5 object in terms of the documents speak for themselves,
6 but keep going.

7 THE WITNESS: So your question is --

8 MR. HUNGERFORD: Whether there's anything else,
9 other than the quoted section in this report, that
10 supports the violation on this date.

11 THE WITNESS: Just the rest of the quote does
12 provide some context in that she's referring to John
13 Railey who wrote the other document. Justin Webster of
14 MCM was onsite. The issue was addressed to Garry Tolen
15 and Ron Denheyer. So that's it.

16 BY MR. HUNGERFORD:

17 Q. And you also have a photograph that you've
18 identified in support of this violation, correct?

19 A. Yes.

20 Q. Did that photograph come from the biological
21 monitor, or did it have a different source?

22 A. Oh, I did include that. It had a different
23 source. This was from the engineering diaries.

24 Q. The photograph was?

25 A. Yes.

1 Q. So do you have an understanding who took the
2 photograph?

3 A. No.

4 Q. Where did you get it from?

5 A. I got it out of the stack of engineering
6 diaries that we received from Fish and Game.

7 Q. So you didn't receive an electronic version of
8 this?

9 A. No.

10 Q. This is a hard copy that you copied?

11 A. Yes.

12 Q. Do you know whose handwriting is on the
13 photograph?

14 A. I have no idea unless, of course, I went back
15 into the engineering diaries and looked for context, and
16 perhaps it indicates that. Perhaps there's more
17 information in the diary. I'd have to look.

18 Q. Are you speculating at this point, or do you
19 actually know?

20 A. I do not know. So my original answer was
21 correct, that I do not know whose handwriting it is, but
22 there is more information in the diaries.

23 Q. It could be revealed?

24 A. Yes.

25 Q. What about this photograph supports the

1 violation?

2 A. There appears to be a hose coming out of what I
3 believe is a drill shaft, and then there's -- It appears
4 to be going somewhere on the gravel bar, and there's
5 handwriting on there that appears to say pumping H2O
6 directly onto, into; it's fuzzy, and then what also
7 appears to say gravel bar.

8 Q. What's your basic understanding of the facts
9 surrounding this violation?

10 A. There appears to be some construction
11 dewatering onto the gravel bar.

12 Q. Construction dewatering from where?

13 A. From a shaft that they are excavating to put a
14 support structure for the bridge, the north bridge.

15 Q. The first quote indicates that the dewatering
16 didn't occur directly to the bar but that it ran off of
17 an access road; correct?

18 A. Correct.

19 Q. Do you have any understanding of how much water
20 actually made it to the gravel bar, if any?

21 A. I have no idea.

22 Q. The quotes indicate that an issue regarding
23 this possible discharge was brought to Mitch Lipsky's
24 attention; right?

25 A. Correct.

1 Q. Do you have any knowledge of whether or not
2 corrective measures were put in place after that was
3 brought to Mr. Lipsky's attention?

4 A. I have no knowledge of whether they were or
5 not, although the quote states that -- I guess it
6 implies that they were. It says, "Corrective measures
7 were not implemented until," so that would lead me to
8 believe that they were implemented.

9 Q. Turning to the November 17th date --

10 A. Okay.

11 Q. Here we have a quote again. Can you tell me
12 what the source of this quote is?

13 A. Engineering diaries.

14 Q. Do you have a copy of that particular entry in
15 front of you?

16 A. I don't believe so.

17 Q. And do you have any other photographs or
18 specific evidence that you're aware of that support this
19 violation?

20 A. No.

21 Q. I'm going to hand you a copy of the document
22 with the quote, which is an assistant resident
23 engineer's daily log dated November 14th.

24 A. Okay.

25 Q. Take a look at that, please.

1 MS. ZAZZERON: May I see that as well when the
2 witness is done?

3 MR. HUNGERFORD: Sure.

4 THE WITNESS: Okay.

5 BY MR. HUNGERFORD:

6 Q. Is it fair to say that the quote refers to a
7 conversation that took place?

8 MS. MACEDO: Objection. The document speaks
9 for itself. You can answer.

10 THE WITNESS: It refers to a conversation, yes.

11 BY MR. HUNGERFORD:

12 Q. Is there anything in the quote to suggest that
13 the pumping below the hundred year floodplain that is
14 indicated in that conversation actually took place on
15 November 14th?

16 A. There's no reference to any dates within that
17 quote.

18 Q. Is it possible that that quote could refer to
19 the day prior, the November 13th recorded event that we
20 went over just a moment ago?

21 A. Yes, it is.

22 MS. MACEDO: Ardine wants to see it.

23 MR. HUNGERFORD: Yes, I know.

24 MS. ZAZZERON: Thank you.

25 MR. HUNGERFORD: Sure. I was going to move on.

1 Ardine, do you want me to hold for a moment?

2 MS. ZAZZERON: No.

3 BY MR. HUNGERFORD:

4 Q. If you could go to the March 7th, 2007 event,
5 please.

6 A. Okay.

7 Q. And again we have some quoted material. Can
8 you tell me what the source of that material is?

9 A. Engineering diaries.

10 Q. And do you have that particular diary of that
11 day handy?

12 A. Yes, I do.

13 Q. Let's review it for a quick moment.

14 A. Okay.

15 Q. Other than this document that contains the
16 quote, are you aware of any other specific photographs
17 or documents supporting this violation?

18 A. No.

19 Q. The quote indicates that a small electric pump
20 was used to dewater a pier pit, correct?

21 A. Correct.

22 Q. Do you know how much water was bumped?

23 A. No.

24 Q. Do you know where it was pumped to?

25 A. The quote says that it was being released under

1 the Oregon oak tree.

2 Q. Do you have any idea how far away that is from
3 the active river channel?

4 A. No, I don't.

5 Q. Do you know if it's within the hundred year
6 floodplain?

7 A. No.

8 Q. The fact that it's an oak tree suggests at
9 least that it's an uplands rather than on the gravel
10 bar; correct?

11 A. Yes.

12 Q. This relates to the south bridge rather than
13 the north bridge; is that true?

14 A. From my understanding, yes, although there is a
15 bit of speculation, but I believe when I went out on one
16 of the inspections with Dean, I believe some Caltrans
17 employees referred to this instance.

18 Q. And what was the substance of that reference?

19 A. I believe it was the northern portion, the
20 northern bar of the river if my directions are correct.
21 There's a pier, and then there's a knoll just to the, I
22 guess according to my directions here would be to the
23 west of that. There's a tree, and then there's a slope
24 down to a little pool down there. So I recall the area
25 in general I guess.

1 Q. You've alleged that this violates condition
2 seven and nine of the certification?

3 A. Yes.

4 Q. Assuming that this is entirely within uplands
5 and outside the hundred year, how would this be a
6 violation of condition seven?

7 A. Well, seven appears to be straight forward.
8 The quote, which I've lost my place, but the quote
9 states that the brownish water is making its way to the
10 Eel River side channel discoloring the waters. That
11 appears to me that insufficient BMPs, best management
12 practices, for sediment and turbidity control were in
13 place. So seven requires adequate BMPs. The fact that
14 discharge sediment to the side channel implies to me
15 that there are or that there were insufficient BMPs
16 during that activity to insure that no silt or sediment
17 enters surface waters. That's seven.

18 Then I guess to finish, number nine, the
19 discharge to surface waters of turbid water with
20 apparently sediment in there would be in violation,
21 would not be authorized by this permit. It contains
22 soil, silt, dot, dot, dot, the prohibited substances in
23 condition nine, and they were placed in a location in
24 which they were allowed to enter into waters of the
25 State.

1 Q. But we don't know if this entered waters of the
2 State; do we?

3 A. It entered the Eel River side channel which,
4 from my understanding, would be waters of the State.

5 Q. Just based on the fact that it said side
6 channel, correct?

7 A. And from my understanding of what they're
8 referring to onsite.

9 Q. What evidence do you have that this was turbid
10 water that was discharged?

11 A. The brownish water is I believe, or maybe I'm
12 misreading that, but b-r something. It looks like
13 brownish. It's cursive, so I can't quite read it, but
14 that would be -- That was what indicated to me that
15 there's a color to it, and it says discoloring the
16 waters. So that would imply that there's some sort of
17 pollutant in there causing a discoloration.

18 MR. HUNGERFORD: Hold on a sec.

19 (Recess held.)

20 BY MR. HUNGERFORD:

21 Q. So now we've moved on to the second category of
22 violations, A dash B, dealing with leaky equipment.
23 We'll start with the August 22nd, 2006 violation.

24 A. Okay.

25 Q. And there we have a quote. What is the source

1 of that quote?

2 A. The response to the notice of violation, the
3 binder.

4 Q. Can you tell me what the source document is?
5 Do you know where that quote appears?

6 A. I believe it's in an e-mail. Let me find it.

7 Q. Sure.

8 A. So it looks like an e-mail from Walt Dragaloski
9 to Ron Denheyer and others.

10 Q. Why don't you take a quick moment to read the
11 e-mail and the quote just to familiarize yourself with
12 that again?

13 A. Okay.

14 Q. Other than the quote, is there anything in this
15 document that you believe supports this violation?

16 A. Anything else in this document?

17 Q. Yes, anything else in the document, the e-mail
18 that you read from.

19 A. So I guess other than just context, you know,
20 that equipment is being fueled on the river bar as well,
21 but that is addressed in other violations, so
22 specifically to this, no.

23 Q. Can you describe for me what the nature of this
24 violation is?

25 A. The backhoe leaked oil onto the river bar, or

1 the way it's stated in the e-mail is a discharge of oil
2 occurred from the backhoe directly onto the river bar.

3 Q. How does that violate condition nine of the
4 certification?

5 A. Well, there was a discharge of oil from a
6 backhoe onto the river bar, waters of the State, and
7 condition nine prohibits that by stating, "No debris,"
8 dot, dot, dot, "oil or petroleum products shall be
9 allowed to enter or be placed where they may be washed
10 into waters of the State."

11 Q. What about condition thirteen, how is there a
12 violation there?

13 A. So I do not have the revised version of
14 condition thirteen in front of me, but I would just have
15 to go -- unless you show me. Okay. So the condition
16 states that operation of vehicles and equipment shall
17 not result in a discharge. There was a discharge.

18 Q. Let me take condition thirteen in two parts if
19 I may. The first sentence says, "Fueling lubrication,
20 maintenance, storage and staging of vehicles and
21 equipment shall be outside the waters of the United
22 States, and operation of vehicles and equipment shall
23 not result in a discharge or threatened discharge to
24 waters of the United States," correct?

25 A. Correct.

1 Q. And then, "At no time shall the applicant use
2 any vehicle or equipment that leaks any substance that
3 may impact water quality," right?

4 A. Correct.

5 Q. So to me, there are two separate requirements
6 there. As to the second, the second sentence, is that
7 violated by this event?

8 A. Yes.

9 Q. Is it the Regional Board's position that any
10 time equipment leaks, that a violation has taken place?

11 A. If it may impact water quality.

12 Q. So if the leak is captured so to speak through
13 the use of BMPs, is that a condition that would violate
14 the certification?

15 A. If it is indeed a BMP, then -- You know, it's
16 difficult to answer a hypothetical not looking at a
17 specific situation, but in general, the purpose of BMPs
18 is to protect the water quality objectives, and if it is
19 functioning properly, then the water quality objectives
20 have been protected, and it would have prevented this, a
21 discharge.

22 Q. So if I can correctly describe your answer, is
23 it your testimony, then, that if equipment leaks but
24 that leak is completely captured through BMPs, then
25 there is no violation of the certification?

1 A. Correct.

2 Q. What about if equipment leaks onto the ground
3 and that leak is promptly cleaned up such that there's
4 no further threat to water quality, would that be a
5 violation of the certification?

6 A. Yes.

7 Q. Why is that?

8 A. Because there was a discharge, and now,
9 depending on which condition we're talking about,
10 condition nine --

11 Q. Well, let's focus on condition thirteen.

12 A. Okay. Focusing on condition thirteen, in this
13 hypothetical, equipment would have been used which
14 leaked a substance that could impact water quality.
15 That portion would be violated.

16 Further, if it was being operated, then
17 operation of the equipment would have resulted in both a
18 discharge, depending on the location of the leak, either
19 a discharge directly to waters of the United States or a
20 threatened discharge to waters of the United States.

21 Q. I'll represent to you that to my knowledge,
22 it's impossible to make construction equipment one
23 hundred percent leak free, and that as just purely an
24 operational matter, as good as you can maintain
25 equipment, it still will leak. Do you have any reason

1 to disbelieve that statement?

2 A. I have no reason to disbelieve that statement.
3 I could, I could speak as -- I would want to ask a
4 question as to why MCM and Caltrans did not petition
5 this permit if they believed that they couldn't achieve
6 the requirements of the permit.

7 Q. And I'm not going to answer that simply because
8 I'm not the person being deposed here.

9 A. Sure.

10 Q. It's probably a reasonable question that can be
11 answered a number of different ways, but I think the
12 situation is this, that it's impossible to keep
13 equipment a hundred percent leak free, and in this case,
14 we had BMPs in the form of an onsite maintenance team
15 that kept this equipment in as good a working order as
16 necessary. Notwithstanding that, equipment will leak,
17 and so what I want to know is: If the project has
18 appropriate BMPs to prevent equipment from leaking and
19 equipment nonetheless leaks and those leaks are promptly
20 cleaned up, is there still a violation of the
21 certification?

22 A. If they are indeed BMPs that are approved by
23 the Regional Water Board, then it would not be a
24 violation, and if indeed they were promptly cleaned
25 up -- I might expand that in many of these cases, we do

1 not have evidence that they were promptly cleaned up,
2 and in fact, we showed as much discretion as possible.
3 Perhaps discretion is not the word, but we were as
4 conservative as possible in going through the evidence
5 we had, that when we had evidence that a leak was
6 cleaned up, we didn't pursue enforcement for that.

7 Q. Really?

8 A. Yes, and I guess I'll add that indeed there may
9 be minor grammatical reference errors in this document.
10 There also might be some pieces of evidence that, that
11 if we were provided more information, we could proceed
12 differently with the order.

13 Q. Well, I think that we'll get into this as we go
14 through some of these individual ones.

15 A. Sure.

16 Q. First of all, for this August 22nd event, other
17 than this document, this e-mail that we've looked at, is
18 there any other specific documents or photographs that
19 you're aware of that support this violation?

20 A. No.

21 Q. If you could turn to the August 29th event.

22 A. Uh-huh.

23 Q. The only item of evidence that is referenced in
24 the complaint is a single photograph. Is that true?

25 A. Yes.

1 Q. And my identifier is 060829-01, which is a
2 picture of two buckets full of rocks.

3 A. Correct.

4 Q. Correct?

5 A. Yes.

6 Q. How does this photograph establish a violation
7 of conditions nine and thirteen?

8 A. It demonstrates that there was a leak of
9 petroleum products onto the gravel bar.

10 Q. How do you know that there's petroleum product
11 on those rocks?

12 A. They are visually stained, and one of the
13 plastic bags appears pink which would lead me to believe
14 it could be red diesel. It could be hydraulic fluid. I
15 don't know exactly what it is, but I would add that
16 there are other pictures in the photographic record that
17 might add context to that photo.

18 Q. It could be a pink bag.

19 A. It could be.

20 Q. But as I understand your answer, your
21 conclusion that this is petroleum stained rocks is based
22 solely on your examination of the photograph, not on
23 anything else?

24 A. The photographic record and, depending on the
25 source, it could have been described in the biological

1 monitoring report as well since it is taken by the
2 biological monitor.

3 Q. Do you know where these rocks came from?

4 A. I do not off the too of my head, no.

5 Q. Do you know when they were collected?

6 A. No.

7 Q. Do you know where this picture was taken?

8 A. No, although I will repeat that looking in the
9 photographic record could provide context as to where
10 the photo was taken and the time that the photo was
11 taken.

12 Q. One of the things that struck me about this
13 photo was the type of rocks that are surrounding the
14 bucket, and my experience is that most river rocks tend
15 to be rounded in shape just from the years of water
16 coming through a riverbed, whereas these appear to be
17 much more jagged, not unlike crushed rock and aggregate.
18 Is it possible that this location was not in the
19 riverbed itself but in some upland location where
20 aggregate was stored?

21 A. It's possible.

22 Q. And do you have any information as to what type
23 of equipment, assuming that this is oil residue, was it
24 that created the residue?

25 A. I do not believe so.

1 Q. Just a moment ago, we discussed an observation
2 of an oil discharge of August 22nd. Do you remember
3 that?

4 A. August 22nd?

5 Q. Yes, 2006.

6 A. Yes.

7 Q. Is it possible that this photograph is of rocks
8 cleaned up from that particular discharge?

9 A. Yes, it's possible.

10 Q. If you could turn to the September 9th, 2006
11 violation, again we have a photograph supporting this
12 particular violation and nothing else referenced by the
13 complaint; correct?

14 A. Correct.

15 Q. The photograph is identified as 060909-03, and
16 based on your prior testimony, we believe this came from
17 the biological monitor; correct?

18 A. Correct.

19 Q. Do you know where this picture was taken?

20 A. Not exactly. As I recall, I believe it's the
21 gravel bar, and that recollection is based on my memory
22 of the contextual pictures in the photographic record,
23 that the biological monitor would have been on the
24 gravel bar taking pictures of other things, and then he
25 took this up-close picture of oil stained rocks.

1 Q. You're making an assumption, though? You don't
2 actually know that, correct?

3 A. My assumption would be based on the series and
4 chronology of photos taken by time, but that's going off
5 my recollection of the photographic record. I would
6 need to check the photographic record to corroborate
7 that.

8 Q. Do you know what type of fluid it is that's on
9 these rocks?

10 A. I do not.

11 Q. Do you know when whatever type of fluid it was
12 was discharged?

13 A. When?

14 Q. When.

15 A. Well, no. I could only venture a guess.

16 Q. Do you know what type of vehicle, if any,
17 created the discharge?

18 A. I do not.

19 Q. Other than this photograph, do you have any
20 other evidence supporting this violation on this date?

21 A. No.

22 Q. Do you have any information as to whether or
23 not this residue-stained set of rocks was cleaned up?

24 A. No.

25 Q. If you turn to the September 26th event, again

1 this allegation is based on a single photograph;
2 correct?

3 A. Yes.

4 Q. Other than this photograph, are you aware of
5 any other specific documents or materials supporting
6 this allegation on this date?

7 A. No.

8 Q. Do you know where this photograph was taken
9 from?

10 A. From the photo itself, no.

11 Q. Does it appear to be a gravel bar?

12 A. No.

13 Q. Is it reasonable to assume that this is
14 somewhere outside of the gravel bar?

15 A. Yes.

16 Q. Do you know how far away from the gravel bar?

17 A. No.

18 Q. Do you know what type of fluid appears in the
19 photograph?

20 A. No.

21 Q. Do you know what type of equipment made or
22 created that fluid, if any?

23 A. No.

24 Q. Are you aware of any other facts, documents,
25 photographs or evidence supporting this violation?

1 A. No.

2 Q. If you could turn to the September 27th entry,
3 in this one, we have a quote as well as a photograph;
4 correct?

5 A. Correct.

6 Q. And the quote says, "Oil leaks above river on
7 wooden trestle. The large trestle crane had this
8 problem regularly," correct?

9 A. Yes.

10 Q. What is the source of that quote?

11 A. CD of biological monitoring reports that we
12 received from Caltrans.

13 Q. Do you know what specific document the quote
14 appears on?

15 A. It would have been the biological monitoring
16 report. They are titled by date, so I wouldn't be able
17 to reference the exact name of the document. The
18 biological monitor did reports weekly or biweekly.

19 Q. I'm going to hand to you a document that gives
20 the source of this quote, and I only have one page of
21 that document. If you know where a full copy exists in
22 your records, please feel free to refer to it.

23 A. This appears to me to be the final biological
24 monitoring report.

25 Q. What's the company that prepared that report?

1 A. Aquatic Resource Specialists I believe.

2 Q. Is that a URS? Isn't that a URS document?

3 A. I said Aquatic Resource Specialists. I think
4 it's ARS. Oh, URS down here (witness indicating)?

5 Q. Yes.

6 A. It says URS on it, so it could have been done
7 by another company.

8 Q. Are you familiar with URS in a general way at
9 least?

10 A. No.

11 Q. I'll represent to you they're a large company
12 that provides engineering services as well as a variety
13 of other environmental services. Do you know why it was
14 that URS prepared a report describing conditions of the
15 project site?

16 A. No.

17 Q. To you knowledge, were the biological monitors
18 employed or affiliated with URS?

19 A. I don't know. It was my understanding that
20 biological monitors worked for a company called IBIS,
21 and I don't know what that stands for. They may have
22 been subcontractors.

23 Q. We've talked about two biological monitors so
24 far, right? One is Carl Page, and the other's Brad
25 Norman?

1 A. Yes.

2 Q. Are you aware of any others other than those
3 two?

4 A. No.

5 Q. So you don't know why URS was involved in this
6 project?

7 A. No.

8 Q. Other than the quote, is there anything else in
9 that document, at least the excerpt that I provided you,
10 that you believe supports this particular violation?

11 A. I believe the whole page supports the
12 violation.

13 Q. Anything else specific on the page?

14 A. Specifically, I think it's all relevant to
15 provide context, the proactive measures section and the
16 problems encountered and measures taken.

17 Q. Okay. And there's also a photograph that
18 supports this violation, correct?

19 A. Correct.

20 Q. Do you have that in front of you?

21 A. Can I confirm this is the correct one? That's
22 the one we're referring to?

23 Q. Yes.

24 A. Yes, that's it.

25 Q. According to go my records, the one you're

1 indicating is the correct photograph, which is
2 identified as 060927-05.

3 A. Okay.

4 Q. And It's a photograph of what appears to me to
5 be the trestle deck. Is that consistent with your
6 understanding?

7 A. Yes.

8 Q. And what does it show?

9 A. It shows oil stains on the planks of the
10 trestle deck. It shows some rags soaked in oil and what
11 appear to be absorbent pads perhaps and also what
12 appears to be gaps and holes in the trestle deck.

13 Q. What's the basis for your belief that this is
14 oil that's on the trestle deck?

15 A. Having reviewed all of the -- Well, just
16 visually I would have to say that it appears that
17 there's oil-soaked rags on the deck, and having looked
18 at other pictures from this site, that's what it
19 appeared to me to be, and I believe it's also associated
20 in the same section in the document that you showed me
21 talking about oil.

22 Q. So outside of your view of this photograph and
23 the reference in the URS report, you're not aware of any
24 specific evidence that this is actually oil on the
25 trestle deck?

1 A. Other than the photographic record and that
2 paper.

3 Q. Do you know, assuming this is oil, do you know
4 the date that this oil was deposited on the trestle
5 deck?

6 A. Do not.

7 Q. Do you have any reason to believe that fluid
8 shown on the trestle deck actually penetrated the
9 trestle deck to the ground or the riverbed beneath?

10 A. Do I have any reason to believe?

11 Q. Yes.

12 A. The fact that the trestle deck was improperly
13 contained for the entire season and that there were
14 holes and gaps within the members would lead me to
15 believe that there's a high likelihood that if there's
16 an oil spill, that it would pass through the holes, and
17 that if there was a rain event, that it would get
18 transported to the river below because it was
19 insufficiently contained per the BMPs in Caltrans' BMP
20 manual which requires full containment of the trestle
21 deck.

22 Q. Do you know which BMP that is?

23 A. I believe it's NS13, but I'd have to check.
24 Yes, NS13, which states quite a few things which provide
25 watertight curbs or toeboards to contain spills and

1 prevent materials, tools and debris from leaving the
2 bar's platform dock, et cetera. I mean that's the most
3 specific one.

4 Q. Do you have any evidence that oil or equipment
5 fluids at any time actually penetrated the trestle deck
6 to the ground or riverbed beneath?

7 A. No. We have evidence that there's oil spills
8 on the trestle deck and that there's holes in the
9 trestle deck that's uncontained. We do not have any --
10 It would be difficult to get an active photograph
11 showing the direct connection. We rely on
12 self-monitoring by Caltrans and its contractors to
13 report to us when a discharge occurs.

14 Q. Would you agree that the trestle deck provided
15 a measure of protection against spills on the riverbed
16 beneath?

17 A. A measure of protection?

18 Q. Yes.

19 A. Sure.

20 Q. Well, not just a measure of protection. I
21 mean, in fact, we have no evidence that any spills
22 actually made it through the trestle deck to the
23 riverbed beneath; correct?

24 A. Correct.

25 Q. And as far as you know, it's entirely possible,

1 isn't it, that every event in which a spill made it on
2 the trestle deck was prevented by the trestle deck from
3 reaching the riverbed below; correct?

4 A. Could be. It's possible.

5 Q. And there's also evidence of other spill
6 prevention or clean-up measures in the photograph,
7 right?

8 A. They could be.

9 Q. Well, you notice there's absorbent pads and
10 rags in the photograph, right?

11 A. That's what it appears to me to be.

12 Q. And do you see that, for lack of a better word,
13 cat litter that's also in the image?

14 A. It could be cat litter.

15 Q. Well, I don't know that it's cat litter, but it
16 appears to me to be another method of soaking up and/or
17 collecting spilled fluids. Does that seem like a
18 reasonable explanation of this material to you?

19 A. Yes.

20 Q. So would you agree from that that certainly
21 there was a program of spill prevention that was being
22 actively implemented on the trestle deck?

23 A. There was a measure. I would argue that it's
24 not a best management practice.

25 Q. Why would that not be a best management

1 practice?

2 A. Because there are no watertight curbs or
3 toeboards.

4 Q. What is a toeboard?

5 A. I believe it would be -- I don't exactly know.
6 I could only venture a guess what a toeboard is.

7 Q. Is there any specific requirement that the
8 trestle deck specifically be completely one hundred
9 percent watertight sealed?

10 A. I'm sorry; your question is could it be a
11 hundred percent watertight?

12 Q. No., I'm saying, my question is: With respect
13 to this trestle deck, is there any requirement in the
14 certification that the trestle deck be a hundred percent
15 watertight sealed?

16 A. Well, let's see if I can do that. The
17 connection that I believe we made was that condition
18 seventeen, "All activities, BMPs and associated
19 mitigation will be conducted as described in this permit
20 and the application submitted by the applicant for this
21 project," and Caltrans has a BMP that requires
22 watertight curbs and toeboards.

23 Q. And was that in the application submitted for
24 the project?

25 A. I do not know.

1 Q. Turning to condition nine of the certification,
2 how does the photograph establish a violation of
3 condition nine?

4 A. Oil or petroleum products were allowed, well,
5 were discharged to a location where it may be washed by
6 rainfall the waters of the State.

7 Q. If a discharge on the trestle deck is cleaned
8 up through the use of absorbent rags or other methods to
9 the point where it no longer poses a danger that it
10 could be washed by rainfall into waters of the State, is
11 there still a violation of the certification?

12 A. Yes.

13 Q. Why is that if there's no possibility that it
14 would be washed into waters of the State?

15 A. Because it was discharged into a location that
16 it could be washed into waters of the United States.

17 Q. So then in your view, does it not matter what
18 form of clean-up might have been used to clean up fluids
19 spills, that the placement alone of or the existence of
20 a fluid spill, no matter what clean-up measures,
21 establishes a violation?

22 A. Yes.

23 Q. Hypothetically, let's say that fluid spills on
24 a dirt road near the project site, and immediately
25 thereafter, all of the dirt was then scouped up and

1 taken away. Has a violation occurred?

2 A. Yes.

3 Q. Turn to condition thirteen. How does the
4 photograph establish a violation of condition thirteen?

5 A. Let me refer to the actual one. "Operation of
6 equipment shall not result in a discharge or a
7 threatened discharge to waters of the United States."
8 That's what apparently has occurred.

9 Q. You'd agree that this isn't a discharge to
10 waters of the United States, right?

11 A. There is no evidence of that.

12 Q. Would you consider this is a threatened
13 discharge to waters of the United States?

14 A. Yes.

15 Q. Even if appropriate measures are taken to clean
16 up, you know, it later being washed into waters?

17 A. It's a threatened discharge. I do not have
18 evidence to show that it has been adequately cleaned up.

19 Q. If you could turn to the October 5th date, and
20 this is a violation that's based on a quote: "Oil and
21 diesel stains on the gravel bar were ID for clean-up,"
22 correct?

23 A. Correct.

24 Q. What's the source of that quote?

25 A. Engineering diaries.

1 Q. Do you have a copy of the source document that
2 you can refer to?

3 A. It doesn't appear that I do right now in this.

4 Q. I'll let you take a look at my copy. I just
5 have a one-page document that I'm handing you with some
6 highlighted language, if you could take a moment and
7 read that.

8 A. Okay.

9 Q. Other than the quoted language, is there any
10 other information in that document that you believe
11 supports this violation on this day?

12 A. Well, there's a -- It continues to say,
13 "Hydraulic and oil leaks were noted from the problematic
14 backhoe moved back across the river and now working
15 along Highway 101." So that adds some context. It may
16 not be specifically relevant to what happened on the
17 gravel bar; I do not know, but it definitely relates to
18 leaky equipment.

19 Q. Other than the statements on that page, do you
20 have any other specific documents, photographs or
21 evidence supporting this violation on this date?

22 A. No.

23 Q. Does the report state when precisely the leak
24 occurred?

25 A. No.

1 Q. Is it possible that the leak that was
2 identified in that entry occurred on a different date
3 than October 5th?

4 A. Yes.

5 Q. Is it possible that this statement refers to a
6 discharge that is covered by a different violation?

7 A. It is possible.

8 Q. Thank you. Turn to the October 6th entry.

9 A. Okay.

10 Q. And for this, we have a quote and four
11 photographs; right?

12 A. Correct.

13 Q. Do you have the photographs in front of you?

14 A. I should, yes.

15 Q. Let me start with the quote, then. What is the
16 source of that quote?

17 A. That was a notice of violation issued by Dean
18 Prat.

19 Q. And just to be clear, this is an October 30th,
20 2006 notice of violation issued by the Regional Board?

21 A. Correct.

22 Q. And so that quote is a statement in the notice
23 of violation, right?

24 A. Correct.

25 Q. Do you have or are you aware of any field

1 notes, recorded observations, logs or similar
2 documentation collected by Dean Prat on that date of his
3 observations?

4 A. No.

5 Q. Would you take a look at the photographs? The
6 first photograph, 061006-01, what does that show?

7 A. It is looking down from on top of the trestle
8 deck down to the South Fork Eel River, and it shows kind
9 of an overview of the construction site and the gravel
10 bar.

11 Q. This violation is based on the use of a backhoe
12 that was considered excessively leaky, correct?

13 A. Correct.

14 Q. What evidence in the photograph is there that
15 this is an excessively leaky backhoe?

16 A. None. It just shows a backhoe in the gravel
17 bar.

18 Q. Turn to the second photograph, 061006-02. Are
19 you there with me?

20 A. Yes.

21 Q. What is that photograph of?

22 A. A crane, a man kneeling down looking at the
23 plastic oil containment management practice underneath
24 the crane.

25 Q. Does that provide any evidence of an

1 excessively leaky backhoe?

2 A. No.

3 Q. Turn to the third photograph. What does this
4 show? This is 061006-03.

5 A. It shows, it's a close-up of the backhoe
6 depicted in 061006-01, the backhoe apparently, just
7 closer up on the gravel bar, apparently the one he's
8 describing.

9 Q. Is there anything in that photograph that
10 evidences an excessively leaky backhoe?

11 A. There is some plastic underneath. It appears
12 to be some plastic underneath the backhoe that I could
13 guess as to what that's there for, but I do not know. I
14 didn't take these photos. I included them for support
15 to show what pictures from this inspection.

16 Q. Is it possible that the plastic sheeting you
17 see underneath the backhoe was simply a BMP and didn't
18 indicate any actual leaking?

19 A. It doesn't appear to be a BMP by the way that
20 it's placed underneath the backhoe, but it's possible
21 it's a BMP.

22 Q. Is there any evidence in that photograph of
23 actual leaks occurring?

24 A. I'd need the photo and to zoom in on it to see.

25 Q. Can you turn to the last photograph, 061006-04?

1 A. Okay.

2 Q. What is that a photograph of?

3 A. A piece of equipment onsite. I think it might
4 be a compressor, but I don't exactly know what it is.

5 Q. This photograph doesn't provide any evidence of
6 an excessively leaky backhoe; does it?

7 A. No.

8 Q. Do you have any evidence that on this date,
9 leaks from this backhoe actually were discharged
10 anywhere onto a gravel bar, a road or anywhere else?

11 A. No.

12 Q. Let's assume that this was a leaky backhoe;
13 however, that any leaks were completely caught by
14 plastic sheeting and didn't penetrate through to the
15 gravel bar or anywhere else. Would a violation have
16 occurred?

17 A. It depends if the plastic sheeting that was
18 containing the oil was a best management practice. It
19 could have contained the oil and still not be a best
20 management practice.

21 Q. Well, let's assume that the use of the plastic
22 sheeting to prevent spills and discharges was the best
23 managment practice. In that case, if the use of the
24 plastic sheeting captured and prevented any discharges
25 beneath, would a violation have occurred?

1 A. Being idle the way it is in the photo, and the
2 reason I make that distinction is reading the permit
3 condition that states, "At no time shall the applicant
4 use any vehicle or equipment which leaks any substance
5 that may impact water quality." So if it's leaking a
6 substance that may impact water quality, it could be a
7 violation. We're talking hypotheticals, right?

8 Q. We're talking hypotheticals.

9 A. If it's a BMP in place that's contained and
10 there's no discharge, then we probably would not pursue
11 it as a violation.

12 Q. That wasn't exactly my question. The question
13 was: Would a violation have occurred if there was a
14 leak but that leak was completely captured by the use of
15 BMPs such as a plastic sheeting?

16 A. It depends. I imagine it wouldn't be leaking
17 if the equipment isn't being used, although it's a
18 hypothetical that could be a leak if it's not, but
19 according to condition thirteen, it looks pretty cut and
20 dry that if it's staged and it's being used and it's
21 leaking a substance that may impact water quality, it
22 could be a violation.

23 If the use of the BMP and containment of that
24 is argued that it could not possibly impact water
25 quality, then it could also be argued that it's not a

1 violation.

2 Q. Well, let me start just with condition nine.
3 Speaking just with respect to condition nine, if leaks
4 from a backhoe or other equipment were completely
5 contained by the use of BMPs such as plastic sheeting
6 but then plastic sheeting was thereafter cleaned, taken
7 away so that it didn't pose any later further threats to
8 water quality, would a violation of condition nine have
9 taken place?

10 A. No, I don't believe so. Granted --

11 Q. You can stop there.

12 A. Okay.

13 Q. That's fine. Turning to condition thirteen, if
14 you have a backhoe or other equipment and leaks are
15 completely caught by BMPs such as plastic sheeting and
16 that plastic sheeting is thereafter cleaned and taken
17 away and disposed of properly such that there's no
18 potential impact to water quality, has a violation of
19 condition thirteen taken place?

20 A. Probably not. You're raising a hypothetical
21 that really is somewhat unrealistic in reviewing --
22 Well, so perhaps, maybe not. Maybe it's not
23 unrealistic, but in determining, in assessing compliance
24 with that, I would consult with Dean and Mona who have
25 more experience with assessing compliance of BMPs. They

1 wrote this language. Dean wrote this language, and Mona
2 and them implement the permit. So in terms of the
3 adequacy and the necessary use of a BMP and whether that
4 applies here -- The reason I'm mentioned just a second
5 ago that I thought it was a hypothetical that we
6 wouldn't normally address is because I didn't address it
7 here I guess is my point, that I made the assessment
8 based on staff observations and the photos just
9 supporting his observations from his inspection.

10 Q. I understand that there's other staff members
11 with the Board who might have different views on
12 violations.

13 A. Sure.

14 Q. But I am asking you as the person who drafted
15 the complaint just what was the basis for some of these
16 violations.

17 A. Sure.

18 Q. And that's what I'm trying to ferret out.

19 A. Sure.

20 Q. As I understand from your testimony, at least
21 in your view, that if equipment leaks are entirely
22 contained by BMPs such as plastic sheeting such that
23 there's no discharge, then condition thirteen would not
24 be violated?

25 A. Correct.

1 Q. Is that a fair statement?

2 A. Yes.

3 Q. Thank you.

4 A. I guess the key there is that it's fully
5 contained. You could see a scenario where that if it's
6 raining, you know, and it may be fully contained,
7 there's a hypothetical that that containment could be
8 filled up with water and is still a threatened
9 discharge. So the reason I hesitate in giving you that
10 black-and-white answer is just because I understand the
11 --

12 Q. You don't want to give me a black-and-white
13 answer?

14 A. Because of the complexity of the situation.

15 Q. It is a complicated situation, but by the same
16 token, I think that we certainly have situations here,
17 and I think we'll see a couple of them in a moment,
18 where we did have equipment that was, as it was
19 operating, entirely contained by a variety of different
20 BMPs such as there's no possibility of discharge to
21 anywhere outside of that containment measure, and I
22 think that my own view is that those efforts and those
23 BMPs implemented for the project deserve to be
24 recognized because I think the point of them was to
25 prevent discharges and also to recognize the fact that

1 it doesn't matter how good you maintain equipment;
2 there's always a possibility of leaks. Irrespective of
3 the language or the intent of the certification, that's
4 the practical reality. I know there's no question
5 there.

6 MS. MACEDO: Yes. You said it wasn't your
7 deposition, so maybe you should stop testifying.

8 MR. HUNGERFORD: I am providing context.

9 MS. MACEDO: Ask a question.

10 BY MR. HUNGERFORD:

11 Q. If you could turn to the October 11th event,
12 here we have no photographs, but we have a quote;
13 correct?

14 A. Yes.

15 Q. What's the source of that quote?

16 A. Biological monitoring reports.

17 Q. Do you have a copy of the source document that
18 contains the quote in front of you?

19 A. I don't believe so.

20 Q. Do you need me to provide you with a copy, or
21 do you have one there?

22 A. Please provide me with one.

23 Q. Sure. Read that quickly.

24 A. Okay.

25 Q. Other than that quote, do you have any evidence

1 supporting this violation on this date?

2 A. No.

3 Q. Is there any evidence of the date that -- Well,
4 let me back up. The quote refers to a variety of
5 different types of equipment leaks; correct?

6 A. Correct.

7 Q. Does the document identify the date on which
8 any of those leaks occurred?

9 A. No.

10 Q. So is it possible that this is just kind of a
11 general perhaps atmospheric explanation that the
12 biological monitor decided to put into their records
13 rather than a description of events on a particular day?

14 MS. MACEDO: Objection, calls for speculation.

15 THE WITNESS: Shall I still answer?

16 MR. HUNGERFORD: Yes.

17 MS. MACEDO: Yes.

18 THE WITNESS: It could be.

19 BY MR. HUNGERFORD:

20 Q. There's a reference in there made to
21 excessively leaky equipment. Do you see that?

22 A. Yes.

23 Q. This is the biological monitor's statement; is
24 that right?

25 A. Yes.

1 Q. Do you have any understanding of what
2 excessively leaky equipment might refer to?

3 A. It's a subjective comment.

4 Q. Do you have any information on the
5 qualifications of the biological monitor to consider
6 whether equipment is leaky, not leaky or excessively
7 leaky?

8 A. Other than his experience on the job site, no.

9 Q. Do you know which biological monitor it was
10 that made these statements?

11 A. No. I'd have to look at the report.

12 Q. To your knowledge, were either Bradford Norman
13 or Carl Page qualified to make mechanical judgments
14 about construction equipment?

15 MS. MACEDO: Objection, calls for speculation.

16 MR. HUNGERFORD: To your knowledge.

17 THE WITNESS: I think that they are qualified
18 to make a statement of whether a piece of equipment
19 leaks excessively.

20 BY MR. HUNGERFORD:

21 Q. Did you as the drafter of this complaint place
22 any weight or reliance on the characterization of
23 equipment as leaky by the biological monitor?

24 A. Sure, I placed some weight.

25 Q. I'll ask it in another way. The fact that the

1 biological monitor described equipment as excessively
2 leaky, did that matter to you when you were preparing
3 the complaint?

4 A. What matters is that there's a leak.

5 Q. So the fact that the biological monitor
6 describes certain equipment as excessively leaky, that
7 didn't play any role in your preparation of the
8 complaint?

9 MS. MACEDO: Objection, misstates his
10 testimony.

11 MR. HUNGERFORD: Well, I'll rephrase the
12 question, then.

13 BY MR. HUNGERFORD:

14 Q. Did the fact that the biological monitor
15 described the equipment as excessively leaky, did that
16 characterization play any role in your preparation of
17 the complaint?

18 MS. MACEDO: That's been asked and answered,
19 but you can answer it again.

20 THE WITNESS: I took this quote in its
21 entirety, and I believe that it does provide some weight
22 to the evidence. It helps describe the situation.

23 BY MR. HUNGERFORD:

24 Q. Does the characterization of equipment as
25 excessively leaky play any role in whether a violation

1 occurred?

2 A. Whether or not a violation occurred, excessive
3 does not play a role in this context. It's whether or
4 not a leak has occurred that had the potential to or
5 that was a threatened discharge and whether or not
6 equipment was being used that was leaky.

7 Q. Thank you. Turn to the October 12th entry.
8 Actually, if I could take that document back.

9 A. Sure.

10 Q. Turn to the October 12th entry. We have a
11 quote and three photographs, correct?

12 A. Correct.

13 Q. What is the source of the quote?

14 A. The biological monitoring reports.

15 Q. Do you have that in front of you?

16 A. Maybe. Yes, I do.

17 Q. This is the biological monitor's report,
18 correct?

19 A. Yes.

20 Q. Do you know which monitor it was that made
21 these statements?

22 A. Carl Page.

23 Q. Turning to the photographs, we have what
24 appears to me to be photographs of different conditions
25 now. The first photograph is 061012-01 and is a

1 photograph of what appears to be the crane on the
2 trestle deck; correct?

3 A. Yes.

4 Q. Now, referring back to the quote, the quote
5 refers to oil and diesel stains on the gravel bar. So
6 based on that, does it appear to you that this
7 photograph is referring to the, I'm sorry, is related to
8 the statements made in the quote? Let me back up. I'll
9 ask it a different way.

10 The violation is based on alleged oil and
11 diesel stains on the gravel bar; correct?

12 A. Correct.

13 Q. Does the first photograph of the crane on the
14 trestle deck provide any evidence supporting that
15 violation?

16 A. No.

17 Q. The second photograph which is 061012-02, that
18 shows a picture of what looks like a compressor; right?

19 A. Yes.

20 Q. And the compressor's on the gravel bar,
21 correct?

22 A. Yes.

23 Q. And there also appears to be plastic sheeting
24 under the compressor, correct?

25 A. Correct.

1 Q. What evidence is there in this photograph of
2 oil and diesel stains in the gravel bar?

3 A. It is a related picture included in the
4 biological monitoring report adjacent to the quote
5 describing the gravel bar. So it appeared to me that
6 that was relevant to the discharge.

7 Q. But the photograph doesn't actually show the
8 existence of any discharge in the gravel bar; does it?

9 A. It might. If you were to zoom in, you can see
10 a dark spot on either wood or metal near the edge of the
11 plastic sheeting, and a man is looking in that
12 direction.

13 Q. Is that why you included this photograph as
14 evidence, that spot on the piece of metal?

15 A. That is one of the, that is -- The picture
16 provides context to the quote, and so I thought it was
17 relevant.

18 Q. Do you have any reason to think that the author
19 of the quote was relying on the operation of this
20 compressor as support for his quote?

21 A. I don't know.

22 Q. Turning to the third photograph, 061012-03,
23 that shows what looks like a track-mounted crane or
24 other piece of heavy equipment. Would you agree with
25 that?

1 A. Yes.

2 Q. Where was this photograph taken?

3 A. I don't know.

4 Q. Does it look like it's a place on the gravel
5 bar?

6 A. No, not necessarily. I might want to clarify
7 that due to the quantity of leaky-equipment photographs
8 that we had, and I believe it describes this in the
9 complaint, that to show and to be as conservative as
10 possible so as not to ding on every single one, we
11 grouped for just leaky equipment. We decided to
12 include, and this was our way of showing discretion,
13 many different photos of leaky equipment per day. So I
14 believe in certain situations, we decided not to assess
15 penalties per photo but steady included all the leaky
16 equipment photos for that day in one violation.

17 Q. Okay. That's fair. By the same token, the
18 complaint alleges violations of ten thousand or more for
19 each one of these days; correct?

20 A. Well, that's the maximum potential. It doesn't
21 necessarily allege or it doesn't -- I don't know the
22 term.

23 Q. Sure, and I understand that you make
24 adjustments, but I just want to make sure that we
25 differentiate between, you know, kind of atmospheric

1 photos of the type that I believe you're referring to
2 and also photos that directly support the existence of
3 violations on the days that you reference in the
4 complaint.

5 A. Well --

6 MS. MACDEO: There's no question.

7 MR. HUNGERFORD: Right, there's no question.

8 BY MR. HUNGERFORD:

9 Q. Do you understand what I'm saying?

10 A. I do.

11 Q. So photograph 061012-03, you don't have any
12 idea where this photograph was taken?

13 A. Nope.

14 Q. Correct?

15 A. Correct.

16 Q. But it does not appear to be on the gravel bar;
17 does it?

18 A. No.

19 Q. If you turn to the October 27th entry, here we
20 have another quote and three photographs; correct?

21 A. Correct.

22 Q. Do you have the source of the quote of that
23 document in front of you?

24 A. Yes.

25 Q. If you would read that entry, please.

1 A. The entire entry?

2 Q. For Friday, October 27th, since that's the date
3 that the violation's alleged.

4 A. "Activities included..."

5 Q. I'm sorry; you don't have to read it. I just
6 want you to familiarize yourself with it. You don't
7 have to read out loud.

8 A. Oh, I thought that's what you meant.

9 Q. No. I'm sorry. Okay?

10 A. Yes.

11 Q. Does the quote provide evidence of any specific
12 violation in a particular location on October 27th?

13 A. "Oil leaks continue to occur without adequate
14 clean-up or prevention."

15 Q. In any specific location?

16 A. No specific location.

17 Q. And then you see the sentence that follows
18 referring to overnight oil spots?

19 A. Yes.

20 Q. "Overnight oil spots are often not prevented
21 and typically just covered up with soil," do you see
22 that?

23 A. Yes.

24 Q. It would seem that this is a general statement
25 made by the biological monitor rather than a description

1 of any specific discharge in a specific location on a
2 specific day. Would you agree with that?

3 A. There are general statements.

4 Q. Do you see any reference to a specific
5 discharge in a particular location on this date?

6 A. No.

7 Q. Turning to the photographs, there are three of
8 them. 061027-01 is the first.

9 A. Okay.

10 Q. What does that show?

11 A. It appears to show an oil leak behind a, behind
12 and on the track of a tractor.

13 Q. Do you have any evidence that that's oil, or is
14 that just an assumption on your part?

15 A. I said what appears to be, so yes. I included
16 photos that could be supportive evidence of that quote.

17 Q. Do you know where this photograph was taken?

18 A. Not exactly, although you could see from
19 adjacent photos, I believe it's in uplands, and when I
20 say adjacent photos, I mean in the large context of the
21 photographic record, there's many, many, many photos by
22 the biological monitor. All the contextual ones I
23 didn't include in here, but I believe it's an upland
24 location.

25 Q. What type of equipment is this; do you know?

1 A. I don't recall.

2 Q. Do you know what upland location this is, how
3 far away from the river?

4 A. I don't recall.

5 Q. Turning to 061027-02, are you there?

6 A. Yes.

7 Q. This shows a picture of some form of
8 caterpillar equipment, correct?

9 A. Correct.

10 Q. Does this appear to you to be on the gravel bar
11 or taken from an upland location?

12 A. Upland location.

13 Q. And that's just based on the nature of the road
14 base; correct?

15 A. That and my recollection of the photographic
16 record.

17 Q. Do you know how far upland from the river?

18 A. No.

19 Q. Do you have any evidence as to the -- Let me
20 back up. I'm assuming the reason this photograph is
21 included is because it shows a couple of small areas
22 underneath the caterpillar that show some form of fluid
23 on the rocks; correct?

24 A. Correct.

25 MS. MACEDO: Wait. Correct that there's fluid

1 on the rocks, or is that why you included the photo?

2 That's a compound question.

3 THE WITNESS: Well, that's what it appears to
4 show.

5 BY MR. HUNGERFORD:

6 Q. Do you know that this is oil, or is it possible
7 it's some other type of fluid?

8 A. I don't know.

9 Q. Do you know whether this was cleaned up?

10 A. I do not.

11 Q. Do you know whether these stained areas were
12 created by this particular piece of equipment?

13 A. I do not.

14 Q. Turn to the next photograph, 061027-03. What
15 does that show to you, the next photograph?

16 A. It shows some sort of fluid being, some of it
17 being contained by a plastic tarp.

18 Q. Do you see any fluid that's not contained by
19 the plastic tarp?

20 A. I do not.

21 Q. Do you know where this photograph was taken?

22 A. Where?

23 Q. Yes.

24 A. No, although there may be other photos that
25 demonstrate that.

1 Q. Do you know what piece of equipment this is?
2 A. I don't.
3 Q. If you could turn to the October 28th entry.
4 A. Okay.
5 Q. And this appears to be based on two
6 photographs, correct?
7 A. Correct.
8 Q. Are you aware of any log entries or other
9 documents that support violations on this date?
10 A. Not that I'm aware of.
11 Q. The first photograph is 061028-01, correct?
12 A. Correct.
13 Q. And that shows what appears to be a
14 stained-looking area on the ground; right?
15 A. Correct.
16 Q. Does this appear on the gravel bar or an upland
17 location to you?
18 A. Gravel bar.
19 Q. Do you know where on the gravel bar this is?
20 A. No.
21 Q. Do you know the type of equipment, if any, that
22 made this stain?
23 A. No.
24 Q. Do you know what type of fluid it is that
25 created this?

1 A. No.

2 Q. Do you know when this particular fluid was
3 discharged?

4 A. No.

5 Q. The next photograph, 061028-02, do you see
6 that?

7 A. Yes.

8 Q. Is that the same photograph that is dash 01
9 from the same day, just a blown-up version?

10 A. I don't believe that it's a blown-up version
11 because that means I would have zoomed in, had to
12 re-save it in a different document. I'm pretty sure
13 they're distinct photos.

14 Q. You didn't take the photographs, correct?

15 A. It could be the same photo that somebody else
16 did that to. I didn't do that.

17 Q. I'm sorry; I wasn't following you. So this
18 could be the same stain, but it's certainly not the same
19 photograph?

20 A. Yes.

21 Q. If you could turn to the next entry which is
22 October 30th.

23 A. Okay.

24 Q. And for this we have a longer series of
25 photographs, correct?

1 A. Correct.

2 Q. And do we have any logs, reports, documents or
3 other evidence that you've identified in support of this
4 violation?

5 A. No.

6 Q. Take a moment and just spin through these
7 photographs if you could.

8 A. Okay.

9 Q. To me, these photographs show a variety of
10 different conditions on the site. Would you agree with
11 that?

12 A. Yes.

13 Q. What is the violation that's being alleged
14 here?

15 A. Conditions nine and thirteen of the
16 certification.

17 Q. Conditions nine and thirteen of the
18 certification on October 30th, 2006?

19 A. Yes.

20 Q. So what is the discharge here on that date that
21 violates the certification?

22 A. Well, on condition nine, no oil or petroleum
23 products shall be allowed to enter or be placed where
24 they may be washed into waters of the State, and that
25 appears to be the case in at least photos 02 and 03, 04,

1 05.

2 Q. Should I take it, then, that you're using a
3 variety of different conditions onsite to establish a
4 single violation for that day?

5 A. I believe I already described that that was our
6 method that we did uniquely for leaky equipment.

7 Q. Let me just go through the photographs.
8 061030-01, do you see that?

9 A. Yes.

10 Q. It looks like a photograph of the crane on the
11 trestle deck. Would you agree?

12 A. Yes.

13 Q. And there appear to be, you know, from a
14 distance, possible stains on the trestle deck. Do you
15 see that?

16 A. Yes.

17 Q. Do you have any evidence that those stains were
18 created by this piece of equipment?

19 A. No.

20 Q. Do you see any active leaking from this piece
21 of equipment at this time?

22 A. Not from the picture I'm looking at.

23 Q. Do you have any information as to when those
24 stains were created?

25 A. No.

1 Q. If you turn to the second photograph, it looks
2 like a picture of the trestle deck with a white piece of
3 equipment in the background. Do you see that?

4 A. Yes.

5 Q. In the center of the photograph, it looks like
6 there was some form of discharge on the trestle deck;
7 correct?

8 A. Correct.

9 Q. Do you see some light kind of discoloration
10 around it suggesting to me at least that there was kitty
11 litter that had been placed there?

12 A. Yes.

13 Q. Do you have any information as to what type of
14 equipment, if any, created this discoloration?

15 A. No.

16 Q. Do you know when the discoloration was created?

17 A. No.

18 Q. There certainly is evidence, would you agree,
19 though, that whatever spilled on the trestle deck was
20 cleaned; correct?

21 A. Was attempted to be cleaned. I cannot speak to
22 whether that was adequately cleaned up or not.

23 Q. Certainly some cleaning took place, correct?

24 A. Sure.

25 Q. Turning to the next photograph, 061030-03, it

1 shows a track-mounted piece of equipment; correct?

2 A. Yes.

3 Q. And underneath we have one small wet area and

4 then a larger wet area to the right; correct?

5 A. Yes.

6 Q. Do you know where this picture was taken?

7 A. No.

8 Q. Does it appear to an upland location rather

9 than a gravel bar?

10 A. Upland.

11 Q. Do you know where in the uplands it was taken?

12 A. No.

13 Q. Do you know how far away from the river this

14 is?

15 A. No.

16 Q. Can you verify that this particular piece of

17 equipment made either or both of the stains that are

18 shown in the photograph?

19 A. No.

20 Q. Do you know what the chemical composition is of

21 either of these stains?

22 A. No.

23 Q. And do you know when this fluid was deposited

24 or placed on this ground surface?

25 A. No.

1 Q. Turning to the next photograph, 061030-04 --

2 A. Yeah.

3 Q. And this appears to be a roadway, correct?

4 A. Yes.

5 Q. Is the reason this photograph is included
6 because of what looks to be staining in the center of
7 the roadway?

8 A. Yes.

9 Q. Do you know what that staining is?

10 A. No.

11 Q. Do you know when it was deposited there?

12 A. No.

13 Q. Do you know how far away from the river this
14 location is?

15 A. I believe it's up by the resident engineer's
16 offices.

17 Q. Which is how far away?

18 A. So in terms of distance, I don't really know.
19 I don't know the site enough to estimate a distance for
20 that. You have to drive a circuitous road down.

21 Q. Is this a public road?

22 A. I don't know. I think so.

23 Q. Do you know if it's project-related
24 construction equipment that created this discoloration
25 on the ground?

1 A. I do not.

2 Q. It could have been a passenger vehicle;
3 couldn't it?

4 A. I don't believe passenger vehicles had access
5 to this site, well, other than project-related passenger
6 vehicles, but they could, absolutely.

7 Q. It's possible it could have been Dean Prat's
8 vehicle; true?

9 A. Is that a question? Sure.

10 Q. I'm not suggesting it is.

11 A. I don't think he was down there on that day,
12 but --

13 Q. Well, good point. We don't actually know when
14 this discoloration occurred?

15 A. No.

16 Q. Turning to the next photograph, 061030-05, do
17 you see that?

18 A. Yes.

19 Q. And so again, we have what appears to be the
20 trestle deck?

21 A. Yep.

22 Q. Is there any equipment insight?

23 A. No.

24 Q. We see some discoloration of the trestle deck,
25 correct?

1 A. Correct.

2 Q. Is there anything that appears to be ponded
3 fluid in this location?

4 A. No.

5 Q. Just discolorations, right?

6 A. Yes.

7 Q. Do you know when those discolorations occurred?

8 A. No.

9 Q. We don't know what type of equipment, if any,
10 made them?

11 A. No.

12 Q. Right?

13 A. Correct.

14 Q. Photograph 061030-06, this shows a picture of
15 water?

16 A. I don't think that was included in this
17 reference. It goes from 05 and skips to 08.

18 Q. Okay. That would explain that. So turning to
19 061030-08, and we see here what appears to be a close-up
20 of the trestle deck; correct?

21 A. Yes.

22 Q. And I don't see any staining or discoloration;
23 do you?

24 A. No.

25 Q. I'm assuming the reason that you included this

1 is because it shows a hole in the trestle deck; correct?

2 A. Yes.

3 Q. Do you have any evidence that any type of fluid
4 whatsoever penetrated that hole and made it below the
5 trestle deck?

6 A. No.

7 Q. Do you have any evidence to suggest that
8 vehicles passed over the location of, the precise
9 location of this hole?

10 A. No.

11 Q. Turning to the next photograph, 061030-09 --

12 A. Yes.

13 Q. It looks like another view of the trestle deck,
14 correct?

15 A. Yes.

16 Q. Is this the same hole that we saw in the last
17 photograph?

18 A. I don't know.

19 Q. It certainly appears to be, that or a similar
20 hole; correct?

21 A. Yes, it's very similar.

22 Q. Do you see any evidence of staining or
23 discoloration?

24 A. No.

25 Q. Do you have any evidence that any fluid passed

1 through this hole beneath?

2 A. No.

3 Q. Do you see up to the top left of the photograph
4 where there is a large, it looks like a four-by-four or
5 six-by-six heavy piece of wood?

6 A. Yes.

7 Q. Are you familiar with the layout of the trestle
8 deck from this photograph?

9 A. It didn't look like this when I visited it.

10 Q. Did you ever walk on the trestle deck or see
11 it?

12 A. Yes.

13 Q. Did you notice that there was a worker walkway
14 on the edge of the trestle deck where there is an
15 equipment passage in the middle?

16 A. I don't quite recall. It was covered with
17 filter fabric at the time, and I don't recall.

18 Q. I'll represent to you that this is a photograph
19 of the walkway where workers would traverse rather than
20 an area where equipment actively traveled. Do you have
21 any reason to disagree with that?

22 A. Just there's some wheels.

23 Q. In the background?

24 A. In the background that appear to be encroaching
25 on that walkway area.

1 Q. Do you see the mesh on the right-hand side of
2 the photograph?

3 A. Yes.

4 Q. Do you know what that is?

5 A. Plastic mesh.

6 Q. Do you know what its function is?

7 A. The function that Caltrans employed it for?

8 Q. Yes.

9 A. No.

10 Q. Turning to the next photograph, 011030-10 --

11 A. Yes.

12 Q. This appears to be a photograph of the trestle
13 deck, correct?

14 A. Correct.

15 Q. What is the purpose for including this
16 photograph?

17 A. It provides context.

18 Q. Context for what?

19 A. The size of the gaps between the trestle beams.

20 Q. There's an image on a cell phone in the middle
21 of the photograph, correct?

22 A. Yes.

23 Q. And the cell phone has been placed there as
24 context for the size of the gap in the trestle beam I'm
25 assuming?

1 A. Yes.

2 Q. You didn't take this photograph, though; did
3 you?

4 A. I did not.

5 Q. This was taken by the biological monitor?

6 A. Yes.

7 Q. So presumably, that's his cell phone?

8 A. Yes, presumably.

9 Q. Is there any document or report by the
10 biological monitor that you can connect to this
11 photograph for this particular day?

12 A. 10/30, there is one entry for October 30th.
13 Whether -- I'll leave it at that, leave my answer at
14 that.

15 Q. Okay. Is there any evidence in there or
16 otherwise of any discharge that took place through this
17 space in the trestle deck?

18 A. No.

19 Q. Do you know what's below this space?

20 A. I do not know what's below this space, but I
21 just want to correct my last statement and just state
22 that the biological monitoring report for that date has
23 an intro paragraph. It does refer to oil and hydraulic
24 leaks from the trestle deck. It's referring to them in
25 general. It's not necessarily stating a specific date

1 and time, but it's referring to them.

2 Q. To your knowledge, is the location of this gap
3 in the trestle deck next to the cell phone an area where
4 vehicles traveled?

5 A. I don't know.

6 Q. You don't know?

7 A. I don't know.

8 Q. And turning to the last photograph in this
9 series for this date, 061030-11, and this looks to be a
10 portion of the trestle deck?

11 A. Correct.

12 Q. Does that seem right to you?

13 A. Yes.

14 Q. Why was this photograph included as an exhibit
15 to the complaint?

16 A. Context.

17 Q. What does it provide context of?

18 A. Timing of the project and the fact that the
19 trestle does not appear to be completed all the way to
20 the other side.

21 Q. Do you know for a fact that this is the trestle
22 deck?

23 A. I'd have to refer to the sequence of photos in
24 the photographic record, but it is my recollection from
25 reviewing those that it is the trestle deck. I did not

1 take the photos, so I could not guarantee without -- I
2 just couldn't guarantee it. I didn't take it.

3 Q. Does the photograph provide any evidence of
4 discharges on October 30th, 2006 of any type?

5 A. Not that I can see from here.

6 MR. HUNGERFORD: Let's take a short break.

7 (Recess held.)

8 BY MR. HUNGERFORD:

9 Q. We're at October 31st under the A dash B
10 matrix, and we have a photograph designated 061031-01;
11 is that correct?

12 A. This is October 31st?

13 Q. Yes.

14 A. Mine says 04.

15 Q. Can I see the photograph you've got because I
16 want to make sure we're looking at the right thing.

17 A. (Witness indicating).

18 Q. Yes, same photo. Other than the photograph, do
19 you have any other logs, reports, documents or other
20 evidence supporting this violation on this date?

21 A. No.

22 Q. And the photograph is of the interior of a
23 wheel of a large piece of construction equipment. Does
24 that appear to be --

25 A. Yes.

1 Q. And there appears to be a leak of some form of
2 grease or other fluid from the inside of the wheel;
3 correct?

4 A. Uh-huh, yes.

5 Q. Do you know what type of fluid that is?

6 A. No.

7 Q. Do you know where this photograph was taken?

8 A. Where?

9 Q. Yes.

10 A. No.

11 Q. Does it appear to be in an upland location?

12 A. Yes.

13 Q. Do you know what upland location?

14 A. Not without reviewing the rest of the
15 photographic record.

16 Q. Let's go to the next date, November 3rd, 2006.
17 Here we have a quote that you've provided with no
18 photographs; correct?

19 A. Correct.

20 Q. Can you please turn to the source of the quote
21 if you have that?

22 A. It doesn't look like I have it.

23 Q. I can provide you with my copy. Why don't you
24 take a moment to review that?

25 A. Okay.

1 Q. Who's the author of the quotation?

2 A. I believe it's Walt Dragaloski.

3 Q. Can you describe what document it is that
4 you're reviewing?

5 A. It's an e-mail from Walt to Ron Denheyer, cc to
6 various other Caltrans employees.

7 Q. And the quote that you've included as part of
8 the complaint indicates that the crane used on the
9 trestle deck is leaking; correct?

10 A. Yes.

11 Q. Does it state the date, a specific date that
12 that leak or any leak occurred?

13 A. Well, the beginning of the e-mail states that
14 he observed the leak on -- At the beginning of the
15 e-mail, he gives a date that leads me to believe that he
16 made this observation on that date.

17 Q. The first sentence in your quote says, "The
18 crane being used in the trestle deck has leaking
19 fluids," and then it goes on to say, "This has been
20 noted many times earlier."

21 A. Uh-huh.

22 Q. So that's the basis for your conclusion that
23 this particular leak occurred on this date?

24 A. Yes.

25 Q. And the quote then goes on to say that the

1 leaks have been captured by plastic which has been
2 placed underneath the crane; correct?

3 A. It states the plastic catches the oil and storm
4 water.

5 Q. Do you know if on this date there was an oil
6 leak that escaped the plastic containment and discharged
7 onto the trestle deck?

8 A. On this date?

9 Q. Yes.

10 A. No. I just have this quote to go by.

11 Q. Are there any photographs or other documents
12 that support this violation on this day?

13 A. No.

14 Q. Okay. Let me take that back. Two pages?

15 A. Two pages.

16 Q. We're now moving into appendix A dash C, and
17 this describes a series of allegations relating to
18 welding slag and steel cuttings; correct?

19 A. Yes.

20 Q. The first date is September 15th, 2006, for
21 which a violation is alleged in this category; is that
22 right?

23 A. Yes.

24 Q. And you have a quote from a document. What is
25 the source of that quote?

1 A. Engineering diaries.

2 Q. Do you have a copy of that in front of you?

3 A. Yes.

4 Q. Why don't you take a moment to read that real
5 quick?

6 A. Okay.

7 Q. Okay?

8 A. Yes.

9 Q. This is an assistant resident engineer's daily
10 report by John Railey; correct?

11 A. Yes.

12 Q. And this is dated September 15th, 2006; right?

13 A. Yes.

14 Q. And the quote says, "Noticed some minor slag
15 dropping into the channel," right?

16 A. Yes.

17 Q. What is slag?

18 A. I believe it is when you're welding two pieces
19 of metal together. It's either that or steel cutting.
20 I guess it could depend on the situation. I'm not too
21 familiar. I don't cut steel, and I don't weld things
22 together very often, ever really, but apparently it's
23 metal shavings, maybe hardened metal.

24 Q. So your understanding is that it generally is
25 some form of metal or steel?

1 A. Yes.

2 Q. A piece or cut or something?

3 A. Yes.

4 Q. When the description is of minor slag, do you
5 have any sense for what that describes?

6 A. No.

7 Q. Do you have any information as to what the
8 composition is of slag that was being observed in this
9 report?

10 A. No.

11 Q. Now, there are a number of other violations in
12 this category that relate to slag; correct?

13 A. (Witness nods head.)

14 MS. MACEDO: Yes?

15 THE WITNESS: Yes.

16 BY MR. HUNGERFORD:

17 Q. Other than on this particular day?

18 A. Yes.

19 Q. And we'll go through those in a minute. Does
20 the Regional Board have any evidence as to the impacts
21 on water quality from slag dropped into the river
22 channel?

23 A. It would be considered a form of sediment at
24 that point I would imagine, unnatural sediment.

25 Q. Is it something that would create turbidity,

1 then?

2 A. Not that I am aware of, although I guess it's
3 possible. I did see one photo in the photographic
4 record where near some welding activities, there
5 appeared to be some black water, and I could see that
6 that could be possible.

7 Q. Do you have any information that would suggest
8 introducing welding slag into a water body would create
9 an adverse impact on water quality in any way?

10 A. Well, at a minimum, it would be considered
11 sediment once it's there.

12 Q. Any toxic effects that you're aware of?

13 A. No.

14 Q. Any impacts to fish or wildlife that you're
15 aware of?

16 A. Other than the impacts that sediment would
17 have, no.

18 Q. Do you have any sense for the total volume of
19 welding slag that might have been introduced into the
20 riverbed as a result of this particular day's
21 activities?

22 A. No.

23 Q. What about collectively over the course of the
24 project?

25 A. I have no idea.

1 Q. You've identified this as a violation of
2 condition nine, correct?

3 A. Yes.

4 Q. Briefly if you can, explain the basis for that.

5 A. It would be considered debris from a
6 construction activity not authorized by the permit that
7 was allowed to enter into waters of the State.

8 Q. Are you aware of whether any BMPs were used or
9 implemented at any point to capture slag or minimize
10 discharge of slag?

11 A. There was one point where -- I have to read
12 through the complaint. I believe it describes it in
13 there, that a BMP was developed. That is my
14 understanding of it. Up until that point, the original
15 BMP was angle of the welding equipment in an attempt to
16 minimize directional spray or slag entering the water,
17 entering the river, which wouldn't be considered by the
18 Regional Board as best management practice, and at some
19 point, it was brought up with the operators onsite, and
20 they changed their management practice to include a
21 five-gallon bucket below the welder.

22 Then at another point later on, I believe
23 Caltrans laid down a fire-retardant blanket on part of
24 the bank or bank of the river to catch some welding
25 slag, but I don't believe the Regional Board would

1 consider any of those best management practice.

2 Q. So it's fair to say that a concern was raised
3 about discharges of welding slag, and that thereafter, a
4 number of practices were implemented to minimize or
5 eliminate those discharges; correct?

6 A. Correct.

7 Q. Now, why is it that you wouldn't consider the
8 use of buckets or blankets as best management practices?

9 A. Because it was demonstrated that they were
10 insufficient to contain welding slag, and based on the
11 photos that I have seen, it doesn't appear that a
12 five-gallon bucket could ever adequately contain the
13 spray from welding, and that from that high up, the
14 spray gets disbursed over a large area when it falls,
15 and unless this fire-retardant blanket is covering an
16 entire area of where any welding is occurring, if
17 welding slag is reaching an area of waters of the State
18 or the U.S., then it is being insufficiently implemented
19 to be a best management practice.

20 Q. Does the Regional Board dictate what best
21 management practices have to use at Caltrans for this
22 project?

23 A. I guess I don't know what you mean by dictate
24 in that sense.

25 Q. Well, how much latitude does Caltrans have to

1 develop their own best management practices to address
2 conditions occurring onsite?

3 A. It is my understanding that that is the
4 process, that Caltrans proposes BMPs and then addresses
5 them over time to make them better with communication
6 with the Regional Water Board.

7 Q. Does the Regional Board need to approve or sign
8 off on each of those BMPs and any iterations?

9 A. I'm not too familiar with that. I would refer
10 to one of my colleagues .

11 Q. To your knowledge --

12 A. I don't know.

13 Q. -- is that a requirement of the certification
14 that the Regional Board actually approve BMPs or changes
15 to BMPs made by Caltrans?

16 A. I don't believe that the certification directly
17 requires it, although it does require implementation of
18 the BMPs, of adequate BMPs.

19 Q. You've just defined a BMP as something that
20 will completely eliminate a discharge; is that correct?

21 A. It will protect the water quality objectives in
22 the Basin Plan.

23 Q. Is a complete elimination of discharges
24 required to protect water quality objectives in the
25 Basin Plan?

1 A. It is my understanding that this water body is
2 impaired for sediment, and I don't believe there was any
3 waste-load allocation for this site for sediment
4 discharges.

5 Q. Well, let me just take a moment and talk about
6 sediment since you brought that up. Is it fair to state
7 that a certain amount of sedimentation wouldn't be a
8 violation of the certification if appropriate BMPs were
9 carried out?

10 A. I couldn't say that.

11 Q. Well --

12 A. The 401 cert. describes prohibitions.

13 Q. Well, let's go back to the welding slag. You
14 said something that was interesting, and that is that
15 the blankets and buckets wouldn't be considered best
16 management practices by the Regional Board, and my
17 question is: If this is a problem, the discharge of
18 welding slag, that wasn't identified before the project
19 began but thereafter during the project was identified
20 as an issue and the uses of blankets and buckets were
21 implemented to address that problem, why wouldn't that
22 qualify as best management practices?

23 A. Even after the implementation of the bucket
24 measures, bucket BMP, there's still photos showing
25 over-spray, that welding slag's not being contained by

1 the buckets.

2 The fire-retardant blanket, I can't per se say
3 that. I would just -- If you had, if you're over the
4 active channel, like it's not going to work unless it's
5 underneath where you're working and it's fully
6 containing the over-spray, and that would be considered
7 a BMP if it's implemented properly.

8 Q. Does the Regional Board have any guidelines or
9 other recommended best management practices that it
10 offered to Caltrans to address the welding slag issue?

11 A. Not that I know of.

12 Q. Are you aware generally of any best management
13 practices or guidelines that the Regional Board
14 recommends to address that issue irrespective of this
15 project?

16 A. No.

17 Q. Turn to the 9/21, September 21st entry.

18 A. Uh-huh.

19 Q. Here we have a quote and a photograph. What is
20 the source of the quote?

21 A. It appears to be the response to the notice of
22 violation.

23 Q. Specifically, do you have the document that's
24 the source of the quote?

25 A. I think I do. I'd have to find it.

1 Q. I'd be happy to give you my copy. Can you
2 describe what that is?

3 A. This is an e-mail from Walt Dragaloski to Ron
4 Denheyer and others.

5 Q. And take a quick moment to just review that.
6 Okay?

7 A. Uh-huh.

8 Q. It says, and I'm paraphrasing, that when the
9 next weekly biological monitoring report comes out, it
10 will contain information regarding a discharge of
11 welding slag; correct?

12 A. Correct.

13 Q. Does it identify a particular date of when that
14 discharge occurred?

15 A. No.

16 Q. Is it possible that it could be referring to
17 the discharge that we just reviewed for September 15th?

18 A. It is possible.

19 Q. And we also have a photograph which is
20 060921-01; correct?

21 A. Correct.

22 Q. And that's a photograph which appears to show
23 sparks falling in or around the river; correct?

24 A. Correct.

25 Q. Is that welding slag, as you understand welding

1 slag to be defined?

2 A. Either that or steel shavings, steel cutting.
3 I didn't bother to make the distinction between the two,
4 although they're referred to specifically throughout the
5 document. I'm not familiar enough to worry about the
6 distinction as it appears to me the discharge is
7 similar.

8 Q. You note from the document you have in front of
9 you that it indicates that certain best management
10 practices were attempted to prevent the discharge of
11 welding sparks; correct?

12 A. It says there were no BMPs in place to help
13 prevent the discharge.

14 Q. Well, I'm looking at the part of the quote that
15 says that the contractor attempted to prevent discharge
16 by placing a five-gallon bucket underneath the welding
17 locations. Do you see that?

18 A. It appears to me that that occurred after the
19 discharge, after there were no BMPs in place to help
20 prevent the discharge.

21 Q. So first of all, the quote refers to events of
22 a date that we don't know because it's not stated;
23 correct?

24 A. Correct.

25 Q. And so then it goes on to say that the

1 contractor made efforts to prevent discharges by using a
2 bucket underneath the welding locations; right?

3 A. Correct.

4 Q. And it also says that buckets were of limited
5 effectiveness because of windy conditions; correct?

6 A. Correct.

7 Q. So it's fair to state that this passage at
8 least shows that there was efforts to introduce
9 management practices to minimize discharges; correct?

10 A. Correct.

11 Q. To your knowledge, were there any other methods
12 that could have been implemented to prevent discharges
13 during windy conditions of welding sparks?

14 A. Sure.

15 Q. What?

16 A. You could provide containment around the sides
17 where the welding is occurring.

18 Q. Did you ever visit the site?

19 A. Yes.

20 Q. While the welding was taking place?

21 A. I don't recall welding occurring while I was
22 there.

23 Q. Do you have an understanding of where the
24 welding took place underneath the structure?

25 A. Yes.

1 Q. Do you have any sense for the ease or
2 difficulty of installing containment completely around
3 the welding area?

4 A. I have a sense that it would be somewhat
5 difficult --

6 Q. Have you ever --

7 A. -- although I also have a sense that there are
8 relatively simple solutions that would be more
9 practicable and effective than what they did.

10 Q. Is that your own just personal belief, or are
11 there Regional Board guidelines or recommendations?

12 A. There are no guidelines or recommendations that
13 I know of.

14 Q. You mentioned you've never done welding,
15 correct?

16 A. Correct.

17 Q. And I'll represent to you that some of these
18 welding locations were -- The welder was actually
19 strapped upside down to the bottom of the bridge in what
20 would be considered a rather dangerous location. Do you
21 have any reason to disbelieve that?

22 A. I do not.

23 Q. Do you have any sense for what would be an
24 appropriate and safe best management practice to reduce
25 welding sparks in that sort of a situation where you

1 have those sort of dangerous situations present?

2 MS. MACEDO: Other than what he stated?

3 MR. HUNGERFORD: Sure.

4 THE WITNESS: I could hypothesize there were
5 situations where there was a cage where a man would
6 stand in, an extension on it, you know, reasonably so in
7 a dangerous location. However, suspension of a
8 fire-retardant blanket beneath the location where the
9 welder is doing their work is a best guess on my part.
10 I guess I'm not allowed to make guesses, so that would
11 be my best professional opinion.

12 MR. HUNGERFORD: Sure.

13 THE WITNESS: However, I don't know the
14 economics of doing this, so I am letting you know that
15 that is --

16 BY MR. HUNGERFORD:

17 Q. It's what you personally believe?

18 A. That I might suggest as a Water Board employee
19 if presented with a problem from Caltrans if they were
20 to have brought to my desk that, A, "We have a problem
21 here with welding slag," I might just throw something
22 out and suggest it, and then Caltrans and MCM
23 contractors could come back. It's a process, and we
24 could have an open dialogue discussion about what is a
25 realistic BMP. I don't believe that ever happened.

1 Q. Are you familiar with any welding slag
2 discharges at any other projects or that were reviewed
3 by the Regional Board in any other situation other than
4 at Confusion Hill?

5 A. I am not.

6 Q. Are you familiar with any other management
7 practices taken at any other projects relating to
8 welding slag outside of Confusion Hill?

9 A. No.

10 Q. Have you had any conversation with anyone
11 within the Regional Board as to what management
12 practices should have been in place apart from buckets
13 or blankets that were used for this project?

14 A. I've had conversations with both Dean and Mona.
15 I do not recall specifics, although specific suggestions
16 of what would be used as BMPs, other than what was done
17 was insufficient.

18 Q. I'll take that one back. If I could turn your
19 attention to the October 6th entry, and here we have a
20 quote from a biological monitoring report. I'm sorry;
21 we actually have two quotes, one from a bio monitoring
22 report.

23 A. What date are we talking about?

24 Q. This is October 6th, 2006.

25 A. I don't see a quote from a biological

1 monitoring report.

2 Q. Let's see here.

3 A. Maybe I do. Wait a second.

4 Q. It looks like two quotes were used to support
5 this violation; is that right?

6 A. Well, I see two violations on October 6th.

7 Q. There are two. I'm speaking of the first.

8 A. Okay.

9 Q. It's a quote that begins with -- There's two of
10 them. The first begins with, "Staff observed welding on
11 the temporary testle," and the second quote begins with,
12 "Molten slag was observed dripping."

13 A. Correct.

14 Q. Do you see that?

15 A. Yes.

16 Q. The first quote, do you know the source of that
17 quote?

18 A. I believe that it's from the notice of
19 violation from October 30th, I believe, although the
20 reference, the footnote reference doesn't appear to go
21 to that. It appears to reference a different document,
22 so I'd have to crosscheck for accuracy.

23 Q. Well, let's start just with the NOV. So the
24 first quote is texted out as the October 30th notice of
25 violation, correct?

1 A. I believe so.

2 Q. Are you aware of any logs, reports, recorded
3 observations, or other data in the Regional Board's
4 files making the observations that are in this letter?

5 A. The letter is the only document that I know of.

6 Q. Was this Dean Prat who made these observations?

7 A. Yes.

8 Q. And the second quote, what is that attributed
9 to?

10 A. What do you mean what is it attributed to?

11 Q. What's the source of that quote?

12 A. I believe it's the engineer diaries.

13 Q. Do you have a copy of that? I actually believe
14 that was a biological monitoring report. I have a copy
15 if you don't.

16 A. October 6th, right?

17 Q. Yes.

18 A. No, I have a copy.

19 Q. You do?

20 A. Yes.

21 Q. Just take a moment and read the October 6th
22 entry.

23 A. Okay.

24 Q. Other than the quoted section, is there any
25 other information in that report that you believe

1 supports this violation?

2 A. No.

3 Q. Do you have any sense from both of these
4 references, the notice of violation and the bio
5 monitoring report, whether they're referring to the same
6 event?

7 A. I do not.

8 Q. Do you have any sense from either of those
9 reports as to how much welding slag was discharged?

10 A. No.

11 Q. If you turn to the October 6th entry --

12 A. You mean the second?

13 Q. Yes, the second October 6th entry. We have a
14 quote and a photograph; correct?

15 A. Uh-huh.

16 Q. And the quote is again from the same notice of
17 violation on October 30th, correct?

18 A. Correct.

19 Q. And again the same question, do we have any, in
20 the Regional Board's files, any logs, reports, field
21 notes of that particular visit?

22 A. No, not that I'm aware of.

23 Q. Not that you're aware of?

24 A. Correct.

25 Q. But if they did exist, they would have been

1 produced in this set; correct?

2 A. Yes.

3 Q. In this set of documents here, I'm going to
4 make an assumption that e-mails occurred between staff
5 members relating to the Confusion Hill Project. If
6 those e-mails existed, would they have been printed and
7 included in that set of documents?

8 A. Between staff members, I don't believe so
9 because we included our attorneys on those e-mails.

10 Q. So they would have been withheld from
11 production?

12 A. Yes.

13 Q. Are you just saying that in a general sense, or
14 are you aware specifically that --

15 A. General sense.

16 Q. Are you aware of any e-mails or other documents
17 that were withheld from production based on privilege or
18 other reasons?

19 A. I'm sure there are some e-mails that are not in
20 there, so I guess my answer is yes.

21 Q. So you believe there were some materials
22 withheld?

23 A. Yes.

24 Q. If you would turn to the photograph.

25 A. Okay.

1 Q. And this is number 061006-05, correct?

2 A. Yep.

3 Q. And that shows a picture of a number of -- It
4 looks like a picture of rebar on the gravel bar;
5 correct?

6 A. Yes.

7 Q. And why was this photograph included as an
8 exhibit?

9 A. Because it was a photo taken from a Regional
10 Board Water Board inspection that shows a picture of the
11 very thing that he's talking about in his quote.

12 Q. Do you have an understanding as to whether or
13 not -- Let me back up. The photograph indicates that
14 there are certain areas where there's -- It looks like
15 it's been heated, and there's residue from cutting;
16 correct?

17 A. Correct.

18 Q. Do you have any understanding as to whether or
19 not those areas were clean?

20 A. I do not.

21 Q. If they were clean, would it make a difference
22 to you as far as whether a violation had occurred?

23 A. No.

24 Q. If they were clean, would it make a difference
25 to you as to the amount of liability --

1 A. Yes.

2 Q. -- when applying the ACL adjustment factors?

3 A. Yes.

4 Q. And that's something we'll get into on another
5 day it looks like.

6 Turn to October 17th, and here we have a quote
7 or possibly two quotes and a number of photographs.
8 Let's begin with the quotes. It looks like two quotes.
9 One says, "Welding slag was discharged to the river and
10 cleaned up immediately." Do you see that?

11 A. Yes.

12 Q. What is that from?

13 A. I believe a biological monitoring report.

14 Q. Do you have a copy of that report anywhere
15 handy?

16 A. Let me check. Not that I can find offhand.

17 Q. I'll represent that I've not been able to find
18 any support for that either.

19 Let's turn to the second quote. It says,
20 "Found a welder attaching angles," and so on.

21 A. Okay.

22 Q. Do you have the source document for that quote?

23 A. Let's see.

24 Q. I'll tell you I have a copy of it. It's an
25 assistant structure representative's daily report by

1 Rich Thompson.

2 A. Okay. Yeah, I don't have it here in this
3 stack, although it would be in there.

4 Q. Why don't you take a look at my copy? Just
5 take a quick moment to review it.

6 A. Okay.

7 Q. Other than the quoted section, is there
8 anything else in that document that supports the
9 violation on this day?

10 A. Not that I can tell.

11 Q. And we have a number of photographs. If you
12 would turn to the second of those, 061017-02, do you see
13 that?

14 A. Let me confirm that your picture's the same as
15 mine. It looks like the number got cut off.

16 Q. Yes, it's the same.

17 A. Okay.

18 Q. And so what does that appear to be to you a
19 picture of?

20 A. Metal debris from steel cutting and/or welding
21 that occurred on the gravel bar without sufficient
22 containment.

23 Q. What is it, what material is being deposited
24 here that establishes a violation in your view?

25 A. Welding and/or steel cutting debris.

1 Q. Is it the actual pieces of metal, the large
2 pieces of metal that are there on the gravel bar, that
3 establishes the violation, or is it the kind of grayish
4 dust or residue that's in the center of the photo?

5 A. The grayish dust, residue.

6 Q. Why wouldn't the pieces of metal establish a
7 violation?

8 A. It could, although on its own, you know, I
9 personally would interpret that as part of the work
10 process and that there was no particular need to contain
11 those at that time.

12 However, it could also be interpreted as a
13 discharge. It's just that in light of the other debris,
14 that demonstrates that sufficient containment was not in
15 place when doing the activity to prevent the more finer
16 material from reaching the gravel bar. It is much less
17 susceptible to clean-up. You could consider that a
18 discharge, an uncontained discharge, but that's not what
19 I used to support the violation.

20 Q. Correct me if I'm wrong, but you might consider
21 that an uncontained discharge because it's some foreign
22 material that's been placed in or near waters of the
23 State; correct?

24 A. Correct.

25 Q. Now, you're aware that generally there was a

1 lot of construction activity on the riverbank on the
2 gravel bar; correct?

3 A. Correct.

4 Q. And we've seen numerous photos that have all
5 sorts of types of materials on the gravel bar that were
6 integral to the construction process; correct?

7 A. Correct.

8 Q. What is it that distinguishes those things as
9 not being actionable as a violation as compared to other
10 things that are actionable because -- Well, go ahead and
11 answer the question.

12 A. Well, I would argue that, that the function of
13 the best management practice in this case would be to
14 prevent these pollutants from reaching waters of the
15 U.S. The evidence shown there that there is finer
16 material on the rocks in the bed shows that there was
17 not sufficient containment while the activity was going
18 on.

19 The placement of the larger material could have
20 been placed physically into that location as part of the
21 work process that would have been irrespective of the
22 BMPs being in place. This is the way I would look at
23 it.

24 Q. So if it's integral to the work process, then
25 it might not be a violation?

1 A. So there's the letter of the 401 certification,
2 and then there is how we interpret and apply it, and I'm
3 not going to say that just if it was integral to the
4 work process because that over-simplifies whether or not
5 it has a high potential of getting to surface waters,
6 whether it has a high toxicity, whether or not it is
7 susceptible to clean-up and all the other various
8 factors, whether or not BMPs should have been in place
9 for that process or not.

10 Q. Well, unquestionably, this is a significant
11 construction project; right?

12 A. Yes.

13 Q. And as part of that project, all manner of
14 materials were placed on or around the river and on the
15 gravel bar; right?

16 A. Yes.

17 Q. Including tools, pieces of metal, hoses, rope,
18 and all of those things; right?

19 A. Correct.

20 Q. Is it fair to say that what distinguishes those
21 things from being -- Well, first of all, backing up, is
22 it fair to say that at the time that they're placed on
23 the gravel bar, technically any of that could be
24 considered a discharge that violates the terms of the
25 certification?

1 A. Depending on the substance, where it's placed,
2 it could be. It depends on what we're talking about.

3 Q. So is at least one factor that might guide
4 whether a particular item placed on the gravel bar in
5 waters of the State is a violation or not is whether or
6 not it's susceptible to clean-up?

7 A. Susceptibility to clean-up is a factor we use
8 in determining the degree of the penalty.

9 Q. Well, for example, if you place like a hammer
10 or a piece of rope on the gravel bar or if it falls
11 there while you're in the process of working, that's
12 something that's going to be cleaned, but it's part of
13 the project; right?

14 A. It's part of the project, and there's a fine
15 line. So you're eating lunch down there at the gravel
16 bar, and your lunch trash falls into the river. Is that
17 a discharge? Officially, yes, that is a violation. Is
18 it susceptible to clean-up? Yes, you can go pick it up.
19 You pick it up, and you put it in the trash.

20 The same thing with a hammer: A hammer falls
21 into the river. Is that a discharge? Well, it could
22 be. Is it susceptible to clean-up? Yes, you pick it
23 up, and you deal with it.

24 If a construction project never adheres to any
25 BMPs and fails to ever contain any of its process

1 equipment and the process equipment falls into the
2 river, that's a violation. A much larger piece of
3 process equipment is a tractor, and if that gets into
4 the river, you know -- See, we're talking about scales
5 here. You know, it could be a piece of trash. It could
6 be a hammer, a piece of work equipment. It would all be
7 a violation, but the susceptibility to clean-up is a
8 factor we take into consideration when assessing a
9 penalty.

10 Q. And imposing a penalty?

11 A. Correct. Well, I guess I don't understand your
12 distinction there.

13 Q. Well, because you haven't imposed any for
14 hammers on the riverbank.

15 A. Correct.

16 Q. And there's certainly plenty of evidence here
17 that we had all sorts of materials placed on the gravel
18 bar; right?

19 A. Correct.

20 Q. And so my question to you, and this is really
21 an important question, is: From the standpoint of
22 Caltrans and the contractors working on the project, how
23 are they to determine when a piece of
24 construction-related equipment or debris that's placed
25 in waters of the United States is a discharge that

1 violates the certification or just something that's not
2 going to be actionable because it's part of the
3 construction process?

4 A. For me I've never had to address that
5 situation, and maybe you would argue that I have
6 addressed it by the way I've developed my document here,
7 but the way I feel I developed the document is I have
8 addressed more severe cases, whereas I've never gone
9 after a hammer or such because it was unnecessary. I
10 had, in terms of staff priorities, et cetera, I never
11 got there, and to be honest, probably never would have
12 because of, you know, how many cases we have here at the
13 Water Board and how many projects we work on, but site
14 cleanliness and upkeep is a very important thing, and
15 keeping your hammers out of the river is also very
16 important.

17 Q. That's fair to say. So is it more or less
18 accurate to say that you made a judgment call in
19 drafting the complaint as to what items when placed in
20 the waters of the State or U.S. constituted discharges
21 and what didn't?

22 A. What constituted priority discharges.

23 Q. Priority discharges, how do you define that?

24 A. By what was in here, that we felt we had
25 sufficient evidence to put into the complaint.

1 Q. Based on your judgment?

2 A. Correct.

3 Q. And the judgment of others and the staff

4 members?

5 A. Correct.

6 Q. Does it play a role with you to know that --

7 Let me rephrase that. Does it matter that the project

8 had a clean-up program where there was a person onsite

9 in charge of picking up loose materials and debris?

10 A. Does that matter? Sure, I believe that's an

11 important part of any large construction project.

12 Q. Does the existence of a clean-up program --

13 Well, I'll leave it at that.

14 MS. MACEDO: Try to get to a good stopping

15 place. It's after three thirty.

16 MR. HUNGERFORD: Three thirty-five. Let's see

17 where we're at in terms of the set. Well, we've got

18 several, another -- We're not going to finish this set

19 by four. I'll go for a couple of others, and then why

20 don't we -- I don't know, Ardine, if you guys want to

21 squeak in a couple of questions, or do you just want to

22 hold off?

23 MS. ZAZZERON: Yes, I don't have any meaningful

24 stream of questions.

25 MR. HUNGERFORD: Then why don't we press on

1 until four, and then we'll stop promptly then. Does
2 that work?

3 MS. ZAZZERON: Sure.

4 BY MR. HUNGERFORD:

5 Q. Let's move to the October 18th discharge, and
6 here we have one photograph and a quote; correct?

7 A. Yes.

8 Q. What's the source of the quote?

9 A. Engineering diaries.

10 Q. Do you have that handy?

11 A. Let me check. No, I have a different document.

12 Q. That's okay. Let me hand you -- I'm handing
13 you an October 18th, 2006 assistant resident engineer's
14 daily report.

15 A. Maybe this is the document, and maybe I just
16 didn't find it. It looks close, but I don't think it's
17 the same.

18 Q. No, that's not the same.

19 A. Yeah. Mine is report number 407.

20 Q. Why don't you look at mine?

21 A. 407, page 2 of 2. Yeah. See, I have one of
22 two, and I think I forgot to copy page two.

23 Q. Sure. Just take a quick moment to review that
24 if you would.

25 A. Sure. Okay.

1 Q. So the quote in the complaint says, "Garry came
2 to jobsite and pointed out that the welding slag
3 remaining on the riverbank needed to be cleaned."

4 A. Correct.

5 Q. Correct?

6 A. Yes.

7 Q. Other than that quote, do see anything else in
8 that document that you believe supports the violation on
9 this date?

10 A. Well, there's just some more language that I
11 think is relevant.

12 Q. Can you point that out to me?

13 A. "When James Ham came later, he promised to
14 arrange labor cleaning tomorrow," and then on page one
15 of two of the same document, there it just states,
16 "There was welding slag issue; need to be addressed
17 during last two days of operation, see page two." So
18 this is the same document. I would say -- Well, I'll
19 let you ask the question.

20 Q. Can you tell from these documents that you just
21 referenced when the welding slag was deposited on the
22 riverbed that was the subject of this quote?

23 A. No.

24 Q. Do you know where the welding slag was that's
25 the subject of that quote?

1 A. No.

2 Q. Is it possible that it's welding slag that had
3 been deposited on a prior day that's covered by a
4 separate violation?

5 A. I don't know.

6 Q. Is it possible?

7 A. Sure.

8 Q. Can you turn to the photograph please,
9 061018-01?

10 A. Okay.

11 Q. This photograph shows a picture of the jobsite
12 from above, correct?

13 A. Correct.

14 Q. And it shows one person welding sort of in the
15 center of the photograph, correct?

16 A. Correct.

17 Q. I'm sorry; he's cutting rather than welding,
18 correct?

19 A. Okay.

20 Q. The sparks from the welding are going generally
21 to the inside of the tubular structure that's being cut.
22 Do you see that?

23 A. I could not say that there's any adequate
24 containment to prevent them from going outside.

25 Q. Do you see any active deposition or discharge

1 of the sparks on the riverbank itself?

2 A. I'd have to zoom in to see.

3 Q. Based on what you can see from the photograph
4 which you used to support the complaint, is there any
5 evidence of active deposition of sparks in the
6 riverbank?

7 A. I would argue that without adequate
8 containment, yes, that there's evidence that some sparks
9 made it to the riverbed without -- There's no
10 containment, and they go off in various directions.

11 Q. Well, the containment could have been within
12 the tubular structure itself?

13 A. I would argue that that's insufficient
14 containment.

15 Q. We're talking about two different things. I
16 think that you're saying that there's a possibility of
17 discharge onto the riverbed because of what you believe
18 is inadequate containment; correct?

19 A. Yes.

20 Q. Are you saying also that there is actual
21 deposition on the riverbank based on this photograph?

22 A. I'd have to look at the photograph more
23 thoroughly to see if there's any -- With an electronic
24 copy, you can zoom in a lot better and see if there's
25 any evidence of that. I don't know. I mean my photos

1 are really small.

2 Q. Referring back to the quote that Jerry came to
3 the jobsite and pointed out welding slag on the
4 riverbed, did you see that?

5 A. Was it Jerry?

6 Q. Garry, I'm sorry, Garry.

7 A. Okay.

8 Q. Is it fair to say that this photograph doesn't
9 appear to relate specifically to the quote in the
10 complaint for this day?

11 A. Is it safe to say what?

12 Q. Is it fair to say that the photograph does not
13 appear to correlate specifically with the quoted
14 statements in the complaint?

15 A. Well, I wouldn't say that it doesn't correlate,
16 although it could be said that it might not correlate.

17 Q. Well, the quote describes welding slag on the
18 riverbed.

19 A. Okay. Oh, you're pointing out that this is
20 still cutting, so they're distinct, then.

21 Q. Do you see any evidence of welding slag on the
22 riverbed from this photograph?

23 A. Let me see. No.

24 Q. Other than this photograph and the quote in the
25 complaint, are you aware of any other specific

1 photographs or documents that support the violation on
2 this date?

3 A. No.

4 Q. Do you know who Garry is?

5 A. No, not exactly.

6 Q. If you could turn to the October 20th date,
7 this violation is based on the photograph 061020-01;
8 correct?

9 A. Correct.

10 Q. Are there any other documents or photographs,
11 reports that you're aware of supporting this violation
12 on this day?

13 A. No.

14 Q. The photograph shows what appears to be welding
15 slag on gravel, correct?

16 A. Yes.

17 Q. Do you know where this photograph was taken?

18 A. No.

19 Q. Do you know when the material was deposited on
20 the gravel that you see?

21 A. No.

22 Q. Is it possible that this is welding slag that
23 was referenced in a prior violation?

24 A. It's possible, although I would argue that if
25 it indeed discharged to waters of the State from a

1 previous date and remained there until this date, the
2 potential liability could be charged on a per-day basis
3 of discharge, and we did not assess that, although it
4 could be done.

5 Q. Okay. Do you have any information as to
6 whether this material was cleaned up?

7 A. No.

8 Q. Give me just a quick moment here. Do your
9 records have the biological monitor's report for this
10 day handy?

11 A. October 18th?

12 Q. No, October 20th.

13 A. October 20th, yes, I believe so.

14 Q. Can I take a look at those if you don't mind?

15 A. Yes. Do you want just this specific date?

16 Q. Yes.

17 A. It begins right here with the 15th through the
18 21st.

19 Q. Okay. Thank you. That was much ado about
20 nothing. I was just making sure that my notes are
21 accurate.

22 If you would turn, then, to the October 24th
23 entry.

24 A. Okay.

25 Q. So we have a quote and a number of photographs.

1 The quote is, "I observed a worker cutting plate steel
2 with a cutting torch on the riverbed," correct?

3 A. Correct.

4 Q. Do you know what the source of that quote is?

5 A. I believe it's the response to the notice of
6 violation.

7 Q. Do you have the specific source document handy?

8 A. Not that handy.

9 Q. Here, I'll hand it to you.

10 A. Do you have it more handy?

11 Q. I have it more handy.

12 A. So it appears to be --

13 Q. Why don't you describe it for us?

14 A. It appears to be an engineering diary.

15 Q. What is that document briefly?

16 A. It is an assistant resident engineer's daily
17 structures instruction report.

18 Q. Dated October 24th?

19 A. Correct.

20 Q. Correct?

21 A. Yes.

22 Q. And you see the quote that you've highlighted
23 in the complaint?

24 A. Oh, in my complaint, yes.

25 Q. I want to ask you a question: The quote

1 indicates there is some concern at least about
2 protecting the riverbed from cuttings; correct?

3 A. Correct.

4 Q. Are you aware of any instance in the documents
5 that you have reviewed where Caltrans or any of the
6 contractors thought that discharges of cuttings on the
7 riverbed might be a discharge as defined by the
8 certification?

9 A. Am I aware of -- Could you repeat it again,
10 please?

11 Q. Yes. Are you aware of any facts suggesting
12 that Caltrans or any of the contractors believed that
13 cuttings on the riverbank was a discharge as defined by
14 the certification?

15 A. Well, this right here --

16 MS. MACEDO: I'm going to object based on
17 relevance, but you can answer.

18 THE WITNESS: This I believe implies that.

19 BY MR. HUNGERFORD:

20 Q. Implies because there was a concern raised?

21 A. Well, because it states he is aware the
22 riverbed should be protected; example given with a
23 plywood sheet, and said he would tell the worker to keep
24 slag off the riverbed, and there may be other documents.
25 There are quite a few I didn't collect. There's a whole

1 group of documents that indicated to me what Cantrans or
2 its contractors thought about such things.

3 Q. Sure. Let me turn to the October 25th date,
4 and this violation is premised on a quote and does not
5 include any photographs; correct?

6 A. Correct.

7 Q. Do you have the source of that quote handy?
8 It's an assistant structures representative's daily
9 report.

10 A. I believe so. Let me check. Yes.

11 Q. Just take a quick review of that.

12 A. Okay.

13 Q. The quote indicates that there was -- Let me
14 back up. Is there anything else in that document that
15 you believe supports your violation on this date?

16 A. Beyond the quote, yes, there are other quotes.

17 Q. Reference them, please.

18 A. Well, oh nine hundred and thirty-five hours,
19 encountered superintendent James Ham, dot, dot, dot. I
20 told him they were preparing to splice three-by-three
21 angles, dot, dot, dot, on the river bar, and they needed
22 to put down something to catch the weld splatter, then
23 vacuum it up before it goes onto the gravel bar. He
24 said he told his crews to do that even yesterday and
25 will tell them again and then left, headed toward his

1 office.

2 Q. Okay.

3 A. I believe there's more, that at oh nine hundred
4 and fifty-five hours, I had returned to the gravel bar
5 and found Albert, dot, dot, dot. I reminded Albert to
6 have his welders and those cutting steel to put
7 something under their work and vacuum or deposit their
8 debris in a container. He said they all know, but he
9 can't watch them all the time. He talked to both those
10 welding and cutting to have them put something under
11 their work and have a laborer pick up slag that was on
12 the gravel bar. There could be more in this.

13 Q. Okay.

14 A. But I don't know.

15 Q. Okay. Let's see. There's a couple more.
16 10/26, if you could turn to that date, October 26th.

17 A. Yes.

18 Q. And in this one, it indicates a quote and a
19 photograph?

20 A. Yes.

21 Q. And what is the source of the quote?

22 A. It appears to be engineering diaries.

23 Q. Do you have a copy of that diary in front of
24 you?

25 A. Yes.

1 Q. It says, "Observed welder in the manlift
2 welding longitudinal force transfer clips onto the
3 trestle beams," correct?

4 A. Oh, okay. Once again, there are two violations
5 on October 26th.

6 Q. I'm looking at the first one.

7 A. Initially my eyes jumped to the second, but
8 yes, I do have that same document.

9 Q. Do you have that photograph, 061026-01?

10 A. Yes, I have that photograph.

11 Q. Do you have any understanding as to whether the
12 debris falling to the gravel bar in the quote is slag or
13 sparks that are indicated in the photograph?

14 A. I do not other than the observation in the
15 quote describes a welder in a manlift which appears to
16 be the case in the photograph. So in general, it
17 appears to be similar.

18 MR. HUNGERFORD: I think we're going to just
19 stop here.

20 THE WITNESS: Okay.

21 MR. HUNGERFORD: I was going to see if we could
22 get to the end of this section, but we're not going to
23 be able to. We're going to end it right there, then.

24 MS. MACEDO: Let's go off the record.

25 MR. HUNGERFORD: Yes.

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(Whereupon, today's proceedings concluded at
4:00 p.m.)

- - -

CERTIFICATE OF WITNESS

I, KASON VERNE GRADY, hereby declare that I have read the foregoing testimony recorded on pages 1 through 177, inclusive, and that the same is a true and correct transcript of my testimony, except as I have corrected any answer in ink, initialed such correction, and stated on the margin my reason for making same.

KASON VERNE GRADY

Date: _____

CORRECTIONS TO THE DEPOSITION OF _____
TAKEN / /

PAGE #	LINE #	CORRECTION
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Stephanie Anne Fox, CSR #4640

CALIFORNIA REGIONAL WATER CONTROL BOARD

NORTH COAST REGION

---oOo---

In the Matter of:

ADMINISTRATIVE CIVIL LIABILITY
Complaint No. R1-2009-0095.

COPY

_____/

Deposition of:

KASON VERNE GRADY

Volume II, Pages 180-335

Wednesday, November 10, 2010

Reported by:
MAREE N. ARMSTRONG
CSR #11284

COASTAL REPORTING SERVICES
Certified Shorthand Reporters
131-A Stony Circle, Suite 500
Santa Rosa, CA 95401
(707) 573-9766

1 Deposition of KASON VERNE GRADY, taken
2 pursuant to agreement at the North Coast Regional Water
3 Quality Control Board, 5550 Skylane Boulevard, Suite A,
4 in the City of Santa Rosa, County of Sonoma, State of
5 California, on Wednesday, the 10th day of November,
6 2010, commencing at the hour of 9:24 a.m., thereof,
7 before MAREE N. ARMSTRONG, CSR No. 11284, a California
8 Certified Shorthand Reporter.

9
10 A P P E A R A N C E S

11
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11 TRANSPORTATION:

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 By: Ardine Zazzeron
 Deputy Attorney

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I N D E X

<u>WITNESS:</u>	<u>KASON VERNE GRADY</u>	<u>Page No.</u>
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1	Article beginning "The Second Stream Crossing by Heavy Equipment...", pages 13 through 18.	333
2	Letter to Mr. David Leland from Donna M. Clark, Caltrans, dated March 5, 2007.	333

1 KASON VERNE GRADY,
2 having been previously duly sworn or affirmed by the
3 certified shorthand reporter in all respects as
4 required by law, proceedings were had as hereinafter
5 set forth:

6 EXAMINATION

7 BY MR. HUNGERFORD:

8 Q. You have already been sworn in, but please
9 state your name again for the record.

10 A. Kason Grady.

11 Q. Mr. Grady, we were here back on October 21st,
12 I believe, and this is the continuation of your
13 deposition from that day.

14 I believe where we left off was, we had just
15 finished with the October 26th, 2008 date in
16 Appendix A-C.

17 A. You mean 2006 date?

18 Q. I'm sorry, 2006. So we will continue on with
19 the October -- I'm sorry, October 28th, 2006.

20 Do you have a copy of the appendices to the
21 Complaint in front of you?

22 A. Yes.

23 Q. And I see the October 28th violation says:

24 "Welding slag continued to fall into
25 the river without adequate mitigation."

1 Do you see that?

2 A. Yes.

3 Q. Do you have any documents that you relied on
4 for this violation?

5 A. Yes.

6 Q. Can you identify them?

7 A. The CD of biology monitoring reports, which
8 was received in our office on November 20th, 2006.

9 Q. Are there any particular passages or
10 documents within that CD that you believe are relevant
11 to this violation?

12 A. Just the referenced quote:

13 "Welding slag continued to fall into
14 the river without adequate mitigation."

15 Q. Do you have the document in front of you?

16 A. No.

17 Q. Okay. I will give you a copy of my version,
18 which appears to be a partial version of that
19 biological report. If you would review it for a
20 moment.

21 (Witness examines document.)

22 THE WITNESS: Okay.

23 BY MR. HUNGERFORD:

24 Q. Okay. Does that appear to you to be an
25 excerpt from a document prepared by Carl Page, the

1 biological monitor?

2 A. Yes.

3 Q. Do you see the passage on the second page
4 that you quoted in the Complaint?

5 A. Yes.

6 Q. Is there anything in that document that ties
7 that statement to this particular date?

8 A. Just the date under which -- the heading date
9 under which the narrative resides.

10 Q. Is there any other information that you're
11 aware of that ties that particular statement to this
12 October 28th date?

13 A. No.

14 Q. Does it appear to you that that passage could
15 be a general statement applying to other dates, you
16 know, within that general time frame?

17 MS. MACEDO: Objection. Calls for
18 speculation.

19 THE WITNESS: No.

20 BY MR. HUNGERFORD:

21 Q. Why not?

22 A. Because it is my impression that, due to the
23 location of that phrase underneath that heading, that
24 it was intended to describe that day.

25 Q. Okay. Thank you. Are there any other

1 documents or photographs, specifically, that you're
2 aware of that support this particular violation?

3 A. No.

4 Q. The next violation is the October 30th, 2006
5 violation, correct?

6 A. Correct.

7 Q. And you have identified a number of
8 photographs in support of this violation; is that
9 right?

10 A. Yes.

11 Q. Do you have those handy?

12 A. I believe so. Yes, I have them.

13 Q. Let me take a look just to make sure your
14 photographs and mine match.

15 A. Yes.

16 Q. Do you know who took these photographs?

17 A. I believe they were taken by Carl Page or his
18 colleague, Bradford Norman.

19 Q. What do they show to you?

20 A. Steel debris in the river.

21 Q. Do you have any reason to believe that this
22 debris was not cleaned up as part of the Caltrans or
23 the contractor's practice?

24 A. No, I do not.

25 Q. Do you know how long the debris had been in

1 the river at the time this photograph was taken?

2 A. Offhand, I do not know. Although, I'm sure I
3 could find some sort of indication of that, at least
4 for the larger piece in Photo 061030-06.

5 It is a larger piece that there may be an
6 indication of how long that was in the river in the
7 photographic record.

8 Q. So what would you look for to try to answer
9 that question?

10 A. Other photos of the same thing.
11 Cross-reference that with Biological Monitoring
12 Reports.

13 Q. But as you sit here, you're not aware of any
14 information, specifically?

15 A. Not specifically other than other photos and
16 what I just mentioned.

17 Q. Are there any other documents or evidence
18 that you're relying on to support this particular
19 violation?

20 A. No.

21 Q. Are you aware of any reports, including
22 Biological Monitoring Reports, that describe this
23 condition other than in the photographs that you
24 provided?

25 A. There could be. I just don't recall at this

1 time.

2 Q. Okay. If you would turn to the next
3 violation dated October 31st, 2006. And there are two
4 photographs that you have identified in support of this
5 violation; is that correct?

6 A. Yes.

7 Q. Are there any other documents other than the
8 photographs that you're aware of that support this
9 violation specifically?

10 A. No.

11 Q. Would you, please, turn to those photographs.

12 A. Okay.

13 Q. Would you show them to me just so --

14 A. It could be this one, too.

15 Q. Let's see. They are 061031-01 and -02; is
16 that right?

17 Okay, those are the ones. And what do these
18 photographs show?

19 A. Metal debris in the river.

20 Q. And that would be the -02 photograph shows
21 what appears to be a metal plate, correct?

22 A. Yes.

23 Q. And the -01 photograph, what does that appear
24 to be to you?

25 A. Flaky rust. It looks like flakes of rust --

1 it appears to be.

2 Q. Do you know what the source of this
3 particular material would have been?

4 A. No.

5 Q. Do you have any information to tell you how
6 long these flakes or the piece of metal had been there
7 at the time the picture was taken?

8 A. The flakes of rust, no. The piece of metal,
9 my answer would be the same as the -- just the
10 violation on October 30th, which is there may be some
11 more information in the photographic record and
12 Biological Monitoring Reports, but none that I'm
13 specifically aware of other than this photo.

14 Q. If you look back at the previous day's
15 violation, you identified three photographs, correct?

16 A. Correct.

17 Q. And it appears to me that one of the
18 photographs identified for October 30th, specifically,
19 061030-06, is the picture of the same metal plate that
20 is shown in the October 31st photograph of 061031-2;
21 would you agree with that?

22 A. Yes.

23 Q. If you turn to the next entry, it is November
24 1st, 2006. And you have a number of photographs for
25 this violation; is that right?

1 A. Yes.

2 Q. Other than the photographs, are there any
3 other documents, reports or written materials that
4 you're aware of that specifically support this
5 violation on this day?

6 A. No.

7 Q. The first photograph is 061101-01; is that
8 right?

9 A. Yes.

10 Q. What does that show?

11 A. It shows sparks from welding or steel cutting
12 falling onto the river bank.

13 Q. Do you have any idea how much -- first of
14 all, what is your understanding of what the sparks are
15 composed of?

16 A. Metal.

17 Q. Okay. Do you have an understanding of how
18 many sparks on this event would have reached the
19 riverbed, or what volume of material would have reached
20 the riverbed?

21 A. No.

22 Q. If you turn to the -02 photograph, that
23 appears to be just a zoomed-in version of the prior
24 photograph; is that right?

25 A. I don't believe it is the same photograph

1 zoomed in, although, it appears to be the same angle
2 and another set of sparks.

3 Q. Okay. And if you look at the -03 photograph,
4 what does that show?

5 A. It shows a worker welding on the trestle
6 deck.

7 Q. How does this photograph support your claim
8 of a violation?

9 A. It is helping to paint the picture of what is
10 happening and causing the sparks to fall onto the
11 riverbed and into the river, and it shows an apparent
12 lack of containment.

13 Q. As we have discussed in your first day of
14 deposition, we talked about your statements as far as
15 why these were violations of Condition 9 of the
16 Certification, correct?

17 A. Yes.

18 Q. Is there anything here that you're aware of
19 within the Certification or the application materials
20 that specifies precisely how sparks or welding slag
21 need to be contained?

22 A. There is no explicit description of how it is
23 to be contained because that is not our approach to
24 permitting. We do not describe the method and manner
25 of how something is to be done. We leave that to the

1 permittee to propose best management practices of how
2 to contain wastes sufficiently to meet the requirements
3 of the permit.

4 Q. So if I may paraphrase, you leave it to the
5 discretion of Caltrans and the directors how they will
6 comply with the permit?

7 MS. MACEDO: Objection. Misstates his
8 testimony.

9 THE WITNESS: There's a process that needs to
10 be followed. If there's ever a question on the part of
11 Caltrans about how to comply with the permit, then
12 there is a process requirement for them to come back to
13 the Water Board and ask for a modifications of a best
14 management practice, or to begin a discussion on what
15 the best management practice needs to be and what the
16 level of expectation is to satisfy those requirements.

17 BY MR. HUNGERFORD:

18 Q. As you just stated, the Water Board and the
19 Certification don't provide a specific direction as to,
20 exactly, what BMPs or how BMPs should be implemented
21 throughout the project, correct?

22 A. Correct.

23 Q. So is it true that Caltrans, as the
24 permittee, you know, is responsible for determining,
25 you know, what BMPs are appropriate and how they should

1 be implemented?

2 MS. MACEDO: Objection. Calls for a legal
3 conclusion.

4 MS. ZAZZERON: Objection. Lacks foundation
5 and compound.

6 THE WITNESS: No. I do not believe that they
7 are in a position to make that decision and
8 determination, that if there is any doubt into -- if
9 there is a situation where there's not an agreed upon
10 BMP for such a practice, and there's a discharge, then
11 the process is for the permittee to communicate that
12 with the Water Board to determine a BMP for that
13 activity.

14 BY MR. HUNGERFORD:

15 Q. So are you saying that all BMPs used on the
16 project need to be vetted by the Water Board prior to
17 being implemented?

18 A. If they have a link or a connection to a
19 permit condition in one of our permits.

20 There are BMPs for other practices unrelated
21 to water quality that, perhaps, are required from
22 other -- other agencies, and in those situations it
23 wouldn't have to go through the Water Board, but if
24 there's a practice that could affect one of the permit
25 conditions or requirements in one of our permits, then

1 yes.

2 Q. Tell me what BMPs on this project were
3 developed by Caltrans that they then submitted to the
4 Water Board for review and concurrence?

5 A. I could not answer that.

6 Q. Do you know of any?

7 A. It's not my job to review those and to be
8 part of that process.

9 Q. Do you have a basic understanding as to
10 whether or not that's what occurred on this project?

11 A. I believe that it occurred for -- to some
12 degree a discharge of cementitious wastes through some
13 communication between Caltrans and Dean Prat, of our
14 staff, and some e-mail correspondence and some
15 discussions about what will be authorized. Whether or
16 not that applies to the BMP approval process, I'm not
17 quite sure.

18 Q. I'm certainly aware of those communications.

19 Is it reasonable to assume, based on your
20 knowledge of the project, that there was a wide range
21 of BMPs that were used in this project on a wide range
22 of issues?

23 A. Yes.

24 Q. Are you telling me that it is your
25 expectation or -- strike that.

1 Are you telling me it is the Water Board's
2 expectation under the permit that all of the BMPs that
3 relate to conditions of the Certification would need to
4 be reviewed by the Water Board before being
5 implemented?

6 A. Yes.

7 Q. Where does it say that in the permit or --
8 I'm sorry, in the Certification?

9 A. I'm not aware of anyplace that it states
10 that.

11 Q. What direction then was provided to Caltrans
12 or the contractors that would have advised them that
13 that was necessary?

14 A. I do not know. That is part of the
15 permitting process that I was not involved in.

16 Q. Let me direct your attention to Condition 7
17 of the Certification, just as an example. Are you
18 there with me?

19 A. Yes.

20 Q. And that says:

21 "Adequate BMPs for sediment and
22 turbidity control shall be implemented and
23 in place prior to, during, and after
24 construction."

25 Correct?

1 A. Correct.

2 Q. Now, it doesn't say that those BMPs need to
3 be reviewed by the Water Board prior to being
4 implemented; is that right?

5 A. That is right.

6 Q. And you're not aware, I take it, of any other
7 statements or direction within this Certification that
8 apply that requirement that the Water Board review BMPs
9 prior to implementation, right?

10 A. Right.

11 Q. Is it reasonable to assume that there were
12 any number of BMPs that might have been developed and
13 implemented unilaterally by Caltrans, the contractors,
14 without the Water Board's involvement in this project?

15 A. Not only is it probable, but I believe it to
16 be true.

17 Q. Would that constitute a violation of the
18 Certification?

19 A. I don't know. I don't believe so, looking at
20 the specific additional conditions that I used to
21 review violations, but I don't know.

22 Q. So you're not aware of any condition in the
23 Certification that would have made it a violation of
24 the Certification had Caltrans, the contractors, not
25 submitted proposed BMPs to the Water Board for review,

1 correct?

2 A. Correct.

3 Q. To your knowledge, back to the violations,
4 within this same date on November 1st, 2006, the next
5 photograph that we haven't discussed is 061101-03; do
6 you see that?

7 A. Yes.

8 Q. And what about this photograph?

9 A. Is that 04? That's the way it is numbered in
10 my document.

11 Q. I'll show you what I have for 03 -- oh,
12 sorry, it is 04. Are you with me?

13 A. Yes.

14 Q. What about this photograph supports the
15 violation for this date?

16 A. Again, it is showing what is happening
17 on-site together with other pictures, specifically, the
18 following picture in the sequence, 061101-05, is
19 showing a welder in a -- in a basket, a metal basket,
20 up high on the trestle deck. It is showing the
21 location of the activity that occurred.

22 Q. And looking through the rest of the
23 photographs that you have assigned to this date, they
24 all show more or less the same thing in the sense that
25 they show sparks and possible welding slag; is that

1 right?

2 A. Yes.

3 Q. And, again, you say that you believe this was
4 just metal falling, but you don't have, I take it, any
5 specific knowledge of the composition of this material?

6 A. No.

7 Q. And, again, you don't have any knowledge of
8 what volume of material might actually have reached the
9 riverbed throughout all of these photos?

10 A. Correct.

11 Q. We are moving on to Appendix A-E. This is
12 discharge violations, correct?

13 A. Each of these Appendices state discharge
14 violations.

15 Q. You're right. So A-E would correspond to
16 that portion of the Complaint that deals with
17 insufficient turbidity measurement violations; is that
18 right?

19 A. Correct. So are we on A-E?

20 Q. Yes, we are on A-E.

21 A. Okay.

22 Q. And the first date of violation that is in
23 the Complaint for this table is August 29, 2006; is
24 that correct?

25 A. Yes.

1 Q. What specific documents have you provided in
2 support of this violation?

3 A. There is a quote from the Biological
4 Monitoring Report.

5 Q. Do you have a copy of that document handy?

6 A. No, I do not.

7 Q. I'll provide you with a one-page review.

8 A. (Witness nods head.) Okay.

9 Q. Do you have any photographs or other
10 documents other than the Biological Monitoring Report
11 that you're aware of that supports this violation?

12 A. No.

13 Q. Okay. And you have alleged that this
14 violates Condition 9 of the Certification; is that
15 right -- I'm sorry, 19?

16 A. Nineteen.

17 Q. Explain to me why is it that -- first of all,
18 back up.

19 The information that is in the Biological
20 Monitoring Report, what does it indicate to you?

21 A. That after a long period of dewatering there
22 was a turbidity plume in the river.

23 Q. Do you have any idea how long the plume was?

24 A. No.

25 Q. Do you have any idea for how long a period of

1 time the plume remained?

2 A. No.

3 Q. Do you have any photographs of the plume
4 itself?

5 A. I don't believe so.

6 Q. Now, certainly, from the biological
7 monitoring notes, the plume was observed by at least
8 one person, correct?

9 A. Yes.

10 Q. And you have alleged this is a violation of
11 Condition 19, right?

12 A. Yes.

13 Q. How does it violate Condition 19?

14 A. Assuming the quote to be true that, indeed,
15 there was a substance seeping through the bar that
16 would have increased turbidity in the river, this would
17 be a violation of Condition 19 because there were no
18 field turbidity measurements collected, which are
19 required whenever a project activity causes turbidity
20 in the river to be increased above background.

21 Q. Okay. Please define for me what are field
22 turbidity measurements?

23 A. Standard field turbidity measurements are
24 performed by a turbidity meter measured in
25 nephelometric turbidity units, abbreviated NTU. That

1 is the standard method used for field turbidity
2 measurements.

3 Q. Are there other methods that can be used for
4 measuring field turbidity?

5 A. Not that I'm aware of.

6 Q. Where in the Certification does it state that
7 field turbidity measurements must be taken by an NTU
8 meter?

9 A. To my knowledge, there is no specific
10 location describing that.

11 Q. Your definition that you just provided me for
12 field turbidity measurements, can you cite for me any
13 recognized publication, works, regulations, or other
14 information that have that definition of field
15 turbidity measurements?

16 A. No.

17 Q. So I take it it is just your understanding
18 that it is the practice in the industry that field
19 turbidity measurements use NTU meters?

20 A. Yes.

21 Q. Are you generally familiar with the general
22 permits for construction industrial discharges of
23 stormwater?

24 A. Yes.

25 Q. Are you aware that most of those or all of

1 those permits require some form of turbidity
2 measurements?

3 A. Yes.

4 Q. Do you know whether those permits require NTU
5 meters as the sole method of measuring turbidity?

6 A. I do not know the exact requirements
7 contained in those permits. There is a new general
8 construction permit that may specify that. I believe
9 it does, but I couldn't guarantee it.

10 Q. Other than the lack of an NTU meter, is there
11 anything else about these facts that establishes the
12 violation for this day?

13 A. Yes.

14 Q. What is that?

15 A. The additional Condition 19 further requires
16 that turbidity measurements shall be collected upstream
17 within 50 feet of project activities to determine
18 background and downstream within 100 feet of the source
19 of turbidity. We have no evidence that that occurred.

20 Q. Let's assume that this plume was, you know,
21 10 feet or less, would those measurements still be
22 required?

23 A. Yes.

24 Q. Let's assume that the plume was 5 feet or
25 less, would those measurements still be required?

1 A. Yes.

2 Q. With an NTU meter?

3 A. Yes.

4 Q. Let's assume that visual monitoring was an
5 acceptable method of field turbidity measurements,
6 would there be a violation of this Certification
7 condition?

8 MS. MACEDO: Objection. Incomplete
9 hypothetical.

10 THE WITNESS: First of all, I don't believe
11 that visual monitoring would be adequate for field
12 turbidity measurements, at least on the basis that
13 Condition 19 distinguishes between visual observations
14 and field turbidity measurements.

15 BY MR. HUNGERFORD:

16 Q. Where does it make that distinction?

17 A. Condition 19, the first sentence reads:

18 "Visual observations of the South Fork
19 Eel River shall be conducted whenever a
20 project activity has the potential to
21 mobilize sediment."

22 The second sentence describes field turbidity
23 measurements. That is an apparent distinction between
24 the two types of monitoring.

25 Q. Although, it doesn't say that you need to use

1 an NTU meter, does it?

2 A. No.

3 Q. Would you turn to the next violation,
4 August 30th, 2006.

5 A. Okay.

6 Q. And what information did you rely on for this
7 particular violation?

8 A. A quote from the same Biological Monitoring
9 Report that we just looked at.

10 Q. And it has a very similar description to the
11 prior date, doesn't it?

12 A. Yes.

13 Q. And I take it that -- well, let me ask you.
14 Do you have any other information, photographs,
15 reports, other than this Biological Monitoring Report,
16 to support this violation on this day?

17 A. No.

18 Q. Do you know how long this turbidity event
19 lasted?

20 A. No.

21 Q. Do you know how long any turbidity plume was,
22 or how large it was?

23 A. No.

24 Q. And I take it that your rationale for
25 including this as a violation is virtually identical to

1 what we described for the previous day?

2 A. Yes.

3 Q. Would you turn to the next violation. It is
4 September 1st, 2006.

5 What documents and photographs or other
6 evidence is this violation based on?

7 A. I believe it is based on a report submitted
8 by Caltrans to the Regional Water Board commonly
9 referred to as Attachment K.

10 Q. Do you have a copy of that?

11 A. Back there.

12 Q. Is the Attachment K the source of the quote
13 that you included in the Complaint?

14 A. This is on September 1st?

15 Q. Yes.

16 A. I'm not quite sure that that is a quote.

17 Q. That's not a quote, it is just possibly a
18 description?

19 A. It could be a quote. I don't know.

20 Q. So the Attachment K, I take it, would be the
21 September 16, 2006 Attachment K?

22 A. No. Correct me if I'm wrong, but according
23 to the footnote reference in Appendix E it refers to
24 the October 6th Attachment K, but it could refer to
25 another one.

1 MR. HUNGERFORD: Well, I'll hand you the
2 Attachment K that I had the impression supported this
3 violation. If you would take a moment to review.

4 (Witness examines document.)

5 THE WITNESS: Okay.

6 BY MR. HUNGERFORD:

7 Q. I have handed you a copy of the September
8 16th, 2006 Attachment K form; is that right?

9 A. Yes.

10 Q. After reading this, is it your understanding
11 that that is the Attachment K that you had in mind that
12 supports this violation?

13 A. Yes.

14 Q. Are you aware of any other documents that
15 support this violation?

16 A. The final Biological Monitoring Report might
17 also refer to this to some degree.

18 MR. HUNGERFORD: Well, I'll hand you a copy
19 of a Biological Monitoring Report, and just take a
20 moment.

21 (Witness examines document.)

22 THE WITNESS: Okay.

23 BY MR. HUNGERFORD:

24 Q. And you also have a photograph, correct?

25 A. In the report you just showed me?

1 Q. No. That you have identified in support of
2 this violation?

3 A. Yes.

4 Q. Do you have that handy?

5 A. Yes.

6 Q. What does the photograph show?

7 A. Actually -- so there is a photograph, but I
8 believe that references another violation on this day.
9 It says two on September 1st. Do you want to clarify
10 which one we are talking about?

11 Q. We are talking about the first violation:

12 "Insufficient turbidity measurements,
13 sediment plume that lasted two minutes."

14 Are you aware of any reports that supports
15 this particular violation?

16 A. No.

17 Q. Okay. Now, do you have the Attachment K in
18 front, or do you need to see it again?

19 A. You can show me again.

20 Q. Okay. Towards the bottom of the page, the
21 Attachment K says:

22 "The disturbance caused a plume of
23 sediment about 20 feet in length and
24 lasting approximately two minutes. The
25 discharge was monitored by a biologist who

1 confirmed that background turbidity levels
2 are not increased as measured from a point
3 100 feet downstream."

4 Do you see that?

5 A. Yes.

6 Q. Based on that, it certainly appears that some
7 form of visual turbidity monitoring or measurements
8 took place, correct?

9 A. Correct.

10 Q. And the author of the Attachment K certainly
11 had in mind this condition of the Certification, and
12 the 100 foot turbidity standard in Condition 19,
13 correct?

14 MS. MACEDO: Objection. Calls for
15 speculation.

16 THE WITNESS: What was the question? The
17 author --

18 BY MR. HUNGERFORD:

19 Q. The author certainly appeared to have in mind
20 the 100 foot standard within Condition 19 of the
21 Certification, correct?

22 A. Sure, yes.

23 Q. Other than the fact that there's -- well, it
24 is true that there's no evidence of an NTU meter being
25 involved here, correct?

1 A. There may be in evidence. There is some
2 evidence. The final Biological Monitoring Report has
3 some evidence that there was some use on-site, but --

4 Q. But for this particular violation?

5 A. In the document you're showing me, no.

6 For this violation, there may -- I would have
7 to look at the final Biological Monitoring Report to
8 reference that.

9 Q. I'll ask you this. Is this violation based
10 on the absence of the use of an NTU meter?

11 A. I couldn't say that. It would be based on
12 the absence of quality data required by Condition 19.

13 Q. Okay.

14 A. Which not only requires field turbidity
15 measurements 100 feet downstream but also 50 feet
16 upstream.

17 Q. Just to be clear, why don't you tell me what
18 is the basis for this violation, factually?

19 A. The basis is a lack of sufficient turbidity
20 measurements to comply with the condition.

21 Q. And the lack of measurements is shown by
22 what, exactly?

23 A. By a lack of quantified or -- scratch that.
24 A lack of field turbidity measurements 50 feet upstream
25 and 100 feet downstream from the source of turbidity;

1 and a lack of evidence that the monitoring continued
2 every hour during the period of increased turbidity
3 until the measurements demonstrated compliance with the
4 receiving water limitations and -- well, I was trying
5 to paraphrase from Condition 19, but Condition 19 is
6 very explicit in what it requires, and I have no
7 evidence to demonstrate that sufficient data was
8 collected during this event.

9 MR. HUNGERFORD: Off the record for a minute.

10 (Recess.)

11 MR. HUNGERFORD: Back on the record.

12 We started up on Appendix A-D -- I'm sorry,
13 A-E, and we want to be with A-E. I'm just going to
14 direct your attention to a couple of these. If you go
15 to Appendix A-D, the August 30th, 2006, violation.

16 THE WITNESS: Okay.

17 MR. HUNGERFORD: Now, we have already talked
18 about, you know, the facts supporting this particular
19 violation, but we didn't talk about the certifications
20 and why you feel they were violated.

21 BY MR. HUNGERFORD:

22 Q. You have identified two conditions of the
23 Certification, Nos. 7 and 9, as being violated here; is
24 that right?

25 A. Yes.

1 Q. Why do these facts violate Condition 7 of the
2 Certification?

3 A. Condition 7 requires:

4 "Adequate BMPs for sediment and
5 turbidity control."

6 The facts that this event occurred the day
7 after a similar event occurred is a piece of evidence
8 that -- that the discharger could have done something
9 more to prevent this. It wasn't an unexpected
10 occurrence or event.

11 Furthermore, on August 30th, 2006, there was
12 a discharge of turbidity into the river seeping through
13 the gravel bar. BMPs are required to be in place to
14 prevent discharges of sediment into the river and the
15 BMPs were clearly inadequate to do that.

16 Q. If a BMP exists and is being implemented and
17 there's a discharge nonetheless, is it a violation
18 under this permit?

19 A. Under this condition?

20 Q. Yes.

21 A. Yes.

22 Q. Condition 7 says adequate BMPs shall be in
23 place. So that, to me, appears to be a requirement for
24 adequate BMPs.

25 If a BMP is in place, and it doesn't provide

1 100 percent protection, does that, also, establish a
2 violation of Condition 7?

3 A. Yes. Because it would be an inadequate BMP.

4 Q. Aren't BMPs developed in kind of an iterative
5 process so that if a BMP doesn't prove completely
6 effective you can go back and revise it to improve it?

7 A. Yes.

8 Q. Isn't that kind of the practice that the
9 Regional Board is following?

10 A. As far as I know.

11 Q. Is that practice incorporated into this
12 Certification?

13 A. I don't know if it is explicitly
14 incorporated.

15 Q. Is there an understanding on the part of the
16 Regional Board that if a BMP does not prove to be 100
17 percent effective, then there is an iterative process
18 that would then apply allowing for the improvement of
19 that BMP without there being a violation?

20 A. No.

21 Q. So a violation occurs regardless of whether
22 the BMPs are then improved and revised?

23 A. Yes.

24 Q. And you, also, mention the Condition 9 is
25 violated by these facts. What is the basis for that?

1 A. The mobilization of sediment into the active
2 water source.

3 Q. So it is just the presence of the sediment in
4 the water source establishes the violation, is that
5 what you're saying?

6 A. (Witness nods head.)

7 MS. ZAZZERON: Is that a "yes"?

8 THE WITNESS: I nodded. I meant "yes."

9 BY MR. HUNGERFORD:

10 Q. Okay. You know that Condition 9 says:
11 "That no debris soil, silt, sand" --
12 et cetera, et cetera -- "other than
13 authorized by this permit shall be allowed
14 to enter into waters of the State."
15 Right?

16 A. Right.

17 Q. To your knowledge, are there any discharges
18 that are allowed by this permit?

19 A. Yes.

20 Q. What are those?

21 A. I believe that discharge of cleaning wastes
22 from concrete cleaning tools and equipment discharges
23 to a fully contained area would be permitted.

24 Q. But that wouldn't be waters of the State,
25 right?

1 A. Right. Was your question, specifically, to
2 waters of the State?

3 Q. Exactly. My question is, this Condition 9,
4 it says, essentially:

5 "No material including silt, sediment,
6 rubbish, cement" -- et cetera -- "other
7 than authorized by this permit shall be
8 allowed to be entered into waters of the
9 State."

10 So my question is, what if any materials are
11 allowed into the waters of the State under this
12 permit?

13 A. I believe that the modification of
14 Condition 13 to allow for the operation of vehicles in
15 waters of the State is an effective allowance for that
16 practice. Other than control and limited operation of
17 vehicles in waters of the State, which isn't a
18 discharge but it is an operation of -- other than that,
19 no, I do not know of any.

20 Q. Being generally familiar with this project
21 doesn't that put Caltrans and the contractors in a
22 difficult situation given that we are talking about the
23 construction of a bridge that inevitably is going to
24 involve numerous small discharges given that you're
25 working with an active river?

1 MS. MACEDO: Objection, vague.

2 THE WITNESS: I believe it is in a difficult

3 position to be in, and I would disagree that discharges

4 are necessarily inevitable based on the requirements of

5 this permit. And if they were, then perhaps Caltrans

6 and the contractor should have requested modifications

7 to the permit prior to starting the project.

8 BY MR. HUNGERFORD:

9 Q. If you go to the September 7th, 2006

10 violation under Appendix A-D, what is this violation

11 based on in terms of records, documents, and

12 photographs?

13 A. The only source of evidence that I'm aware is

14 an Engineering Diary.

15 Q. And do you have that handy?

16 MS. ZAZZERON: Which one are we on?

17 THE WITNESS: September 7th.

18 MR. HUNGERFORD: September 7th. We might

19 need to go back to September 1st, but we will do this

20 first.

21 MS. ZAZZERON: A-D?

22 MR. HUNGERFORD: Yes.

23 THE WITNESS: Yes, I believe I have the

24 correct Engineering Diary.

25 /////

1 BY MR. HUNGERFORD:

2 Q. All right. Would you just take a moment to
3 read that. And I take it this is a quoted passage that
4 is in the violation?

5 A. I believe so, yes.

6 (Witness examines document.)

7 THE WITNESS: Okay.

8 BY MR. HUNGERFORD:

9 Q. The quoted section refers to a quoted
10 conversation between Gene Leo and Walt Dragaloski,
11 correct?

12 A. Yes.

13 Q. And that seems to be recorded by Rich
14 Thompson in his daily report, right?

15 A. Yes.

16 Q. And the date of the report is September --
17 I'm sorry, the date of the report is -- what is the
18 date of this report?

19 A. September 7th, 2006.

20 Q. September 7th, 2006, yes, you're right.

21 Is there anything in this quoted section that
22 indicates that the conditions being discussed in this
23 conversation, actually, took place on September 7,
24 2006?

25 A. Other than it is all contained on the daily

1 report under the heading "September 7th, 2006."

2 Q. Is it possible that this conversation that is
3 recorded in this report could have referred to events
4 on a different date?

5 A. It could have.

6 Q. Let me go back to -- I did skip one -- the
7 prior violation for September 1st, 2006. Are you with
8 me?

9 A. Yes.

10 Q. And this is:

11 "Temporary plume of fine sediments
12 from cement seeping out bottom when seal
13 cement poured."

14 Correct?

15 A. This is September 1st?

16 Q. Yes, September 1st, 2006.

17 A. Yes.

18 Q. What is this violation based on in terms of
19 facts, photographs and evidence?

20 A. It is based on Biological Monitoring Report
21 and a photo.

22 Q. Okay. And what does the photograph show?

23 A. The photo shows turbidity in the river
24 surrounding cofferdam.

25 Q. Do you have any sense for what that material

1 might be that is forming turbidity?

2 A. The quote to some degree implies that it
3 would be cementitious, that it occurred when the seal
4 cement was poured.

5 Q. Is there anything about the photograph that,
6 to you, provides evidence that this, in fact, was
7 cementitious?

8 A. Not specifically.

9 Q. Does it appear from the photograph that this
10 could have simply been turbidity in the form of silt or
11 natural sediments displaced as part of the construction
12 process?

13 A. It could be.

14 Q. Just to be clear, is this the quote that has
15 been included in the September 1st violation, and what
16 is its source?

17 A. The Biological Monitoring Report.

18 Q. Do you have a copy of that report, and can
19 you point me to that passage?

20 A. I would have to look in my documents behind
21 me.

22 Q. I'll just show it.

23 I have a copy of the Biological Monitoring
24 Report, I believe, that you're referring to, but the
25 wording is a little different than your quote, which is

1 why I ask the question. So if you could just tell me
2 that that is the Biological Monitoring Report that
3 you're referring to, then I'm content.

4 A. I don't believe that it is, necessarily,
5 referring to that specific report, although, that
6 report might also be referring to the same event.
7 There are multiple reports.

8 Q. Okay. Well, I just want to ask this
9 question. Your Complaint has a quote. The quote says:

10 "Temporary plume of fine sediments
11 from cement seeping out bottom when seal
12 cement poured."

13 I want to know, what is the source of that
14 quote? And if it is this document, then can you
15 confirm for me that the quote is a little bit different
16 than what the document says?

17 A. In order to determine that I would have to
18 take the CD of Biological Monitoring Reports received
19 on November 20, 2006, open it up on my computer and
20 check the document.

21 Q. Okay. If you would turn to, next, the second
22 September 2006 violation, please -- I'm sorry,
23 September 7th.

24 A. Did we ever go over the first September 7th?

25 Q. Yes, we did. And we are going to go in order

1 now, I promise.

2 A. So we are on the second one?

3 Q. We are on the second one, September 7th,
4 2006. It begins with the quote, it says: "Late this
5 afternoon." Do you see that?

6 A. Yes.

7 Q. This is the same quote that was referred to
8 for the first September 7th violation in this
9 appendices, right?

10 A. It is partly the same quote.

11 Q. What is different from this first September
12 7th violation to the second September 7th violation?

13 A. The first one refers to dewatering into a
14 settlement basin and, after about eight hours of
15 pumping, some turbidity was noticed emanating from the
16 gravel bar.

17 Q. Okay.

18 A. The second one refers to small discharge
19 noticed during the seal course placement at trestle
20 bent 3 foundation.

21 Q. So we are talking about the same conversation
22 recorded, two different site conditions?

23 A. Correct.

24 Q. Right. For the first September 7th violation
25 that we talked about a moment ago, you mentioned that

1 it was possible that the conversation that was being
2 recorded in this report might have referred to events
3 of a different day. Do you remember that?

4 A. It is possible to the degree that these daily
5 reports refer to other days. I'm unfamiliar with the
6 extent that that happens.

7 Q. And that's exactly my point, that it is
8 possible that these daily reports could be referring to
9 events that took place on other days, right?

10 A. It could.

11 Q. Is it equally possible that, in this
12 particular violation, that the quoted section that you
13 have included in the Complaint, actually, refers to
14 events on a date different than September 7th, 2006?

15 A. It is possible.

16 Q. Okay. Let's turn to the September 9th, 2006.
17 And we have here -- what is the basis for this
18 violation?

19 A. The basis is a quote from a quote contained
20 in the Response to the Notice of Violation from
21 Caltrans.

22 Q. So I'll go through the information that I
23 have as far as violation.

24 First, I have a copy of a daily report from
25 Rich Thompson dated September 11th, 2006, which appears

1 to have the quoted section you have included in the
2 Complaint. Do you have a copy of that document?

3 A. September 11th, you say?

4 Q. Yes.

5 A. Rich Thompson? I believe I do.

6 Q. Why don't you take a look at that. Why don't
7 you read through that document very quick.

8 A. Yes. It appears that my last statement that
9 it was from the binders -- Response to Notice of
10 Violation is incorrect. I noticed that the reference
11 in the Appendix, actually, refers to Engineering
12 Diaries, so --

13 Q. Okay. Now, the date of this report is
14 September 11th, correct?

15 A. Correct.

16 Q. But the violation is dated September 9th;
17 isn't that right?

18 A. Correct.

19 Q. Where in the report does it refer to these
20 events being described as occurring on September 9th?

21 A. I don't believe it does.

22 Q. Does that indicate to you that we have the
23 wrong date here for this particular violation?

24 A. Possibly.

25 Q. This violation appears, at least in part, to

1 be based on a conversation -- I'm sorry, a report by
2 Rich Thompson describing statements by a man named Ron
3 den Heyer, correct?

4 A. Yes.

5 Q. And what is the basis for this violation of
6 Condition 9?

7 A. The existence of turbidity from drilling
8 debris in the water around trestle foundation.

9 Q. And do we have photographs of that?

10 A. Yes.

11 Q. Okay. And I have two photographs, 060909-01,
12 and -02. Are those the two photographs that you have
13 presented in support of this violation?

14 A. Yes.

15 Q. Are you aware of any other photographs,
16 reports or documents that, specifically, support this
17 violation on this date?

18 A. No.

19 Q. Okay. These photographs, at least my copies,
20 don't actually have an index on the photograph with
21 dates. Are they on yours?

22 A. Yes.

23 Q. Okay. And the date stamps --

24 A. September 9th.

25 Q. -- shows September 9th?

1 A. Yes.

2 Q. Given that the report that we just looked
3 from the assistant structural representative is on
4 September 11th, does it appear possible to you that the
5 photographs relate to different events than were
6 recorded in the conversation?

7 A. Yes.

8 Q. What do the photographs show you?

9 A. A turbidity plume in the river.

10 Q. And based upon your prior testimony it is the
11 existence of the plume that establishes the violation,
12 correct?

13 A. Well, the existence of substance, turbidity,
14 and other pollutants that would cause the plume.

15 Q. Do you have any information as to what is the
16 composition, chemically at least, of this particular
17 plume?

18 A. No, not exactly.

19 Q. Is this violation based on the presence of a
20 cementitious plume, or just the fact that there's a
21 plume there?

22 A. I believe it is based on the presence of a
23 cementitious plume. Let me check, though.

24 No. That would be just a plume, not a
25 cementitious plume.

1 Q. Now, the conversation that is included in
2 this September 11th report, that refers to turbidity
3 from drilling debris, right?

4 A. Correct.

5 Q. Okay. And the photographs that you have
6 included don't relate to drilling debris, do they?

7 A. I don't know. They could.

8 Q. Let's turn to the September 22nd, 2006. All
9 right. This is based on a heavy vehicle crossing that
10 created a 400-foot plume; is that right?

11 A. Yes.

12 Q. Okay. And what documents -- well, let's
13 start it this way.

14 The documents that I have in support of this
15 violation, the first is what appears to be a portion of
16 a water quality monitoring report by URS. Do you have
17 that in your records?

18 A. I believe it is in the records.

19 Q. Well, let me ask you this. What is the
20 source of this quote? Do you have that document?

21 A. That is the final Biological Monitoring
22 Report and the -- yeah, which I believe refers to the
23 same URS document that you were referring to.

24 Q. Okay. Do you have a copy of that?

25 A. In our records.

1 Q. Is it handy to you in any way?

2 A. I'm not exactly sure where that is. Let
3 me --

4 (Pause in proceedings.)

5 THE WITNESS: I couldn't readily find that
6 document, but I did find a Biological Monitoring Report
7 that refers to that event.

8 MR. HUNGERFORD: Okay. Let me see a copy of
9 that.

10 THE WITNESS: But it is not the same document
11 that you're referring to.

12 BY MR. HUNGERFORD:

13 Q. Is that a document that you have relied upon
14 to support this violation?

15 MS. ZAZZERON: Excuse me. We should identify
16 the document for the record.

17 MR. HUNGERFORD: Sure.

18 THE WITNESS: The document that we are
19 talking about is the Response to the Notice of
20 Violation from Caltrans received by the Water Board in
21 December 14th of 2006.

22 MS. ZAZZERON: Okay.

23 THE WITNESS: There are photos referenced in
24 this document that are the same photos referenced in
25 the Complaint.

1 In terms of the quote, I don't believe that
2 the quote is referred to in here. I think it is from
3 the document that you're referring to.

4 MR. HUNGERFORD: Okay. Well, I'll provide
5 you with an excerpt.

6 BY MR. HUNGERFORD:

7 Q. Let me ask you, first of all, the document
8 that you just referred to that has the photographs, is
9 there anything in the text that you're aware of that
10 supports this violation?

11 A. Yes.

12 Q. Why don't we attach -- we will mark this
13 particular portion of the report.

14 A. Okay. It is 6.1.

15 Q. We are going to mark it. We are going to
16 have the court reporter mark it.

17 A. Okay.

18 Q. I'll provide you with a copy of my version of
19 the URS Report, which I believe provides the quoted
20 material that is in the Complaint. If you would take a
21 look at that, please.

22 A. Okay.

23 (Witness examines document.)

24 BY MR. HUNGERFORD:

25 Q. Have you had a chance to look at that?

1 A. Yes. But I haven't been able to find the
2 rest of the quote. Oh, there we go.

3 Anyway, I can't find all of the quote. I
4 don't know that that really matters.

5 Q. The quote appears to come from that document,
6 correct?

7 A. Right.

8 Q. And it is a URS document, right?

9 A. Yes.

10 Q. Do you know what the purpose was of this
11 document?

12 A. Not exactly.

13 Q. Do you know what URS's involvement was with
14 this project?

15 A. No.

16 Q. And there's also a number of photographs that
17 you have included as part of this violation, right?

18 A. Yes.

19 Q. And do you have those handy, generally?

20 A. Yes.

21 Q. I have reviewed them without going to each
22 one in particular.

23 They all appear to me to be a photograph of a
24 piece of heavy equipment passing across the river and
25 the resulting sediment plume. Would you agree with

1 that?

2 A. Yes. Multiple pieces of equipment.

3 Q. So the photographs, to you, show more than
4 one crossing over the -- I'm sorry, you're right.

5 Other than the photographs and the URS Report
6 that we just reviewed, are there any other reports,
7 documents, or other evidence that you're aware of that,
8 specifically, supports this violation on this date?

9 A. Other than the URS Report, the photos, and
10 the Biological Monitoring Report?

11 Q. And the Biological Monitoring Report?

12 A. No.

13 Q. What is the basis for this violation of this
14 condition?

15 A. The transport of sediment to the river
16 because cleaning the equipment was not done prior to
17 crossing, as evidenced by the photographs.

18 Q. Where is the requirement that equipment must
19 be cleaned of sediment prior to crossing?

20 A. That is additional Condition No. 9, which
21 requires that no sediment or silt shall be placed in
22 waters of the State; and, by not cleaning the equipment
23 prior to crossing, sediment was transported to the
24 river.

25 Q. Okay. Doesn't the Certification, also,

1 acknowledge in Condition 19 that turbidity potentially
2 will be created by crossings?

3 A. No, I don't believe so.

4 Q. Have you read the application for this
5 project?

6 A. Yes, at one point.

7 Q. Do you recall that Caltrans specified in the
8 application that a number of crossings would occur?

9 A. Yes.

10 Q. Okay. And these crossings, inevitably, will
11 produce some turbidity, would you agree with that?

12 A. It all depends on how they are performed.
13 If -- I would say that, yes, when crossing through the
14 channel like this, that it is likely to produce some
15 amount of turbidity.

16 Q. I'll ask more directly. Do you think it is
17 at all possible to drive a heavy piece of equipment
18 across the river without creating turbidity in this
19 river?

20 A. Without building a bridge, no.

21 Q. Is it your position that any creation of
22 turbidity from that crossing would then create a
23 violation of the Certification?

24 A. Not automatically.

25 Q. What is it about this crossing on this date

1 that establishes a violation then?

2 A. The transportation of sediment into the
3 system. If it has stirred up sediments that were
4 existing there on the bottom of the riverbed, then
5 there wouldn't have been a mobilization of sediment
6 into the system from an outside source.

7 And I believe I would have to cross-reference
8 with one of the other appendices, but there's also the
9 potential to collect insufficient turbidity
10 measurements. And I presume, in this instance, that is
11 also one of the violations.

12 Q. Do you know what the source was of the
13 sediment that was introduced into the system?

14 A. Tracked by the equipment from an upland area.

15 Q. Does that say that in the quote?

16 A. There is language in there that talks about
17 that.

18 MS. ZAZZERON: I'm sorry to have to
19 interrupt, but I have got to make that call. If I'm
20 not back in 15 minutes, just go ahead and start. Sorry
21 about that.

22 Off the record.

23 MR. HUNGERFORD: We will finish with this
24 one, then we will go off.

25 THE WITNESS: Okay. You asked if there was

1 anything in particular in the quote in the appendix to
2 the Complaint that explicitly talked about the source
3 of the sediment or -- that was transferred to the
4 river, right?

5 MR. HUNGERFORD: Yes.

6 THE WITNESS: I don't believe that there is
7 any particular thing stating it was from an upland
8 area, although, the quote in the appendix states that
9 cleaning appeared not to have been done for the second
10 crossing, that there was mud still caked on after going
11 through the clean cobble riverbed.

12 And then in this other document which we
13 flagged the response to the Notice of Violation in the
14 caption to one of the photos, which is also referenced
15 in the appendix, states that:

16 "The first unit to cross this week
17 note caked mud in tracks. This is not
18 from the crossing because it is cobble and
19 no such mud it (sic) at the cross site."

20 BY MR. HUNGERFORD:

21 Q. Okay. So it is your position that this
22 violation is established because there's an
23 introduction of sediment into the river from somewhere
24 outside the river?

25 A. (Witness nods head.)

1 MS. MACEDO: Is that a "yes"?

2 THE WITNESS: Yes. Thank you.

3 MR. HUNGERFORD: All right. We will stop
4 there.

5 (Recess.)

6 MR. HUNGERFORD: Back on the record.

7 I have a couple of things I want to ask about
8 this vehicle crossing. Since we were working just on
9 my version of the URS Report, I'll give this to you
10 again.

11 The bottom of page 6-19 describes the first
12 wet channel crossing. Would you take a look at that
13 real quick

14 (Witness examines document.)

15 THE WITNESS: Just the first crossing?

16 MR. HUNGERFORD: Yes.

17 THE WITNESS: Okay. I'm done.

18 BY MR. HUNGERFORD:

19 Q. Okay. So there were three wet channel
20 crossings. The Regional Board only selected the second
21 one as the basis for the violation on September 22nd,
22 correct?

23 A. Correct.

24 Q. Why did the first wet channel crossing not
25 result in a violation?

1 A. It was based on the apparent cleaning of the
2 equipment prior to crossing that would have removed any
3 sediment that would have been transported into the --
4 into the waters of the U.S.

5 Q. I'll read the passage to you:

6 "The first wet channel crossing
7 occurred on September 6 resulted in a
8 sediment plume with a maximum that
9 extended over 200 feet in length that
10 lasted 25 minutes."

11 So we can tell from that that a sediment
12 plume, a fairly lengthy one, was created, correct?

13 A. Correct.

14 Q. Other violations that you have alleged are
15 based on the mere existence of sediment plumes. Why
16 does this particular instance not merit a violation?

17 A. I don't believe that other violations are
18 based on the mere existence of sediment plumes, unless
19 that sediment was from a source that is contributing to
20 the river. Correct me if I'm wrong.

21 Q. Well, let me go back to Condition 9 of the
22 Certification, which says that:

23 "No debris, soil, silt" --

24 et cetera -- "other than authorized by
25 this permit, shall be allowed to enter

1 into, be placed or washed into the waters
2 of the State."

3 Now, how is this particular -- well, let me
4 back up.

5 Would you agree that the first equipment
6 crossing established a discharge by creating a
7 sediment?

8 A. Not necessarily. If all the sediment was
9 within the system it is not a discharge into the
10 system, it is a discharge of in-stream sediments into
11 the system, if you want to call it that.

12 Q. So if, hypothetically, on this project a
13 worker were to have, you know, stood in the river and
14 kicked up sediment, thereby, creating a plume, that
15 wouldn't establish a violation?

16 A. Well, it would trigger the need to monitor
17 turbidity.

18 Q. Okay.

19 A. Although I wouldn't consider it triggering a
20 violation of Condition 9.

21 Q. So just to be clear, the first equipment
22 crossing isn't a violation because the turbidity is
23 created by sediment that's within the riverbed,
24 correct?

25 A. Correct. Not that because it is sediment

1 from within the riverbed -- sorry, let me correct that.
2 Because we don't have sufficient evidence that the
3 sediment came from an outside source.

4 Q. So only when the sediment comes from an
5 outside source and creates turbidity is it then a
6 violation of this condition?

7 A. That was the way that I interpreted it.

8 Q. So the creation of turbidity in the first
9 equipment crossing isn't a discharge at all?

10 A. It depends on where the sediment that caused
11 the plume came from. Right now we don't have enough
12 evidence to indicate that it -- that it was a
13 discharge.

14 Q. Okay. Well, let's be clear.

15 Let's assume that the turbidity created in
16 the first vehicle crossing came exclusively from the
17 bottom of the active river. Does the creation of
18 turbidity -- is that a discharge as defined by the
19 Certification?

20 (Witness examines document.)

21 THE WITNESS: I don't believe so.

22 BY MR. HUNGERFORD:

23 Q. Okay. How relevant is it to the first
24 crossing that there was some greater degree of cleaning
25 that may have taken place prior to the crossing?

1 A. It is the crux of the issue, is it not,
2 that -- and I have just stated that because there was
3 more cleaning and that the -- there were no upland
4 sediments transported to the river, I didn't consider
5 it a violation.

6 Q. All right. Let me ask you something else
7 about the URS Report.

8 If you look at Page 6-20 of the report, it
9 refers to turbidity monitoring reading on a visual
10 scale referring to values of zero and 3. Do you see
11 that?

12 A. Yes.

13 Q. Would that appear to you to be field
14 turbidity measurements that were taken on that
15 occasion?

16 A. No.

17 Q. Because there's no NTU meter being used?

18 A. Correct. It is a subjective measurement that
19 has no way to be standardized.

20 Q. Well, there is clearly a scale being used,
21 correct?

22 A. Yes.

23 Q. Are you familiar with what that scale is?

24 A. No, not exactly.

25 Q. One other question about this crossing, do

1 you have any idea where the equipment would have been
2 cleaned prior to sending vehicles across?

3 A. No. I would presume right before they
4 crossed.

5 Q. Are you aware of any requirements or
6 specifications that deal with cleaning equipment?

7 A. No. There may be some BMPs about it, but I'm
8 no aware of it particularly.

9 Q. If the equipment would have been cleaned
10 outside of the 100-year floodplain in some upland area,
11 would that have been an acceptable location to clean
12 equipment?

13 A. I don't believe so. Granted I wouldn't be
14 the person to make that decision.

15 I think the most relevant place to clean the
16 equipment -- you could do a prior cleaning anywhere,
17 but it is right before you cross the stream.

18 Q. Well, how do you think the cleaning would
19 take place?

20 A. With full containment to prevent a discharge
21 to the river.

22 Q. But you're not aware of any specifications in
23 this Certification, correct?

24 A. No.

25 Q. Are you aware of any BMPs in this regard that

1 were brought to your attention by Caltrans and the
2 contractors?

3 A. No.

4 Q. Turn to the September 29th, 2006, and there
5 are two for September 29th, correct?

6 A. Yes.

7 Q. And the first one starts with a quote that
8 says that: "Sandbags were then placed."

9 Right?

10 A. Yes.

11 Q. The source of the quote, according to my
12 information, is an engineer's report dated September
13 29th, 2006. Do you have a copy of that?

14 A. Yes.

15 Q. Okay. It states that, during the placement
16 of concrete within a CMP, that concrete escaped from
17 the CMP leaving a plume, right?

18 A. Yes.

19 Q. And then there's three photographs that you
20 have attached, also, in support of this violation,
21 right?

22 A. Yes.

23 Q. Okay. And the first, which is 060929-01,
24 shows a picture of the CMP and a worker standing in the
25 river, correct?

1 A. Yes.

2 Q. Also shows what appears to be a plume coming
3 from the base of the CMP, right?

4 A. Yes.

5 Q. The other two photographs also show what
6 appears to be a plume in the river, right?

7 A. Yes.

8 Q. Do you have any information to support the
9 statements made in the report that this is, in fact,
10 cement or cementitious material escaping from the CMP?

11 A. Other than the photos showing pouring of
12 cement into the CMP and subsequent plume coming around
13 from what appears to be the base of the CMP and the --
14 and the quote which is from an Engineering Diary, would
15 be the professional opinion of an engineer hired by
16 Caltrans.

17 Q. Well, we don't know this is a professional
18 opinion of an engineer, it is simply a law, right?

19 A. I would presume that the laws would be their
20 professional opinions.

21 Q. I wouldn't make that assumption.

22 Is there anything about the photographs that
23 indicate that this is cement as opposed to just
24 sediment stirred up in the bottom of the river?

25 A. Other than the photo and the quote, no.

1 Q. Are you aware of any testing or sampling or
2 any other information that would establish that this is
3 cementitious material and not sediment?

4 A. No.

5 Q. Let's turn to the next one, September 29th.
6 And this -- well, it is the second one of September
7 29th, and this is a quote that is contained in the same
8 engineer's report, correct?

9 A. Yes.

10 Q. And we also have a couple of -- three
11 photographs, right?

12 A. Yes.

13 Q. And 060929-04, -05 and -06, right?

14 A. Yes.

15 Q. Other than this engineer's report and the
16 photographs, are you aware of any other information,
17 documents or evidence that specifically supports this
18 violation on this date?

19 A. No.

20 Q. And the engineer's report indicates that the
21 contractor's tremie came off and while trying to
22 reattach the tremie the contractor worked around the
23 CMP standing on sandbags, right?

24 A. Yes.

25 Q. Is there any photograph in the series that

1 you have included that, specifically, shows that event?

2 A. No.

3 Q. What about these photographs support this
4 violation?

5 A. The plumes.

6 Q. Well, I will look at the first one.

7 The photograph designated -04 shows what
8 appears to be some plume, but doesn't show where that
9 plume is coming from, correct?

10 A. Correct.

11 Q. This photograph identified as -05, also,
12 appears to show a plume but not where it is coming
13 from, correct?

14 A. Correct.

15 Q. And the photograph of -06 may show a plume,
16 but, again, doesn't indicate where it is coming from,
17 right?

18 A. Correct.

19 Q. And there's the statement in the engineer's
20 report. It indicates some uncertainty as to whether
21 the plume was created by concrete or algae, correct?

22 A. The quantity of how much was algae or
23 concrete was hard to determine.

24 Q. So it is fair to state that it was unclear to
25 the person making the observations, you know, whether

1 it was concrete or algae?

2 MS. MACEDO: Objection. Misstates his
3 testimony, and the document speaks for itself.

4 THE WITNESS: Agree, the document speaks for
5 itself. The unsure about how much was concrete or
6 algae.

7 BY MR. HUNGERFORD:

8 Q. Well, at the very least the quoted statement
9 reflects some difficulty distinguishing between
10 concrete and algae; would you agree?

11 MS. MACEDO: Asked and answered.

12 THE WITNESS: I don't know if I could come to
13 that conclusion.

14 MR. HUNGERFORD: Okay.

15 THE WITNESS: I don't think so. I think that
16 you could distinguish between concrete and algae and
17 still be uncertain as to the quantity of each in terms
18 of a percentage of discharge.

19 BY MR. HUNGERFORD:

20 Q. Well, putting aside the percentage of
21 discharge, would you agree that this statement
22 indicates that the observer could not easily
23 distinguish between a possible concrete discharge and
24 possible algae?

25 MS. MACEDO: Objection. Calls for

1 speculation. Argumentative.

2 THE WITNESS: No, I would disagree. I think
3 that it --

4 MS. MACEDO: No. You answered it. Please
5 stop.

6 BY MR. HUNGERFORD:

7 Q. The statement, "was hard to determine," what
8 is your understanding of what was hard to determine
9 from this quote?

10 A. How much was concrete or how much was algae.

11 Q. Okay. What is the basis for the violation of
12 Condition 9 in this violation?

13 A. The discharge of concrete and/or sediment
14 into the river.

15 Q. Well, I don't see -- what, in the photographs
16 or the engineer's report, references discharges of
17 sediment?

18 A. The contractor worked around the CMP standing
19 on the sandbags. It is possible that there was fine
20 sediment contained in the sandbags.

21 Q. Is it equally possible that standing on a
22 sandbag could have disturbed the riverbed, thereby,
23 creating a plume?

24 A. Yes. But I find it very unlikely and nearly
25 impossible that standing on sandbags could possibly

1 cause a turbidity plume of that magnitude.

2 Q. How big was the turbidity plume? You're just
3 basing that on the photographs?

4 A. Yes.

5 Q. How much, if any, concrete was discharged
6 giving rise to this violation?

7 A. It is hard to determine.

8 Q. Certainly, it was difficult to determine for
9 the person making the statement, correct?

10 A. Correct.

11 Q. It is certainly possible from this statement
12 that none of it was concrete and all of it was algae;
13 is that true?

14 A. It is hypothetically possible, highly
15 unlikely. Based on the way he phrased his statement as
16 well as the visual observations of the photographs, it
17 does not appear to be algae. Algae does not look gray.

18 Q. But as you know it also could be sediment
19 rather than concrete, right?

20 A. Portions of it could also be sediment.

21 Q. It's fair to state, from the photographs, we
22 don't really know what exactly the material is that we
23 are seeing in the plume, correct?

24 MS. MACEDO: Objection. The photographs
25 speak for themselves.

1 THE WITNESS: I still have to answer this; is
2 that correct?

3 MS. MACEDO: Yes.

4 THE WITNESS: From the photographs alone you
5 cannot determine exactly what the pollutant is.
6 Together with the quote it indicates that a portion of
7 it is concrete.

8 BY MR. HUNGERFORD:

9 Q. If you turn to the October 7th, 2006 event,
10 and, again, there are two of them, so we will look at
11 the first one.

12 A. There are three of them.

13 Q. You're right, there are three of them.

14 Okay. So the first one appears to be based
15 on two photographs and a report by the resident
16 engineer -- the assistant resident engineer, correct?

17 A. Yes.

18 Q. And the- - assistant resident engineer's
19 report is dated October 7th, 2006 and contains a quote
20 referring to the number of passes made by a contractor
21 that escaped through a silt fence; is that right?

22 A. Yes.

23 Q. And we also have two photographs denominated
24 061007-01 and -02, correct?

25 A. Yes.

1 Q. Other than this engineer's report and the
2 photographs, is there any other evidence, document or
3 report that you're aware of that, specifically, address
4 this violation on this day?

5 A. Yes. A letter that we received from Caltrans
6 on March 12, 2007.

7 Q. Do you have a copy of that?

8 A. In our file.

9 Q. I would like to see that. Is it handy?

10 A. Yes.

11 (Pause in Proceedings.)

12 THE WITNESS: Okay. Do you want me to pull
13 it out?

14 MR. HUNGERFORD: If you could just show me
15 what it is, the letter.

16 THE WITNESS: There.

17 MR. HUNGERFORD: Could I see it, please?

18 BY MR. HUNGERFORD:

19 Q. Okay. What you have handed me is a March 5,
20 2007 letter from California Department of
21 Transportation addressed to David Leland at the
22 Regional Board, correct?

23 A. Correct.

24 Q. Can you point to me the section that deals
25 with this particular violation?

1 A. It's in the discussion of Additional
2 Condition No. 7 on the second page.

3 Q. Okay. I'll mark this letter as the next
4 exhibit.

5 Describe for me what the basis is for this
6 violation?

7 A. Violation 9 or 17?

8 Q. Well, it is the same factual scenario. It
9 supports both, correct?

10 A. Correct.

11 Q. Why don't you just give me the factual
12 scenario as you understand it?

13 A. Okay. The contractor -- let me get my
14 photo. The contractor was operating a heavy piece of
15 equipment, an excavator, and was doing some digging,
16 and it appears to be in the river channel itself. And
17 there is a wooden crossing spanning the active channel,
18 and there's a silt fence in the river, presumably,
19 intended to hold back the sediment stirred up through
20 the excavation.

21 Q. Okay. How is this a violation of Condition
22 No. 9?

23 A. Through the excavation of the river channel,
24 the mobilization of sediments into the river occurred.

25 Q. Is there any indication that the mobilization

1 of sediments was from other than sediments within the
2 river itself?

3 A. No.

4 Q. Now, you testified earlier that sediments in
5 the river that are disturbed and then create plumes of
6 turbidity aren't necessarily violations of Condition 9;
7 isn't that right?

8 A. Correct.

9 Q. So what is it about this discharge of
10 in-river sediment that establishes a violation of
11 Condition 9?

12 A. This could be a potential inconsistency, and
13 this could be a violation that we would be willing to
14 reconsider moving forward with if we reevaluate and
15 look at the evidence and determine that that would be
16 consistent with our interpretation of Condition 9
17 throughout the Complaint.

18 Q. I'm having a difficult time understanding
19 your response. I'll break this up into two parts.

20 First of all, is there anything about this
21 mobilization of in-stream sediments that violates
22 Condition 9?

23 A. If, indeed, it is only in-stream sediments,
24 then perhaps it is not a violation of Condition 9 and
25 perhaps we would reconsider moving forward with it as a

1 violation.

2 Q. Is that a revisitation that the Regional
3 Board intends to make?

4 A. I will discuss that with our management.

5 Q. Okay. Moving to condition 17, what is it
6 about, you know, this factual scenario that violates
7 that condition?

8 A. The admission by Caltrans is that it was not
9 a proper BMP makes it pretty cut and dry that
10 insufficient or inadequate BMPs were in place.

11 Q. So Caltrans statement here that this wasn't
12 the BMP that they felt was appropriate establishes the
13 violation of Condition 17, is that what you're telling
14 me?

15 A. Yes.

16 Q. Apart from Caltrans and possible
17 acknowledgements of whether or not this was an
18 appropriate or inappropriate BMP, is there anything
19 that the Regional Board noted about the use of this BMP
20 that the Regional Board felt independently it was
21 inappropriate?

22 A. I believe that -- it is my understanding that
23 silt fences are not designed to be used in -- submerged
24 in water as such and an inadequate BMP for the
25 containment of sediment.

1 Q. And to the best of your knowledge, is that
2 the basis for -- strike that.

3 What would be an appropriate BMP for
4 in-stream sediment control?

5 A. I don't know.

6 Q. Okay. Turn to the next October 7th
7 violation. And this one is based on a quote from
8 Engineering Diary dated October 7th, 2006 by Mitch
9 Shands, correct?

10 A. Well, let me find the document.

11 Q. Sure.

12 A. Okay.

13 Q. So we have an Engineering Diary. Are there
14 any other photographs, reports, evidence that you're
15 aware of that, specifically, supports this violation on
16 this date?

17 A. No.

18 Q. Okay. Now, my reading of the report is that
19 there are a number of passes with the excavator within
20 the active riverbed, correct?

21 A. Correct.

22 Q. And that, you know, as with the last
23 violation on the same day, that there was silt that was
24 created as a result of those activities and was
25 escaping through silt fence, right?

1 A. Yes.

2 Q. What is the difference between this violation
3 and the last one?

4 A. Timing.

5 Q. So that there were three passes made and this
6 is the second pass?

7 A. No, I don't believe so. There are three
8 events. I believe the first event included three
9 passes.

10 Q. Okay. Let me ask you this. How does this
11 event violate Condition 9?

12 A. My statement would be similar to the previous
13 one.

14 Q. Okay. And, again, to the effect that if this
15 is in-river sediment that is being undisturbed, that
16 that wouldn't be a condition of Violation 9, correct?

17 A. That we will reevaluate whether that is or
18 not. It is my impression that it would not be.

19 Q. So with respect to Condition 17, what is the
20 basis for that violation?

21 A. The same as the previous.

22 Q. The fact that an inappropriate BMP was used
23 in the form of a silt fence?

24 A. Correct.

25 Q. Let's go to the next violation on the same

1 date of October 7th. In here we have again as
2 evidence, as I understand it, the same engineer's
3 report, correct?

4 A. Correct.

5 Q. And apart from this engineer's report are
6 there any other reports, photographs or evidence that
7 you are aware of that support this violation?

8 A. No.

9 Q. And the quote says that -- it begins with
10 "Mr. Ham," and to paraphrase, it says he was going to
11 go back down and complete excavation work.

12 What is the basis for the violations of
13 Conditions 9 and 17?

14 A. The same as the previous two.

15 Q. The thing that struck me about this was it --
16 well, strike that because I don't want to make a
17 statement, I'll ask a question.

18 Is there anything about this statement, or in
19 other evidence that you might have, that indicates that
20 Mr. Ham, actually, went down and did additional work at
21 the site?

22 A. No.

23 Q. And if he didn't, in fact, go down and
24 perform that work, then there would be no violations
25 for this particular event?

1 A. Correct.

2 Q. And as I understand it, the basis for the
3 violations that are alleged, you know, requires the
4 assumption that he, actually, did go down and perform
5 work in substantially the same manner as the prior two
6 violations?

7 A. Correct.

8 Q. Move on to the next violation dated
9 October 16th, 2006. And I have as evidence an
10 assistant resident engineer's daily log dated that
11 date, October 16th. Do you have that, as well?

12 A. Yes.

13 Q. I don't have any photographs or any other
14 evidence that I'm aware of. Is there any other
15 evidence in the form of reports, photographs, or other
16 documents that you're aware of that supports this
17 particular violation?

18 A. No.

19 Q. And you have Condition 9 as being violated.
20 What is the basis of that violation?

21 A. The discharge of concrete waste into the
22 river.

23 Q. The basis for your statement that it is a
24 discharge is, I take it, exclusively this statement in
25 the resident engineer's daily log?

1 A. Yes.

2 Q. Are you aware of any other -- any testing or
3 other observations that support this was concrete as
4 opposed to sediment or some other type of material?

5 A. We have no evidence that, as far as I'm aware
6 of, that the contractor or Caltrans ever tested for pH
7 levels if there was a concrete waste discharge for the
8 river.

9 Q. Do you know where this leak occurred?

10 A. Not exactly.

11 Q. Do you know if it came out the top of the
12 CMP, or the bottom of the CMP, or anywhere else?

13 A. No.

14 Q. Do you even know whether this came out of a
15 CMP?

16 A. No.

17 Q. Okay. If you could turn to the January 5th,
18 2007 date.

19 A. Did you intentionally skip --

20 Q. Did I skip one? Oh, yes, I did. I'm sorry.
21 I did not intentionally skip one.

22 So October 20th, 2006, and the allegation is
23 a cement discharge to the river, correct?

24 A. Yes.

25 Q. Okay. And I have, as evidence, two

1 documents. One is an excerpt from what appears to be a
2 Biological Monitoring Report and the other is a
3 photograph designated 061020-02. Do you have those, as
4 well?

5 A. Yes.

6 Q. Are you aware of any other documents,
7 photographs, or evidence supporting this particular
8 violation?

9 A. No.

10 Q. And this is a violation of Condition 9,
11 correct?

12 A. Correct.

13 Q. What is the basis for the violation?

14 A. The discharge of cementitious waste to the
15 river from the concrete seal course pour.

16 Q. Do you have a copy of the Biological
17 Monitoring Report in front of you?

18 A. Yes.

19 Q. I'll quote it:

20 "I observed one very minimal sediment
21 plume event during the seal pour of the
22 in-stream falsework footings."

23 And that quote doesn't refer to a concrete
24 plume, it refers to a sediment plume; isn't that right?

25 A. Yes.

1 Q. Do you have any evidence that the plume was
2 composed of cementitious material?

3 A. Other than the fact that this plume occurred
4 during the seal pour and that it could be referring to
5 a cement discharge, you could refer to a cement plume
6 as a sediment plume. But, no, other than that, no, I
7 do not.

8 Q. Is it possible that the activity of pouring
9 concrete could disturb in-stream sediments that would
10 create a small plume like this?

11 A. Yes.

12 Q. So it is certainly what could have happened
13 in this case?

14 A. Yes.

15 Q. Assuming that this was a small sediment plume
16 rather than cementitious material, is it possible that
17 this is not a violation of Condition 9 given that that
18 would have been in-river sediment?

19 A. It is possible.

20 Q. Off the record -- take it back. We have one
21 more in this section.

22 Okay. If you go to the next violation dated
23 January 5th, 2007 -- are you with me?

24 A. Yes.

25 Q. Okay. It says:

1 "Turbid discharge to river,
2 approximately 170 gallons of stormwater
3 discharged."
4 Correct?
5 A. Correct.
6 Q. And this is based on, as I have it, an e-mail
7 dated February 21st, 2007. It looks like from Walt
8 Dragaloski at Caltrans to a number of people at the
9 Water Board.
10 Do you also have that e-mail?
11 A. I believe it is in the file. I could look
12 for it.
13 Q. Well, I'll let you take a look at my copy.
14 If you would review that for a moment.
15 (Witness examines document.)
16 THE WITNESS: Okay.
17 BY MR. HUNGERFORD:
18 Q. Are there any other documents, photographs,
19 or reports, or evidence that you're aware of that
20 supports this violation?
21 A. No.
22 Q. Is this violation based exclusively on this
23 e-mail?
24 A. I don't know.
25 Q. Well, are you aware of any other information

1 you relied on in drafting this particular violation?

2 A. No.

3 Q. Are you aware of any other information other
4 than this e-mail that supports this particular
5 violation?

6 A. Not particularly. It could be other
7 information in the file.

8 Q. Okay. The e-mail indicates that a maximum
9 amount of 170 gallons broke and fell; isn't that
10 correct?

11 A. Yes.

12 Q. Do you know where this fluid would have
13 landed?

14 A. No. Although the pipe spanned the river, so
15 somewhere in the river channel.

16 Q. Would you regard anything above the 100-year
17 floodplain as being an upland area?

18 A. More or less.

19 Q. Do you have an understanding of precisely how
20 this particular line was situated above the river in
21 that portion of it that could have been above the
22 100-year floodplain?

23 A. Is your question that could it have been?

24 Q. Sure.

25 A. Then yes.

1 Q. And the discharge, the estimate of 170
2 gallons, appears to have been based on an estimate of
3 the maximum volume that could have been held by the
4 pipe; is that your understanding?

5 MS. MACEDO: Objection. The document speaks
6 for itself.

7 THE WITNESS: Yes, that's what the document
8 states.

9 BY MR. HUNGERFORD:

10 Q. Do you have any other information to support
11 this statement that 170 gallons was discharged and not
12 some other volume?

13 A. No.

14 MR. HUNGERFORD: Off the record for a second.

15 (Lunch break from 12:10 to 12:55 p.m.)

16 MR. HUNGERFORD: So we are going to move on
17 to Appendix A. We already started with a couple of
18 those beginning today, so we are going to skip down to
19 the September 6th, 2006 event.

20 BY MR. HUNGERFORD:

21 Q. Are you with me?

22 A. Um-hmm.

23 Q. Now, this one, the only evidence I have is a
24 photograph, and I understand there was a Biological
25 Monitoring Report that, also, supports this?

1 A. Yes.

2 Q. Why don't you just list for me what items of
3 evidence are being offered in support of this
4 violation?

5 A. The photo, the biological monitoring report,
6 and then I would also say that the Engineering Diaries
7 would also include information relevant to this event,
8 although, they are not included here explicitly.

9 Q. Okay. Let's start with the Engineering
10 Diaries. Are you aware of any specific statements or
11 facts in the diaries, or you're just saying that
12 because, in a general sense, that they reinforce this
13 violation?

14 A. Yes.

15 Q. Is there a Biological Monitoring Report that
16 addresses this violation on this day?

17 A. I believe the Biological Monitoring Report we
18 looked at earlier, the final report by URS, referred to
19 all three crossings, and then there's individual
20 Biological Monitoring Reports organized by date, so --

21 Q. So let's look at the -- I have the URS
22 Report, when I find it. The individual monitoring
23 report I don't have handy, so if you could find that,
24 that would be helpful.

25 A. Okay.

1 Q. Okay. So let me take a look at that.

2 Okay. So this is a Biological Monitoring
3 Report. This one page of the Biological Monitoring
4 Report says the channel crossing -- do you know the
5 date of this report so we could identify it on the
6 record?

7 A. It may be, if we go back further --
8 September 9th, 2006.

9 Q. Okay.

10 A. And so it was written a few days after the
11 event.

12 Q. And this report appears to have a photograph
13 dated September 6th on this one page. Is there
14 anything in the text here that describes this specific
15 event on September 6th?

16 A. Yes.

17 Q. And what does it say happened?

18 A. Would you like me to read it?

19 Q. You could paraphrase. Tell me what your
20 understanding is of what happened based on your reading
21 of it?

22 A. About 8:12 in the morning an excavator, a
23 loader, and a utility type pickup truck crossed the
24 river creating a sediment plume about 12 minutes in
25 duration, approximately 70 to 85 feet in length.

1 Q. And down below you notice that there is
2 crossings by three vehicles, an excavator, a loader and
3 a pickup truck, correct?

4 A. Correct.

5 Q. And then we have a photograph which is
6 designated 060906-01; is that right?

7 A. Yes.

8 Q. And that shows a picture of an excavator on
9 the bank of the river?

10 A. Yes.

11 Q. And then you mentioned you're also relying on
12 the URS Report, and it is the same URS Report that we
13 previously discussed at pages 6-19 and 6-20 of that
14 report described in the crossings.

15 Is there any other photographs, evidence, or
16 other documents that you're aware of that support this
17 specific violation?

18 A. No.

19 Q. Okay. You say this is a violation of
20 Condition 19, correct?

21 A. Correct.

22 Q. What is the basis for a Condition 19
23 violation?

24 A. There was a plume in the river that was not
25 monitored for turbidity.

1 Q. Meaning, not monitored by using an NTU meter?

2 A. Correct.

3 Q. Had an NTU meter been used, would there be a
4 violation?

5 A. It depends on if the NTU meter provided
6 adequate data to determine compliance with the
7 condition. If they didn't properly operate and
8 maintain the piece of equipment, they didn't calibrate
9 it and keep proper records of that to provide the
10 correct data, then a violation would have still
11 occurred.

12 Q. Okay. Well, let's just look at Condition 19.
13 Condition 19 begins by saying:

14 "Visual observations shall be
15 conducted whenever a project activity has
16 the potential to mobilize sediment and
17 increase the turbidity of the South Fork
18 Eel River."

19 Now, stopping right there, there does appear,
20 do you agree, to be evidence that visual observations
21 were conducted?

22 A. Yes.

23 Q. The condition then goes on to say:

24 "Field turbidity measurements shall be
25 collected whenever a project activity

1 causes turbidity to be increased above
2 background concentrations."
3 Do you see that?
4 A. Yes.
5 Q. As you previously testified, the field
6 turbidity measurements must be measured using an NTU
7 meter, right?
8 A. Yes.
9 Q. Would you agree that in this case there also
10 appears to have been -- there is evidence of visual
11 measurements being taken of the turbidity created by
12 the crossings?
13 A. Visual observations?
14 Q. Yes. And, in fact, those visual observations
15 resulted in estimates regarding the size, length and
16 duration of the plume; would you agree?
17 A. Yes.
18 Q. But as you have testified, you don't believe
19 that those satisfy the requirements of the condition
20 because there's no NTU meter being used?
21 A. Because there is no accurate calibratable,
22 repeatable scientific measurement that is not
23 subjective being taken in order to demonstrate
24 compliance with a 20 percent limitation contained in
25 the basin plan.

1 Q. Based on the information contained in the URS
2 Report and the Biological Monitoring Report, does it
3 appear that the 20 percent past 100 feet standard was
4 violated?

5 A. I think we have inadequate, insufficient data
6 to make that assertion.

7 Q. What additional data would you require?

8 A. The type of data that I just discussed.

9 Q. Turning to the Biological Monitoring Report,
10 there is a fairly distinct description of the plume.
11 The report says it lasted about 12 minutes and was
12 about 70 to 85 feet in length, correct?

13 A. Correct?

14 Q. Doesn't that provide evidence that the 100
15 foot, 20 percent turbidity standard, was not violated?

16 A. No. Because 20 percent turbidity cannot
17 always be visually determined. The background can be
18 so clear that 20 percent is just not visual.

19 Q. What would 100 percent turbidity be? What
20 would that look like?

21 A. It would be completely opaque. You
22 couldn't -- light would not be able to pass through the
23 water.

24 Q. Let's assume that a turbidity meter had been
25 used in this case and the results were precisely the

1 same as were indicated in the Biological Monitoring
2 Report, that the plume lasted -- it was no more than 80
3 feet in length and lasted only 12 minutes. Would you
4 then be able to determine whether there was a
5 violation of turbidity standard of 100 feet at 20
6 percent?

7 MS. MACEDO: Objection to the term "turbidity
8 meter." Do you mean NTU meter?

9 MR. HUNGERFORD: Yes.

10 THE WITNESS: Assuming we had adequate data
11 taken at the correct locations, then we could ascertain
12 that whether or not it was a violation of the basin
13 plan 20 percent condition.

14 BY MR. HUNGERFORD:

15 Q. So you know with those qualifications, yes,
16 you would be able to determine compliance with that
17 basin plan requirement?

18 A. Yes.

19 Q. Turning to the December 7th, 2006, at least
20 the first of them. It looks like there are three
21 September 7th, here?

22 A. I see two.

23 Q. Let's see. Table A-E, September 7th. Oh,
24 you're correct, there are two.

25 Both of them relate to quotes contained in

1 the September 7th, 2006 daily report by Rich Thompson,
2 correct?

3 A. Correct.

4 Q. Now, we have already discussed this factual
5 scenario in relation to other violations, haven't we?

6 A. Yes.

7 Q. And we have already considered the
8 possibility that the conversations that occurred here
9 were describing events from a date other than September
10 7th; isn't that right?

11 A. Yes.

12 Q. Now, what is being alleged here, which is
13 different, is violations of Condition 19, right?

14 A. Yes.

15 Q. What is it in this daily report which
16 establishes violations of Condition 19? And, you know,
17 feel free to answer with respect to both of these
18 September 7th violations.

19 A. In both situations there were distinct
20 discharges to the river that would have triggered the
21 requirement for turbidity monitoring 50 feet upstream
22 and 100 feet downstream over a period of time to
23 demonstrate compliance with the basin plan, and the
24 monitoring was not done adequately.

25 Q. We have noted, in many of these cases, there

1 was a biological monitor or other persons on-site that
2 were at least visually monitoring turbidity, correct?

3 A. Correct.

4 Q. The basis, as I understand it for these two
5 September 7th violations, is that someone -- there's no
6 evidence that someone was there with an NTU meter; is
7 that right?

8 A. And if there were somebody there with an NTU
9 meter because, at times, there were, it was
10 insufficiently maintained, calibrated and then operated
11 to provide quality data that would be sufficient for
12 the requirement of the condition.

13 Q. Now, you remember from the first day of our
14 deposition we talked in a little more detail about the
15 turbidity created by the use of isolated Pool B; do you
16 remember that?

17 A. Yes.

18 Q. In those instances, and I'll speak generally
19 from my memory, most of those turbidity events were
20 relatively minor in a sense that less than 20 feet in
21 length was the size of the plume. Do you remember
22 that?

23 A. Yes, I do.

24 Q. Let's assume that we have a very small amount
25 of turbidity in a plume that appears to be no more than

1 10 feet in length based on visual observations. Is
2 that a situation where an NTU meter would be required?

3 A. Yes.

4 Q. Why is that?

5 A. As I said before, you cannot visually
6 determine whether or not 20 percent is being increased
7 downstream at 100 feet.

8 Q. So there's no point, there's no size of plume
9 that can't be measured with visual measurements as
10 opposed to an NTU meter to determine compliance with
11 basin plan standards?

12 A. No.

13 Q. So, hypothetically, if it was a three-foot
14 plume that was created, that also would require an NTU
15 meter?

16 A. Yes.

17 Q. Is it any defense to a violation like this
18 that a turbidity event may be unexpected?

19 A. I don't believe so. I have to look back at
20 Condition 19 to see if there's a provision that allows
21 for that.

22 Q. Well, let me ask this just as a mechanical
23 issue, I suppose. Let's say, hypothetically, that you
24 know a worker working in the live stream drops a beam
25 or some other, you know, large item into the river

1 which then causes some turbidity, which is, of course,
2 an unexpected event. At that point, how would an NTU
3 meter be used under the terms of this Condition?

4 A. You would measure upstream 50 feet and
5 downstream within 100 feet for the duration prescribed
6 in Condition 19 to determine compliance.

7 Q. So someone would need to go upstream 50 feet,
8 take NTU readings, and then that same person would run
9 downstream --

10 A. It wouldn't have to be one person.

11 Q. So you might have two people with two meters,
12 one upstream and one downstream at the same point in
13 time?

14 A. Possibly.

15 Q. But the Certification doesn't describe,
16 exactly, how that is supposed to occur?

17 A. Correct.

18 Q. Are you aware of any other sources or
19 materials or guides relied on by the Regional Board or
20 other people, you know, in the industry that provide
21 direction or guidance for the use of NTU meters in
22 these types of situations?

23 A. There's just standard methods which we
24 commonly refer to in the permits that I write, and
25 there very well could be guidance by State Board, or

1 individual permits, or general permits.

2 I'm not familiar enough with Caltrans general
3 stormwater permit to know if it talks about it --

4 Q. Okay.

5 A. -- but at least standard methods.

6 Q. Are you aware of, specifically, of any
7 standard methods, or that's just your general belief?

8 A. Standard method is a book that contains all
9 of the standard methods that are used in -- that we use
10 for compliance with the permits that we write.

11 Q. Who publishes that book?

12 A. I don't recall.

13 Q. Is it referred to anywhere in the
14 Certification?

15 A. No.

16 Q. To your knowledge, is it a book that is
17 commonly used in the industry as guidance for using NTU
18 meters and possibly other subjects?

19 A. Yes.

20 Q. In this case are you aware of, you know --
21 strike that.

22 What information, to your knowledge, would
23 have been available to Caltrans or the contractors on
24 this project in terms of guidance as to how NTU meters
25 should be used?

1 A. I believe that all engineers who graduate
2 with a bachelor's degree are familiar with standard
3 methods. It is part of the common curriculum. Beyond
4 that, I don't know to what degree Caltrans engineers
5 use standard methods in their practice.

6 And from our agency, you know, I was not
7 involved in the permitting process for this, so I can't
8 speak to that.

9 Q. Okay. Let's move to the September 9th, 2006
10 violation, and this relates to sediment plume from
11 placement of trestle footings. And there's a familiar
12 conversation involving Ron den Heyer, correct?

13 A. Correct.

14 Q. And I have three items that I have as
15 evidence for this particular violation. The first is a
16 September 11th, 2006 daily report by Rich Thompson, and
17 the other two are photographs designated 060901-01
18 and -02; is that right?

19 A. Yes.

20 Q. Now, we have talked about these same
21 photographs in this document in relation to another
22 violation but not for Condition 19. What is the
23 evidence here that Condition 19 was violated?

24 A. There was -- turbidity was increased above
25 background in the river, which would have triggered the

1 field turbidity measurements that we have already
2 discussed.

3 Q. Is your violation based on the fact that you
4 just simply have no evidence that an NTU meter was
5 used, or do you have affirmative evidence that an NTU
6 meter wasn't used?

7 A. I do not have affirmative evidence that an
8 NTU meter wasn't used. In fact, it may have.
9 Although, I reviewed the data whenever a meter was
10 used, and none of the data appeared adequate that was
11 ever used on-site, so -- and in all instances, in
12 Appendix A-E, whenever there was any evidence of a
13 sediment plume in the river, insufficient turbidity
14 measurements were taken.

15 Q. Okay. I want to ask you something about this
16 engineer's report.

17 We have talked earlier about whether or not
18 this refers to events that occurred on this date or a
19 different date, and I have the same question here.
20 Specifically, this 10-10 entry, it states:

21 "Ron den Heyer who came to my office
22 with Carl Page and a photo of turbidity
23 from drilling debris."

24 Do you see that?

25 A. Yes.

1 Q. And then further down in that passage it
2 says:

3 "John wasn't there this morning and
4 when Mitch went down to the gravel bar
5 after looking at the trestle
6 super-structure, he saw MCM's crew using a
7 baffle to keep anchor rod hole cleanout
8 debris within the CSP and some known
9 turbidity in the water."

10 Do you see that?

11 A. Yes.

12 Q. From those passages does it appear possible,
13 does it seem possible to you that the photo of
14 turbidity referenced in the first part of that passage
15 was from a date other than September 11th?

16 A. It is possible.

17 Q. Okay. I mean, is there anything else in this
18 document that you see that establishes unmonitored or
19 unmeasured turbidity on that day?

20 A. Yes. Later on in the middle of the paragraph
21 it says:

22 "Mitch said Carl didn't say anything
23 to him about debris spraying into the
24 water when they were at the foundation
25 work this morning. Carl said he saw it

1 before Mitch came down, and he also saw
2 some SAT when he and I were on the job."

3 Q. So that statement suggests to you that there
4 might have been some turbidity?

5 A. Yes.

6 Q. It doesn't say turbidity, though, it just
7 says debris spray into the water?

8 A. It talks about debris spraying into the
9 water, and earlier in the paragraph -- "Ron den Heyer
10 came to the office with Carl Page and a photo of
11 turbidity and Carl said he saw it before" -- it appears
12 to me to imply that there was turbidity in the water
13 earlier that morning.

14 Q. Is it true that -- let's back up.

15 Do you have any information or evidence of
16 what debris would have been sprayed in the water in
17 this statement that you referred to?

18 A. Just contextually, and in an entire paragraph
19 earlier on it says, "anchor rod hole cleanout debris."

20 Q. But we don't know, you know, precisely what
21 type of debris, or how much, or, you know, where it
22 would have hit the water, or other information, do we?

23 A. No.

24 Q. Or whether, in fact, that observation of, you
25 know, debris spraying the water would have created what

1 is commonly understood as being turbidity?

2 A. Correct.

3 Q. Turn to the September 22nd violation, and
4 this is:

5 "Turbid discharge to river. Second
6 heavy vehicle crossing."

7 Now, the information that we have in support
8 of this violation first is a number of photographs; is
9 that right?

10 A. Yes.

11 Q. Do you have those photographs handy?

12 A. Yes. We have reviewed them already.

13 Q. It is the same set of photographs that we
14 have looked at before. Just to identify them,
15 060922-07 through -15. And they show, generally, a
16 number of vehicles crossing over the river; is that
17 correct?

18 A. Yes.

19 Q. In addition to the photographs, you also cite
20 the Biological Monitoring Report. Do you happen to
21 have that report or that excerpt handy?

22 A. Yes.

23 Q. If you could show me that passage?

24 A. It is the one --

25 Q. It is the one that we already marked.

1 Is the basis for this violation that an
2 equipment crossing took place without an NTU meter
3 being used?

4 A. I don't believe so because one of the
5 pictures shows a piece of equipment, apparently,
6 measuring turbidity.

7 Q. Well, just to be clear, you have read the URS
8 Report which I provided you earlier, right?

9 A. Yes.

10 Q. And I will quote this from the URS Report.
11 It talks about three crossings, and it talks about the
12 use of the turbidity meter.

13 Well, actually, rather than do it that way,
14 I'm just going to give this to you so you can review it
15 for yourself and make your own conclusions; and I would
16 look at pages 6-20 and 6-21. Take a look at that.

17 (Witness examines document.)

18 THE WITNESS: Okay.

19 BY MR. HUNGERFORD:

20 Q. So that report describes three different
21 crossings, right?

22 A. Yes.

23 Q. Does it also say that the first two did not
24 involve the use of an NTU meter but the third did?

25 A. Yes.

1 Q. So for this particular violation we are
2 talking about the second of those crossings, aren't we?

3 A. Yes.

4 Q. And so is this violation based on the fact
5 that an NTU meter was not being used?

6 A. In part.

7 Q. What else is it based on?

8 A. There's many different parts to the 401
9 Certification Condition 19, so we do not have evidence
10 that any of them had been complied with.

11 We don't have evidence that an NTU was used
12 50 feet upstream or 100 feet downstream, or during the
13 period of time that would have been required to
14 demonstrate compliance with the 20 percent above
15 background requirement.

16 But the use of an NTU meter is integral to
17 each of those conditions.

18 Q. In the URS Report you noted that, or did you
19 note that there was a visual scale used for turbidity
20 monitoring on this second crossing?

21 A. Yes.

22 Q. Okay. Looking at Condition 19, just to
23 divide it into its components, the first section says:

24 "Visual observations shall be
25 conducted and there's potential increased

1 turbidity."
2 Correct?
3 A. Correct.
4 Q. And, certainly, here, visual observations
5 were conducted?
6 A. Correct.
7 Q. The second says:
8 "Field turbidity measurements shall be
9 collected when activity increases
10 turbidity above background."
11 Right?
12 A. (Witness nods head.)
13 Q. And in this case we have visual measurements
14 and a visual scale was used, correct?
15 A. Correct.
16 Q. But not an NTU meter?
17 A. Correct.
18 Q. So am I correct in assuming that your basis
19 for this violation, at least in part, is because an NTU
20 meter was not used?
21 A. Yes.
22 Q. Now, going on to the rest of the condition.
23 There is next direction that --
24 "Turbidity measurements shall be taken
25 upstream and downstream from the source of

1 turbidity."

2 Right?

3 A. Yes.

4 Q. Okay. And should I take it that the basis

5 for the violation is that there wasn't an NTU meter

6 being used upstream and downstream?

7 A. In part, yes.

8 Q. At the end of this condition there is a

9 requirement that:

10 "Turbidity monitoring results be

11 reported when there is an increase in over

12 the basin plan standards."

13 Is that right?

14 A. Yes.

15 Q. Is there a violation of that here?

16 A. It is not being assessed -- well, I don't

17 believe that was the foundation of my putting it in

18 here, although, it is possible that it was not reported

19 in the appropriate time.

20 Q. So just so I understand this, the primary

21 basis, at least for this violation, is that an NTU

22 meter wasn't used, and it wasn't used in the manner

23 that the Regional Board believes it should have been?

24 MS. MACEDO: Objection. Misstates testimony.

25 THE WITNESS: I'll answer "yes" as long as it

1 is understood that by use of the NTU meter, we -- I
2 mean that sufficient data was not collected to
3 demonstrate compliance with the receiving water
4 limitations.

5 BY MR. HUNGERFORD:

6 Q. Isn't it true that the only method of
7 demonstrating compliance that you described as
8 acceptable is the use of an NTU meter?

9 A. Yes.

10 Q. Are there any other acceptable methods of --
11 of --

12 A. It is possible. I believe there is another
13 method, but I don't know the name of it.

14 Q. What does it involve?

15 A. It's similar to an NTU meter, but --

16 Q. It involves using some instrumentation?

17 A. Yes.

18 Q. You don't know what that is called, though?

19 A. I believe they measure it in terms of JTUs,
20 maybe, but I think it is an older method, and I'm not
21 quite sure if it is still used.

22 I think it may, actually, have been used on
23 this project, but we still didn't have sufficient
24 information, sufficient data to determine compliance
25 with the condition.

1 Q. Turn to September 28th. And for this one the
2 violation appears to be based on the Biological
3 Monitoring Report and three photographs; is that right?

4 A. Yes.

5 Q. Okay. And the photographs are numbered
6 060928-1, -02 and -03, correct?

7 A. Yes.

8 Q. Beginning with the photographs -- looking at
9 the Biological Monitoring Report, the Biological
10 Monitoring Report shows a Figure 1 that indicates a
11 September 28th --

12 "Sediment plume caused by workers in
13 channels moving gravels off bedrock to set
14 CMP footings, cofferdams."

15 Right?

16 A. Yes.

17 Q. And this is, I take, the factual basis for
18 this violation; is that right?

19 A. Yes.

20 Q. Do you have the Biological Monitoring Report
21 in front of you? Why don't you get that.

22 A. Okay.

23 Q. On the second page it talks about a number of
24 different plumes. Is there any particular one that
25 forms the basis of this violation? Where is the

1 violation? Is it based generally on these activities
2 generally this day?

3 A. I believe that, in an attempt to show
4 discretion, we lumped them together.

5 Q. Okay. Let's turn to the photographs. The
6 first photograph shows a number of workers standing in
7 the river; is that right?

8 A. I would like to correct my last statement
9 just because I notice that there is another violation
10 19 on the same date, and this refers to two plumes, and
11 I believe those two plumes refer to two different
12 violations. So, no, we did not lump them together.

13 Q. We are on September 28th, right? I only see
14 a single violation for that day.

15 A. I think you're right.

16 Okay. Looking in the same Biological
17 Monitoring Report earlier on at the beginning, the
18 section entitled "Settlement Plumes," it says:

19 "I observed two distinct sediment
20 plumes this week, one related to the" --

21 Well, I won't read it all, and I think that
22 that is referring to the two, one on the 28th and one
23 on the 29th.

24 Q. Okay.

25 A. So that later on, when it appears to say the

1 second plume -- perhaps referring to the second one
2 that he observed that week.

3 Q. I see. I think you're probably right, and
4 thank you for clarifying that.

5 So we are looking just at the September 28th,
6 and we have a number of photographs, and the first one
7 appears to be a number of workers standing in the
8 river; do you see that?

9 A. Yes.

10 Q. And my interpretation of this is that the
11 workers standing in the river, or the work that they
12 are doing is creating some turbidity that we see in the
13 foreground of the photograph. Would you agree with
14 that?

15 A. Yes.

16 Q. Okay. Is that the plume that you believe is
17 being referred to by the Biological Monitoring Report?

18 A. Yes.

19 Q. Looking at the next two photographs, you see
20 what appears to be a much broader view of the site. It
21 is from a different vantage point than the first
22 photograph.

23 What is it about these two photographs that
24 document the violation?

25 A. It may not appear directly from looking at

1 this small of a photo that there's a turbidity plume,
2 but this turbidity event lasted four hours, and this
3 picture could be depicting the turbidity plume, which,
4 when looked at on a computer, you might be able to see
5 it better.

6 Q. Do you have an understanding of What the
7 workers were doing in the river at this time?

8 A. They were using shovels, perhaps, to
9 excavate a clean area for a pier footing for the
10 trestle deck. Yes, for the trestle.

11 Q. I think you're probably right.

12 I take it with -- you know, as similar to
13 some of the other violations regarding this condition,
14 is this violation, also, based on the lack of
15 information showing that a turbidity meter was being
16 used?

17 A. And that -- yes. And that lack of quality
18 data.

19 Q. Now, looking at the first photograph, these
20 workers standing in the river, it appears that their
21 activities have created some turbidity, correct?

22 A. Correct.

23 Q. It would also suggest that turbidity is being
24 created as a result of the disturbance of in-stream
25 sediments. Would you agree with that?

1 A. I can say that it appears that way.

2 Q. Okay.

3 A. I couldn't guarantee it. I mean, they could
4 be doing other things that I'm not aware of, but first
5 glance, yes, it appears that they are using shovels in
6 the river and that turbidity is coming from in-stream
7 sediments.

8 Q. Thank you. Other than the Biological
9 Monitoring Report and these photographs, are you aware
10 of any other specific information that supports this
11 particular violation?

12 A. No.

13 Q. Turning to the first of two September 29th,
14 violations, both rely on a September 29th assistant
15 resident engineer's daily report. The first one also
16 relies on three photographs, and those are 060929-1, 2,
17 and 3; is that right?

18 A. Yes.

19 Q. Do you have those photographs handy?

20 A. Yes.

21 Q. I have numbers 2 and 3 but not, apparently, 1
22 handy. Could you show me that?

23 Okay. We have seen this before.

24 Other than the photographs and the assistant
25 resident engineer's daily report, do you have any other

1 specific facts, documents or evidence in support of
2 this particular violation?

3 A. Not particularly.

4 Q. So the assistant resident engineer's report
5 describes, and I'll paraphrase, that there is some
6 turbidity created from the placement of concrete into a
7 CMP; is that correct?

8 A. Correct.

9 Q. And is this violation based on the lack of a
10 turbidity meter as well as the lack of acceptable data
11 to demonstrate compliance with the basin plan
12 standards?

13 A. Yes.

14 Q. Which is similar to the other violations in
15 this series that we talked about?

16 A. Yes.

17 Q. Is there anything else about this particular
18 violation, this particular factual scenario, that
19 establishes the violation of Condition 19?

20 A. Not that I know of.

21 Q. Turning to the next event on the same date,
22 which also relies on the same assistant resident
23 engineer's report, other than the report and the three
24 photographs that you have referenced in the Complaint,
25 are you aware of any other evidence, facts or

1 information that support this particular violation?

2 A. I'll just repeat that, in general, you know,
3 all of the documents in our file are -- they are
4 supportive of the allegations here, and there are other
5 photos that provide context to each of these photos.
6 We have a whole stack of CDs and there are other
7 photos, and we have gone over that earlier in the
8 deposition, but I want to reiterate that. Other than
9 that, no.

10 Q. Absolutely. And I understand completely
11 that, as a contextual matter, you're relying on the
12 entire record. So when I ask those types of questions
13 it relates to just specific documentary evidence.

14 So on this particular occasion, we looked at
15 this before, it refers to a detached tremie and workers
16 standing on sandbags, which then created a plume that
17 might have had some combination of concrete and/or
18 algae; is that right?

19 A. Yes.

20 Q. And other than the lack of an NTU meter being
21 used, or other acceptable data for the Regional Board
22 to establish basin plan compliance, is there anything
23 else about this factual scenario that establishes a
24 violation of Condition 19?

25 A. No.

1 Q. Let's turn to the next violation, which
2 appears to be October 2nd. This October 2nd, 2006,
3 this is the third heavy vehicle crossing, correct?

4 A. Correct.

5 Q. So let's take a look at the evidence that has
6 been submitted here.

7 First, we have one photograph designated
8 061002-01; is that correct?

9 A. Yes.

10 Q. Which shows an excavator in the middle of the
11 river; is that right?

12 A. Yes.

13 Q. And then we also have a Biological Monitoring
14 Report that describes the crossings which we have
15 already marked as an exhibit to this deposition; is
16 that right?

17 A. Yes.

18 Q. Let me back up.

19 The Biological Monitoring Report, which one
20 are you relying on, just so I know?

21 A. Which entry?

22 Q. Yes. Which entry in the Biological
23 Monitoring Report.

24 A. The one that is quoted in the appendix. Are
25 you asking the source of that?

1 Q. Yeah. I want to just determine whether or
2 not the exhibit we have already marked is the same
3 Biological Monitoring Report that you're referring to
4 here in this violation.

5 A. I believe it might be the URS Report.

6 Q. Okay. I'll cut through this. I will hand
7 you a copy of what appears to be one page from a
8 Biological Monitoring Report, with the date of
9 October 9th, 2006 on the top. Would you take a look at
10 that?

11 A. Okay.

12 Q. Is that the same quote that is contained in
13 the Complaint?

14 A. Yes.

15 Q. What does it indicate?

16 A. It indicates that turbidity measurement 100
17 feet below the crossing was taken.

18 Q. Okay.

19 A. And that there was a reading of two NTUs on
20 the meter.

21 Q. Okay. And so how did that violate Condition
22 19?

23 A. All of the NTU readings provided by Caltrans
24 and the biological monitor were inadequate to determine
25 compliance. They were questioned by the biological

1 monitor as to being valid and were inadequate for
2 compliance determination; and, therefore, insufficient
3 to comply with the requirements of 19.

4 Q. How was the use of the NTU meter or the
5 readings obtained inadequate?

6 A. We have no evidence that the meter was
7 properly maintained, calibrated, operated. And in the
8 data in the URS Report, the data is starred as being
9 questionable and not accurate.

10 Q. Let me start with the first part of that.

11 So you have no evidence of proper maintenance
12 or calibration. Is that something that you require to
13 be maintained in Caltrans and contractors' files?

14 A. In order to follow the standard method you
15 need to properly operate and maintain your equipment
16 and calibrate it, and in all the permits that I write
17 that is a requirement. It is not explicit in the
18 Certification.

19 Q. Okay. Do you have any evidence that this
20 particular piece of equipment wasn't adequately
21 maintained or calibrated?

22 A. In the file there is an indication that the
23 equipment wasn't properly maintained through its life
24 on-site.

25 Q. I will want to see that reference.

1 A. I would have to dig for it. I haven't
2 reviewed all of these documents in quite some time,
3 although, I do recall statements that the meter hadn't
4 been maintained for quite some time.

5 In fact, at the end of that report, you don't
6 appear to have it all copied, but at the very end of it
7 there's a data table showing all of the turbidity
8 measurements, and it has them starred as inaccurate.
9 And the information that you're requesting might be in
10 other parts of that document or in other documents that
11 I have. I would have to dig for them.

12 Q. Because I don't have this information in
13 front of me, and it sounds like it is going to be
14 difficult for you to find, let me make sure I
15 understand your testimony correctly.

16 The information that you have that this
17 equipment was not correctly maintained or calibrated at
18 this time is based on an asterisk that is contained in
19 the full URS Report; is that right?

20 A. That's part of the evidence.

21 Q. Other than that asterisked section of the URS
22 Report, what else?

23 A. What other evidence do I have that indicated
24 that the equipment was not properly maintained?

25 Q. Yes.

1 A. There's a narrative language from the -- I
2 believe from the Biological Monitor describing how --
3 when it was calibrated and how, even after it was
4 calibrated, the data was still questionable. I would
5 have to look into it to try to gather up all of that
6 information, and I can do that.

7 Q. You didn't quote any of that in your
8 Complaint, did you?

9 A. No.

10 Q. Let's assume that the evidence were to show
11 that this equipment was adequately maintained and
12 calibrated. Would there be a violation of
13 Condition 19?

14 A. In this instance?

15 Q. Yes.

16 A. No. There would be a violation of
17 Condition 14.

18 Q. Okay. But Condition 14 isn't alleged as
19 being violated in this particular instance, is it?

20 A. Based on the lack of quality data. If,
21 indeed, the data was quality, then the data given
22 demonstrates an increase above 20 percent of
23 background.

24 Q. Okay. Is it your understanding that the
25 Certification does not, under any circumstances, allow

1 greater than 20 percent above background at 100 feet?

2 A. Correct, it does not allow that. It says
3 that --

4 "At which point it is determined that
5 it is greater than 20 percent at 100 feet,
6 then BMPs shall be modified."

7 Q. So let's assume that the first event of this
8 type of activity has caused an exceedance of the 20
9 percent standard of 100 feet, and thereafter, you know,
10 corrective measures are taken to improve the BMPs.
11 Would that first event still establish a violation of
12 the basin plan?

13 A. If it was increased above 20 percent?

14 Q. Yes.

15 A. Yes.

16 Q. So is it correct then that improvements made
17 to BMPs, as required by 19, will not protect an
18 activity from violating the basin plan?

19 A. Well, the idea of a BMP is that it does not
20 cause a violation on the basin plan. So if the BMPs
21 are working properly, then it will not violate the
22 basin plan.

23 Q. Have you alleged violation of Condition 14
24 anywhere in the Complaint?

25 A. I don't believe so.

1 Q. If you could turn to the next event. It is
2 October 7th, 2006.

3 And this is a familiar situation that we have
4 talked about before. This is using a silt fence to
5 control in-stream turbidity by an excavator; is that
6 right?

7 A. Yes.

8 Q. And we have seen the photographs before and
9 we have also seen the assistant engineer's daily
10 report, correct?

11 A. Correct.

12 Q. So I think we have a basic understanding of
13 the factual scenario, so the question is this: Is the
14 basis for the violation of Condition 19, the absence of
15 evidence that an NTU meter was used and the absence of
16 other acceptable evidence, bearing on the basin plan
17 compliance?

18 A. Yes.

19 Q. Is there anything else about this factual
20 scenario that violates Condition 19?

21 A. No.

22 Q. Let's turn to the next, October 7th, 2006.

23 Here we have a very similar situation. The
24 same date, relying on the same engineer's report, and
25 this is the second attempt to excavate footings. And

1 am I correct in assuming that the violation of
2 Condition 19 is based on the same premise?

3 A. Yes.

4 Q. And then let's turn to the next October 7th,
5 and this is the statement by Mr. Ham that he was at
6 least two-thirds complete, might go back down to
7 finish.

8 Do you see that?

9 A. Yes.

10 Q. And so am I correct that your testimony is
11 that you don't know whether or not Mr. Ham, actually,
12 went down and did additional work?

13 A. Correct.

14 Q. And so the violation is based on the
15 assumption that he did go down and perform that work,
16 and that the results of that work were substantially
17 similar to the earlier two passes?

18 A. Yes.

19 Q. Okay. If we could go to the next one,
20 October 14th, 2006.

21 And this is another insufficient turbidity
22 measurements regarding discharges during construction
23 of in-stream footings. We have no photographs for
24 this, correct?

25 A. Yes.

1 Q. What we have appears to be a quote from a
2 Biological Monitoring Report by Carl Page; is that
3 right?

4 A. I believe so.

5 Q. Go ahead and --

6 A. I have to find it.

7 Q. Yes, find it if you could.

8 A. Okay.

9 Q. Other than Mr. Page's report, do you have any
10 other specific facts, evidence or documentation that
11 supports this violation?

12 A. No.

13 Q. Is this violation, as with others in the
14 series, based on the absence of an NTU meter or other
15 acceptable evidence to satisfy the basin plan
16 standards?

17 A. Yes. But it is not just the basin plan
18 standards, it is also, you know, the requirements in
19 Condition 19 --

20 Q. Okay.

21 A. -- that are in place to implement the basin
22 plan standards.

23 Q. Got it. Anything else about this factual
24 scenario that establishes a violation of Condition 19?

25 A. No.

1 Q. Okay. Turn to the next October 16th, 2006.
2 And we have here two documents that I have in support
3 of this violation. The first is an October 23rd report
4 to Susan Leroy (phonetic) by the Biological Monitor,
5 and the second is a photograph designated 061016-01.
6 Am I correct on both?

7 A. You would have to show me the quote for me to
8 find it.

9 Okay.

10 Q. Other than these two items are you aware of
11 any other specific evidence that supports this
12 violation?

13 A. No.

14 Q. And the Biological Monitoring Report here
15 says that there's a discharge from a person working
16 that channel which created a plume of about 8 feet long
17 by about 3 feet wide for about 15 minutes; is that
18 right?

19 A. Yes.

20 Q. What is the basis for the violation of
21 Condition 19?

22 A. Lack of sufficient turbidity measurements
23 with the appropriate meter and the appropriate
24 distances for the appropriate amount of time.

25 Q. And we, certainly, do have visual monitoring,

1 though, of this particular event, right?

2 A. Correct.

3 Q. And visual monitoring did produce an estimate
4 of the size, length and time of the plume, right?

5 A. Yes.

6 Q. But as you previously testified, the visual
7 monitoring, in your view, doesn't satisfy the
8 requirements of Condition 19?

9 A. Correct.

10 Q. Do you have any idea what this worker is
11 doing?

12 A. No.

13 Q. All right. Turn to the next one. The next
14 one is October 16th, 2006. Again, we have seen this
15 before. We have a one page of the assistant resident
16 engineer's daily, dated October 16th, 2006; is that
17 right?

18 A. Yes. I believe we have already looked at
19 that.

20 Q. We have looked at that in relation to another
21 violation. We don't have any photographs, correct?

22 A. No.

23 Q. Are you aware of any other reports, evidence,
24 or documents that support this particular violation on
25 this day?

1 A. No.

2 Q. Now, you have quoted a section in the report
3 that says that, during a concrete pour, there was a
4 minor leak, correct?

5 A. Correct.

6 Q. Now, since your violation is based on an
7 increase in turbidity, what is it about this statement
8 that demonstrates that there was an increase of
9 turbidity in the active river channel?

10 A. I don't see any.

11 Q. Am I correct in saying that it refers to a
12 leak but not necessarily turbidity?

13 A. Correct.

14 Q. And we don't really understand what the -- or
15 to state it more accurately, we don't have any
16 information at this point what the circumstances were
17 of that leak, do we?

18 A. Correct.

19 Q. So with this in mind, is it possible that
20 there's no evidence of an increase in turbidity that
21 would have required action to be taken under
22 Condition 19?

23 A. Not that I can see.

24 Q. Okay. If you would turn to the next one,
25 October 18th. And we have here two documents, by my

1 count, in support of this violation.

2 First is an October 18th passage in a
3 Biological Monitoring Report and the second is a
4 photograph designated 061018-02. Do you have the same
5 things?

6 A. The photo, yes.

7 Q. Can you show me the photograph that you have
8 to make sure that we are looking at the same thing?

9 A. You can look at the number below it. It is
10 02, I think.

11 Q. Okay. So the factual scenario here is the
12 installation of metal sheet piles in the active river
13 channel which resulted in a plume estimated to be 25
14 feet by 6 feet for 20 minutes; is that correct?

15 A. Correct.

16 Q. Other than the photograph and the Biological
17 Monitoring Report, are you aware of any other facts,
18 documents or evidence that, specifically, supports this
19 violation?

20 A. No.

21 Q. So the Biological Monitoring Report
22 identifies -- based apparently on visual monitoring --
23 a 25 by 6 foot plume, correct?

24 A. Correct.

25 Q. So, certainly, there was visual observations

1 and visual field estimates made of the plume, correct?

2 A. Correct.

3 Q. Should I take it the violation is based on
4 the absence of any evidence that a turbidity meter was
5 used?

6 A. Yes.

7 Q. And should I also assume that the violation
8 is based on the absence of any other acceptable
9 evidence to the Regional Board that would establish
10 compliance with the basin plan or Certification
11 standards?

12 A. Yes.

13 Q. Is there anything else about this factual
14 situation that, in your view, establishes the violation
15 of Condition 19?

16 A. No.

17 Q. Turn to the October 20th event. And I have
18 two items in support of this. One is an October 20th
19 entry in a Biological Monitoring Report and the other
20 is a photograph designated 061020-02. Do you have the
21 same two things?

22 A. Yes

23 Q. Can I see your photograph to make sure we are
24 looking at the same thing.

25 A. (Indicating.)

1 Q. Thank you.

2 The Biological Monitoring Report states that
3 the monitor observed a minimal sediment plume event
4 during the seal pour that lasted five minutes and was
5 about 2 feet by 4 feet; is that correct?

6 A. Correct.

7 Q. First of all, other than the monitoring
8 report and the photograph, are you aware of any other
9 specific documents, facts, or evidence that support
10 this violation?

11 A. No.

12 Q. Is this violation, as with others in this
13 series, based on the absence of evidence that an NTU
14 meter was used?

15 A. Yes.

16 Q. Is it also based on the lack of acceptable
17 evidence of the Regional Board to establish compliance
18 with the basin plan or the Certification standards?

19 A. Yes.

20 Q. Is there anything else that this violation is
21 based on?

22 A. No.

23 MR. HUNGERFORD: Let me take just a quick
24 break.

25 (Recess.)

1 MR. HUNGERFORD: So we are moving on now to
2 the next category of violation. This is A-F Appendix,
3 and they deal with alleged improper disposal of cement
4 waste.

5 The first of these violations -- there's
6 actually a pair of them, is dated August 29th, 2006.
7 The first August 29th violation appears to be based on
8 a quote. It states that:

9 "On August 29th, during placing
10 concrete in a corrugated steel pipe within
11 the river, the water level rose, and to
12 prevent it from overflowing into the
13 river, the water was pumped to the
14 dewatering basin."

15 Do you see that there?

16 A. Yes.

17 Q. What is the source of that quote?

18 A. I believe it is the Response to the Notice of
19 Violation.

20 Q. You cited Biological Monitoring Report as,
21 unless I'm mistaken here -- yes, a Response to the
22 Notice of Violation. And you don't have any
23 photographs or any other evidence that you have cited,
24 correct?

25 A. Correct.

1 Q. Are you aware of any other evidence or other
2 information, facts or documents that specifically
3 support this violation?

4 A. No.

5 Q. Okay. Now, the quoted section is a response
6 to Notice of Violation. It appears to be an excerpt
7 from a letter dated December 13th, 2006; is that
8 correct?

9 A. It is probably in here somehow, but I don't
10 see it.

11 Q. Well, I can provide you with my own excerpt
12 just for reference.

13 A. Oh, yes. It is in the front. Okay.

14 Q. My question is that, I would assume that a
15 statement like this, that is contained in a letter,
16 would be accompanied somewhere by some other
17 documentation of the events that were summarized in the
18 letter. Are you aware of any other documentation in
19 that regard?

20 A. No. I mean, this is all we have to rely on
21 is what Caltrans provides us.

22 Q. It indicates that a certain amount of water
23 that had come into contact with cement was pumped into
24 the water basin, correct?

25 A. Correct.

1 Q. Do you have any idea how much water was
2 pumped?

3 A. It appears to relate to an event described in
4 one of the documents that we have already referenced,
5 one of the Biological Monitoring Reports, where it is
6 stated that there is seeping through the bar after
7 eight hours of pumping from the cofferdams.

8 So in terms of a volume, no, I do not have an
9 estimate, but supposedly eight hours of pumping.

10 Q. I would disagree with you on -- not to be
11 argumentative, but simply because I don't --

12 A. You may be right.

13 Q. Reading this passage alone, which is all that
14 I have to go on based on the information provided in
15 connection with the Complaint, it states that, you
16 know:

17 "Water was pumped during placement of
18 concrete from a CSP into the basin."

19 Given that this line of violation is based on
20 the cement discharges or improper disposal of cement
21 waste, my assumption is that this violation was based
22 on the fact that isolated Pool B, presumably, or some
23 other basin, was used to dispose of water that came in
24 contact with cement.

25 A. You're right. The other one I was referring

1 to is probably construction dewatering, and this is
2 cement contact watering, which are different events, so
3 I'll retract that last --

4 Q. So I'm correct that this is based on cement
5 contact water?

6 A. Yes.

7 Q. And is the violation based on -- why don't
8 you tell me what the violation is based on?

9 A. It is based on the quote.

10 Q. Okay. Specifically, what about the quote?
11 Well, let's go to the violations first. We have
12 Violations 9 and 17.

13 Condition 9 is what we have already looked
14 at -- no concrete washings other than authorized by
15 this permit shall be allowed to enter into a place or
16 be washed into waters of the State.

17 How is that condition violated by this quote?

18 A. This would be cement or concrete washings.
19 It could fall under the category of -- that was the
20 most relevant category. It was allowed to enter into
21 waters of the State.

22 Q. And what specific waters of the State? The
23 quote doesn't indicate that it was washed into the
24 river, for example.

25 A. It is considered that the dewatering basin

1 commonly used isolated Pool B as waters of the State.

2 Q. Do we know whether this is isolated Pool B
3 that was used here?

4 A. No.

5 Q. You were making that assumption?

6 A. It is an educated guess based on the only
7 evidence that we have, is that that is the only basin
8 used on the north bridge gravel bar. It was also used
9 on that date for other dewatering activities. We have
10 no evidence to the contrary.

11 Q. Okay. Do we have any idea how much water was
12 pumped into the isolated Pool B, assuming that was the
13 basin?

14 A. No.

15 Q. Do you have any evidence of what the pH of
16 that water might have been?

17 A. Cement -- if it is concrete contact water, it
18 would be a relatively high pH.

19 Q. So it is possible, but we don't have any
20 evidence, do we?

21 A. This quote is evidence.

22 Q. Well, the quote is evidence that there was
23 contact water, contact -- that came into contact with
24 cement was placed in the basin. But does it, actually,
25 provide evidence that this was high pH water?

1 A. If it came into contact with concrete it
2 would have had high pH unless it was otherwise
3 remedied -- adjusted.

4 Q. Okay. We might have covered this the first
5 day but the statement "waters of the State" in
6 Condition 9, how are "waters of the State" defined?

7 MS. MACEDO: Objection. Calls for a legal
8 conclusion.

9 THE WITNESS: So we -- "waters of the State"
10 is -- I defer to my legal counsel to make a legal
11 determination of that.

12 BY MR. HUNGERFORD:

13 Q. Sure. You can tell me your understanding.

14 A. My understanding is that "waters of the
15 State" includes both surface waters and groundwaters.

16 Q. The quoted section indicates that had this
17 water not been pumped to the dewatering basin that it
18 potentially could have overflowed into the river.
19 Would you agree with that?

20 A. Yes.

21 Q. Putting aside whether there is a violation of
22 Condition 9, or any other condition, would you agree
23 that that's a mitigating condition that would play a
24 role in the application of the adjustment factors?

25 A. No.

1 Q. Why not?

2 A. Because it would have been a violation had it
3 discharged to the stream channel, and it would have
4 been a violation had it discharged -- to the stream
5 channel.

6 Q. So you're saying it makes no difference
7 whether it overflowed into the live river or whether it
8 was pumped to a dewatering basin?

9 A. They both are violations and due to the type
10 of material both are egregious, and there may be lesser
11 impacts to salmonides -- salmon species or other
12 in-stream aquatic life.

13 On the other hand, there are other aquatic
14 life in the in-stream gravels of the gravel bar. So
15 both have their impacts.

16 Q. You mentioned that this is an egregious
17 violation. What is that based on?

18 A. Based on the high pH and the associated
19 impacts associated with that.

20 Q. Isn't it true that you're just making an
21 assumption that this is high pH water based on the fact
22 that it is contact water, not based on any direct
23 information of the particular discharge?

24 A. I don't believe that's an assumption. I
25 believe that is implied by the evidence that we have.

1 Just because we don't have quantifiable evidence
2 doesn't mean it is an assumption.

3 Q. We, also, don't know how much water was
4 pumped from the CMP to the sedimentation basin, do we?

5 A. No.

6 Q. So your statement that this is an egregious
7 violation is based solely on the fact that this appears
8 to have been cement contacted water; it was pumped
9 somewhere into a sedimentation basin?

10 A. Within waters of the State, and that this
11 activity was foreseeable and had been communicated
12 between the Water Board and Caltrans prior to issuance
13 of the Certification.

14 It is part of the application, and Dean went
15 out of his way to make it very clear that no disposal
16 of cement waste or contact water is allowed on this
17 site and that it should be fully contained.

18 Q. Having reviewed all of the other evidence
19 connected with the Complaint, did you see a regular
20 practice being engaged in to dispose of cement contact
21 water into the sedimentation basin, or would this be
22 more accurately characterized as an isolated event?

23 A. I would not consider it an isolated event,
24 although, it may not be generally common practice.
25 There are other analogous events here on the table,

1 although, it is not as common of a practice as other
2 events based on the evidence that we have.

3 Q. I'll just go through the rest in a moment.
4 I'm going to the next event, which is, also,
5 August 29th.

6 First, the violation appears to rely on the
7 same quote that we just discussed from the December
8 13th, 2006 letter to Catherine Coleman; is that
9 correct?

10 A. This is the second event that occurred on
11 October 29?

12 Q. Yes.

13 A. It is the same -- yes, it is addressed to
14 Catherine Coleman, but it is the Response to the Notice
15 of Violation, and this is the cover sheet to that.

16 Q. I'm sorry, maybe I said October --
17 August 29th.

18 A. Yes. Same paragraph, same document.

19 Q. Okay. Let me I apologize. Let me back up to
20 the last because I neglected to ask you something.

21 You also allege this is a violation of
22 Condition 17. This is with the first August 29th
23 event, right?

24 A. Yes.

25 Q. What is it about this that violates

1 Condition 17?

2 A. As I referred to just a moment ago, that this
3 was foreseeable and -- foreseen in the application and
4 permit process.

5 Condition 17 requires that all activities,
6 BMPs, shall be conducted as described in the permit and
7 application, and this activity was not conducted in
8 that manner, which would have required full containment
9 of cement contact water.

10 Q. Okay. Let's go to the next August 29th. So,
11 again, we don't have, other than this quote, any other
12 facts, photographs or documentary evidence supporting
13 this particular violation, do we?

14 A. No.

15 Q. So focusing just on the quoted language, it
16 says:

17 "After placing the concrete seal
18 course, the contractor cleaned the hopper,
19 tremie and shovels in a footing excavation
20 in the river bar."

21 So what is your understanding, factually, of
22 what happened there?

23 A. The document speaks for itself. I mean, I
24 don't know how else I could explain it without
25 hypothesizing.

1 Q. Let me ask you a couple of questions then.

2 It appears from this statement that the
3 contractor had a number of tools or other equipment
4 that had come into contact with cement. I'm making
5 that assumption. Is that also the assumption that you
6 are using?

7 A. Yes.

8 Q. Now, it says it cleaned them in a footing
9 excavation in the river bar.

10 What exactly would a footing excavation have
11 been?

12 A. It would have been an excavated portion of
13 the gravel bar.

14 Q. Do you know whether that would have been a
15 contained area?

16 A. I have no evidence of any contained areas on
17 the river bar.

18 Q. Let me ask you this. Let's use a clear
19 situation.

20 You're now familiar with the CMPs, right?

21 A. Yes.

22 Q. And that there was -- a CMP was, essentially,
23 a contained area that would be created either in the
24 gravel bar or in a river where water would be pumped
25 out and concrete would be pumped in. Would that be

1 correct?

2 A. Correct.

3 Q. Let's say the contractor who had tools that
4 came into contact with cement and then cleaned those in
5 a CMP after a concrete pour had already been made in
6 that CMP, would that be a violation?

7 A. It depends if there's potential discharge to
8 the river. If it is completely sealed and contained,
9 then it could be considered as not a violation.
10 Although, I would argue that is probably not a BMP.

11 Q. But, certainly, in that situation, there
12 would be no discharge, for instance, correct?

13 A. That was my caveat, that if there's no
14 potential for discharge, then --

15 Q. So looking at this situation with this quote
16 relating to August 29th, are you making an assumption
17 here that these tools were cleaned in an uncontained
18 area?

19 A. Yes.

20 Q. Do you have any specific information on
21 whether this area was contained or uncontained?

22 A. No.

23 Q. Had this been -- well, let me start over.

24 If the facts were to prove that this was a
25 contained area, then, if I understand your testimony

1 correctly, it is conceivable that this would not amount
2 to a violation?

3 A. It could be construed as such. We would
4 still need to consider whether or not there was -- it
5 was a best management practice whether 17 was violated
6 or not, but --

7 Q. But with respect to --

8 A. -- with respect to Condition 9.

9 Q. What about with respect to Condition 10?

10 A. Condition 10 requires containment -- "shall
11 be adequately contained and shall be disposed of
12 properly." Whether that is proper disposal, I'm not
13 the expert to make that decision, but it could be
14 construed, as well, that 10 would not be a violation.

15 Q. Okay. Turn to the next one. This is the
16 August 30th, 2006. And what we have here, the
17 allegation is:

18 "Concrete washout to unlined area."

19 And I have two photographs in support of this
20 violation. One is designated 060830-01 and the other
21 is 060830-02. Do you have those?

22 A. Yes.

23 Q. I have no reports, records, logs or other
24 evidence in support of this violation, specifically, do
25 you?

1 A. No.

2 Q. Are you aware of any?

3 A. No.

4 Q. So we are relying just on the photographs.

5 Do you know who took those photographs?

6 A. I believe it was a Biological Monitor.

7 Q. Do you know where these photographs were
8 taken?

9 A. Near the cement plant.

10 Q. Where in relation to the bridge was the
11 cement plant?

12 A. I believe it was to the northeast -- a few
13 hundred yards from the northeastern part of the bridge
14 trestle.

15 Q. Certainly away from the riverbed itself,
16 correct?

17 A. Correct.

18 Q. What does the photograph appear to show to
19 you?

20 A. It appears to show concrete washout to an
21 unlined area.

22 Q. What is "concrete washout" specifically or --
23 let me rephrase that.

24 What is your understanding of what happened
25 here to create the situation that you see in the

1 photographs?

2 A. It is alleged that there's concrete tools or
3 other equipment that needed to be cleaned and washed
4 and the wastes were deposited at this location.

5 Q. Let me just refer to tools and other things,
6 equipment that was washed. Where do you get that from
7 in relation to these photographs?

8 A. It is just a hypothetical of how cement
9 contact water could get into this location.

10 Q. So that's generally your understanding of how
11 these things might get out there. You don't know what
12 sort of vehicle, for instance, if any, deposited this
13 material here?

14 A. No.

15 Q. And, I take it, we don't know precisely what
16 day this material was placed here either?

17 A. No.

18 Q. And we don't know precisely where this
19 material came from, do we?

20 A. No.

21 Q. This concrete plant, do you know who was
22 operating the concrete plant?

23 A. Caltrans, I believe, or one of their
24 subcontractors.

25 Q. Do you know if it was used exclusively to

1 serve the project, or might it have had other uses?

2 A. Specifically for the project.

3 Q. Do you know that, or are you making an
4 assumption?

5 A. I've been out on-site, and I believe this was
6 constructed for this project.

7 Q. Do you know whether this was at any point in
8 time ever cleaned up?

9 A. No.

10 Q. No, you don't know, or --

11 A. No, I do not know.

12 Q. Okay. So what violations are being
13 alleged -- I'm sorry, what conditions are being
14 violated based on the allegations?

15 A. Condition 9 and 17.

16 Q. Okay. Nine states that -- I'll paraphrase --
17 that no concrete washings other than authorized for
18 this permit shall be allowed to enter into or placed
19 where it may be washed by rainfall into waters of the
20 State, correct?

21 A. Correct.

22 Q. Now, if this material that was placed here
23 was entirely cleaned up, would there still be a
24 violation of Condition 9?

25 A. Yes.

1 Q. Why is that?

2 A. Because it was placed in a location that
3 could be washed by rainfall into waters of the State.

4 Q. And it makes no difference whether or not
5 this material was subsequently cleaned?

6 A. Well, cleaning -- cleanup of a discharge is a
7 factor that we take into consideration when assessing a
8 penalty.

9 Q. So your position is that the violation was
10 established, simply, by the placement in this location?

11 A. Yes.

12 Q. Okay. Turning to Condition 17:

13 "All activities, BMPs, and associated
14 litigation be conducted as described in
15 the permit and the application."

16 What is it about this condition that violates
17 Condition 17?

18 A. Contact water shall be fully contained per
19 the application and permit.

20 Q. What would be the total containment? Is
21 there a prescribed method for what constitutes
22 containment?

23 A. I believe Caltrans has a BMP to address that
24 issue. There are many different types of minor systems
25 that could be considered full containment. It depends

1 on what waste we are talking about.

2 Q. Okay. Let me turn to the next event. This
3 is September 8, 2006.

4 What we have here are two photographs and an
5 acting structural representative's daily report dated
6 September 7th, correct?

7 A. Yes.

8 Q. Are there any other facts, documents or
9 evidence, other than shown here in these photographs or
10 this daily report, that you're aware of that,
11 specifically, supports this violation?

12 A. No -- well, no.

13 Q. Looking just at the September 7th log,
14 there's a quoted section, which says:

15 "The water was tested for pH, treated
16 for muriatic acid, and pumped into the
17 settlement basin."

18 Do you see that?

19 A. Yes.

20 Q. How is this a violation of Condition 9 and 17
21 of the --

22 A. The same as before. Condition 9:

23 "No concrete washings shall be placed
24 in or allowed to enter into waters of the
25 State."

1 In this case it was discharged into a
2 settlement basin, which was waters of the State.

3 And Condition 17 is:

4 "All cement wastes shall be fully
5 contained."

6 Q. Now, one piece of information that is
7 different here compared to the last allegation is that
8 there was treatment that took place, correct?

9 A. Correct. I guess you could consider it
10 treatment.

11 Q. Well, let's explore that just briefly.
12 What is your understanding of what muriatic
13 acid does?

14 A. It would lower the pH. On the other hand --
15 so it would treat the pH to some extent, but we have no
16 indication whether that was an effective or appropriate
17 method. It was a process of communicating that with us
18 that was not adhered to or followed.

19 We do not know any of the other constituents
20 contained in the muriatic acid that may have water
21 quality impacts in and of themselves. We don't know to
22 what pH it was treated or tested to.

23 Q. So if I can understand your answer correctly,
24 the use of muriatic acid as a form of treatment isn't
25 something that has been considered or approved by the

1 Regional Board in this project, correct?

2 A. Correct.

3 MS. MACEDO: Objection -- go ahead.

4 BY MR. HUNGERFORD:

5 Q. Let's assume that muriatic acid wasn't an
6 acceptable form of treatment to reduce the pH. Would
7 that remedy these violations?

8 A. No.

9 Q. Why?

10 A. Because Condition 9 is -- does not speak
11 about adjusting pH and neither does Condition 17, and
12 so that would not affect the substance of either
13 violation. Although, if it were an approved method for
14 buffering pH or reducing pH, then that might be a
15 mitigating factor that we could take into consideration
16 in terms of cleanup, et cetera.

17 But it wasn't a controlled process that
18 was -- it didn't go through the regular process of
19 approval through the Water Board, we have no
20 quantifiable evidence to show what pH level it was
21 treated to, or all of the other constituents that we
22 talked about previously.

23 Q. Looking at the photographs, the first
24 photograph shows what appears to be isolated Pool B.
25 Would you agree with that? And this is, specifically,

1 060908-1.

2 A. Yes.

3 Q. Do you have any understanding as to whether
4 or not this shows the water that was referred to in the
5 quoted passage, or whether this is just a
6 representative photo of isolated Pool B?

7 A. I would have to ask the Biological Monitor if
8 they recalled what they took the photos of. Although,
9 the two photos, one shows one end of the pipe being in
10 the corrugated metal pipe -- from one end, and the
11 other photo shows the other end of the pipe, isolated
12 Pool B.

13 So, no, we do not know that these are the
14 exact photos of that event, but they seem relevant to
15 what occurred on that date --

16 Q. Okay.

17 A. -- for the quote.

18 Q. Now, looking at the September 7th passage
19 that you have quoted?

20 A. September 7th?

21 Q. Yes. We are on the same violation we have
22 been talking about.

23 MS. ZAZZERON: The 8th.

24 THE WITNESS: The 8th or the 7th?

25 /////

1 BY MR. HUNGERFORD:

2 Q. Okay. It is the 8th, I'm sorry. We are on
3 the September 8th photograph, but it is the September
4 7th daily report that you used; is that right?

5 A. Correct, it is the September 7th daily
6 report.

7 Q. And the statement you quoted, actually,
8 begins with:

9 "The next day the water was tested for
10 pH, treated with muriatic acid, and then
11 pumped into the settlement basin."

12 Are you making an assumption that the, quote,
13 "next day," end quote, was September 8th?

14 A. Apparently, that's what I had decided.

15 Q. Okay. But it is also possible this could be
16 from a different date; is that correct?

17 A. It is possible.

18 Q. All right. Now, let's turn to the next one.
19 Okay. Now we are going to September 13, 2006. And I
20 have here -- let's see.

21 We have photograph 060913 -01, and there's
22 also a quote. What is the quote from?

23 A. I believe that's from the URS Report.

24 Q. Okay. Do you happen to have that handy?

25 A. No.

1 Q. Well, I'm going to ask you, between now
2 and -- considering if you're likely to come back to
3 finish your deposition another day -- to see if you
4 could locate that document because I don't have a copy
5 of a document that contains that quote.

6 A. Well, let me just check here. Maybe, it is
7 in here.

8 It doesn't appear to be in here. Okay, I can
9 find it.

10 Q. So just do me that favor and see if you can't
11 find that.

12 A. Okay.

13 Q. Let's look at the photograph. What does this
14 show to you that establishes violations for Conditions
15 9 and 17?

16 A. Condition 9, cement wastes were disposed of
17 on the gravel bar which -- waters of the State; and
18 Condition 17 is that -- refers to the application,
19 which requires all cement wastes to be fully contained.

20 Q. Okay. Does the Certification make any -- let
21 me ask you this.

22 Is there any distinction between cement
23 contact water and, you know, dry cement material in the
24 eyes of the Certification in the Regional Board?

25 A. Dried -- yes. There is a distinction that

1 once it is fully dried and cured it no longer has the
2 pH -- potential pH impacts that wet cement has.

3 On the other hand, both of these conditional
4 violations would still be violated because 9 still
5 covers debris, rubbish, soil, et cetera, which, you
6 know, once it dried would fall under the category of
7 debris.

8 And then 17 is BMPs and that -- throwing
9 debris on the gravel bar like that is definitely not a
10 best management practice.

11 Q. Do you know where this is on the gravel bar?

12 A. I would have to look at the photo
13 documentation --

14 Q. Okay. Do you know --

15 A. -- the photo record to get the context and
16 everything.

17 Q. Do you know whether this material was placed
18 on this specific date or a different date?

19 A. I do not know, exactly, but I believe that
20 this document that I will find might refer to a date.

21 Q. Okay. And do you know whether this material
22 was ever eventually cleaned up?

23 A. No.

24 Q. Okay. If you turn to the next, September
25 29th, 2006. And this is a familiar statement. Maybe

1 it is not -- I see we have a violation of Conditions 9
2 and 17.

3 The items I have in support of this violation
4 are three photographs and a statement from the
5 assistant resident engineer's daily report. Is that
6 what you have, as well?

7 A. Let me find it.

8 Q. Sure.

9 A. That's assistant resident engineer Mitch
10 Shands?

11 Q. Yes. And the three photographs are 060929-7,
12 8 and 9, correct?

13 A. Correct.

14 Q. The statements that you have quoted in the
15 Mitch Shands report state, and I'm paraphrasing, that
16 to prevent water from overflowing the CMP, untreated
17 water was pumped onto the gravel bar. Do you see that?

18 A. Yes.

19 Q. Do you have any understanding as far as where
20 on the gravel bar this was pumped to?

21 A. It appears in or near isolated Pool B.

22 Q. Do you base that on the photograph
23 designated -09?

24 A. That, and my recollection of photos in and
25 around that in the record.

1 Q. Now, looking at the photographs, do any of
2 these photographs show the actual activity here of
3 pumping water from the CMP or putting it in isolated
4 Pool B?

5 A. No. 060929-07 shows a better indication of
6 where the pipe is coming from and going to, but it does
7 not show the active -- the activity of discharging
8 occurring.

9 Q. So am I correct in understanding that these
10 photographs are, you know, more representative
11 photographs showing, you know, the area relating to
12 this violation rather than, actually, showing the
13 active event?

14 A. Correct.

15 Q. And do we have any information as far as how
16 much water would have been pumped in this case?

17 A. No.

18 Q. And the basis for the violations of 9 and 17,
19 I take it, are more or less the same as we described
20 for the prior, you know, event involving the potential
21 overflow where water was pumped to isolated Pool B?

22 A. Yes.

23 Q. Is there anything else other than what we
24 have already discussed about this particular event that
25 establishes a violation of those conditions?

1 A. No.

2 MR. HUNGERFORD: Off the record for a second.

3 (Recess.)

4 MR. HUNGERFORD: All right. So we are moving
5 on to the last item in this particular series.

6 BY MR. HUNGERFORD:

7 Q. This is the September 29th, 2006 violation;
8 is that correct?

9 A. Yes.

10 Q. And what we have in support of that is just a
11 single document which appears to me to be an assistant
12 resident engineer's daily report by Mitch Shands dated
13 September 29th, 2006; is that correct?

14 A. Yes.

15 Q. Are you aware of any other photographs,
16 documents or evidence that support this violation,
17 specifically?

18 A. No.

19 Q. What is your understanding of the factual
20 scenario supporting this violation?

21 A. It is my understanding that the equipment,
22 hopper, tremie and shovels, were cleaned in an area
23 that was uncontained.

24 Here it is described as a "glory hole for 2
25 through 7s FTG," and that it was not fully contained,

1 and it was not an adequate BMP.

2 Q. What is the basis for your statement that it
3 was not fully contained?

4 A. It is an assumption.

5 Q. This would follow your testimony earlier with
6 respect to a different violation in which you believe,
7 and correct me if I'm wrong, that if this was fully
8 contained, then it might not be a violation of
9 Conditions 9 or 10, but possibly of 17; is that
10 correct?

11 A. Yes.

12 Q. So in this case whether or not the
13 Certification has been violated depends largely on
14 whether or not this was a contained area; is that
15 right?

16 A. Yes.

17 Q. But the information we have in front of us is
18 not determinative on that, is it?

19 A. No.

20 MR. HUNGERFORD: All right. We will stop
21 there for today.

22 (Whereupon, Exhibit Nos. 1 and 2
23 were marked for identification.)

24

25 (The deposition was adjourned at 3:15 p.m.)

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CERTIFICATE OF WITNESS

I, KASON VERNE GRADY, hereby declare under oath
that I have read the foregoing testimony recorded on
pages 183 to 333, inclusive, and that the same is a
true and correct transcript of my said testimony,
except as I have corrected any answer ink, initialed
such correction, and stated on the margin my reason for
making same.

KASON VERNE GRADY

DATE: _____

CORRECTIONS TO THE DEPOSITION OF _____
TAKEN / /

PAGE #	LINE #	CORRECTION
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13 I further certify that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor am I a relative or employee of such attorney or
16 counsel, nor am I financially interested in the within
17 action.

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25

MAREE N. ARMSTRONG, CSR #11284



Figure 6 b. Condition of dead trout when first collected.

The Second Stream-Crossing by Heavy Equipment. On 22 September 2006 I observed the Second of the two wet channel-crossings by heavy equipment (in this case 2 dump trucks, 1 bulldozer, and a loader with a sheep-roller attached, see Table 1 below).

I had some concerns about how the Crew responded to my attempts to hail them prior to the crossing and when 1 vehicle was already through the wetted-channel prior to my inspection, then I ran toward them from the downstream 100 foot mark where I was conducting the background water-quality measurements and began photographing what I considered

a blatant attempt on the part of the crossing crew to ignore the directions of the biologist.

This week's Second-Crossing Plume (SCP) extended approximately twice the length of the first, which I now correct as ca. 85 m (I reported ca. 85 feet before but it was more likely closer to =165 feet based on my present staking) and it (the first crossing plume) lasted about 15 minutes total (see my last report). The SCP was much thicker in appearance (a milky brown) and persisted to nearer 400 feet downstream for about 30 minutes, based on my previous stakes and channel length estimates for the habitat units involved, and today's observations.



Figure 7 a. Second unit to cross this week, a dump truck/ hauler. Notice wake due to excessive cross speed.



Figure 7b. First Unit to cross this week; note caked mud in tracks. This is not from the crossing because it is cobble and no such mud it at the cross site.



Figure 7c. Fourth unit to cross this week.

Table 1. Heavy Equipment Observed to Cross on 22 Sept. 2006, South Side Project Area.

- | | |
|---|-----------------------------|
| 1 | CAT D350E Dump 601-9; |
| 2 | CAT D350E Dump 601-10; |
| 3 | CAT Excavator 320-6? |
| 4 | CAT DOZER D6 601-2 + Roller |
-
-

Prior to the crossing I was able to stake out the 50 foot upstream and 100 foot downstream points of the crossing site with a tape measure, rock kiosks and wooden rods, conduct background turbidity measurements through digital photographs and instruments, also using my 0-3 scale.

The crossing of 2 vehicles occurred at 9:02 am, and 2 vehicles at 09:04 am.

I was at the crossing micro-site at ca. 08:30 am and had arranged through Walt Dragaloski (CDFG) & Justin _____ (Mercer Frasier) (with Carlon S. & Ron den Heyer present) to meet Justin at the cross site, so he could learn to use & use the Caltrans Turbidity meter, but he never showed up.

It appeared that the 4 pieces of heavy equipment were never taken out of service or washed prior to this second crossing event. They were being used right up until the cross. The Excavator seemed to have its tracks literally caked with mud when it proceeded to cross without stopping for inspection (see Figure 5 b).

These are the main items that disturbed me about the crossing experience:

- 1) the entire group of heavy vehicle operators proceeded to the crossing site at excessive speed, too fast through the wetted channel, creating a wake and excessive sediment discharge; they did not make eye contact with me (a standard of safety), the biologist present in the channel, even though I was in the channel work area prior to the cross;
- 2) I was not immediately informed that the crossing was going to begin, even though I was observed to be at the site by the operators and

foremen, as already collecting biological and water quality data at the work site;

- 3) I attempted to hail the unknown operator as the first heavy vehicle crossed at the site, as he hastily entered the channel without the proper precautions, and he ignored me;
- 4) Thus, I was forced to run to photograph the resultant plume, when by the permits I had the right to “slowly walk before the vehicles” to “observe and remove any aquatic life” (Permit/File Number: 28305N) and “a mat was to be placed down” (see Environmental Redbook, Enclosure 2, Page 1, Nationwide Permit General Guidelines – Dated March 18, 2002 , Item/Paragraph 5 : “ 5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance”). A mat was not used on the first crossing either. The provision of Page 5, Item 20, invoking “Activities that result in the physical destruction (e.g. . . . smother downstream by substantial turbidity) . . . are not authorized. “, could be invoked here as well.

Re-Fueling & Equipment Storage.

The Army Corps of Engineers Permit Number (SUBJECT: File Number) 28305N, Page 3, Item 5: requires that “ 5. Storage and staging of vehicles, equipment and materials shall be located above the 100-year flood elevation. I continue to see Trestle area violate this. The “old oil mousse” sheen(?) I reported seeing in a previous report was not observed this last week and apparently is not on-going on the project site.

Un-Addressed Wood Chip Under Fueling Stations Permit Issue. No renewed discussion so far. Page 2 of Environmental Redbook, not going to be followed? Or Special Provision superceding this?

DEPARTMENT OF TRANSPORTATION

DIVISION — MS 57

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NCRWQCB

MAR 12 2007

March 5, 2007

Mr. David Leland
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input checked="" type="checkbox"/> Reg/NPS/FL	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date

Dear Mr. Leland:

This letter is in response to your letter of February 20, 2007, addressed to Ms. Katrina Pierce, and in response to issues raised during a meeting held between North Coast Regional Water Quality Control Board staff, and David Melendrez, Branch Chief from Caltrans North Region Environmental Engineering, on February 22, 2007.

In your February 20, 2007 letter, you requested additional clarification of points made by counsel in a letter dated December 28, 2006. To place the December 28, 2006 letter in the proper context, it is necessary to refer back to the October 30, 2006, and to the November 27, 2006 Notices of Violation issued to Caltrans on the Confusion Hill project.

ALLEGATIONS MADE BY THE WATER BOARD IN THE OCTOBER 30, 2006 NOTICE OF VIOLATION:

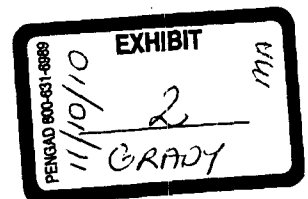
In the October 30, 2006 NOV, the water board noted violations of the following additional conditions to the Section 401 Water Quality Certification issued to Caltrans on February 16, 2006:

Additional Condition #7 deals with adequate BMPs for sediment and turbidity which Caltrans admitted the contractor violated on 29-30 August 2006 in the December 28, 2006 letter.

Additional Condition # 9 deals with discharges of debris, cement or concrete washing, oil or petroleum products into waters of the State which Caltrans admitted the contractor violated, on October 6, 2006, in the December 28, 2006 letter. It should be noted that this additional condition covered the leaking "backhoe," observed by water board staff, on the gravel bar, and any other leaking equipment operating at the site during the week of October 2, 2006.

Additional Condition #11 deals with removal of excess debris from the work area and prohibition against placing rubbish within 150 feet of the high water mark of any stream. Caltrans did not address this allegation specifically in the December 28, 2006 letter because it was covered under the admitted violation of Additional Condition #9. Caltrans admits the contractor violated this condition on October 6, 2006.

"Caltrans improves mobility across California"



3/5/2007

backhoe observed by water board staff as leaking on October 6, 2006. According to Walt Dragaloski, the excavator was inspected by both the biologist and by the resident engineer before it crossed the river during the week of October 2, 2006. Also, the crossing speed of the excavator was kept very slow and the result was a very minimal turbidity plume. This information was contained in the biological monitoring report submitted for the week of October 2, 2006.

Additional Condition # 13 was not cited in the October 30, 2006 NOV. It prohibits the fueling, lubrication, maintenance, operation, storage, and staging of vehicle and equipment in Waters of the United States and further prohibits the discharge or threatened discharge to Waters of the United States. It goes on to prohibit the use of any vehicle or equipment which leaks any substance that may impact water quality.

In citing the violation of Additional Condition # 13 in the November 27, 2006 NOV, the water board stated a backhoe was crossing the river. The vehicle depicted crossing the river, in the pictures attached to the November 27, 2006 NOV, was not a backhoe. It was an excavator and was not leaking as explained in the discussion of Additional Condition 9 above. As noted in the December 28, 2006 letter, the crossing or operation of equipment in the water was allowed by the water board under this condition as noted in the April 18, 2006 letter from the water board to Mr. Gary Berrigan and attached to this clarification letter. Therefore as the violations of this section are cited, both in the November 27, 2006 NOV and in the February 20, 2007 letter, Caltrans denies violating this additional condition.

ISSUES RAISED IN THE FEBRUARY 20, 2007 LETTER:

You have requested a clarification of comments made in the December 28, 2006 letter regarding language used in Additional Condition #8. You note in your letter that these comments suggest a lack of understanding, by Caltrans, of the terms "unauthorized discharges" and "water quality problems." As indicated by the reporting of unauthorized discharges by Caltrans staff, and staff recognition that some of these discharges might lead to the exceedance of a water quality objective, Caltrans understands these provisions. The statements in the December 28, 2006 letter were made within the context of responding to the November 27, 2006 NOV which indicated the water board was "considering potential follow-up actions" and notified Caltrans of possible enforcement action against Caltrans. Caltrans understands the water board is considering taking an Administrative Civil Liability action against Caltrans for the actions at Confusion Hill.

Anticipating this might be the logical next step from the tone of the November 27, 2006 NOV, the December 28, 2006 letter noted the difficulty in enforcing these conditions against a contractor in any contract action Caltrans might be able to take to recover a portion of the likely fine to result from an ACL. Regarding the general observation about the language in Additional Condition #8, it is important to understand first why Caltrans would want to recover a portion of any ACL fine or penalty assessed against the Department, and second how contract enforcement works in California under the Public Contract Code.

The Department utilizes independent contractors for construction of highway improvement projects. When a contractor violates a contract provision, either a general specification or a special provision, and the violation later results in enforcement action being taken against the Department due to the contractor's failure to comply with those provisions, the Department may elect to retain

3/5/2007

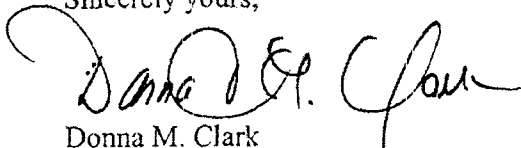
not determine from the facts presented at the time of the December 28, 2006 letter whether or not there had been a violation of Section C.2.3 of this permit because there was no determination of an exceedance of a water quality standard. We understand Caltrans District 1 Construction Storm Water Coordinator now believes an exceedance did occur when the construction dewatering product was released on 29-30 August 2006. Caltrans also understands this triggered a reporting requirement under the Caltrans statewide MS4 NPDES permit and under Additional Condition #8 of the 401 Certification.

CONCLUSION:

In closing, it is clear that Caltrans understands the conditions of the Section 401 Certifications are entirely enforceable against the Department. However, if the water board takes enforcement action against Caltrans, based upon violations of Additional Conditions 7 and 8, and action results in fines or penalties, it will be difficult for Caltrans to recover any portion of the fines or penalties. Also, as is clearly indicated above, there are several provisions within the NPDES construction permit that are readily enforceable since the contractors are notified in the request for bids of those legal obligations.

I trust this letter addresses the concerns you raised in the February 20, 2007 letter. If not, please contact me immediately at 916-654-2630.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donna M. Clark". The signature is fluid and cursive, with a large initial "D" and a stylized "C".

Donna M. Clark
Deputy Attorney III

Enclosure: April 18, 2006 Letter from NCRWQCB to Mr. Gary Berrigan

CALIFORNIA REGIONAL WATER CONTROL BOARD

NORTH COAST REGION

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In the Matter of:

COPY

ADMINISTRATIVE CIVIL LIABILITY
Complaint No. R1-2009-0095.

_____/

Deposition of:

KASON VERNE GRADY

VOLUME III, PAGES 336 - 468

Tuesday, November 30, 2010

Reported by:
MAREE N. ARMSTRONG
CSR #11284

COASTAL REPORTING SERVICES
Certified Shorthand Reporters
131-A Stony Circle, Suite 500
Santa Rosa, CA 95401
(707) 573-9766

1 Deposition of KASON VERNE GRADY, taken
2 pursuant to agreement at the North Coast Regional Water
3 Quality Control Board, 5550 Skylane Boulevard, Suite A,
4 in the City of Santa Rosa, County of Sonoma, State of
5 California, on Tuesday, the 30th day of November, 2010,
6 commencing at the hour of 9:36 a.m., thereof, before
7 MAREE N. ARMSTRONG, CSR No. 11284, a California
8 Certified Shorthand Reporter.

9
10 A P P E A R A N C E S

11
12 FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
13 BOARD, NORTH COAST REGION:

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18 BY: Julie E. Macedo
19 Attorney at Law

20 FOR MCM CONSTRUCTION, INC.:

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16 Deputy Attorney
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I N D E X

WITNESS: KASON VERNE GRADY

Page No.

Examination by Mr. Hungerford

340, 462

Examination by Ms. Zazzeron

435, 464

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E X H I B I T S

No exhibits marked.

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KASON VERNE GRADY,

having been previously duly sworn or affirmed by the
certified shorthand reporter in all respects as
required by law, proceedings were had as hereinafter
set forth:

EXAMINATION

BY MR. HUNGERFORD:

Q. Go ahead and state your name for the record
again, if you would.

A. Kason Grady.

Q. Mr. Grady, we are back here for your third
day of your deposition, and we are going to start with
Table A-G of the Water Quality Violations, and that is
A-G in the Appendix to the Complaint.

Let's start with the September 18th, 2006
violation. What is the nature of this violation?

A. Rubbish discharge to the river.

Q. What documents or photographs do you have to
offer in support of this violation?

A. We have two photographs numbered 060918-01
and -02.

Q. Okay.

A. Which are photographs of -- one of some wood
debris in the river and another one of a rope in the
river.

1 Q. Other than these two photographs, do you have
2 any other documents, records, or documentary evidence
3 to offer in support of this particular violation on
4 this date?

5 A. No.

6 Q. The photographs are taken by the Biological
7 Monitor, I'm assuming?

8 A. I believe so.

9 Q. This is in keeping with all of the other
10 photographs we have seen, I believe, all of which I
11 believe came from the Biological Monitor, correct?

12 A. Correct.

13 Q. Do you know where these photographs were
14 taken, specifically, within the project site?

15 A. I would have to review the photographic
16 sequence. There are many photos in the record, and
17 there are other photos, as I have mentioned before,
18 that provide context to each photo where he was at the
19 time when taking the photos.

20 Q. Looking at the first photograph, the -01
21 photograph, what does that show to you?

22 A. There is at least one, perhaps more, pieces
23 of wood debris in the river. I believe it is a
24 straight cut cubic piece of wood that does not appear
25 to be from any natural source.

1 Q. Are you basing that description solely on
2 your review of this photograph or do you have other
3 information that --

4 A. Just from review of the photograph.

5 Q. Do you know what part of the site this piece
6 of wood came from?

7 A. Once again, I would have to defer to
8 reviewing the photographic record, but -- where it came
9 from, no.

10 Q. Do you have any evidence linking this piece
11 of wood with the construction project?

12 A. Other than the photograph, no.

13 Q. Is it possible that this piece of wood could
14 have come from a different source other than the
15 construction project?

16 A. Anything is possible. The Biological Monitor
17 is taking photographs of the construction site. It is
18 by deduction, when using this photograph that, based on
19 the other evidence that he had collected, that he was
20 taking a picture of wood debris from the construction
21 site.

22 Q. But if I understand you correctly, you don't
23 have any evidence that, positively, links this piece of
24 wood to the construction project, do you?

25 MS. MACEDO: Misstates testimony.

1 THE WITNESS: This photo.

2 BY MR. HUNGERFORD:

3 Q. Other than the photograph.

4 A. No.

5 Q. And this next photograph is -02. What does
6 that show to you?

7 A. A rope in the river.

8 Q. And, again, do you know for certain that this
9 rope came from the construction project?

10 A. I was not there. I didn't take the
11 photograph, so I cannot say for certain. But I use the
12 same threshold of evidence as I did the previous photo
13 to make the assertion that it came from the project.

14 Q. You're making an assumption because the
15 photograph was being taken by a Biological Monitor?

16 A. And because of the evidence he is collecting
17 on-site and the context of photos surrounding there.
18 And in regards to this rope, there may be other
19 narrative evidence that I'm not particularly aware of
20 right now, but there may be in Engineering Diaries or
21 may be in Biological Monitoring Reports.

22 Q. But none that you're aware of right now?

23 A. Not right now.

24 Q. Taking these two photographs, how do they
25 establish a violation of Condition 9 in the

1 Certification?

2 A. They would be considered debris and/or
3 rubbish that have been discharged into the river.

4 MR. HUNGERFORD: I'll direct your attention
5 to Condition 11 of the Certification. Would you read
6 that for a moment.

7 (Witness examines document.)

8 THE WITNESS: Okay.

9 BY MR. HUNGERFORD:

10 Q. And that Certification states that:

11 "When operations are completed any
12 excess material or debris shall be removed
13 from the work area and disposed of
14 properly. No rubbish shall be deposited
15 within 150 feet of the high watermark in
16 the stream."

17 What do you believe the first sentence of
18 that Certification speaks to, the first sentence of
19 that condition?

20 A. I believe it speaks to cleanup of the site
21 after the project is completed.

22 Q. Does it contemplate, in your reading of that,
23 that debris and excess material would be generated
24 during the process of construction?

25 MS. MACEDO: Objection. Calls for

1 speculation.

2 THE WITNESS: I could speculate that, yes, it
3 infers that debris is going to be generated.

4 MR. HUNGERFORD: well, let me ask you a
5 different way.

6 BY MR. HUNGERFORD:

7 Q. would you agree that this condition of the
8 Certification contemplates that excess debris and other
9 material would be generated during the construction
10 process in the work area?

11 A. Yes. I believe that Condition 9 also, by
12 prohibiting it, implies that it is going to be created.

13 Q. Condition 9 also says that, "other than
14 authorized by this permit," correct?

15 A. Correct.

16 Q. Let's just speak about Condition 11. with
17 respect to the timing of the cleanup of any excess or
18 debris what does that condition say?

19 A. Timing, I believe -- the only thing it says,
20 in regards to timing is that when operations are
21 completed.

22 Q. what do you believe "operations" means?

23 A. Completion of the entire project.

24 Q. So do you believe that Condition 11 of the
25 Certification can be read in combination with

1 Condition 9 to allow debris to be placed within the
2 work area and cleaned up afterwards?

3 A. No.

4 Q. Why not?

5 A. Because Condition 11 in no way implies that
6 debris or rubbish is allowed to be discharged into
7 waters of the state. It is stating that everything
8 shall be completely clean when the project is done.

9 Q. Are you aware that MCM or -- back up. Are
10 you aware that the project included personnel whose
11 function was to clean up debris and other material that
12 was deposited around the site?

13 A. I am aware that personnel did go around and
14 clean up the site at times.

15 Q. Would you consider that a Best Management
16 Practice for managing trash and debris?

17 A. Not on itself, not alone.

18 Q. Okay. But, certainly, that would be one type
19 of Best Management Practice for managing trash and
20 debris at a construction project, wouldn't it?

21 A. The employment of personnel to clean up a
22 site is a management practice that I would not consider
23 a Best Management Practice because they are cleaning up
24 debris and rubbish that has already been discharged,
25 they are mitigating a violation that has occurred.

1 Q. You're getting ahead of my question.

2 Do you agree that having personnel on-site
3 whose job it is to clean up rubbish and trash is, at
4 the very least, a protective measure to protect against
5 discharges of trash and debris?

6 A. No. I think it is a mitigative measure for
7 cleaning up an already existing discharge.

8 Q. So, in your view, the moment that an item of
9 debris hits the water, that a discharge occurs?

10 A. Yes.

11 Q. What if an item of debris hits the riverbar,
12 and not the active channel?

13 A. It is a discharge.

14 Q. It is a discharge, as well?

15 A. Yes.

16 Q. Turning to Condition 17, how do the
17 conditions described by these photographs violate that
18 condition of the Certification?

19 A. I do not believe that we are assessing a
20 penalty for Condition 17 here.

21 Q. I'm sorry, you are right. These are all
22 Condition 9 violations. That was my mistake.

23 If you turn to the next violation dated
24 December 22nd, 2006, what facts, documents or records
25 do you have in support of this violation?

1 A. We have six photographs numbered 060922-01,
2 02, 03, 04, 05 and 06, as well as a quote from the
3 Biological Monitoring Reports.

4 Q. Let's start with the quote from the
5 Biological Monitoring Reports. Do you have that there?

6 A. Yes.

7 Q. Do you have it in front of you to review?

8 A. I have the quote referenced in the Complaint.
9 Did you want me to find the actual source document?

10 Q. Is it easy for you to find? Would it be
11 easier to look at mine?

12 A. Perhaps --

13 Q. Why don't you take a look and see if you can
14 find it.

15 A. Yes. I didn't copy the Biological Monitoring
16 Report into this document, so I would have to --

17 Q. You can look at this.

18 A. Okay.

19 Q. So what I have handed you is a one-page copy
20 of a Biological Monitor Report. Is there a date on
21 that document?

22 A. There's not a date on the one page you have
23 handed me, although, I could look at the rest of the
24 report and find a date.

25 Q. And the statement says that, and I'm

1 paraphrasing, that the operation discharges sawdust and
2 various materials on a daily basis, correct?

3 A. Correct.

4 Q. Is there any statement there about what
5 discharges occurred on a particular day?

6 A. I would have to look at the rest of the
7 Biological Monitoring Report to make that
8 determination. On the one page there is not.

9 Q. If you look at the photographs that you have
10 offered --

11 A. Yes.

12 Q. -- the first one, 060922-01, what does that
13 show to you?

14 A. It shows the end of the trestle deck in
15 mid-construction.

16 Q. How does this photograph establish a
17 violation of Condition 9?

18 A. It is providing some context to the timing
19 and characteristics of the work site at the time.

20 Q. Is there anything specific about this
21 photograph that establishes a violation of Condition 9
22 other than providing basic context for the project?

23 A. No, I don't believe so.

24 Q. If you turn to the next photograph, -02, what
25 does that show to you?

1 A. I believe that's rust flakes. I believe it
2 is on the trestle deck near the edge with -- at a
3 location where the trestle deck is not fully contained.

4 Q. How does this debris establish a violation of
5 Condition 9?

6 A. It is demonstrating the potential discharge
7 of that debris to the water course. And Condition 9
8 states that:

9 "No debris shall be allowed to be
10 placed where it may be washed by rainfall
11 into waters of the state."

12 In this location, rainfall could wash this
13 into waters of the state because it is not fully
14 contained.

15 Q. Does this photograph establish that a
16 discharge, actually, occurred?

17 A. Not this photograph alone, no.

18 Q. Do you have any reason to believe that this
19 wasn't cleaned up?

20 A. I do not have any reason to believe that it
21 was or was not.

22 Q. Turn to the next photograph -03, what does
23 that show to you?

24 A. Rust flakes in the river.

25 Q. How can you determine there are rust flakes

1 in the river from that photograph?

2 A. I would have to look at it electronically,
3 which I have done. And I have zoomed in on it, and it
4 shows what appears to be flakes of rust in the river.

5 Q. What is it about this photograph that
6 demonstrates to you that this is rust?

7 A. The visual appearance of the darker pieces in
8 the photo.

9 Q. Let me see the photograph that you're looking
10 at.

11 I will show you a blown-up version that I
12 have. Take a look at that.

13 A. Okay.

14 Q. Now, my review of this photograph, you know,
15 is inconclusive but appears to show some type of object
16 in the center of the photograph.

17 A. Correct.

18 Q. Do you see that?

19 A. I see that, too.

20 Q. Do you know what that is?

21 A. I do not. That could also have been included
22 in my determination for including this photo. I would
23 have to look at it even in the larger version than that
24 on-line to fully review that piece of evidence.

25 Q. Do you know where, specifically, this

1 photograph is taken as you sit here?

2 A. As I sit here now, no. I would have to
3 review the photographic record.

4 Q. Turn to the next photograph, -04, what does
5 that show to you?

6 A. Rust flakes on a rock.

7 Q. Again, how can you tell these are rust
8 flakes?

9 A. I'm basing that assessment off my review of
10 the document, previously. That's what I recall it
11 being. It could be another form of debris or rubbish.

12 Q. Could it be a leaf?

13 A. I do not believe so. I have looked at these
14 photographs up close and zoomed in and would not have
15 included a leaf.

16 Q. Do you know where this photograph was taken?

17 A. I believe it was on the gravel bar, but I
18 would have to review the photographic record to fully
19 conclusively make that assessment.

20 Q. Looking at the photograph does that appear to
21 be a gravel bar?

22 A. There is bedrock outcroppings near the gravel
23 bar, so when I said "the gravel bar," perhaps, I should
24 have said bedrock.

25 Q. Assuming for a moment that that is rust or

1 some form of construction-related debris, do you know
2 when it would have been placed there?

3 A. I do not have an exact place in time.

4 Q. Turning to the next photograph -05, what does
5 that show to you?

6 A. A plastic lid in the river. Some sort of
7 drinking cup.

8 Q. How does this establish a violation?

9 A. It is a piece of evidence of rubbish in the
10 river.

11 Q. Do you have any information that,
12 definitively, links this piece of plastic to the
13 construction project?

14 A. Other than this photograph, no.

15 Q. Just to ask you a question of the photograph,
16 what is your understanding of the Biological Monitor's
17 role on the project?

18 A. It is my understanding that it was that he
19 was referred by the National Marine Fishery Service to
20 observe impacts to salmonide species in the river. And
21 he also, at times, took turbidity measurements and took
22 photographs of many other potential violations
23 throughout the project in regards to our permit.

24 Q. How many photographs would you estimate that
25 he, or the pair of Biological Monitors, took throughout

1 the course of the project?

2 A. Hundreds.

3 Q. Hundreds. And as you have acknowledged
4 previously in this deposition, not all of those
5 depicted violations of the Certification; is that
6 correct?

7 A. That is correct.

8 Q. Is it fair to say that the Biological
9 Monitors took numerous photographs showing general
10 conditions of the property?

11 A. Yes.

12 Q. Would you also agree that, as the Biological
13 Monitor is taking the photographs, the purpose of
14 recording the site conditions isn't necessarily to
15 establish violations of the Certification?

16 A. That is correct.

17 Q. So as the Biological Monitor took this
18 photograph, for instance, do you have any reason to
19 believe that the purpose of taking this photograph was
20 to establish a violation of a certain condition?

21 A. Not directly.

22 Q. Is it possible that the Biological Monitor
23 could have been simply taking photographs observing the
24 general conditions in the vicinity of the project?

25 A. Yes.

1 Q. Is it possible that the Biological Monitor
2 could have taken this photograph regardless of whether
3 or not this particular piece of debris came from
4 project personnel?

5 A. It is possible.

6 Q. If you turn to the next photograph, No. 6,
7 what does that show to you?

8 A. It shows a pile of rusty flakes on the
9 trestle deck that is not fully contained.

10 Q. Is there any evidence of discharge to the
11 river or the riverbed?

12 A. In this particular photo, no.

13 Q. Is there any reason to think that the
14 conditions shown here in terms of the rusty metal
15 weren't cleaned up?

16 A. I would have to review the photographs to see
17 if there's other photographs that demonstrate how long
18 it remained there.

19 Q. But sitting here you don't have any reason to
20 believe they weren't cleaned up promptly?

21 A. With this particular photo, no. However, I
22 have reviewed various documents that indicate that
23 rubbish, although, it had been cleaned up at times on
24 the project site, that there was also various
25 statements indicating that rubbish, rust, trash and

1 debris would remain on the riverbed for days at a time,
2 and that they were not cleaned up promptly.

3 Q. Can you cite me those statements?

4 A. I would have to review the file.

5 Q. So that's your general recollection of what
6 it is?

7 A. Yes.

8 Q. If you turn to the next date. It is
9 September 26, 2006. And here I see you have a number
10 of photographs you have offered in support of the
11 violation on this date; is that correct?

12 A. Yes.

13 Q. Other than the photographs do you have any
14 records or other documentary evidence supporting the
15 specific violation on this day?

16 A. No.

17 Q. The first photograph is 060926-02, correct?

18 A. Correct.

19 Q. What does that show to you?

20 A. Rust flakes in the river.

21 Q. How do you know those are rust flakes?

22 A. Based on my recollection of zooming in on
23 these photos and making an assessment of what the photo
24 was being taken off.

25 Q. Do you know when these rust flakes, assuming

1 they were rust flakes, when they would have been
2 deposited in the river?

3 A. I wouldn't, no.

4 Q. Turning to the next photograph -03, what does
5 that show to you?

6 A. It is a similar photo taken a few minutes
7 after the previous photo of what appears to be similar
8 discharge.

9 Q. Why do you say it was a few minutes after?

10 A. I believe that the time signature for the
11 photo is included after the date, so I believe that
12 this one was taken at 8:54 in the morning.

13 Q. I see. Is it possible to believe this simply
14 is a rock?

15 A. I would have to review the photo further to
16 make that determination.

17 Q. You're basing your statement that this is
18 rust or construction debris, exclusively, on your
19 review of this photograph, correct?

20 A. Correct.

21 Q. Turning to the next photograph -04, what does
22 that show to you?

23 A. It is a similar situation as in the previous
24 two photographs.

25 Q. And, again, your belief that this is some

1 construction related debris is based solely on your
2 review of the photo, correct?

3 A. Correct.

4 Q. Turning to -05, what does that show to you?

5 A. Wood waste in the river.

6 Q. Do you know where this photograph was taken
7 in relation to the project?

8 A. Not exactly. There's some water coming into
9 the river there. Maybe from Red Mountain Creek. I
10 would have to review the other photos to definitively
11 make that determination.

12 Q. Do you have any evidence that definitively
13 links this piece of wood to construction on the
14 project?

15 A. Other than this photo, no.

16 Q. And the last photographs of this series
17 060926-06, what does that show to you?

18 A. More wood waste in the river.

19 Q. Again, do you know where in relation to the
20 project site this was taken?

21 A. I would have to review the rest of the
22 photographs to make that determination.

23 I didn't want to include all of the
24 photographs because there were hundreds in the appendix
25 here, so we are including the photographic record as

1 supporting evidence for all of our claims.

2 Q. Sure. Do you have any evidence that,
3 specifically, links this piece of wood to construction
4 at the project?

5 A. The same with all of these other rubbish
6 violations. I would have to review the Biological
7 Monitoring Reports to further link the photos with the
8 report.

9 I believe that there is some evidence in the
10 reports that indicates the general situation of debris
11 on-site that could be connected with these photos that
12 the Biological Monitor took.

13 Q. Let me ask it a little differently then.

14 Do you have any information, as you sit here
15 right now, that specifically links this piece of wood
16 with construction operations at the project?

17 A. Other than these photos and the Biological
18 Monitoring Reports, no.

19 Q. Turn to the next violation, dated September
20 27, 2006. And here, again, we have a series of
21 photographs, correct?

22 A. Correct.

23 Q. Is there any other documentary evidence
24 records, reports or logs that you are aware of that
25 specifically support this violation on this particular

1 date other than the photographs?

2 A. The Biological Monitoring Reports go in
3 conjunction with these photographs, but other than
4 those, no.

5 Q. we have four photographs being 060927-01,
6 correct?

7 A. Correct.

8 Q. Starting with -01, what does that show to
9 you?

10 A. It appears to show rust flakes in the river.
11 I would say the same thing for all of these photos, 1
12 through 4.

13 Q. And you're identifying rust flakes based
14 exclusively on your review of the photographs; is that
15 correct?

16 A. Correct.

17 Q. Do you know where these photographs were
18 taken?

19 A. A couple of them you can see in the
20 reflection of the water, the trestle. so I believe it
21 is near the trestle.

22 Q. Assuming these are rust flakes or other
23 construction-related debris, do you know when these
24 materials would have been deposited in the river?

25 A. No.

1 Q. Do you have any reason to believe that these
2 conditions, assuming they were construction-related,
3 posed any adverse water quality impacts?

4 A. Well, they -- upon deposition into the river,
5 they would be considered sediment, and the water body
6 is impaired for sediment. And so, yes, additional
7 sediment into an impaired water body would be a
8 detrimental effect.

9 Q. What do you base your conclusion that this is
10 sediment?

11 A. The fact that it lays down like sediment,
12 that it is a waste that settles to the bottom as
13 settleable solids would, which is a form of sediment.

14 If you were to put these rust flakes, or
15 other debris, into a measuring device to measure
16 settleable solids, they would settle out and provide a
17 measurable quantity of settleable solids.

18 Q. Do you have any reason to think that these
19 rust flakes, assuming that's what they are, would
20 impose any impact to fish or wildlife?

21 A. Yes.

22 Q. Why?

23 A. Because the water body is impaired for
24 sediment and additional inputs of sediment into the
25 system further affect the impairment of that water

1 body. And that impairment was -- for sediment is, in
2 part, based upon its effect upon listed species such as
3 salmonides that -- where sediment can cover up spawning
4 grounds and impact their ability to reproduce.

5 Q. Are there any toxicity issues associated with
6 the deposition of rust in the riverbed that you're
7 aware of?

8 A. No.

9 Q. Turn to the next violation dated
10 October 16th, 2006. And here, again, I have a series
11 of photographs, correct?

12 A. Correct.

13 Q. Are there any other documents, records or
14 reports that you're aware of that establish this
15 violation on this particular day other than the
16 photographs?

17 A. I will say no, just so that we agree that, as
18 we have in the past, that the other -- the Engineering
19 Diaries provide references to rubbish discharges, and
20 the Biological Monitoring Reports, as well, document
21 rubbish discharges, and then the other photos in the
22 record also provide context.

23 So other than all of that, and these specific
24 photos, no.

25 Q. Well, I won't agree to that, but your

1 comments are noted on the record.

2 why don't we begin with the first photograph
3 061016-02. what does that show to you?

4 A. I would have to zoom in and -- it either
5 shows rust flakes or some sort of what appears to be a
6 metal -- metal in the river.

7 Q. Again, your belief that this is
8 construction-related debris is based solely on your
9 review of the photographs, correct?

10 A. Correct.

11 Q. Turn to the next photograph -03. what does
12 this photo show to you?

13 A. It shows a steel I-beam a few feet off the
14 water surface spanning the river and quite a lot of
15 rust flakes and other sediment on the steel I-beam that
16 had not been cleaned up and is threatening to discharge
17 into the river.

18 And below it, in the river, what appears to
19 be the same material already discharged to the river.

20 Q. Is there a commonly accepted definition of
21 "sediment" that you're aware of?

22 A. I would have to look it up.

23 Q. The next -04, what does that show to you?

24 A. It shows a man, what appears to be, cleaning
25 a steel I-beam with a vacuum.

1 Q. How does this photograph support or establish
2 a violation of Condition 9?

3 A. It -- well, it shows a management practice to
4 clean up a steel I-beam, which is in the favor of the
5 party who has discharged. But it does demonstrate --
6 it shows a time at which this activity was performed
7 relative to the timing of the previous photographs.

8 And it provides context relative to the
9 following photograph -05, which shows another steel
10 I-beam with rubbish or -- excuse me, sediment and
11 debris on it. And it appears to be wet, that it
12 appears to have gotten in the water. And 05 has
13 occurred at a time after which one of the employees,
14 apparently, cleaned the I-beam.

15 And so between the two photographs, personnel
16 began working even further with steel I-beams in and
17 adjacent to the river that were not fully contained and
18 that had sediment on them, potentially, discharging
19 into the water.

20 Q. That was a very lengthy response to my
21 question. Let me ask you something specific.

22 Is there anything about this photograph -04
23 that particular establishes a discharge of some form of
24 construction debris?

25 A. Well, there is a -- there are various pieces

1 of wood on the gravel bar and on the bank of the river
2 along the bedrock on the other side that would be
3 considered a waste discharge.

4 Q. I'm glad you noticed that. So looking in the
5 foreground in the bottom left of the photograph, it
6 looks like a two-by-four, correct?

7 A. Correct.

8 Q. And would you regard that as unpermitted
9 discharge?

10 A. Yes.

11 Q. Looking at the opposite side of the river you
12 see some planking, it looks like, correct?

13 A. Correct.

14 Q. That's an unpermitted discharge?

15 A. Yes.

16 Q. And then, of course, next to the green piece
17 of equipment in the top left there's, you know, other
18 items there on the ground next to that equipment,
19 right?

20 A. Correct.

21 Q. Those are all unpermitted discharges?

22 A. No. Those are Best Management Practices
23 employed to contain -- to contain a discharge.

24 Q. well, let me ask you a question. First of
25 all, all of these particular items that you see on the

1 ground surrounding the construction project, are you
2 alleging that these are all violations in the
3 Complaint?

4 A. No.

5 Q. why not?

6 A. It was not within the scope of what I was
7 tasked with addressing. There's so much evidence. I
8 didn't worry about those as discharges relative to
9 other, perhaps, egregious discharges on-site.

10 Q. Do you have any reason to think that -- well,
11 let me back up.

12 As you would expect, in the course of a
13 construction project like this, there are probably
14 hundreds or maybe thousands of occasions in which
15 pieces of wood or other construction-related items were
16 placed on the ground in the riverbed. Is that a fair
17 statement? Do you agree with that?

18 A. Yes. That in the scope of a construction
19 project I could see how that could happen. The
20 distinction for me being whether or not --

21 Q. wait --

22 A. -- that is a considered a Best Management
23 Practice --

24 MS. MACEDO: Let him finish.

25 MR. HUNGERFORD: I would like it if you could

1 limit yourself to answering my questions rather than a
2 lot of commentary because I'm asking a question, I'm
3 trying to get to a point.

4 BY MR. HUNGERFORD:

5 Q. Is it fair to assume that on this
6 construction project there are probably numerous, if
7 not hundreds of occasions, on which pieces of wood and
8 other construction-related items were placed on river
9 bank?

10 MS. MACEDO: Objection. calls for
11 speculation.

12 THE WITNESS: Yes, I believe there were.

13 BY MR. HUNGERFORD:

14 Q. And that would not be simply speculation on
15 your part because you have reviewed hundreds of
16 photographs showing those types of conditions; isn't
17 that right?

18 A. Yes.

19 Q. Is it your position that all of those
20 conditions, all of those pieces of wood and
21 construction-related items on the river bank are
22 violations of the 401 Certification?

23 A. I think it depends on whether it is part of a
24 Best Management Practice, or not.

25 Q. Okay. Let's look at just this photograph

1 right here.

2 The conditions that we have pointed out in
3 the piece of two-by-four in the foreground and the wood
4 or the construction-related items on the opposite side
5 of the river, those you would regard as violations of
6 the Certification?

7 A. They could be. I would have to review it
8 further.

9 Q. Turn to the next photograph -05. I believe
10 we have already described that, so let's go to the
11 next, -06. What does that show to you?

12 A. Wood waste in the river.

13 Q. Again, do you have any reason, any definitive
14 evidence, linking this wood waste to the construction
15 project as you sit here today?

16 A. Other than this photo and our other
17 documents, no.

18 Q. The next photograph in the series is -07. I
19 have the same question for you. Is there anything
20 linking this piece of wood to the construction?

21 A. Other than this photograph and the other
22 evidence, no.

23 Q. And -08, the same question?

24 A. No.

25 Q. And -09, what does that show to you?

1 A. A can of some beverage in the river.

2 Q. And -10 shows a piece of plastic; is that
3 right?

4 A. Yes.

5 Q. My same question, do you have any reason to,
6 specifically, link these to the project?

7 A. Other than the photographs and evidence we
8 have, no.

9 Q. Turn to the next date, which is October 24th,
10 2006. And in this we have, rather than any
11 photographs, we have a single document which appears to
12 be from the Biological Monitoring Report; is that
13 correct?

14 A. Yes.

15 Q. Do you have that report in front of you with
16 just your allegations?

17 A. I do not have the report in front of me right
18 now.

19 Q. Okay. And the statement on the Complaint is:

20 "Large flakes of rusty metal from
21 I-beams and slag from continuous welding
22 accumulated on the gravel bar. These were
23 temporarily cleaned up, but those in the
24 river remain."

25 Is that right?

1 A. Yes.

2 Q. I'll hand you -- well, rather than do that.
3 I don't know what the source is of this quote, and I
4 have a document which is from the Biological Monitoring
5 Report which doesn't -- has a similar but not the same
6 quote. Can you tell me, exactly, where this quote came
7 from?

8 A. I would have to look in our documents to try
9 to find it. I believe it came from a CD of Biological
10 Monitoring Reports that we received on November 20th,
11 2006.

12 Q. Are all of these quotes that are in the
13 Complaint, are they direct quotes or at any time have
14 you paraphrased or edited it out?

15 A. There's potential that -- well, let me back
16 up.

17 In the Complaint there are certain
18 descriptions that are not quoted, and those did not
19 come from a quote, it is paraphrased on my part,
20 perhaps. And there's the potential that a quote could
21 have been inadvertently input on accident. I would say
22 that is an exception, not the rule, and that it could
23 have been a paraphrase that, accidentally, got a quote.

24 I don't think it is the case here, but I
25 would have to review.

1 Q. well, I'm handing you a copy of a one-page
2 excerpt from a Biological Monitoring Report, and
3 there's a highlighted portion, which is the language
4 that I have highlighted, which is similar to, but not
5 precisely the same as quoted in the Complaint.

6 You should take a look at that real quick.

7 A. Okay.

8 Q. Reading that, do you have any recollection or
9 understanding now as to whether or not the quote in the
10 complaint is from a different document, or do you
11 believe it is from the document that I just handed you,
12 albeit, with some editing on your part?

13 A. I would assume that it has not been edited on
14 my part, it is from a different Biological Monitoring
15 Report.

16 Q. Okay.

17 A. I do know that the CD of Biological
18 Monitoring Reports received on November 20th did
19 include language that was slightly different from other
20 reports at other times.

21 Q. well, what I want to do, maybe on break, is
22 ask you to hunt that down.

23 A. It is right down there.

24 Q. I won't have you look at it right now. we
25 will come back to it.

1 The next violation date is October 25th,
2 2006. We have here a quote from the Biological
3 Monitoring Report and three photographs; is that
4 correct?

5 A. Yes.

6 Q. Other than the report and the photographs,
7 are you aware of any other records, documents or
8 evidence that, specifically, supports this violation on
9 this date?

10 A. No.

11 Q. Let's look at the photographs. The first one
12 is 061025-01. Do you have that in front of you?

13 A. Yes.

14 Q. What does that show you?

15 A. It shows sawdust and rust flakes on what
16 appears to be bedrock.

17 Q. And are you making an assumption that this is
18 a construction-related debris?

19 A. Based on the evidence of this photo and
20 surrounding photos, I don't believe it is an assumption
21 as much as a best professional judgment.

22 Q. From your review of the photograph alone?

23 A. This photograph and other photographs in the
24 photographic record. And tying that together with the
25 quote provided, I think it paints a pretty clear

1 picture.

2 Q. Do you have any reason to believe this wasn't
3 cleaned up?

4 A. It wasn't, no.

5 Q. Turn to the next one, -02. What does that
6 show you?

7 A. It shows rust flakes and other debris on
8 trestle deck that is not fully contained.

9 Q. Is there any evidence there of a discharge
10 into the river or the riverbed on this particular day?

11 A. Photograph -01 provides evidence of discharge
12 on that day. This photograph does not particularly
13 show a discharge, but it is on the same day. And it
14 shows general site conditions.

15 Q. And does photograph -03, also, show general
16 site conditions?

17 A. Yes.

18 Q. Photograph -01, is there any way for you to
19 determine when that sawdust or debris was placed there?

20 A. No.

21 Q. Looking at the quote that you have included
22 from the Biological Monitoring Report, the first part
23 of it says:

24 "A punch list was developed to return
25 the gravel bar to its natural state by the

1 end of the month."

2 Is that right?

3 A. Yes.

4 Q. Does that indicate to you that there was a
5 program or a management practice in place to clean up
6 debris around the project site?

7 A. Yes.

8 Q. Would you agree that that management practice
9 would appear to comport with Condition 11 of the
10 Certification to the extent that it requires excess
11 material and debris to be removed from the work area
12 when operations are completed?

13 A. It would help with compliance with that,
14 however, this is quite a long time prior to completion
15 of the entire project, and so it is unlikely that, if
16 it were left in place, that by the time the end of the
17 project came around, that it would still be there due
18 seasonal conditions, run-off, et cetera.

19 So it doesn't appear to be that it was done
20 to comply with an end of the project requirement as
21 much as a mitigating factor to clean up a discharge
22 after it was already done.

23 Q. So it indicates they are making periodic
24 cleanups of the work area; is that right?

25 A. That -- at least at one time there was a

1 punch list and a cleanup done, yes.

2 Q. Turn to the next date. This is October 26th,
3 2006, and here we have what appears to be one
4 photograph 061026-03. Do you see that?

5 A. Yes.

6 Q. Are there any documents, reports or evidence
7 that you're aware that, specifically, supports this
8 violation on this date?

9 A. No.

10 Q. Looking at the photograph, what does that
11 show to you?

12 A. This photograph appears to show -- we are
13 talking about 061026-03?

14 Q. Yes.

15 A. It appears to show a worker cutting steel --

16 Q. Let me --

17 A. -- or welding on the gravel bar, if that's
18 the right photo I'm looking at.

19 Q. I don't think it is. Not the one that I
20 have.

21 A. I have this one, as well, but this appears to
22 be numbered 04 and this one appears to be numbered 03.

23 I was describing what 03 appears to look like
24 to me, however, it also wouldn't appear to be
25 referencing -- it, perhaps, appears -- at least my

1 numbering system appears to be a mis-reference to that
2 summary description of large flakes, where 04 appears
3 to be a more accurate reference.

4 Q. So this could indicate there is a
5 misidentification photograph, and what you meant to
6 include in the Complaint was -04?

7 A. It could be. I would like to review that and
8 the associated pictures to make sure that that's the
9 only piece of evidence that we intended to rely upon.

10 Q. Well, let's assume that it was the -04 that
11 you intended to rely on. What is it about that
12 photograph that supports a violation of Condition 9?

13 A. It shows flakes of rust uncontained on -- it
14 appears to be the trestle deck, and placed in a
15 location where it could be washed by rainfall into
16 waters of the state.

17 Q. Does it show an actual discharge into the
18 river or riverbed, or anywhere --

19 A. No.

20 Q. Do you know where along the trestle deck,
21 assuming it is the trestle deck where this photograph
22 was taken?

23 A. I would have to review the associated
24 photographs. So looking at just this one, not really.

25 Q. Looking at the ground beneath on the site of

1 the photograph would it appear to you that this
2 particular location was over some upland area rather
3 than the riverbed, the river channel?

4 A. The slope is quite steep in that location.
5 It is difficult to say that.

6 Q. And the last date in this series is
7 October 31st, 2006. Turn to that.

8 And here we have one photograph 061031-06; is
9 that right -- I'm sorry -01?

10 A. Yes.

11 Q. Okay. Other than this photograph, are you
12 aware of any documents, records or other evidence that,
13 specifically, supports this violation on this date?

14 A. No.

15 Q. What does the photograph show to you?

16 A. Flakes of rust and/or other metal in the
17 river.

18 Q. You're making the determination that this is
19 rust based solely on your review of the photograph; is
20 that right?

21 A. Correct.

22 Q. Do you have any information on when this
23 rust, if that's what it is, would have been deposited
24 here?

25 A. No.

1 Q. Do you know where in relation to the project
2 site this photograph was taken?

3 A. I would have to review the rest of the
4 photographs.

5 Q. So that's a no?

6 A. Looking at this one photo, no.

7 Q. Do you have the Complaint in front of you?

8 A. Yes.

9 Q. If you would turn to that. Turn to page 15,
10 Paragraph (G), "Rubbish, Debris, Trash and Sediment
11 Discharge." Are you there?

12 A. Yes.

13 Q. I want to ask you a couple of questions about
14 the allegations here. The first sentence under
15 Paragraph (G) says:

16 "Rubbish in the river affects the
17 downstream beneficial uses by creating
18 visual impacts."

19 Do you see that?

20 A. Yes.

21 Q. Do you have any evidence of downstream visual
22 impacts generated by this project?

23 A. Photographs that we have are visual impact,
24 at least for the duration that the photograph was
25 taken.

1 Q. All the photographs that I have seen appear
2 to be in the vicinity of the project or the work area
3 itself. would you agree with that?

4 A. Yes.

5 Q. So areas downstream, do we have any evidence
6 that you're aware of that would support or establish
7 visual impacts of areas downstream of the work area?

8 A. When you say "downstream," are you talking --

9 Q. I'm referencing --

10 A. -- outside of the work area or significantly
11 far downstream beyond the scope of any of the
12 photographs taken?

13 Q. Well, I'm just quoting the language in the
14 Complaint, so maybe you can tell me?

15 A. It is possible that some of the photographs
16 taken depict downstream conditions.

17 Q. But you don't know, sitting here?

18 A. No.

19 Q. That sentence goes on to say rubbish in the
20 river -- "can also pose threats to wildlife and human
21 health."

22 Are you aware of any specific threats to
23 wildlife or human health created by the project?

24 MS. MACEDO: Other than those that he has
25 already testified to?

1 THE WITNESS: Yes. Other than the violations
2 I have already testified to, no.

3 MR. HUNGERFORD: Okay. Well, let me go
4 through it.

5 BY MR. HUNGERFORD:

6 Q. With respect to wildlife, you mentioned that
7 sedimentation can have adverse impacts on wildlife,
8 correct?

9 A. Correct.

10 Q. You also mentioned that you weren't aware of
11 any toxic discharges that could have affected wildlife;
12 is that also correct?

13 A. Correct. Well, discharges -- cementitious
14 discharges could be considered toxic discharges.

15 Q. Okay. The next sentence goes on to say:

16 "Rubbish could also create a barrier,
17 foster bacteria, or introduce chemicals
18 into the river."

19 Is that correct?

20 A. Yes, correct.

21 Q. Are you aware of any specific instances where
22 you know this project created a barrier to the river,
23 fostered bacteria, or introduced chemicals?

24 A. The discharge of rubbish could potentially do
25 all of those things, so the discharges described in

1 this Complaint could have done all of those things. We
2 did not sample to quantify that, but each discharge
3 would have the potential for all of that.

4 Q. So you just used the word "potentially." Do
5 I understand your answer to be that it is possible, but
6 you don't have any specific information established
7 that those things took place?

8 A. Well, these were not reported as violations,
9 so we never had the opportunity to do any sort of
10 sampling as such.

11 Q. The next appendix is A-H, correct -- which is
12 the last table appended to the Complaint.

13 The first violation date is August 17th,
14 2006. Are you with me?

15 A. Yes.

16 Q. The first allegation on August 17th is:

17 "Hydraulic fluid spill on gravel bar."

18 Correct?

19 A. Correct.

20 Q. And I have in support of that a single
21 photograph which appears to be designated 060817-01; is
22 that right?

23 A. Yes.

24 Q. Other than this photograph do you have any
25 other evidence, documents or reports referencing a

1 hydraulic fluid spill on this particular day?

2 A. There may be some quotes in Engineering
3 Diaries or the Biological Monitoring Report. It has
4 been awhile, so I would have to review the file. It
5 seems like it would have been included here had there
6 been one, so not that I know of.

7 Q. Please take a look at the photograph that you
8 have in front of you. What does it show to you?

9 A. It shows three buckets and multiple bags of
10 oil stained rocks.

11 Q. Why do you believe those are oil stained
12 rocks?

13 A. I haven't looked at the photo up close. It
14 appears to be rocks with staining on them.

15 Q. And in the allegations you say "hydraulic
16 fluid spill." Is that the same thing as oil?

17 A. Hydraulic fluid, I believe, is a type of oil.
18 I could be wrong there, though.

19 Q. These rocks appear to have been collected or
20 picked up in some fashion; is that right?

21 A. Yes.

22 Q. Do you know when, assuming that any oil or
23 hydraulic fluid spill occurred -- when that spill took
24 place?

25 A. No, not exactly.

1 Q. Okay. Do you know why these rocks were
2 collected?

3 A. I believe they were collected in an effort to
4 clean up the spill.

5 Q. Did that demonstrate to you that there was a
6 cleanup program in place at the project site?

7 A. Yes.

8 Q. Okay. If you would turn to the next one
9 dated August 22nd, 2006. And we have in support of
10 this, what appears to be an e-mail to Walt Dragaloski
11 from -- I'll take that back. It looks like an e-mail
12 to Ron from Walt Dragaloski. Is that your
13 understanding, as well?

14 A. Yes.

15 Q. And "Ron," I assume to be Ron den Heyer?

16 A. Yes.

17 Q. Are you aware, other than this e-mail, of any
18 photographs, documents or the records supporting a
19 violation on this date?

20 A. No.

21 Q. What evidence is there in this e-mail of a
22 violation on August 22nd, 2006?

23 A. The quoted -- the quote states:

24 "Equipment is being fueled on the
25 riverbar at the north bridge."

1 The riverbar is waters of the state, and the
2 401 Certification, Condition 13, states that fueling
3 shall be outside of waters of the United States.

4 Q. Are you aware of any communications that
5 occurred between Caltrans or other, you know, people
6 working on the project with the Regional Board on this
7 particular issue?

8 A. Other than the 401 Certification?

9 Q. Yes.

10 A. No.

11 Q. All right. If you turn to the next date,
12 November 3rd, 2006.

13 A. Okay.

14 Q. And this is a sediment discharge which
15 appears to be referenced in an e-mail to Ron from Walt
16 Dragaloski. Do you have a copy of that e-mail?

17 A. I would have to pull it out of our file.
18 would you like me to do it?

19 Q. I'll hand you my copy, and you can take a
20 look at that.

21 There's a highlighted section on the second
22 page.

23 A. Okay.

24 Q. Now, this is alleged as a violation of
25 Condition 9, correct?

1 A. Correct.

2 Q. The quote says:

3 "During construction of the work
4 platform for the south bridge, loose soil
5 was pushed over the edge of the bank,
6 which cascaded all the way to the toe of
7 the slope."

8 Do you know how much soil was involved in
9 this event?

10 A. No.

11 Q. Do you have any reason to believe that this
12 condition wasn't remedied, as suggested by walt in his
13 e-mail?

14 A. No.

15 Q. And your allegation for this date is based
16 solely on this e-mail; is that right?

17 A. Yes.

18 Q. Turning to the next date, November 3rd, 2006.

19 A. I believe we were just --

20 Q. That was November 3rd, I'm sorry. It would
21 be the very last one, May 23rd, 2007. What evidence do
22 you have in support of this violation?

23 A. The quote from an e-mail from walt
24 Dragaloski.

25 Q. Okay. And it is an e-mail from walt

1 Dragaloski to Mona Dougherty and Dean Prat, correct?

2 A. Correct.

3 Q. Other than the e-mail, do you have any other
4 photographs, documents or evidence in support of this
5 violation on this date?

6 A. No.

7 Q. What is your understanding of the facts
8 supporting this particular violation?

9 A. My understanding of the facts could best be
10 described by reading the quote. It is pretty concise.
11 It states:

12 "The contractor you send to sandblast
13 rebar at Pier 3 without the use of
14 appropriate BMPs, without Caltrans
15 oversight, and in disregard of the
16 direction provided by the resident
17 engineer. It is estimated that six bags
18 of sand were used to clean the rebar and
19 the waste was not contained and was
20 allowed to fall directly to the gravel bar
21 of the river. The sand is well dispersed
22 and it may not be feasible to remove the
23 sand without, also, removing naturally
24 placed riverbar fines."

25 Q. You say it is a violation of Condition 7 and

1 9?

2 A. Correct.

3 Q. Condition 7 -- how does it violate Condition
4 7?

5 A. Condition 7 requires adequate BMPs for
6 sediment and turbidity control. And the quote which is
7 from one of the Caltrans inspectors states that,
8 "Activity was performed without use of appropriate
9 BMPs."

10 Q. Are you aware of any BMPs which should have
11 been applied here?

12 A. Containment.

13 Q. What type of containment?

14 A. The type of containment that would have
15 contained the sand and would have prevented it from
16 reaching the gravel bar of the river.

17 Q. Is that any direction that you're aware of
18 that was provided to anyone at the project at the time,
19 or was that just your statement sitting here today as
20 to what you believe an appropriate BMP to be?

21 A. An appropriate BMP is one that prevents the
22 discharge. So that is my statement based on an
23 understanding of what makes an effective and
24 appropriate BMP.

25 Q. Do you know if any BMPs were used at the time

1 of the sandblasting?

2 A. I do not.

3 Q. What you know is contained exclusively in the
4 e-mail, correct?

5 A. Correct.

6 Q. Turning to Condition 7, that refers to BMPs
7 for sediment and turbidity control. Would you regard
8 sand as sediment?

9 A. Yes.

10 Q. And turning to Condition 9, how is it that
11 this condition violates Condition 9?

12 A. Sand would also be considered. It could be
13 contained within the definition of soil, silt or other
14 organic or earthen material from construction activity,
15 and it was allowed to enter into waters of the state,
16 which is prohibited by Condition 9. So it violates
17 Condition 9.

18 Q. Okay. Do you have any understanding as to
19 what, if anything, happened after this particular date
20 with respect to future sandblasting at this project?

21 A. I believe that BMPs were developed. I do not
22 recall what those were.

23 Q. What is your basis that BMPs were developed?
24 Why do you say that?

25 A. I was involved in the project at the time.

1 And that's just my recollection that, you know, this
2 was a big deal at the time. There was communication
3 between the Water Board and Caltrans about this issue,
4 and I recall that Caltrans developed BMPs for this
5 practice in the future.

6 Q. Do you remember what those BMPs were?

7 A. No.

8 Q. Do you remember if those BMPs, whatever they
9 were, met with the satisfaction of the Water Board?

10 A. I don't recall because most of the
11 communication would have occurred between Caltrans and
12 either, probably, Dean Prat but perhaps also Mona
13 and -- I do not recall.

14 Q. Why do you say that this was a big deal?

15 A. Well, it was a discharge that -- an illicit
16 discharge to the river with inappropriate BMPs, and it
17 was one of the first of its kind.

18 There were not very many discharges like that
19 that were actually reported to us by Caltrans; yet we
20 had evidence of -- as documented here in this
21 Complaint -- of many discharges.

22 And so we addressed such notifications as big
23 deals at the time as a high priority, that when we got
24 notification of a discharge, we would deal with it
25 prior to other tasks, I guess.

1 Q. And Mona and Dean would have handled that on
2 this one?

3 A. I believe so. I was involved to some degree,
4 but it has been a few years.

5 Q. What was your involvement?

6 A. I don't recall. My main involvement was on
7 the enforcement realm, developing this Complaint. So
8 at the time I received notification that this happened,
9 I would have had conversations with Dean and Mona about
10 it, but it is all pretty vague. It has been a few
11 years.

12 Q. Have you ever been involved with any other
13 compliance oversight on any other bridge projects other
14 than this one?

15 A. No.

16 Q. Do you have any experience -- past
17 experience, other than on this particular issue, with
18 respect to what would be an appropriate BMP for
19 sandblasting?

20 A. No.

21 MR. HUNGERFORD: Why don't we take a quick
22 break, if we could.

23 (Recess.)

24 MR. HUNGERFORD: I would like you to turn to
25 page 17 in the Complaint.

1 THE WITNESS: Okay.

2 MR. HUNGERFORD: And we have paragraph 20,
3 "Stormwater Permit Violations." Probably, the second
4 full paragraph after paragraph -- I'm sorry, it begins
5 with: "Equipment was being fueled outside of an
6 approved fueling area".

7 THE WITNESS: All right.

8 BY MR. HUNGERFORD:

9 Q. What condition or requirement was being
10 violated by the allegations of fueling outside of the
11 approved fueling area?

12 A. In the stormwater permit.

13 Q. Do you have a copy of the stormwater permit,
14 or is that the language --

15 A. Yes, I do have a copy of the stormwater
16 permit. I haven't looked at it in a while, so --

17 Q. Is the stormwater permit quoted or attached,
18 incorporated, or otherwise, into the Complaint?

19 A. Not that I know of. Well, I guess some of
20 the BMPs, some of Caltrans BMPs, are included. And
21 then a stormwater permit requires implementation of
22 BMPs.

23 Q. I just want to know what is the list of legal
24 requirements that are being violated by this refueling
25 practice. Let's start with the stormwater permit. Is

1 there a particular provision of the stormwater permit
2 being violated?

3 A. It would be hard for me to say specifics on
4 that right now, although, I did get familiar with it
5 when I drafted it a while back.

6 Since it is not referenced explicitly in
7 here, I would really have to review the stormwater
8 permit, which is a really big document. It would
9 probably be easier to talk to Mona about it.

10 She is familiar with it. I could attempt to
11 review this real quick and express to you the various
12 different sections that would be relevant.

13 Q. Let me ask you this. Was this part of the
14 Complaint drafted by you or by Mona?

15 A. It was drafted by me in consultation with
16 Mona.

17 Q. Okay. But I take it this part of the
18 Complaint, under Section 20, at least, depends largely
19 or entirely on the stormwater permit; is that right?

20 A. Correct.

21 Q. Let me ask you about some of the facts here,
22 and we can take up the other stuff with Mona. That
23 paragraph says:

24 "Equipment is being fueled outside of
25 the approved fueling area without any BMPs

1 and being performed in such a manner for
2 weeks."

3 What is the basis for that statement,
4 factually? what documents or records do you have that
5 demonstrate that?

6 A. It is the quote provided just prior to that
7 paragraph.

8 Q. Okay. The one that says: "Fueling is
9 occurring," et cetera, et cetera?

10 A. Yes.

11 Q. Okay. Do you have or can you cite me to the
12 document that is the source of that quote?

13 A. It is an e-mail from Walt Dragaloski to Ron
14 den Heyer, and others.

15 Q. Do you have a copy of that e-mail?

16 A. Yes.

17 Q. Can I take a look at it, please?

18 A. I believe it is No. 5.

19 Q. So you've pointed me to, it looks like, an
20 August 25, 2006 e-mail describing events on
21 August 22nd; is that right?

22 A. Yes.

23 Q. Other than this e-mail, do you have any other
24 documents or records or evidence supporting this
25 particular violation?

1 A. No.

2 Q. The quote says "for weeks," right?

3 A. Yes.

4 Q. And other than the statement quoted in the
5 e-mail do you have any information as to how long this
6 condition, actually, existed?

7 A. No.

8 Q. Did you or anyone else, to your knowledge, do
9 any follow-up investigation to determine for how long,
10 actually, this condition was in place?

11 A. No.

12 Q. So your estimate of ten days of violations
13 was just simply a judgment call based on
14 Mr. Dragaloski's e-mail?

15 A. It was a conservative estimate. "Weeks"
16 being plural. Ten days -- ten working days is on the
17 conservative end.

18 Q. The next paragraph states:

19 "On August 22nd the discharger
20 violated the stormwater permit by not
21 implementing BMPs NS9 when refueling
22 multiple pieces of equipment."

23 Do you see that?

24 A. Yes.

25 Q. Again, can you point me to what r

1 in the stormwater permit is being violated here, or
2 would that also require some further review on your
3 part?

4 A. Yes, it would be the same. It would be, in
5 this instance, whatever part of the permit is requiring
6 implementation of the BMPs.

7 Q. Would Mona be the best person to ask about
8 that?

9 A. Yes.

10 Q. The next paragraph says:

11 "On September 20th there was observed
12 a manlift and generator working on the
13 trestle pad without drip protection."

14 Do you see that?

15 A. Yes.

16 Q. Are you aware of any actual discharges
17 associated with that event -- discharges into the river
18 or the river bed?

19 A. No.

20 Q. Are you aware of any discharges onto the
21 trestle deck as a result of -- at that time?

22 A. On that specific instance, no. Although,
23 there is evidence of leaky discharges to the trestle
24 deck and the riverbar that we have already discussed.

25 Q. We have discussed those, right?

1 A. Right.

2 Q. But on this particular occasion, nothing?

3 A. Not that I'm aware of.

4 Q. And then we come to the top of the page 18,

5 the first full paragraph beginning with:

6 "The trestle deck was inadequately

7 contained."

8 A. Again, is this a requirement of the

9 stormwater permit that is being allegedly violated?

10 A. Yes.

11 Q. Could you point me to that provision without

12 some further review on your part?

13 A. No.

14 Q. Well, let me ask you then just a couple of

15 questions generally. The statement:

16 "The trestle deck was inadequately

17 contained."

18 A. What is that based on?

19 Q. It is based on -- I believe it references BMP

20 NS-13.

21 Q. Now, it doesn't say NS-13 in the Complaint?

22 A. Correct, it doesn't in that paragraph, but in

23 the sequence of the description, the previous quote is

24 describing BMP NS-13, which does require that:

25 "The discharger provide watertight

1 curbs or toe boards to contain spills and
2 prevent materials, tools and debris from
3 leaving the barge/platform/dock,
4 et cetera. Secure all materials to
5 prevent discharges to waters via wind."

6 In regards to that BMP the trestle deck was
7 inadequately contained.

8 Q. What does the Water Board think should have
9 happened at the trestle deck in terms of containment?

10 A. I could read over the BMPs. We don't say how
11 to do it. In fact, we leave that to the discharger to
12 develop a BMP and to implement it. And according to
13 the evidence we have on file that was not adequately
14 implemented on-site for the period of time alleged.

15 Q. Are you aware of any evidence of containment
16 on the trestle deck?

17 A. Yeah. There's -- throughout the photographic
18 record there's bits and pieces here and there of
19 evidence of some containment. And further on, as
20 described in this paragraph:

21 "On January 8, 2007 the discharger
22 placed filter fabric over the entire
23 trestle."

24 so there's various containment efforts made.

25 Q. With respect to the other violations we

1 discussed saying that there were drip cans and leak
2 protection put over the trestle deck at various
3 points when heavy equipment is being used, correct?

4 A. Correct.

5 Q. And that would be a type of containment,
6 right?

7 A. Yes.

8 Q. And as you noted, the Regional Board doesn't
9 dictate how containment should take place, it just
10 leaves that to the discharger to determine, right?

11 A. That is my impression, although, the process
12 does include collaboration that if something is not --
13 is not working correctly, then the discharger would
14 communicate with the Water Board, and it would be an
15 iterative process.

16 Q. Are you aware of any instance, as we sit here
17 now, which -- let me back up.

18 what do you consider a watertight seal with
19 respect to the trestle deck?

20 A. One in which water cannot pass through the
21 trestle deck.

22 Q. So if you were to spill water anywhere on the
23 trestle deck it wouldn't drip through?

24 A. That is my impression of the language.

25 Q. Are you aware of any occasion, as you sit

1 here now, in which any type of fluid or any other type
2 of debris, actually, made its way through the trestle
3 deck and hit the water or the riverbed beneath?

4 A. There is no exact evidence linking it
5 directly. Although, as I have shown you with many of
6 the rubbish pictures, that the trestle deck was
7 inadequately contained, and that there was debris on
8 the trestle deck uncontained the same day as there was
9 a discharge below the trestle deck of debris -- the
10 same type of debris.

11 So it is our belief that that's sufficient
12 evidence to demonstrate a discharge and --

13 Q. Well, you have observed that there was
14 material on the trestle deck, so that same material
15 might have been below, but is there any evidence that
16 you're aware of, as you sit here right now, that fluid
17 or any other type of debris, actually, passed through
18 the trestle deck below to the riverbed beneath?

19 A. No.

20 Q. It states in the middle of this paragraph
21 that:

22 "The effort to seal the deck with foam
23 was not an effective BMP."
24 why is that?

25 A. Because -- forgetting which document

1 described it, but after it was performed, when
2 equipment was on the trestle deck, it caused deflection
3 and separation of the beams, and the foam and such,
4 that there was not a watertight seal, and it was not
5 functioning properly.

6 Q. So you're saying that the foam, actually,
7 made it worse?

8 A. It could have. I did not see that. I --
9 just describing some documents that I have read that
10 described how it was not an effective BMP.

11 Q. What documents are those that you're
12 referring to?

13 A. I just said I can't recall. I would have to
14 look in the file.

15 Q. Do you remember who prepared those
16 documents?

17 A. No. No.

18 Q. Where would you look to find those
19 documents?

20 A. I would look in the Engineering Diaries, and
21 I would look in the Biological Monitoring Reports and
22 the series of e-mails contained in the binder.

23 Q. And then, eventually, filter fabric was
24 placed over the trestle; is that correct?

25 A. Yes.

1 Q. And was that adequate in the Regional Board's
2 view?

3 A. I do not know. I'm not the one to make that
4 determination.

5 Q. Does NS-13 dictate how the watertight seal
6 should be established?

7 A. I do not believe so.

8 Q. So to some extent it leaves it up to the
9 judgment of the discharger or the permittee; is that
10 right?

11 A. I wouldn't say so much as judgment, as left
12 up to whether or not it is functioning properly. It is
13 a BMP if -- if it effectively prevents -- BMPs, in
14 general, are effective if they protect water quality
15 if -- that's what a BMP is for. And in this case it
16 would be an effective BMP if it is providing a
17 watertight curb. So I don't believe -- I don't have
18 any evidence that that was done within the time frame
19 alleged.

20 Q. Would you agree that there's evidence here
21 that there is an iterative process that took place in
22 the sense that, initially, you had a trestle deck, and
23 then there were efforts to seal it with foam, and then,
24 following that, there were efforts to place filter
25 fabric over the trestle which you described in the

1 Complaint as the final BMP.

2 Is that a fair statement of your
3 understanding of the facts?

4 A. Yes.

5 Q. With respect to the BMPs for the trestle deck
6 there certainly seems to be an iterative process that
7 BMPs were revised and possibly improved as time went
8 on; is that right?

9 A. Yes.

10 Q. But those revisions, were they, to your
11 knowledge, motivated by any actual discharges through
12 the trestle deck?

13 A. I do not know. I do not have any particular
14 evidence demonstrating an actual discharge through the
15 trestle deck.

16 Q. The last paragraph in that section:

17 "The maximum potential civil liability
18 for stormwater permit violations is
19 \$1,410,000, which includes 11 days of
20 equipment fueling BMP violations and 130
21 days of insufficient trestle deck
22 containment."

23 Is that right?

24 A. Yes.

25 Q. So the 130 days of trestle deck is the

1 failure to have a watertight trestle as just described,
2 right?

3 A. Um-hmm.

4 Q. The 11 days of equipment fueling, I take it,
5 is ten days, which is your conservative judgment of how
6 long refueling took place outside the approved
7 refueling area?

8 A. Yes.

9 Q. And the additional one day is what? The
10 August 22nd, '06 or September 20th -- it would be the
11 August 22nd, 2006 violation, right?

12 A. Correct. It looks like, maybe, the September
13 20th violation was inadvertently excluded.

14 Q. So the September 20th, there's no --

15 A. It is hard to say which one. I don't think
16 it is explicit in the way that it describes it, but --

17 Q. Well, you have alleged 11 days of equipment
18 refueling violations and the September 20th date
19 doesn't describe any refueling issues. So should I
20 take --

21 A. Correct.

22 Q. So there appears to be no penalties
23 associated with this September 20 day?

24 A. It appears that way.

25 Q. Okay. I would like to turn now and talk

1 about the ten factors under 13385, which you have
2 discussed, beginning on page 18 of the Complaint.

3 Let me start just by understanding how it is
4 that you developed these factors in the context of this
5 Complaint.

6 why don't we begin on page 26. We will take
7 a look at the table there. Okay?

8 A. Okay.

9 Q. So for each category of violation you have
10 listed a maximum potential liability and proposed
11 penalty; is that right?

12 A. Yes.

13 Q. We will begin with construction dewatering.
14 And so you have identified 39 violations for a maximum
15 potential liability of \$390,000 correct?

16 A. Correct.

17 Q. Your proposed penalty is, also, 390,000?

18 A. Correct.

19 Q. Should I take that to mean that you did not
20 feel that any reduction off the maximum potential
21 liability was appropriate?

22 A. Correct.

23 Q. Why is that?

24 A. Because the nature, extent and circumstances
25 of all violations were egregious. And due to the clear

1 requirements in the permit and application, special
2 provisions, the lack of communication with the water
3 Board regarding noncompliance with those requirements,
4 the discharge was highly culpable. And there appears
5 to be an economic benefit gained by not discharging at
6 another location, and by not following the required
7 process.

8 And due to those factors, we didn't believe
9 that any of the other factors were sufficient to reduce
10 the penalty from the maximum potential.

11 Q. Let's talk about just the use of isolated
12 Pool B. That certainly underlies some of the
13 violations in this category, correct?

14 A. Correct.

15 Q. And the use of isolated Pool B was, at least
16 in one way of measuring, was less than 100 feet from
17 the active river; is that right?

18 A. Yes.

19 Q. However, I believe we also discussed that it
20 was as far away from the river as the topography
21 allowed. Would you agree with that?

22 MS. MACEDO: As represented by counsel.

23 THE WITNESS: I guess, for that type of
24 discharge, there are other practices that could have
25 been employed, that, due to the constraints of the

1 topography would have required a different management
2 practice.

3 So for that type of management practice in
4 that topography, given your hypothetical, I could
5 say -- I could say, yes, but it wasn't permitted, and
6 it was explicitly prohibited to do it that way.

7 BY MR. HUNGERFORD:

8 Q. Your statement, there's a high degree of
9 culpability associated with these violations, what does
10 that mean?

11 A. It means that the discharger had an
12 opportunity to follow the permit, that -- to follow the
13 process, to make modifications to the permit, and did
14 not do any of those, did not communicate with the Water
15 Board, and made a decision to -- to proceed in direct
16 violation with the permit. And that's the high
17 culpability associated with that.

18 Q. Go down to the next category, "Leaky
19 Equipment." This is on page 26. There are 28
20 violations listed with a maximum potential liability of
21 280,000, by your count, and a proposed penalty of
22 150,000, correct?

23 A. Correct.

24 Q. So, apparently, you felt it was appropriate
25 to give some discount there off of the maximum --

1 proposed maximum potential penalty; is that right?

2 A. Yes.

3 Q. Let me ask this. Did you determine that
4 discount, so to speak, as a group looking at all of
5 this category of violations, or did you apply it on a
6 violation-by-violation basis?

7 A. As a group.

8 Q. Why did you not apply it on a
9 violation-by-violation basis?

10 A. We felt that it was more clearer for the
11 discharger and the -- anyone reviewing the document.
12 There are so many violations it would have been
13 difficult to do on an individual violation basis, and
14 it was -- that was the best approach that we could come
15 up with.

16 Q. Is there any guidance or policy that you're
17 aware of that would allow you to apply the 13385
18 factors collectively to a group of violations rather
19 than on a violation by violation basis?

20 A. To my knowledge there's no policy, or such,
21 that would prohibit us from doing that.

22 Q. Are you aware of any policy or other guidance
23 that speaks to how, at least for this Regional Board or
24 all Regional Boards, how violations should be regarded
25 for the purposes of the 13385 factors?

1 MS. MACEDO: In existence at the time of the
2 drafting of the Complaint?

3 MR. HUNGERFORD: Yes.

4 THE WITNESS: There is an enforcement policy
5 that we follow.

6 During the time drafting the Complaint there
7 was an enforcement policy in place at the time. It has
8 since then been revised and updated, and there is a new
9 version that I'm less familiar with.

10 MS. MACEDO: And it is not applicable to this
11 Complaint.

12 THE WITNESS: Correct.

13 BY MR. HUNGERFORD:

14 Q. So the former version can you cite that to
15 me?

16 A. I do not have it in front of me.

17 Q. Can you describe it, generally? How would I
18 identify it? What is it called?

19 A. It is called enforcement policy -- the State
20 Water Board's Enforcement Policy.

21 MS. MACEDO: Capital letters.

22 BY MR. HUNGERFORD:

23 Q. So the State Water Board Enforcement Policy,
24 in caps. Any other policy or guidance that you are
25 aware of from the state board or on a regional level?

1 A. No.

2 Q. And so your decision to reduce, for this
3 category of leaky equipment, 280,000 to 150,000, what
4 fed that decision?

5 A. It appears that, primarily, based on efforts
6 in place, management practices that were in place to
7 prevent leaks from reaching surface waters, as well as
8 efforts made to clean them up, we have evidence that,
9 on occasions, spills were cleaned up and that
10 management practices were employed to contain leaks.
11 So those efforts we took into consideration to reduce
12 the penalty.

13 Q. We spoke previously about the
14 characterization of the equipment used in this project
15 as "leaky equipment." Do you remember that?

16 A. Yes.

17 Q. Those characterizations, as they appear in
18 the records of the project, appear to come mostly or
19 entirely from the Biological Monitoring Report; is that
20 right?

21 A. I guess, in reference to the violations that
22 we have discussed, yes. Although, there is
23 documentation in the Engineering Diaries of equipment
24 leaks, as well.

25 Q. Other than the Biological Monitor statements

1 and what might appear in the Engineering Diaries,
2 again, is there anything else that you're basing the
3 conclusion on that this equipment was, quote, unquote,
4 "leaky equipment"?

5 A. There were staff inspections that were
6 performed.

7 Q. of the equipment?

8 A. Of the site. There's one particular
9 inspection where Dean noted that the backhoe was
10 excessively leaky. We discussed that previously.

11 Q. You note here that the equipment was never
12 replaced. What is the basis of that conclusion?

13 A. It is possible that some equipment was
14 replaced, but it is my understanding that certain
15 pieces of equipment, like the Manitoba crane that was
16 used throughout the entire project -- there may have
17 been multiple cranes that leaked repeatedly, that at
18 least those ones were not replaced. That's an example.

19 Q. Do you have, or did you consult any records
20 as to how the equipment used in the project was
21 maintained?

22 A. Other than Engineering Diaries, no. There is
23 some evidence in the Engineering Diaries of that.

24 Q. Turning to the next category, "Slag
25 Discharges," there's 15 violations with a maximum

1 liability of 150,000, and you have a proposed penalty
2 of 50,000; so roughly one-third of the maximum.

3 why is it that you reduced that to 50,000
4 from 150?

5 A. well, slag discharges were not considered
6 toxic. They resulted from lack of using and
7 implementing sufficient BMPs, which made them less --
8 less egregious than construction dewatering or
9 cementitious discharges; but as we described in the
10 complaint more egregious than rubbish discharges,
11 and --

12 Q. And, again, you're looking at these
13 violations and applying the \$50,000 penalty as a whole
14 to this group of violations, correct, not to individual
15 violations?

16 A. Yes.

17 Q. Meaning, that you haven't delineated
18 violation by violation and applied the factors to each
19 one?

20 A. No.

21 Q. Next one, "Turbid Discharges," 20 violations,
22 maximum potential liability of 200,000, with a proposed
23 penalty of 150. So you have taken off, roughly, 25
24 percent; is that right?

25 A. Yes.

1 Q. Why is it that you felt that it was
2 appropriate to make a reduction of 25 percent?

3 A. I do not recall.

4 Q. And page 23 at the bottom, under D(a) --

5 A. Yes.

6 Q. You note that:

7 "Turbid discharges have a high degree
8 of toxicity with respect to the endangered
9 species occupying the river."

10 What is it about turbid discharges that are
11 toxic?

12 A. Well, depending on the type of -- you know,
13 what is causing the turbidity, if it includes
14 settleable solids or suspended solids, it could impair
15 their ability to navigate, but it could also settle out
16 on spawning grounds and prevent fry from emerging,
17 which would interfere with their reproductive cycle,
18 which would have a toxic effect.

19 Q. Generally, my understanding of toxicity as
20 applied in the context of beneficial uses to water
21 bodies, typically, refers to, for example, selenium,
22 and is something that is recognized as being toxic in
23 certain quantities in water bodies for wildlife.

24 Other types of heavy metals to the extent
25 that they are contained within the river could

1 certainly be toxic. But, here, I haven't seen any
2 evidence of that, so I wanted to understand what your
3 basis is for saying there's a high degree of toxicity
4 in the discharges?

5 A. Sure. I would have to review if -- if
6 turbidity would be considered under the umbrella of
7 toxicity.

8 From my understanding of acute and chronic
9 toxicity tests, there is the potential that turbidity
10 could be considered as a toxic parameter because of its
11 ability to interfere with the survival of aquatic
12 species.

13 If you see a depression in survival or growth
14 in those species, then you can see a reduction in
15 either acute or chronic toxicity, and, therefore,
16 depending on the type of turbid discharge, it could
17 have a toxic effect.

18 Q. So you're just referring in a sense to
19 turbidity, which may be toxic?

20 A. Yes.

21 Q. Looking at the next category, you have
22 "Insufficient Turbidity Measurements," 22 violations
23 with a maximum liability of 220,000, and you have a
24 penalty of about half of that.

25 What was the basis for reducing this by 50

1 percent?

2 A. The turbidity measurement violation?

3 Q. Yes.

4 A. The fact that there is no direct indication
5 of substantial detriments, the way it is worded here.
6 So no direct fish kills caused by it or other immediate
7 effects. That played into our determination to reduce
8 the penalty.

9 Q. Okay. If I'm understanding this right, the
10 ultimate effect of this violation -- of this category
11 of violations wasn't so serious as to warrant a
12 complete --

13 A. And some samples were taken. As you have
14 discussed before, an NTU meter was used at times,
15 et cetera. And the fact that there wasn't just a
16 complete disregard for turbidity measurements across
17 the board warrants a reduction from the maximum.

18 The maximum in this case would be no
19 turbidity measurements ever and potential direct
20 impacts.

21 Q. Now, turning to the next one for "Improper
22 Disposal of Cement wastes," you have 16 violations and
23 maximum liability of 160,000, and collectively -- you
24 have imposed a maximum penalty on those as a
25 collective; is that right?

1 A. Yes.

2 Q. And, again, you haven't gone to each one of
3 these individually and applied the 13385 factors; is
4 that right?

5 A. That's right.

6 Q. And your conclusion that the maximum penalty
7 is warranted is based on what?

8 A. It is based on the high degree of culpability
9 which includes the fact that this type of discharge was
10 clearly prohibited in the permit, and that there was
11 multiple correspondences regarding that; that there was
12 a process to be followed to change application of the
13 permit. So if the discharger was going to change its
14 practice there was a process that needed to be followed
15 that was never followed. And so that adds up to a high
16 degree of culpability.

17 High alkalinity can create very toxic
18 conditions in the river, and it wasn't susceptible to
19 cleanup. And the fact that it is assumed that economic
20 benefit was gained by not implementing it, according to
21 the permit. All of those factors play into assessing
22 the maximum potential, and there's no factors included
23 to reduce -- to reduce the penalty.

24 Q. Now, not all of these cement discharge
25 violations were exactly the same type of factual

1 scenario, were they?

2 A. No.

3 Q. Just to refresh, I'll read through a couple.

4 One was where tools were cleaned in an
5 excavation for a footing where concrete had been
6 poured; and another was an upland area, where it looks
7 like there was some cementitious material placed.

8 You know, at another time there was some dry
9 cement put on the riverbar or left there. On another
10 occasion there was water to prevent an overflow of
11 cement-affected water into the river, and water was
12 pumped to the gravel bar.

13 Is it your belief that all of those different
14 type of fact situations are treated equally under the
15 13385 factors, that all of those have the same degree
16 of culpability?

17 A. In regards to culpability, yes. The permit
18 is clear that all cementitious wastes need to be fully
19 contained, and it appears that, in none of those
20 situations, the waste was fully contained.

21 So upland versus near the riverbar, yes,
22 there's a difference in potential impacts. However,
23 the potential impacts are still very high for all of
24 them and the degree of culpability is still very high.

25 Q. well, let me ask this:

1 "On August 29th, during placing
2 concrete on a corrugated steel pipe within
3 the river, the water level rose. To
4 prevent overflowing of the river, the
5 water was pumped to a dewatering basin."
6 Do you remember that?

7 A. Yes.

8 Q. So there is, potentially, a mitigating factor
9 first in that. This action was taken to prevent
10 cement-affected water from spilling over to the active
11 river.

12 Is that a fact that you would consider in
13 applying the 13385 factors, or is that irrelevant?

14 A. The fact that this mitigation -- "mitigation"
15 as you put it, is performed to prevent the cementitious
16 waste discharging to the active river channel but was
17 then discharged to waters of the state in the riverbar,
18 which still has very similar potential impacts to the
19 river, really does not mitigate the effects of the
20 discharge.

21 And prior to doing that, to be getting this
22 cement pour, the discharger could have very easily
23 foreseen this situation occurring and would have either
24 had a Best Management Practice in place to fully
25 contain the waste, or if they could have seen that that

1 was not possible, then he could have communicated with
2 the Regional Water Board to discuss the scenario and
3 follow the process of -- as laid out in the 401
4 certification of getting a general permit for that
5 process, which was never done.

6 So all of those factors still retain a high
7 degree of culpability and a high degree of impact to
8 the water body.

9 Q. You, also, testified on that particular event
10 that you did not know how much water was pumped from
11 the corrugated steel pipe into the basin. Do you
12 remember that?

13 A. I do.

14 Q. Is it irrelevant how much water is pumped to
15 the basin because, certainly, that would have some
16 effect on the nature, circumstances and extent of
17 gravity of the situation?

18 A. In 13385 if you discharge over 1,000 gallons,
19 you can -- you're required to include as a maximum
20 potential \$10 per gallon. And being less than that, it
21 doesn't affect the assessment of penalty for -- you can
22 either do it on a per day basis or per gallon basis.
23 And that depends on the quantity. And being less than
24 1,000 gallons, you do it on a per day basis.

25 So the maximum potential liability of \$10,000

1 isn't reduced within that per day discharge. You can
2 have a much smaller discharge and still get the maximum
3 potential penalty of \$10,000 per day. It is just the
4 way it is structured in the water code.

5 Q. And I'm aware of the water code structure,
6 but are you saying that any discharge of any volume
7 below the 10,000 gallon threshold merits the maximum
8 penalty?

9 A. You just said 10,000 gallons, it is 1,000
10 gallons.

11 Q. One thousand.

12 A. It depends on all of the factors. And what
13 I'm saying is that volume alone is not sufficient to
14 reduce the penalty.

15 In this instance, due to the high degree of
16 culpability and the high degree of toxicity and the
17 potential economic benefit gain from the practice and
18 no other evidence to support reduction of penalty, we
19 went with the maximum.

20 Q. The economic benefit gained from this
21 practice -- I think it is fair to say, if you agree,
22 that the economic benefit factor is something that you
23 have talked about in most of this portion of the
24 Complaint with respect to the 13385 factors, correct?

25 A. Correct.

1 Q. Has the Water Board formed any economic
2 analysis or study or report or other undertaking as to
3 the actual costs allegedly saved as a result of
4 managing this project in one way versus another?

5 A. No, we have not done a thorough analysis.

6 The economic benefit assertions are based on
7 recognition that, following a permit, it will require a
8 certain cost, and violating the permit is going to --
9 especially in these situations we are talking about
10 cementitious discharges, the alternatives would cost
11 more; and therefore there is an economic benefit gained
12 by not implementing the alternative, which is complying
13 with the permit.

14 Q. I understand conceptually what you're saying,
15 but in terms of specific dollar amounts, is there any
16 way to determine how much of -- taking just the cement
17 waste violations, how much of the penalty is based on
18 the economic savings, or is that just a judgment call
19 on your side?

20 A. There is no quantifiable way to break that
21 out in the way this Complaint has been drafted,
22 although, it is possible to do that type of
23 calculation.

24 Q. It just wasn't done here?

25 A. It was not done in the way that you

1 described.

2 Q. The next one, "Rubbish and Debris
3 Discharges," nine violations, maximum penalty of
4 \$90,000, proposed penalty of 10.

5 So a fairly large discount there in relation
6 to the others. Why is that?

7 A. We allowed for a significant reduction in the
8 maximum penalty based on the fact that rubbish
9 discharges are, in general, nontoxic, that the
10 discharger did, as we indicated before, include a punch
11 list to clean it up at times, which -- those efforts,
12 to some degree, mitigated the potential impacts of the
13 rubbish.

14 And so due to their susceptibility to clean
15 up, and the lack of economic benefit presumably gained,
16 and the nature, circumstances, extent, gravity weren't
17 that severe, we reduced the maximum down to what it is.

18 Q. Turning to the "Individual Events." We have
19 five individual events. They are a total maximum
20 liability of 50,000. You reduced it to 41; is that
21 right?

22 A. Yes.

23 Q. Now, the individual events are under
24 paragraph -- I'm sorry, Section H, correct?

25 A. Correct.

1 Q. I'm looking at -- oh, I see. I was looking
2 at A-H trying to figure out where the five came from,
3 and the five is because you have two allegations
4 alleged for sandblasting; is that right?

5 A. Yes.

6 Q. Now, these are all -- all five of these
7 violations or at least four of them describe different
8 factual scenarios, don't they?

9 A. Let me go back. Yes.

10 Q. For one, we have a hydraulic spilling,
11 another is equipment fueling, another is sediment
12 discharge, and another is sandblasting; is that right?

13 A. Yes.

14 Q. But in this case, as well as the others, you
15 applied proposed penalty to the group of individual
16 events rather than to the events on a
17 violation-by-violation basis; is that right?

18 A. No, I don't believe -- I believe because
19 these individual violations section that were not
20 easily categorized in another way, they have been
21 assessed individually.

22 Q. Where do I find that breakdown?

23 A. Right here in page 25 of the Complaint.

24 Q. Okay. I see. So you have 10,000, 1,000,
25 10,000. Okay.

1 Other than this Category H is there anywhere
2 else in the Complaint that you have broken this down
3 individually per event?

4 A. No.

5 Q. Okay.

6 A. No. Umm -- my answer is no, yeah. My answer
7 stands "no."

8 Q. You meant "no," right?

9 A. Right.

10 Q. Finally, we have stormwater permit, 141
11 violations, maximum penalty of 1,401,000, and you have
12 dropped that down to 450.

13 A. Yes.

14 Q. How do we get 1,000? They are all multiples
15 of 10. Do you know?

16 A. One thousand?

17 Q. The total maximum penalty is 1,401,000.

18 A. I think that's a typo.

19 Q. That's a typo?

20 A. Yes.

21 Q. So that should be 1,410,000?

22 A. Yes.

23 Q. And 450,000, why did you think it was
24 appropriate to reduce this to 450,000 in this case?

25 A. There was a high degree of culpability

1 associated with these violations, which includes
2 implementing BMPs, which were not done for a large
3 period of time.

4 However, for example, in containment of
5 trestle deck, there was an iterative process performed
6 which took a long time to implement, as well as there
7 was -- it is not clear if these violations resulted in
8 actual discharges to waters of the state, nor the
9 extent to which those discharges may have impaired the
10 water body; and due to those factors we have reduced
11 the maximum potential down. Although, it remained at
12 that level for 450,000 based on the degree of
13 culpability and nature and circumstances of what
14 happened.

15 Q. Okay. Stepping back to the 13385 factors, we
16 have talked about some of them. There are a couple:
17 Ability of the violator to pay; and the effect on the
18 violator's ability to stay in business. You're aware
19 of those, right?

20 A. Yes.

21 Q. How did you apply the ability of the violator
22 to pay as to just the Complaint as a whole?

23 A. In general, we look at that -- that factor as
24 one where the burden relies on the discharger to
25 demonstrate that they do not have the ability to pay,

1 especially, in a situation where you have a state
2 agency involved.

3 we have no evidence to the contrary that the
4 discharger doesn't have the ability to pay.

5 Furthermore, this is a very large, expensive project,
6 upwards of \$70 million, and this is a small percentage
7 of that.

8 Based on those factors, we welcome any
9 evidence either now and up until the hearing to
10 demonstrate otherwise, if you or anyone else feels that
11 there is an inability to pay.

12 Q. Did you conduct any economic financial
13 analysis of the project with respect to how much money
14 might have been available within that \$70 million
15 figure to go towards compliance, for instance?

16 A. I don't believe that's a requirement to
17 consider in this factor.

18 Q. Okay. That wasn't in response to my
19 question. Was any analysis -- let me back up.

20 You mentioned it is a \$70 million project,
21 correct?

22 A. Correct.

23 Q. And that \$70 million represents the total
24 value of the project, correct?

25 A. (Witness nods head.)

1 Q. You're aware, also, just as a general matter,
2 that that money is going to go to various contractors
3 to be put forth on various things, right? The money
4 is, actually, going somewhere, correct?

5 A. Correct.

6 Q. So within that mix there may or may not be
7 some moneys that are earmarked or that could be drawn,
8 you know, to satisfy, you know, stormwater penalties or
9 certification penalties, possibly.

10 Did you conduct any analysis of the project,
11 the cost, the financials, that would have allowed you
12 to make any sort of a judgment as to what really was
13 Caltrans ability to pay out of that \$70 million for
14 certification violations?

15 A. I, in particular, did not.

16 Q. So is it fair to say you regarded this as a
17 large, expensive project, and Caltrans is a large state
18 agency, and those were significant factors in your
19 analysis for ability to pay?

20 A. And as I stated, that it is my impression, in
21 general, that unless we have evidence to the contrary,
22 that there is a presumption in just the general
23 drafting of complaints that there is an ability to pay.

24 Q. But you didn't do any investigation on that
25 issue in this particular one?

1 A. Like I said, we feel that the burden of proof
2 lies on the discharger.

3 Q. Okay. And the effect on ability of the
4 discharger to stay in business, was that a factor that
5 was considered here?

6 A. I guess my answer would be the same as
7 ability to pay.

8 Q. That you believe the burden of proof lies on
9 the discharger?

10 A. Yes.

11 Q. So you didn't conduct any analysis or
12 investigation into the ability to stay in business?

13 A. Just as to the extent that I previously
14 described, the size of the project and the relative
15 portion of the post-penalty does not appear to -- that
16 it will impact the ability of Caltrans, or its
17 contractors, to stay in business.

18 Q. What about the cleanup efforts factor, how
19 did you analyze that here?

20 A. In the entire Complaint?

21 Q. Sure.

22 A. Where appropriate we took into consideration
23 to reduce the maximum potential penalty being proposed.

24 Q. Over the course of your deposition you have
25 seen, reviewed information in these documents

1 indicating that cleanup efforts were undertaken, for
2 example, to pick up trash, to pick up rocks that might
3 have been stained by fluids; do you remember that?

4 A. Yes.

5 Q. Was all of this information at your disposal
6 when you drafted the Complaint?

7 A. Yes.

8 Q. So the Complaint and your application of the
9 13385 factors incorporated all of that?

10 A. Yes.

11 Q. Did you know that the project had people --
12 personnel that were devoted towards cleaning up the
13 project site and managing, you know, potential
14 discharges of debris, rubbish, trash, and other items?
15 Were you aware of that?

16 A. I knew that -- I was aware that there was
17 staff or personnel tasked with doing such things. I
18 wasn't and I guess I'm still not aware that there were
19 several people, that that was their sole job and --

20 Q. If you were to learn that, would that affect
21 your view of the voluntary cleanup efforts factor?

22 A. It would depend on -- well, yes, we would
23 welcome that information, and we would take it into
24 consideration.

25 And it would depend on the type of discharge

1 because it is a mitigation of a discharge. It
2 wouldn't -- it wouldn't eliminate the violation, but it
3 would be something that we could take into
4 consideration to reduce potential penalty.

5 Q. History of violations, how was this factor
6 analyzed by the Regional Board?

7 A. We worked on all of these as a team, so
8 history of violations, in particular, I'm not -- I
9 wouldn't say I would be the person most knowledgeable
10 about that because there are other staff or management
11 who are more familiar with both Caltrans and MCM's
12 history of violations than I am and how that was taken
13 into account.

14 I believe it is described in here to some
15 degree about references, other construction -- bridge
16 construction projects that were used as references
17 and --

18 Q. Who is the staff that you believe is most
19 knowledgeable on this issue?

20 A. It would be -- well, it would be really a
21 combination of the various staff.

22 Coincidentally, just not myself, but Mona and
23 Dean both deal with Caltrans and perhaps even MCM in
24 other situations. Both David Leland and Louise both
25 have a long history with the water Board and provide a

1 lot of context with these types of cases.

2 As well as well as our attorney, Kris
3 Kargennul and Julie deal with cases throughout the
4 state and would have a better understanding of history
5 of violations.

6 Q. Let me ask this. At the beginning of page 19
7 of the Complaint, we have a number of other instances
8 involving projects that you have listed in the
9 Complaint with regard to history of violations.

10 A. Yes.

11 Q. Is there anything else, other than this
12 history that is contained in the Complaint, that you
13 relied on, you know, to analyze the 13385 factor?

14 A. Not that I'm aware of.

15 Q. But Mona and Dean, Mr. Leland, those three
16 people would have some knowledge?

17 A. Yes.

18 Q. The next, skip down a bit, economic savings
19 is a factor that is to be looked at under Section
20 13385.

21 A. Is that different than economic benefit?

22 Q. I don't regard those as the same thing. Do
23 you have a different understanding?

24 A. No. That's why I clarified. Just making
25 sure that we are talking about the same thing.

1 Q. And just to be clear, the Regional Board in
2 this case didn't prepare any study or analysis of the
3 economic savings gained from any particular or group of
4 events that are an alleged result of the violations; is
5 that right?

6 A. Correct, to my knowledge.

7 Q. And so if I wanted to find out on a
8 particular event, let's say -- a few minutes earlier we
9 talked about discharging cementitious waste, pumping
10 the water to isolated Pool B; do you remember that?

11 A. Yes.

12 Q. If I wanted to know what the Regional
13 Board -- how they applied the economic savings factor
14 with respect to that particular violation, how would I
15 do that?

16 A. The way we have done it here, we assumed that
17 there was economic benefit or savings gained by not
18 adhering to the permit, which was explicitly laid out
19 in the application process and communication via
20 e-mails with Dean Prat, as well as in the 401
21 Certification itself, which would have been foreseeable
22 to anybody bidding on the project; and, therefore,
23 compliance with the Certification through full
24 containment of cementitious waste should have been
25 incorporated into the economics of the proposal of the

1 bid. And, therefore, by not implementing full
2 containment of cementitious wastes, there was a benefit
3 gained.

4 We didn't include a reduction in the penalty
5 based, in part, on the fact that there was a presumed
6 benefit gained by not -- I just hypothesized on what a
7 potential solution would have been, but suffice it to
8 state, full containment down there.

9 Q. So if I can just try to fairly restate your
10 answer, you're assuming that, by not complying, that
11 there was some economic benefit that was gained; is
12 that right?

13 A. Especially in this instance where the
14 prohibition was very clear.

15 Q. But with respect to any particular violation,
16 do we as -- do the people who are facing these
17 violations have any way of determining how the
18 economic savings factor was applied on a particular
19 violation?

20 As an example for the cementitious waste, is
21 there any dollar value that the Regional Board assigned
22 with that or any other violation as to the amount of
23 savings that the discharger achieved by not doing it
24 differently?

25 A. Not particularly, that I'm aware of.

1 MR. HUNGERFORD: Okay. I don't have any
2 other questions.

3 MS. ZAZZERON: Off the record.

4 (Lunch break from 12:29 to 1:21 p.m.)

5 MS. MACEDO: So we are almost at the
6 conclusion of Mr. Grady's deposition, and we discussed
7 it during a previous day, but I would like, for the
8 record, to state that Mr. Grady appeared as the person
9 most knowledgeable for the Diepenbrock Harrison
10 Deposition Notice, Categories A through J,
11 Categories L, M, N.

12 Mona Dougherty will likely be the PMK for
13 Category K, and a combination of Dean Prat and Mona
14 Dougherty will be the PMK for Category O.

15 David Leland had previously been designated
16 as the PMK from the supervisory and management
17 standpoint, but based on the questioning, Kason Grady
18 also fulfills that role.

19 MS. ZAZZERON: I'm going to reserve the
20 Department's right to object to the designation. At
21 the first round of Kason's deposition, counsel for the
22 Board indicated that Mr. Grady was not appearing as a
23 PMK, he was appearing as a percipient witness;
24 therefore, the organization of questions and things
25 were based on that.

1 In addition, if we were advised that David
2 Leland was only a PMK for a few of those categories, it
3 would have saved a lot of time and probably expense.
4 So I'm reserving the Department's right to object to
5 that PMK designation again.

6 MR. HUNGERFORD: well, with that, I will do
7 my final cleanup.

8 BY MR. HUNGERFORD:

9 Q. Kason, earlier when we spoke, Appendix G, you
10 mentioned that there was an October 24th, 2006 quote,
11 and we were trying to identify the source of that
12 quote. Have you been able to identify it?

13 A. I'm going to have to clarify. You're
14 referring to October 26th in Appendix G?

15 Q. I'm sorry, October 24th. October 24th, I
16 think, that was the date that we couldn't identify the
17 quote, and you were going to take a look for me.

18 A. You know, I may have confused the dates, so I
19 would have to look that up again. I didn't look for
20 that one. I was looking for a different quote that I
21 couldn't find, so --

22 Q. Okay.

23 A. I apologize for that.

24 Q. That's all right. We will leave that one
25 open. Okay.

1 And I have no other questions at this point
2 in time.

3 MS. ZAZZERON: Off the record.

4 (Pause in proceedings.)

5 EXAMINATION

6 BY MS. ZAZZERON:

7 Q. Mr. Grady, you've been doing a great job
8 waiting for the attorneys to ask the question before
9 you start to answer. And I would ask that, as you have
10 with Mr. Hungerford, if you don't understand any part
11 of a question that I'm asking, please ask me to restate
12 it.

13 A. Okay.

14 Q. How many times did you personally visit the
15 job site while the project was ongoing?

16 A. I'm not going to be able to give you an exact
17 number. Maybe two or three.

18 Q. So less than five?

19 A. Yes, yeah.

20 Q. Approximately, two or three?

21 A. (Witness nods head.)

22 Q. Yes?

23 A. Yes.

24 Q. Approximately, what dates did you go there?

25 A. Oh, geez, I don't know if I'm going to be

1 able to state. It would have been in 2007, in the
2 summer of 2007, and the fall.

3 Q. So definitely after the two NOV's were issued?
4 A. Oh, yes.

5 Q. The first time that you went to the job site
6 were you accompanied by anybody?

7 A. Dean Prat.

8 Q. What was the purpose in going there?

9 A. I believe we were doing an inspection of the
10 job site.

11 Q. How long did you stay out there?

12 A. Two to -- a few hours. Yes, just a few
13 hours.

14 Q. Did you gain access to the trestle?

15 A. Yes.

16 Q. Are any of the allegations in the Complaint
17 the result of your first visit to the job site?

18 A. I don't believe so, no.

19 Q. Your second visit, who were you accompanied
20 by?

21 A. Dean Prat, as well.

22 Q. Was it, also, to make an inspection?

23 A. As I recall, there were inspections. I
24 don't -- I don't recall if there was any particular
25 impetus for the inspection, but that's what I recall it

1 being for.

2 Q. Are any of the allegations in the Complaint
3 reflective of your second visit -- anything you saw in
4 your second visit?

5 A. No, I don't believe so.

6 Q. On any of your visits did you speak to any
7 Department of Transportation personnel?

8 A. Yes.

9 Q. To whom did you speak?

10 A. We spoke to Sebastian Cohen. There were
11 other assistant resident engineers. I believe Gene Leo
12 was there. Terry Davis was there.

13 And, in fact, I think it may have been the
14 first inspection there was some sort of -- I don't know
15 if it was a training or a -- it was a meeting in the
16 office on-site. I forget what the details of that
17 meeting were, but -- so there was other staff that I'm
18 not remembering. There was a whole group of people in
19 that meeting.

20 I believe that -- I don't recall Walt
21 Dragaloski being there, actually. So I definitely
22 remember those three names that I just mentioned, but
23 there were others.

24 Q. Did you speak with anyone from MCM during
25 your visits?

1 A. Maybe. I don't recall particularly.

2 Q. Did you go to the R.E.'s office?

3 A. Yes.

4 Q. On any of your visits to the site did you
5 meet with any employee of another regulatory agency?

6 A. Fish and Game or --

7 Q. Correct. That would be Fish and Game, NMFS.

8 A. National Marine Fishery Service, NMFS.

9 You know, I don't recall. There could have
10 been a Fish and Game warden there. I don't remember
11 meeting Karen Maurer or -- I don't recall.

12 Q. Did you, personally, speak with Karen Maurer
13 regarding Confusion Hill?

14 A. I may have spoken to her once on the phone.
15 I requested some documents from her.

16 Q. Did you receive those documents?

17 A. Yes.

18 Q. Which documents did you request and receive?

19 A. She wrote up an Arrest and Investigation
20 Report, and I received that along with some associated
21 photographs.

22 Q. In which file would I find those materials?

23 A. Our entire file. The way we refer to it is
24 all the documents, but the brown folders are Volumes I
25 through III, and then the green one, I think, is

1 Volume IV. So it is in one of these. Probably II and
2 III. They are organized chronologically, and I think I
3 got them in 2007.

4 Q. Did you talk with anyone else at Fish and
5 Game about Confusion Hill?

6 A. Not that I recall.

7 Q. You mentioned an Arrest and Investigation
8 Report. To your knowledge, was anyone ever arrested in
9 conjunction with anything that happened at Confusion
10 Hill?

11 A. Not that I know of.

12 Q. Have you worked with Karen Maurer on other
13 occasions apart from Confusion Hill?

14 A. No.

15 Q. Have you ever met her in person?

16 A. No.

17 Q. Do you know where she is today?

18 A. She is retired, to my knowledge. Other than
19 that, I don't know where she is now.

20 Q. You just spoke with her that one time with
21 respect to Confusion Hill?

22 A. Yes.

23 Q. Prior to commencing your testimony this
24 morning have you reviewed either Part I or Part II of
25 your deposition?

1 A. I have reviewed, maybe, a couple of pages of
2 Part I when I received it, and Part II I just got
3 today; and, no, I have not reviewed that.

4 Q. Have you spoken about your testimony with
5 anybody?

6 A. Other than my counsel, no.

7 Q. You have not spoken to Mona or Dean about the
8 questions and your answers?

9 A. Maybe in general terms, but I don't think I
10 have spoken to them about any specifics.

11 Q. You testified that you graduated with an
12 engineering degree; is that correct?

13 A. Correct.

14 Q. What type of engineering degree?

15 A. Chemical.

16 Q. Did you ever take the test to become
17 licensed?

18 A. No.

19 Q. Why not?

20 A. I was informed by advisors at UCLA that
21 general chemical engineers don't -- a licensure doesn't
22 provide much of a benefit, and that it is not
23 frequently done. So I didn't necessarily know I was
24 going to be going into more of a civil environmental
25 field at the time and didn't do it. I'm considering it

1 now.

2 Q. Have you ever worked for any kind of a
3 contractor -- construction contractor?

4 A. I've done some construction but not on any
5 sort of large scale.

6 Q. Have you worked for a construction firm?

7 A. No. I don't think I would consider it as
8 such. It was family businesses.

9 Q. What kind of construction?

10 A. My dad is a general contractor, and I've
11 worked with a college friend out in Hawaii doing
12 construction of a retreat/eco spa resort out in Hawaii.

13 Q. Have you ever worked with the kind of heavy
14 equipment that was used on Confusion Hill?

15 A. There was a backhoe used on-site out there,
16 but I have never operated any. I have just worked in
17 conjunction -- they had one there.

18 Q. Do you have any knowledge as to what the
19 maintenance schedule was for the heavy equipment
20 operated on Confusion Hill?

21 A. No.

22 Q. Did you ever ask the Department of
23 Transportation or MCM for that kind of information?

24 A. No.

25 Q. Do you have knowledge about the age of the

1 heavy construction equipment used at Confusion Hill?

2 A. No.

3 Q. What is the function of a sedimentation
4 basin?

5 A. To settle out sediments, to prevent sediment
6 transportation to surface waters.

7 Q. Do sedimentation basins constitute BMPs?

8 A. I believe they can depending on the activity
9 and its design.

10 Q. If isolated Pool B had been located 100 feet
11 from the -- what was the location that it had to be 100
12 feet from?

13 A. I believe from the active stream channel.

14 Q. If it had been located 100 feet from the
15 active stream channel, would you consider it a BMP?

16 A. If it did not cause a discharge of wastes to
17 surface waters. So it would -- it is a hypothetical
18 scenario, so it would kind of depend.

19 A Best Management Practice is only such if it
20 is effective in protecting whatever water quality
21 standard or objective that it is intending to protect.
22 And so on this project if it was 100 feet and the
23 continuous discharge still caused sediment transport
24 subsurface to the active stream channel, it would still
25 need to be modified and be evaluated.

1 So I don't think that 100 feet alone is
2 enough to be considered a BMP.

3 Q. Let's say it is doing what it is supposed to
4 do, protecting the water quality, and nothing is
5 seeping through that is not supposed to seep through
6 it, would you then consider it a BMP?

7 A. Hypothetically, I think it could be
8 considered a BMP. I didn't draft up the language in
9 the Certification, Dean Prat did. And I think that we
10 would need to take into consideration more than just
11 the 100 feet in determining that.

12 He -- I had talked to him about it in
13 previous -- in developing, drafting the Complaint, and
14 I got the impression that there is more than the 100
15 feet.

16 You know, there's a degree of context and
17 history that is included that -- for example, 100 feet
18 has been used historically and proposed on other
19 projects, and it has worked. And, therefore, on those
20 sites it was sufficient or was considered sufficient.

21 So I don't think it is black and white as in
22 if it was 100 feet would it have been a Best Management
23 Practice. Maybe.

24 Q. I believe you testified you had spoken to
25 Carl Page?

1 A. Yes.

2 Q. On how many occasions?

3 A. Probably, a couple, or a few, not -- less
4 than five.

5 Q. When is the last time you spoke to Mr. Page?

6 A. Probably, since it has been -- since 2007.
7 Maybe 2008, but it has been awhile.

8 Q. You haven't spoken to him for any reason
9 since the 2007-2008 time period?

10 A. I don't believe so.

11 Q. Has Mr. Page ever sought retention or
12 employment by the Board, to your knowledge?

13 A. Not to my knowledge.

14 Q. When you talked to Mr. Page were they
15 in-person meetings?

16 A. I believe I did meet him in person once, yes.
17 He did come to the office. I think he was here
18 involved on another project, and I was in the middle of
19 reviewing some of the documents, so I remember going
20 over some photographs with him. But the exact details
21 of that meeting and conversation I'm not -- I wouldn't
22 recall.

23 Q. Did Mr. Page ever review the ACL in draft
24 form?

25 A. No.

1 Q. Mr. Norman, did you meet or did you speak
2 with him with respect to Confusion Hill at any time?

3 A. Maybe, but I -- I don't think so.

4 Q. Who retained Mr. Page and Mr. Norman for the
5 project, if you know?

6 A. Other than Caltrans, I can only guess. I
7 believe there was a company -- I only have seen names
8 on documents, so I'm not quite sure.

9 Q. So you do not know if Mr. Page and
10 Mr. Norman, through their company, reported directly to
11 Caltrans, or there might have been some other
12 intermediary company?

13 A. There may have been an intermediary.

14 Q. Have you ever been a professional
15 photographer?

16 A. No.

17 Q. Are you a photography buff of any kind or --

18 A. I could say I'm an amateur photographer. I
19 like to take photos.

20 Q. You testified earlier that a lot of the
21 photos that are referenced in the ACL were taken by
22 either Mr. Norman or Mr. Page; is that correct?

23 A. Yes.

24 Q. Are there any photos that were not taken by
25 Mr. Norman or Mr. Page?

1 A. I believe there was one photo that came from
2 an Engineering Diary that may be included. I don't
3 know if we were referring it as a violation or not.

4 It is just this one. This one on November
5 13, 2006. I don't believe that was taken by either of
6 them.

7 Q. When you spoke to Mr. Page, and, as you say,
8 you may have also spoken to Mr. Norman, did you gain an
9 understanding as to how their relationships were with
10 Caltrans personnel, in general?

11 A. I don't -- I don't think so in terms of
12 their relationship. I mean, the --

13 Q. Well, let me ask you this. Do you recall him
14 ever saying anything negative or derogatory about the
15 Department of Transportation or its employees?

16 A. No, not specifically. It is hard to say. I
17 don't -- I don't recall specifics from our
18 conversations, so no.

19 Q. Did either of them ever tell you they did not
20 like the project?

21 A. No, I don't think they said they didn't like
22 the project.

23 Q. How about MCM? Did either Mr. Norman or
24 Mr. Page ever say anything negative or derogatory about
25 MCM or any of its employees or principals?

1 A. Not that I recall.

2 Q. What kind of camera did Mr. Norman use when
3 he took his photographs?

4 A. I do not know.

5 Q. Do you know whether it was digital?

6 A. Yes, it was digital.

7 Q. Did Mr. Norman indicate to you that he had
8 input -- that he had set the date and time on the
9 camera?

10 A. No, he did not. I don't believe I asked.

11 Q. So as you sit here today you don't know who
12 set the time and date on the camera that Mr. Norman
13 used; is that correct?

14 A. That is correct.

15 Q. Mr. Page, what kind of camera did he use?

16 A. I do not know other than I'm presuming it is
17 a digital camera because we received digital
18 photographs that hypothetically could have used a film
19 genre, and then had them scanned into digital, but I
20 don't believe so. That's -- as I recall from the
21 conversation with them, I think that they even
22 indicated they used a digital camera, so --

23 Q. To your knowledge did Mr. Page set the time
24 and date of that camera?

25 A. I don't -- I don't recall asking that.

1 Q. I gather from your testimony about when you
2 were at the job site that you were not present when any
3 of these photographs were taken; is that correct? And,
4 I mean, "any of these photographs," I'm referring to
5 any of the photographs that are cited in the ACL; is
6 that correct?

7 A. Yes.

8 Q. So you were not present when they were taken?

9 A. Correct, I was not present.

10 Q. That was bad questioning on my part.

11 A. That's okay.

12 Q. How did you verify that the dates reflected
13 on the various photos were the actual and true dates
14 that the photos were taken?

15 A. The final Biological Monitoring Report and
16 various of these monitoring reports have dates on them
17 that are referenced throughout the documents and the
18 quoted documents.

19 And I'm not remembering in very specific
20 instance, but I would have to go back and review, but I
21 do believe that there's some cross-referencing that is
22 possible where you could confirm that the dates, at
23 least in some instances, were correct.

24 And so you assume, unless it has been changed
25 throughout the project, that they were consistent. But

1 I would need to go back and check that. I don't recall
2 how I went about doing that. I may have even talked to
3 them and asked them that question, but I would have to
4 see if I wrote it down in my phone log, or not.

5 Q. Did you, specifically, ask one or both of
6 these gentlemen, Mr. Page or Mr. Norman, if the dates
7 that were reflected in these photos were the true and
8 accurate dates that these photos were taken?

9 A. I don't recall, although, I may have.

10 It seems like one of those things that I
11 would have asked, so I would just have to go back and
12 corroborate and checked if I wrote it down. I don't
13 recall, no.

14 Q. Where would those notes be?

15 A. It would have been in a telephone log where
16 I -- just notes to myself to summarize a conversation
17 that I have on the phone, so --

18 Q. Would those notes be here in this room?

19 A. No.

20 Q. Would that be something that you could access
21 after the deposition is over and give it to your
22 attorney if it exists?

23 A. Yes.

24 Q. So I would ask that you check for those
25 notes, please.

1 There are multiple assistant resident
2 engineers reports referenced in the ACL; is that
3 correct?

4 A. Yes.

5 Q. What is the role of an assistant resident
6 engineer, if you know?

7 A. I do not know.

8 Q. With respect to Confusion Hill, how often
9 were assistant resident engineers at the job site?

10 A. I can only speak to having reviewed the
11 diaries, and it appears that an assistant resident
12 engineer, either one, or multiple, were on the job site
13 nearly every day, and that at least part of their job
14 role is to document what happened each day.

15 Q. When you would say "what happened," what do
16 you mean by that?

17 A. I mean, various aspects of what occurred on
18 the job site that day. So the resident -- the
19 assistant resident engineer and diaries cover a broad
20 spectrum of activities that occur on-site.

21 Q. With respect to the trestle and the sealing
22 of the trestle, which BMPs were employed that you know
23 of?

24 A. Are you asking what are the names of the BMPs
25 by Caltrans or what activities? I'm not understanding

1 your question, I guess.

2 Q. Okay. What measures were taken by Caltrans
3 and/or its contractors on the trestle?

4 A. It is my understanding that pieces of wood
5 were nailed down at times. I presume that that's what
6 was meant by toe boards -- both along the edges and in
7 the middle throughout. At one time the foam was placed
8 in the cracks and then there was filter fabric that was
9 laid down.

10 Those were the containment practices that I'm
11 aware of that were applied directly to the trestle,
12 although, there was, also -- when equipment was on the
13 trestle, plastic sheeting was placed underneath some
14 cranes and other equipment at times. I believe that's
15 about all of the containment practices that I'm aware
16 of.

17 Q. Would you consider any of those practices to
18 be BMPs?

19 A. Not really. At least during the time frame
20 of the alleged violations we have evidence that the
21 trestle deck was not adequately contained, and
22 therefore would not be meeting the standard of the BMP
23 in place.

24 Q. Was the standard for BMPs ever met on the
25 trestle as far as you're concerned?

1 A. That, I do not know. Once filter fabric was
2 laid down, I do not have any evidence that it was or
3 was not fully contained. So, no, I do not know.

4 Q. When did the project, actually, begin
5 physical construction work, if you know?

6 A. Sometime in 2006, I believe. Exact date, I
7 don't exactly know.

8 Q. Let's see. First violation I believe is in
9 August of 2006.

10 A. It occurred prior to that, but I'm not
11 exactly sure.

12 Q. There are some charges involving rust flakes
13 that are in September of '06, correct?

14 A. Yes, correct.

15 Q. What kind of metal would rust in less than
16 two months time, that you know of?

17 A. What is that?

18 Q. What kind of metals would rust in two months
19 time that you know of?

20 A. I presume it is iron. It could be other
21 metals in there that I'm not fully aware of --
22 different metals that rust -- steel.

23 Q. I'm sorry I'm jumping around here. I've been
24 taking notes in all of the depositions. Mr. Hungerford
25 did a very thorough job, so I don't think I have very

1 much more, which I know will make everyone very sad.

2 way back in the first deposition

3 Mr. Hungerford asked you some questions regarding the
4 term "surface waters," do you recall?

5 A. Yes.

6 Q. Is that term defined in the basin plan?

7 A. I don't know.

8 Q. How about in the NPTES permit?

9 A. "Surface water" defined -- I don't recall
10 there being a "surface water" definition in the
11 definition section, although, I guess there could be.

12 Q. So as you sit here right now, you don't know
13 one way or the other; is that correct?

14 A. Correct.

15 Q. Is that term defined as Porter-Cologne Act?

16 A. I don't know.

17 Q. Okay. With respect to Mr. Norman, what, to
18 your knowledge, is his educational background?

19 A. I do not know.

20 Q. Do you have knowledge regarding the extent of
21 his experience on major construction sites?

22 A. No.

23 Q. For Mr. Page, do you have knowledge about his
24 educational background?

25 A. I believe he is a biologist.

1 Q. How about his experience at large
2 construction sites?

3 A. I'm not very familiar with the scope of his
4 experience.

5 Q. You testified that, with respect to the
6 photograph, apparently, taken on October 16th -- I
7 think it is -04?

8 A. Yes.

9 Q. That what appears to be a two-by-four or
10 other plank of wood that is located in the left
11 foreground, that plank is a violation. Am I stating
12 your testimony accurately?

13 A. I guess, without seeing quoted testimony in
14 front of me, I'm not quite sure of the exact details of
15 it, but I will, I guess, restate that it could be
16 construed as a violation; although, I don't believe
17 that that was why I included that photo.

18 Q. What is the basis for saying that could be
19 construed as a violation?

20 A. Because the gravel bar is considered waters
21 of the state, and presuming that it is in a location
22 that is in the waters of the state, it could be
23 construed as a discharge.

24 Q. A discharge of?

25 A. Of debris.

1 Q. I'm referring to the Biological Monitoring
2 Report, and it is dated August 20th, 2006. I'll show
3 you my copy.

4 A. Sure.

5 Q. The second page shows a person standing near
6 some water.

7 A. Yes.

8 Q. Do you know who that is, Mr. Page or
9 Mr. Norman?

10 A. It is one of them, I presume, but, no, I do
11 not. It doesn't readily look -- I couldn't tell you if
12 it was either one of them, per se.

13 Q. Does it appear that at least one of his feet
14 is in the water?

15 A. Yes.

16 Q. Is that a violation, I should say?

17 A. I would say that, no, it is not because the
18 permit, or the application, describes workers in waters
19 of the state as part of the project.

20 Q. The application describes that?

21 A. I believe so. I'm not quoting it. I would
22 have to review the documents.

23 Q. Would it be a violation if he had not cleaned
24 his shoes before stepping into the water?

25 A. That's possible.

1 Q. And then we have same report and,
2 unfortunately, the pages are not numbered. On the
3 seventh page of the same report, August 20th, there are
4 two photographs. I'm pointing to the lower one, which
5 has a notation "Mr. Tom Capener setting up acoustic
6 monitoring equipment." Do you see any violations in
7 this photograph?

8 A. No.

9 Q. why not?

10 A. Because it appears that nothing is being
11 discharged.

12 Q. Do you have any information as to where that
13 photograph was taken in relation to the river?

14 A. It appears as if the river is right here.

15 Q. So you're pointing immediately to the top
16 left corner of the photo?

17 A. Correct. It appears that way from this
18 photo, but I would have to -- that is as it appears.

19 Q. would you agree that the wood plank shown in
20 the photograph from the October 16th is further away
21 from the water than this acoustic monitoring equipment
22 shown in the photograph from the August 20th Biological
23 Monitoring Report?

24 A. Yes.

25 Q. Please explain why the photograph from the

1 Biological Monitoring Report, August 20th, is not a
2 discharge but the wood plank is?

3 A. So, again, I've stated that the wood plank
4 could be construed as a discharge. It is hard to talk
5 about hypotheticals because we didn't assess a penalty
6 for that, and I'm not hanging my hat on the assertion
7 that that is a discharge. And the same with this
8 hypothetical photo.

9 But to best assist in understanding where we
10 have drawn a line in this document, he is actively
11 using monitoring equipment. It has not been
12 discharged, left in place, or left at a place where it
13 could be washed by rainfall into waters of the state.
14 It is actively being used.

15 Q. Let me ask you another one of those dreaded
16 hypotheticals. Let me ask you this. With respect to
17 the phrase, "could be washed by rainfall into waters of
18 the state," does that phrase at all depend on whether
19 rain is, actually, predicted or not?

20 A. No.

21 Q. So if the acoustical monitoring equipment
22 that we are talking about here in the August 20th
23 report were left where they are shown and rain was
24 predicted to fall within an hour, would that follow
25 within the limits of that phrase?

1 A. Sure. I believe that any potentially mobile
2 unnatural substance that could become a pollutant when
3 entering waters of the state and left alone and
4 unattended could be construed as a discharge.

5 If it is actively being used and absolutely
6 necessary for the project, then that's probably what
7 was foreseen and considered as one of the permitted
8 discharges.

9 I believe, in my previous testimony, I have
10 stated that no discharges were permitted. And in
11 hindsight, you know, there are some -- the footings,
12 things that are permanently or -- that have been left
13 in place, the bridge itself, is part of what would be
14 otherwise considered as a discharge but that has been
15 permitted and allowed.

16 So I don't know how to better describe that.

17 Q. Let's say there's some welding slag that was
18 released onto the gravel bar, we will say
19 inadvertently, but it was released onto the gravel bar,
20 and there's no prediction of rain for at least a week,
21 and the slag is then picked up at the end of the
22 working day, would you still consider that a violation?

23 A. Absolutely. It would be a discharge that has
24 been cleaned up. Part of the 13385 requires us to
25 consider the susceptibility to clean up as a mitigating

1 factor, so --

2 Q. Would you say that that slag was placed where
3 it could be washed by rainfall into waters of the
4 state?

5 A. If we are talking about the gravel bar, then
6 it would be considered waters of the state where it
7 fell.

8 Q. And that's even though no rain was predicted
9 and the slag was picked up within a very short time?

10 A. Well, discharged to the gravel bar is
11 discharged to the waters of the state. So it was
12 discharged to the waters of the state, it was picked
13 up, which was mitigation and cleanup.

14 Q. I'm trying to focus on the phrase where it
15 could be washed by rainfall into waters of the state.
16 Would that slag violate that particular condition?

17 A. Yes.

18 Q. Even though rain was not imminent?

19 A. Yes. Unless, of course, there was some sort
20 of downgrading, not on the gravel bar. Say, it was an
21 upslope location, and there was a BMP in place to
22 prevent transport of that pollutant to waters of the
23 state, then it could be argued that it couldn't have
24 been washed by rainfall into waters of the state
25 because the BMP was there to protect it. In that

1 instance, then maybe not.

2 Q. Are you familiar with the festival, "Regae on
3 the River" which, I think, is more commonly known as
4 "Regae Rising"?

5 A. Yes.

6 Q. Where does that take place? Is that near
7 Piercy or --

8 A. I think it is, geez. There may even be a
9 state campground around there. There's a gas station
10 nearby.

11 Relative to Confusion Hill I'm trying to
12 remember if it is -- it is near Confusion Hill, but if
13 it is just north or just south of there, I don't
14 recall.

15 Q. The reference to the river, is that still the
16 south fork of the Eel River?

17 A. Yes.

18 Q. And does the Water Board permit that activity
19 or that festival?

20 A. I believe they have a permit with us.

21 Q. Have you ever attended the festival?

22 A. I have.

23 Q. It is true that attendees pitch tents very
24 close to the river; is that correct?

25 A. Yes.

1 Q. And food is eaten near the river, also?

2 A. Yes.

3 Q. Would the tents and the food be considered a
4 violation?

5 A. It would depend on the permit, I would
6 presume.

7 Q. Would Mona or Dean have information about
8 permits issued for that festival?

9 A. Maybe, but I believe a different staff member
10 in our office oversees it.

11 Q. There have been problems with the trash being
12 left in conjunction with that festival; isn't that
13 correct?

14 A. I guess I'm not particularly aware of that,
15 but I could see that being the case.

16 Q. To your knowledge, have there ever been any
17 enforcement actions ever commenced as a result of that
18 festival?

19 A. I don't know.

20 Q. To your knowledge, is there a water or --
21 excuse me, a swimming hole at or near the Confusion
22 Hill site where members of the public go to swim?

23 A. I believe there's a pull-out just south of
24 there. The Redwood Grove, yeah, that I've seen people
25 fish and swim. I've even swam that myself.

1 Q. To your knowledge, do members of the public,
2 have they in the past, left trash and other debris near
3 that swimming hole?

4 A. During my visit I didn't see any trash left
5 behind, but, in general, I have seen trash left on
6 beaches.

7 MS. ZAZZERON: All right. Let me just look
8 through --

9 Sean, do you have any questions you want to
10 follow up with? I'm going to look through one more set
11 of notes of mine.

12 MR. HUNGERFORD: Yes, I have a couple of
13 questions.

14 MS. ZAZZERON: Go ahead.

15 FURTHER EXAMINATION

16 BY MR. HUNGERFORD:

17 Q. Kason, you mentioned there were some
18 permitted discharges -- bridge and footings, for
19 example, right?

20 A. Yes.

21 Q. Other than the bridge and the footings there
22 were certain other aspects of the construction process
23 that were contemplated in the application, correct?

24 A. Correct.

25 Q. Beyond the bridge and the footings. From

1 your perspective, would we look at the application to
2 determine, you know, which of these discharges were
3 permitted and unpermitted?

4 A. I would look at both the application and the
5 permit.

6 Q. The permit is fairly perfunctory, it doesn't
7 contain a great deal of information and defers to some
8 extent to the application. Anything else other than
9 the permit and the application?

10 A. About what is allowed to be discharged?

11 Q. Exactly. About what types of discharges are
12 contemplated and allowed under this Certification.

13 A. Other than the Caltrans BMP manual. I would
14 refer to that, too, because that refers to specific
15 types of containment. But other than that and, you
16 know, the other permits for the project, no, I'm not
17 aware of -- I would refer to those documents, yes.

18 Q. The "other permits," meaning, the Fish and
19 Game permits, and that sort of thing?

20 A. Yes. And the stormwater permit.

21 Q. Stormwater permit. You're familiar with
22 there was an EIR done for this project, wasn't there?

23 A. I'll take your word for it, I guess. I'm not
24 familiar with the EIR that was -- was or was not done.

25 Q. Do you know if the Regional Board has the EIR

1 or has the CEQA documents for this project in its
2 records?

3 A. I'm not aware of the CEQA documents for this
4 project. They may be in the file. I don't remember
5 seeing them.

6 MR. HUNGERFORD: That's all I have.

7 FURTHER EXAMINATION

8 BY MS. ZAZZERON:

9 Q. Mr. Grady, in Part II of your deposition you
10 testified that the Board's files contained some
11 references to turbidity monitoring equipment not being
12 properly maintained and/or calibrated. Do you recall
13 mentioning that?

14 A. Yes.

15 Q. Which file would we find that information in?

16 A. It would be in Volume II or III, and it was a
17 document that we got from Caltrans, which was the final
18 Biological Monitoring Report.

19 Q. Okay. And you were pointing to the brown
20 folders?

21 A. Yes.

22 Q. Now, with respect to the three white fat
23 binders that have red rectangle sticky things on the
24 side there --

25 A. Yes.

1 Q. -- what are those?

2 A. Those are the Engineering Diaries that we
3 received from Fish and Game, or through Fish and Game.
4 They were Caltrans Engineering Diaries.

5 Q. To your knowledge, who from Fish and Game
6 obtained those?

7 A. I believe Karen Maurer. But they were
8 delivered to Mona, and then I got them from Mona, and I
9 put them in the binders because they were just in
10 stacks.

11 Q. I notice that some of the pages are flagged
12 with stickies. Were you the flagger?

13 A. For some of them. The green flags were
14 already there, and the other flags it was either me or
15 an intern that I had help me organize some of the
16 documents.

17 Q. When you say "the green flags were already
18 there," who put those on?

19 A. I don't know. I think they were already
20 there when Mona received them.

21 MS. ZAZZERON: So I think I'm done with
22 questions, but with respect to the documents, I think
23 we would like to get the brown folders.

24 THE WITNESS: Volumes I through III.

25 MS. MACEDO: There's green, do you want that

1 one, as well?

2 MS. ZAZZERON: well, I don't know if I like
3 green, but green is fine, as well.

4 I don't need the permits. Thank you. And I
5 don't know -- I don't need the materials produced by
6 the department. I think we will have those disks
7 burned.

8 If we can go off the record to discuss the
9 logistics?

10 MS. MACEDO: Off the record.

11 (Whereupon, the deposition was
12 concluded at 2:27 p.m.)

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CERTIFICATE OF WITNESS

I, KASON VERNE GRADY, hereby declare under oath that I have read the foregoing testimony recorded on pages 340 to 466, inclusive, and that the same is a true and correct transcript of my said testimony, except as I have corrected any answer in ink, initialed such correction, and stated on the margin my reason for making same.

KASON VERNE GRADY

DATE: _____

CORRECTIONS TO THE DEPOSITION OF _____
TAKEN / /

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CALIFORNIA REGIONAL WATER CONTROL BOARD

NORTH COAST REGION

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In the Matter of:

COPY

ADMINISTRATIVE CIVIL LIABILITY
Complaint No. R1-2009-0095.

_____/

Deposition of:

MONA DOUGHERTY

Monday, December 20, 2010

Reported by:
MAREE N. ARMSTRONG
CSR #11284

COASTAL REPORTING SERVICES
Certified Shorthand Reporters
131-A Stony Circle, Suite 500
Santa Rosa, CA 95401
(707) 573-9766

1 Deposition of MONA DOUGHERTY taken pursuant
2 to agreement at the North Coast Regional Water Quality
3 Control Board, 5550 Skylane Boulevard, Suite A, in the
4 City of Santa Rosa, County of Sonoma, State of
5 California, on Monday, the 20th day of December, 2010,
6 commencing at the hour of 10:22 a.m., thereof, before
7 MAREE N. ARMSTRONG, CSR No. 11284, a California
8 Certified Shorthand Reporter.

9
10 A P P E A R A N C E S

11
12 FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
13 BOARD, NORTH COAST REGION:

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I N D E X

WITNESS: MONA DOUGHERTY Page No.

Examination by Ms. Zazzeron 5

Examination by Mr. Hungerford 50

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Nos. Page No.

A "Subpoena Duces Tecum to
Mona Dougherty." 28

1 MONA DOUGHERTY,
2 having been duly sworn or affirmed by the certified
3 shorthand reporter in all respects as required by law,
4 proceedings were had as hereinafter set forth:

5 EXAMINATION

6 BY MS. ZAZZERON:

7 Q. Good morning.

8 A. Good morning.

9 Q. Please state your name and spell your last
10 name for the record.

11 A. Mona Dougherty, D-o-u-g-h-e-r-t-y.

12 Q. And Ms. Dougherty, have you ever had your
13 deposition taken before?

14 A. No.

15 Q. Have you had a chance to go over some of the
16 procedures with your attorney?

17 A. I think.

18 Q. Okay. well, let me give you the highlights.

19 A. I'm not sure I went over what you're talking
20 about, so --

21 Q. Of course. It is very important, for the
22 sanity of our court reporter and to have a clear
23 record, that I wait until you're done answering my
24 question before I start talking again, and also that
25 you wait until I'm done asking the question before you

1 start to speak.

2 A. Yes.

3 Q. You just said "yes" in a very clear voice.

4 It is important that we do answer audibly. Nods of the
5 head and waving of the arms, as I'm prone to do, do not
6 show accurately on the record. All right?

7 A. Yes.

8 Q. I ask that when I state a question, if you
9 don't understand it, please, by all means, ask me to
10 clarify or restate it.

11 we don't want you to guess as to what the
12 question really means, and then later on read the
13 transcript, and go, "She really wasn't asking that, she
14 was asking this." Is that okay?

15 A. Yes.

16 Q. Don't feel shy about asking for
17 clarification.

18 It is important that you do not guess or
19 speculate as to an answer, but we are entitled to your
20 best estimate. And an example is that if I were to ask
21 you how much money is in my wallet, that would be a
22 complete guess on your part; but if I were to ask you
23 how much money was in your wallet, you could give me
24 likely your best estimate, you wouldn't know exactly.

25 so do you understand the distinction there?

1 A. Yes.

2 Q. And then when this deposition is done in a
3 few weeks, or so, you will get a copy like in a booklet
4 form, and you will have a chance to read it.

5 You are certainly entitled to make
6 corrections typographically. If you make substantive
7 corrections we are entitled to comment on that if it
8 goes to a hearing; do you understand?

9 A. Yes.

10 Q. Finally, without getting into any detail, is
11 there any reason physiologically, pharmaceutically, or
12 physically that you cannot give accurate and true
13 testimony today?

14 A. No.

15 Q. All right. You are currently employed by
16 the -- is it State Water Board or North Regional Water
17 Board?

18 A. North Regional Quality Control Board.

19 Q. How long have you been so employed?

20 A. This last July is ten years. My first eight
21 months was at San Diego Regional Water Board.

22 Q. What is your current title or classification?

23 A. Water Resources Control Engineer.

24 Q. Have you ever held any other title or
25 classification with the Water Board?

1 A. No.

2 Q. You have testified just a few minutes that
3 you have not testified in a deposition before. Have
4 you ever testified at a hearing?

5 A. Yes.

6 Q. Under oath?

7 A. Yes.

8 Q. How many times?

9 A. Many. I'll try to estimate. Fifteen in
10 front of our Board and in front of San Diego's Board,
11 maybe more. Fifteen to twenty would be probably the
12 best.

13 Q. Well, you were testifying as to factual
14 occurrences that occurred during a project or something
15 like that?

16 A. In some cases. In others I was presenting a
17 permit or other action to our Board for adoption.

18 Q. Okay. Of the 15 times, how many times would
19 you say that you were testifying as a percipient
20 witness to an event?

21 A. Clarify "percipient"?

22 Q. Something that you personally heard, saw,
23 read, wrote.

24 A. So "wrote" is included.

25 I would think I -- would think all of them,

1 either a permit I wrote, an inspection I conducted,
2 documents I reviewed. So I would say probably all of
3 them.

4 Q. And how many times have you testified with
5 respect to giving evidence about a violation -- alleged
6 violation?

7 A. I believe two or three.

8 Q. Did any of those events involve the
9 Department of Transportation?

10 A. Yes.

11 Q. How many of those?

12 A. One.

13 Q. Which one is that?

14 A. The previous Confusion Hill ACL.

15 Q. Okay. We know that involved MCM, as well.
16 How about the other two times that you testified as to
17 a violation? Did that involve MCM?

18 A. No.

19 Q. Have you obtained any educational degrees?

20 A. I have a Bachelor of Science in Environmental
21 Engineering.

22 Q. Where did you get that?

23 A. Humboldt State University.

24 Q. What year did you graduate?

25 A. 2000.

1 Q. Did you have any jobs after graduating but
2 before going to the water Board?

3 A. I, for a short period of time, was actually
4 an intern with Caltrans at District One. For a short
5 period after I graduated I had been employed there for
6 a while. But that was my only job in between.

7 Q. Was that in the environmental branch?

8 A. Previously? Not at that time. At that time
9 I was in surveying, but I had worked in environmental.

10 Q. Do you have any professional license?

11 A. Yes. I have an EIT license and a
12 professional engineers license.

13 Q. What is the engineering designation?

14 A. Civil.

15 Q. What was the first one you mentioned?

16 A. EIT or FE. Engineering training or -- I
17 don't know what "FE" stands for, but it is the
18 preliminary test that you take to -- so in order, at
19 some point in the future, you can take the PE.

20 Q. So in your current position with the Board
21 what are your day-to-day responsibilities?

22 A. I work, primarily, on municipal stormwater.
23 So I work with all the Phase One and Phase Two
24 municipalities in our region, and I work on the
25 Caltrans municipal water permit.

1 Q. Is that also known as the NPDES permit?

2 A. Yes.

3 Q. As part of your position with the water
4 Board, are you required to attend training --
5 job-related training?

6 A. I do. I do attend training. It hasn't been
7 made clear to me what trainings I'm required to attend
8 beyond I attend occasional training.

9 Q. Have you taught any classes at any time?

10 A. I would say probably not a formal class. I
11 have given like technical forums or presentations on
12 technical issues.

13 Q. At what point in time did you first become
14 aware, in any form, of the Confusion Hill project?

15 A. I'm not sure the first time I had heard about
16 it. We had an application pending in our office for a
17 while that I was peripherally aware of.

18 The first time I became aware and I started
19 playing a role was in November of 2006.

20 Q. Okay. You referred to an application. Is
21 that referring to the application for a Section 401
22 Certification?

23 A. Yes.

24 Q. So what happened in November of '06?

25 A. Corinne Gray from the Department of Fish and

1 Game contacted me that there were some violations
2 occurring at the Confusion Hill project. And Dean
3 Prat, who had been working on the project previously,
4 was on vacation.

5 So Corinne asked if she could bring me some
6 photos, and I said "yes." So she brought me some
7 photos, and I looked at them, and it seemed indicative
8 that there were some violations going on.

9 Q. Corrine Gray, do you know the spelling of
10 that because you know that Maree is going to ask you.

11 A. C-o-r-r-i-n-e, and I believe Gray is with an
12 "a," G-r-a-y.

13 Q. At the time Ms. Gray contacted you in
14 November '06, what was your understanding as to her
15 position with the Department of Fish and Game?

16 A. At that time she was working as a biologist
17 on stream bed alteration agreements, that kind of
18 thing. So she was working as a biologist. I'm not
19 sure if she took the photos. She may have gotten them
20 from the biological monitor who was reporting to Fish
21 and Game.

22 Q. What were the names, if you know, of the
23 Biological Monitors who were reporting to Fish and
24 Game?

25 A. I have heard their names, but I can't recall

1 them right now. I never met them.

2 Q. Were either of them named Bradford Norman or
3 Carl Page?

4 A. Carl Page is, definitely, familiar.

5 Q. Is it your understanding that Mr. Page was a
6 biological monitor working for Fish and Game?

7 A. I believe that the requirement for his
8 employment may have come from NOAA, but I know that he
9 was submitting reports to Fish and Game.

10 Q. How many times did you speak with Ms. Gray?

11 A. I would say between three and five.

12 Q. Were the three to five occasions all within
13 that same November 2006 time period?

14 A. I would say most likely between November
15 through the spring of 2007.

16 Q. In November of 2006, did Ms. Gray send you
17 any memos or anything in writing reflecting the alleged
18 violations she was referring to?

19 A. No.

20 Q. In November of '06, approximately, how many
21 violations did Ms. Gray report?

22 A. She didn't give me a specific number.

23 Q. Okay.

24 A. She just showed me some photos and said that
25 there were some violations of the stream bed alteration

1 agreement occurring, and she wanted to know whether we
2 were concerned about violations of the 401.

3 Q. Did you meet with Ms. Gray in person?

4 A. Yes.

5 Q. On how many occasions?

6 A. For this project I would say, probably, just
7 once.

8 Q. All right. Was that near the November '06
9 time period?

10 A. Yes.

11 Q. The incidents that Ms. Gray reported to you
12 were those ever encompassed by you or someone else from
13 the North Coast Regional Board in a Notice of
14 Violation?

15 A. Yes.

16 Q. Would that be the November 27th Notice of
17 Violation?

18 A. I believe that's the date, yes.

19 Q. Subsequent to the issuance of that -- we will
20 call it NOV, to make it short, did Ms. Gray
21 subsequently contact you about any other violations?

22 A. I can't recall. I don't think so.

23 Q. What was the general substance of
24 conversations that you had with Ms. Gray after November
25 2006?

1 A. She called several times to ask if our office
2 was going to take any action, so we discussed what our
3 office was considering.

4 Q. Take action as in what?

5 A. Notice of violation or some type of
6 inspection, something like that.

7 Q. What was your response to Ms. Gray?

8 A. I -- I had cc'd her on the Notice of
9 violation, so I told her that was in the mail. And
10 then I said that -- I thought that I had referred the
11 inspection issue at that point back to Dean Prat who
12 was back from vacation, and I can't give any dates that
13 he inspected.

14 Q. You estimated that you had communication with
15 Ms. Gray up until or through the spring of 2007. What
16 was the substance of those conversations that reached
17 into 2007?

18 A. I believe our last one, which I think was in
19 early 2007, was to tell me that she was being
20 transferred within Fish and Game and she would be
21 working on water rights issues and that Karen Maurer
22 will be my contact at that point.

23 Q. What was Karen Maurer's position?

24 A. She is a warden with Fish and Game. Retired
25 now.

1 Q. Were you acquainted with Ms. Maurer
2 previously?

3 A. I had worked with her on several projects
4 previously.

5 Q. Did warden Maurer contact you at any time
6 about alleged violations on Confusion Hill?

7 A. Yes.

8 Q. On how many occasions?

9 A. Perhaps, five. I think five.

10 Q. Were these communications by e-mail, by
11 telephone, a mixture of both, or some other medium?

12 A. I can't recall whether she e-mailed me. She
13 did come to the office, I believe, once, maybe twice,
14 to drop off documents. And then we had several phone
15 conversations.

16 Q. When is the last time you communicated in any
17 form with warden Maurer?

18 A. I don't remember the time. I believe it
19 was -- it was not long before she was planning on
20 retiring because she did call me to tell me that she
21 would be retiring soon.

22 Q. The documents that she brought over,
23 approximately, how many were there, if you know?

24 A. Quite a few. She brought over several CDs of
25 photos and a large stack of Engineering Diaries.

1 Q. From where did she procure those diaries?

2 A. I believe she went to the Caltrans field
3 office for Confusion Hill and asked for them and
4 received them there.

5 Q. Okay.

6 A. Can I add something to a previous answer?

7 Q. Sure.

8 A. I believe my last discussion with her was in
9 2007 because I -- I met with Kyle Hiatt in 2008 on the
10 project. He had taken over for her at that point.

11 Q. Confusion Hill?

12 A. Um-hmm.

13 Q. Yes?

14 A. Um-hmm.

15 Q. That was a "yes"?

16 A. Yes, sorry.

17 Q. That's okay. Did Lieutenant Hiatt ever
18 contact the Water Board to report any violations at
19 Confusion Hill?

20 A. I don't recall whether he mentioned specific
21 violations, but he did contact me and asked if I wanted
22 to do a joint inspection with him.

23 Q. And what was the upshot of that?

24 A. We -- we went to an unannounced inspection
25 on -- I believe it was the first week of January 2008.

1 Q. Were any violations noted at that time?

2 A. There were a few BMP maintenance violations.
3 Not -- not to the same extent as the violations that we
4 had information from in 2006 and 2007.

5 Q. All right. Did the 2008 inspection result in
6 any e-mails or NOVs?

7 A. No.

8 Q. Were your observations communicated to
9 someone from either Caltrans or MCM while you were
10 on-site?

11 A. Sebastian Cohen was with us the entire time,
12 so I think I did make a couple of comments to him about
13 areas that needed maintenance.

14 Q. To your knowledge, were the violations that
15 you noted corrected?

16 A. He sent me follow-up photos and an e-mail
17 saying that they had been.

18 Q. You indicated, and correct me if I'm wrong,
19 you were peripherally aware of the 401 application
20 having come in for Confusion Hill; is that correct?

21 A. Yes.

22 Q. Did you work on any aspect of the application
23 or the issuance of the Certification in any more than a
24 peripheral manner?

25 A. No.

1 Q. Prior to November of 2006 had you read the
2 permit that was issued?

3 A. No.

4 Q. At what point in time did you first review
5 the permit?

6 A. I believe it was directly following when I
7 received the photos from Corrine Gray, so probably a
8 week after that in November 2006.

9 Q. To your knowledge, who from the Board had
10 direct involvement with the application and the
11 issuance of the Certification?

12 A. Dean Prat.

13 Q. Anyone else that you know of?

14 A. It would have been reviewed by his
15 supervising senior, who I believe was Diana Henrouille,
16 in our office. Clerical staff would have helped
17 prepare it, and it would have been signed by our
18 executive officer, or someone who had signing authority
19 for her if she wasn't in that day.

20 Q. Other than Ms. Gray and warden Maurer, did
21 you speak or have any other type of communication with
22 anyone from the Department Fish and Game regarding
23 Confusion Hill?

24 MS. MACEDO: And Lieutenant Hiatt.

25 MS. ZAZZERON: I'm sorry, and Lieutenant

1 Hiatt.

2 THE WITNESS: No.

3 BY MS. ZAZZERON:

4 Q. Other than communications with the Department
5 of Fish and Game personnel just mentioned, did you,
6 yourself, have any communications with any other
7 outside public entities about Confusion Hill?

8 A. For this time frame?

9 Q. Let's just start with at any time.

10 A. For a previous -- for a previous period, I
11 believe it was the City of Garberville, called me
12 because they had to shut off their drinking water
13 intakes because of a lot of turbid water, and they were
14 concerned that it was coming from the Confusion Hill
15 Road before the project began.

16 Q. Did you follow up on that?

17 A. Yes. We actually issued a 13267 order
18 because we found from photos taken by the traffic or --
19 road watching cameras that a slide had occurred and
20 side casting was happening.

21 Q. And "side casting" is?

22 A. Side casting is taking some type of heavy
23 equipment scraper, something like that, and in this
24 instance it is -- side casting is basically pushing
25 materials over the side. In this case the scraper was

1 pushing slide materials into the river.

2 Q. And, approximately, when was that?

3 A. I can't remember. We do have -- I could find
4 the information out, but I can't remember.

5 Q. Your recollection, though, is that this
6 incident occurred prior to the commencement or prior to
7 the issuance of the 401 Certification for the Bypass
8 Project?

9 A. I believe so because I wrote it, so I think
10 it would be probably in 2004 or 2005, somewhere in
11 there.

12 Q. And that was directed to the Department of
13 Transportation?

14 A. Yes.

15 Q. Any other public entities that you
16 communicated with? And let's narrow it down to the
17 Confusion Hill Bypass Project itself.

18 A. I can't remember communicating with any other
19 agencies.

20 Q. How many times other than the one you
21 mentioned with Lieutenant Hiatt did you personally go
22 to the project site?

23 A. That was my only inspection where -- that I
24 went to the project site.

25 A few other times, when I had been passing

1 through, I had stopped on the road and looked. But
2 that was the first time -- I mean, that was the only
3 time that I went to the project site.

4 Q. Those times when you were driving by and took
5 a look, did any violations result from that that you
6 wrote up?

7 A. No. It wasn't -- I didn't have a good
8 vantage point, so I was trying to see what was
9 happening, but I didn't always see what was happening
10 very well.

11 Q. Now, in terms of the Board's practices with
12 respect to projects, are there regular inspections that
13 are conducted of ongoing projects?

14 A. As resources allow. We don't have unlimited
15 amount of resources to do inspections so -- as
16 resources allow we do.

17 The primary inspector for this project was
18 Dean Prat.

19 Q. All right. Have you, in the course of your
20 employment, been primary inspector for any job sites?

21 A. Yes. I used to write Caltrans 401s and other
22 401s up until several years ago, and then -- I used to
23 have a lot of waste water treatment plants, and now I
24 do municipal stormwater inspections.

25 Q. Does the Board have any either written or

1 informal guidelines as to how to decide, given the
2 limited resources, when to go to a particular job site?

3 A. Construction?

4 Q. Construction, yes.

5 A. We have -- we have commitments that we have
6 to meet for the construction stormwater permit. I
7 don't generally do those inspections, although, I have
8 in the past.

9 when it comes to 401 inspections, we don't
10 have any assigned resources to do that, so we don't
11 have any commitments, and it is on an as needed basis.

12 If we get a Complaint, if we are concerned
13 that the project is complicated, it may need to be
14 inspected more often, so we kind of make judgment calls
15 based on that.

16 Q. Okay. Did Warden Maurer ever indicate to you
17 that she had had personal or -- I should say personal
18 or professional conflicts with MCM?

19 A. She didn't specify MCM directly. She didn't
20 specify any particular person or entity directly.

21 She did tell me that she was having a hard
22 time getting compliance on the project and that she was
23 frustrated with the response to her inspections.

24 Q. Did the Department of Fish and Game ever
25 institute any enforcement proceedings with respect to

1 Confusion Hill as far as you know?

2 A. I'm not sure. I believe they may have done a
3 report that was submitted to the Mendocino County
4 D.A.'s office, but I haven't seen it. I don't have
5 direct knowledge of that.

6 Q. Have you talked to David Leland or Kason
7 Grady with respect to their depositions?

8 A. I know that they occurred. They told me they
9 were happy it was over.

10 Q. Did you see either of their transcripts?

11 A. No, I did not.

12 Q. Did either of those gentlemen tell you
13 anything substantive about the depositions, let's say,
14 and of the questions that were asked, for instance?

15 A. None of the questions that were asked. I'm
16 trying to remember.

17 I believe -- Kason, I believe, mentioned
18 something to me. I'm trying to remember what it was.
19 Not specifically about questions. He said that at one
20 point he felt like he was being asked the questions
21 over and over again.

22 I know he made a comment to me, but I can't
23 remember. It wasn't -- it didn't seem important or
24 substantive, but he did make a comment to me, but I
25 can't remember what it is.

1 Q. Okay. Nothing like it was just as much fun
2 as going to Disneyland?

3 A. No.

4 Q. What role, if any, did you have in the
5 drafting of the ACL?

6 A. Some of the work I had done in the previous
7 ACL was incorporated into this ACL that we are talking
8 about today.

9 I talked to Kason quite a bit about the
10 stormwater permit, and I reviewed the ACL. He asked me
11 questions about things. He wanted my opinion on what
12 he should include in the ACL.

13 I have had -- I've been to many meetings with
14 Caltrans staff -- with Caltrans and MCM staff to
15 discuss the ACL. I prepared the Notice of Violation
16 and the 13267 order that required the Biological
17 Monitoring Reports to be submitted to us. So I believe
18 that's my only involvement.

19 Q. One of the first things you said in response
20 to my previous question was that some of the work you
21 had done on the previous Confusion Hill ACL was
22 incorporated into the current one. What did you mean
23 by that?

24 A. Well, in the section -- the 13385 section for
25 factors that we review in assessing penalty amounts,

1 some of that work that I had done previously -- I can
2 think, specifically, about the total maximum daily load
3 for the Eel River, the endangered species work. I
4 believe Kason added on, but included a lot of
5 information that I prepared on the prior history of
6 violations. I think that's the extent of it.

7 Q. Let me ask you, slightly off topic, but with
8 respect to prior history of violations, does the Board
9 have any guidelines or practice as to how far back it
10 will reach to incorporate or reference prior violations
11 in an ACL?

12 A. Our formal guidelines on preparing
13 enforcement is the State Board Enforcement Policy. It
14 has been awhile since I read the whole thing. I don't
15 know if there's anything else in there about that.

16 I guess, informally, we don't like to go back
17 much longer than, I would say -- I have never seen us
18 take action on something longer than five to ten years
19 after it occurred.

20 Q. Okay. I don't know if I was clear, but I
21 meant not taking action, the period of time in which
22 the Board can take action, but the period of time in
23 which the Board can reference prior violation.

24 A. I'm sorry.

25 Q. That's all right. It was probably my

1 question.

2 A. I haven't -- I haven't seen or heard any
3 guidance that I can remember on that issue.

4 Q. To your knowledge, was Kason Grady the
5 primary individual from the Board that worked on the
6 ACL?

7 A. Yes. He actually took it over from me. I
8 had received the Engineering Diaries and then didn't
9 have time to finish the enforcement, so I then passed
10 it on to him.

11 Q. Had you commenced any part of the ACL at the
12 time that it got transferred to Kason Grady?

13 A. No.

14 Q. When you said you reviewed the ACL did you
15 also -- was that encompassed in your response, review
16 of the appendices, that detailed the numerous charges?

17 A. Yes. I believe I reviewed them early on. I
18 haven't reviewed recently the one included in the ACL
19 that went out, but I reviewed several earlier versions.

20 Q. Have you ever spoken to Carl Page?

21 A. No.

22 Q. How about Bradford Norman?

23 A. No.

24 MS. ZAZZERON: All right. Just a couple of
25 housekeeping matters. I would like to have the

1 Subpoena Duces Tecum to Mona Dougherty marked as
2 Exhibit A to this transcript.

3 (Whereupon, Exhibit A was marked
4 for identification.)

5 BY MS. ZAZZERON:

6 Q. Ms. Dougherty, had you seen Exhibit A prior
7 to today?

8 A. No.

9 Q. Do you have a copy of the Complaint with you?

10 A. Yes.

11 Q. So referring to the Complaint, which I have a
12 clean copy -- maybe we can attach it later, but we are
13 referring to Administrative Civil Liability Complaint
14 No. R1-2009-0095. If you can turn to page 5, paragraph
15 14 there.

16 Did you have input into any portion of
17 paragraph 14?

18 A. Yes. I believe that most of that was taken
19 from the previous ACL that I had written.

20 Q. Turning to page 6, and that will be
21 (B) Nonstormwater Discharge Prohibitions. Are you
22 aware of any allegation that the Department or MCM
23 improperly discharged stormwaters?

24 A. Improperly discharged stormwater?

25 Q. Yes. Okay. That was the next one. Let's

1 ask about the stormwater first.

2 A. Are you -- do you mean stormwater rain only
3 or with pollutants?

4 Q. Let's see. How about either one?

5 A. Well, they had permit coverage to discharge
6 rain only.

7 with pollutants there are various permits
8 that they would be operating at that point. They would
9 be looking at their stormwater permit as well as the
10 401. And the 401 is more restrictive in a couple of
11 areas.

12 But the stormwater permit requires that
13 stormwater -- that pollutants be removed to the maximum
14 extent practicable using -- for most of the pollutants
15 that we are talking about, using best conventional
16 technology.

17 Q. So you're referring to stormwater that has
18 pollutants within it?

19 A. Um-hmm.

20 Q. Is that a "yes"?

21 A. Yes, sorry.

22 Q. To your knowledge, were stormwaters with
23 pollutants mixed in improperly discharged --

24 A. Yes.

25 Q. -- in this case?

1 A. Yes.

2 Q. How about nonstormwater discharges? Is there
3 any allegation with respect to nonstormwater improperly
4 discharged into a stormwater conveyance system?

5 A. I am not sure about the conveyance system,
6 but the construction dewatering activities that
7 happened and the concrete wastes that happened and
8 perhaps some of the -- some of the fueling violations
9 were violations of the stormwater permit, as well.

10 Q. Okay. To your knowledge, did -- I'm not sure
11 I understood the answer to the question.

12 A. That -- I got a little lost.

13 Q. That's okay.

14 A. Did those occur, is that what you're asking?

15 Q. No. The question is, to your knowledge, is
16 there any specific allegations that nonstormwaters were
17 improperly discharged into a stormwater conveyance
18 system?

19 A. I would say "yes."

20 Now, this is a tricky question because the --
21 I was thinking at first that the pipe going over the
22 river would be part of the conveyance system, perhaps,
23 but that was designed not to carry stormwater but to
24 carry nonstormwater. So I'm not sure.

25 There may be a stormwater conveyance on the

1 site that I'm not aware of. I'm not -- I don't have as
2 good a site knowledge as some other people do.

3 Q. With respect to large (B) here on page 6, do
4 you have knowledge, based on your understanding of what
5 you reviewed in this case, that Caltrans did not
6 prohibit nonstormwater discharges into its stormwater
7 conveyance system?

8 A. I'm not sure. Well, actually I take that
9 back. I do remember one discharge, nonstormwater, that
10 went to a road, and a road and roadside ditches are
11 part of the stormwater conveyance systems, so yes.

12 Q. It is your understanding that that water did
13 enter a drain inlet or water conveyance system?

14 A. It was discharged to the road, which is part
15 of the stormwater conveyance system.

16 Q. Let's see. Right above big (B) there's
17 paragraph 7, and the term "surface waters" is used
18 there, and it is used in other portions of the ACL; is
19 that correct?

20 A. Yes.

21 Q. Is "surface waters" defined in the
22 Porter-Cologne Act, to your knowledge?

23 A. I believe it is not.

24 Q. How about the NPDES permit?

25 A. I believe there's an appendix that has

1 definitions. I'm not sure. It may be there.

2 Q. In Section 401 Certifications is the term
3 "surface waters" defined typically?

4 A. Typically, it is not, but it is defined in
5 our Basin Plan.

6 Q. It is defined in the Basin Plan?

7 A. Yes.

8 Q. What is the definition, if you're familiar
9 with it to testify?

10 A. Yes. Rivers, streams, wetlands.

11 Q. Would that include the bottom of, let's say,
12 a riverbed?

13 A. Yes.

14 Q. So it is rivers, streams, and --

15 A. Wetlands.

16 Q. -- wetlands.

17 A. That's for inland surface water. And then on
18 the coast you have the ocean.

19 Q. Okay. Paragraph 16, which is on page 8, did
20 you have any input into that section of the ACL?

21 A. Let me see. No. This was taken directly
22 from our Basin Plan, so it is pretty much standard
23 language.

24 Q. Are you familiar with the Basin Plan?

25 A. Occasionally, yes.

1 Q. Based on your knowledge of the project and the
2 records that you have seen, have you seen any
3 indication that any fish were, actually, killed as a
4 result of this project?

5 A. There was a photo of a dead fish. It was
6 unclear how the fish had died, so I have no direct
7 knowledge that project activities resulted in any dead
8 fish.

9 Q. The photo of that fish, did that come from
10 the Biological Monitoring Report?

11 A. I believe so.

12 Q. Do you have any knowledge that any wildlife
13 were killed as a result of this project?

14 A. I don't have any knowledge, no.

15 Q. Do you have any knowledge about any actual
16 harm to plant life that resulted from the project?

17 A. Harm or -- well, damage to either wildlife or
18 plants could be -- would be inferred by the activity
19 that took place in that the TMDL discusses the
20 deleterious effects of sediment discharges on fish and
21 endangered species for the Eel River.

22 And then there's also -- there's also a lot
23 of studies that have been done about the sediment --
24 sediment discharge affecting. I'm not sure about
25 plants, although unwanted mucin-type of plant growth,

1 algae, that type of thing, are often linked with excess
2 sediment discharges.

3 Q. Have you seen any reports or any other
4 documentation, photographs, verbal communications, that
5 reflect that one or more plants, actually, was harmed
6 as a result of project activities?

7 A. Well, there was a considerable amount of
8 logging that was done, so I have seen reports about
9 that.

10 Q. Logging in connection with the Confusion Hill
11 Bypass Project?

12 A. Yes.

13 Q. Were there permits for that?

14 A. I believe that the planned vegetation removal
15 was -- I believe that it was accurately described in
16 the application, but I'm not sure. So then the 401 --
17 if it was accurately described in the application, the
18 401 would have authorized it.

19 I did have a lot of concerns about the timing
20 of vegetation removal leading to sediment discharges
21 that would not have occurred if the vegetation removal
22 had been planned more carefully.

23 Q. All right. Are you aware of any actual
24 damage to habitat? And I don't mean presumed damage.
25 Actual knowledge that habitat was --

1 A. when we look at a photo with sediment
2 discharge that is actual damage to a habitat. There's
3 endangered species in the South Fork Eel River, and
4 sediment greatly reduces their ability both to breathe
5 and feed and move through the habitat. So that is
6 actual damage to the habitat.

7 Q. were you just referring to photographs?

8 A. Yes.

9 Q. Do you have those with you?

10 A. No. They are part of the file, though.

11 Also, their ability to reproduce.

12 Q. were there any studies done after the project
13 was over to survey the wildlife habitat?

14 A. Not to my knowledge. I'm not sure. That may
15 have been a part of either NOAA or DFG's requirements.

16 Q. So you're not aware of any studies that
17 compared habitat before the project commenced to
18 afterwards; is that correct?

19 A. Correct.

20 Q. To your knowledge, at any time during the
21 project, was there any discharge of any substance or
22 material in quantities deleterious to fish?

23 A. Yes.

24 Q. Describe those?

25 A. Well, we have -- we have notices of

1 discharge, photographs, discussions in the Biological
2 Monitor Reports and the Engineering Diaries. And as I
3 mentioned before, discharges of sediments, discharges
4 of dewatering that may have sediment or may have been
5 in contact with wet concrete as well as concrete waste,
6 those are all deleterious to fish.

7 Q. What are the quantities that are deleterious
8 of the various substances?

9 A. I can't list a number off the top of my head.
10 It is very small amounts and discharges of any of these
11 substances were prohibited by the permit.

12 Q. How about do you have knowledge about placing
13 or disposal of any substances or materials that could
14 be deleterious to fish?

15 A. By "placing" do you mean placing in the
16 active channel or placing where it may be discharged
17 through other activities or rainfall into the active
18 channel of waters of the state?

19 Q. Locations where the materials could pass into
20 any stream or water course in the basin.

21 A. There was information discussed in the
22 Biological Monitoring Reports and in the Engineering
23 Diaries where that was the case, yes.

24 Q. Paragraph 16 of the ACL, again, it is page 8,
25 down on numbers (1) and (3), those cite two portions of

1 the Basin Plan, I take it?

2 A. Yes.

3 Q. What is the difference between the two of
4 those in terms of the deleteriousness that is
5 mentioned?

6 A. Let me read them.

7 So the "difference"? Do you mean the
8 difference in the activities? They are both prohibited
9 under the Basin Plan, but what the difference in the
10 activities would be?

11 Q. Well, no. What is the difference between
12 paragraph one's usage of the phrase, "in quantities
13 deleterious to fish"; and then the second paragraph --
14 the paragraph 3, which is the one right below it, "in
15 quantities which could be deleterious"?

16 A. I'm not sure. I don't know if a difference
17 is meant there, if that is a typo. I'm not sure about
18 that extra word.

19 Q. Turning to page 9, under "Turbidity."

20 A. Uh-huh, yes.

21 Q. There was no evidence in the Confusion Hill
22 project that the 20 percent threshold was exceeded; is
23 that correct?

24 A. I haven't looked through the monitoring data.
25 I believe that there may be some that shows that.

1 when some of these discharges were happening,
2 though, if you can see a change in turbidity, it is
3 going to be greater than 20 percent. Just when water
4 is this clear, it is.

5 One of the issues with why we don't know
6 enough about the turbidity discharges is that the
7 turbidity monitoring was not completed as it should
8 have been, violating the 401.

9 Q. were there any pH tests done during the
10 course of the project?

11 A. I'm not sure.

12 Q. Do you have specific knowledge that the pH
13 standard identified on page 9 was violated?

14 A. I don't have knowledge of it being violated,
15 no. I don't know if it was monitored, though, so I
16 don't think we can say it wasn't, but I don't have any
17 knowledge of that.

18 Q. Are surface waters ever defined with relation
19 to bankful channels?

20 A. Do you mean within the regulatory documents
21 that we typically use or other agencies use because
22 there may be definitions in the Fish and Game Code that
23 I'm not familiar with.

24 Q. No. I'm referring to documents that the
25 Board authors.

1 A. That -- that phrase is not used in the
2 description of surface waters that I have seen.
3 However, the -- any limitation to less than bankful --
4 bankful -- the entire bed, bank and channel, there's no
5 limitation saying that that entire bed, bank and
6 channel are not. So when you would see river or
7 stream, a reasonable person would conclude that that
8 meant bed, bank and channel -- the entire bankful
9 portion of the surface water.

10 I'm sorry, I don't know if this is not
11 allowed, but can I take a break?

12 MS. ZAZZERON: Absolutely.

13 (Recess.)

14 BY MS. ZAZZERON:

15 Q. Based on your answer, is it accurate to say
16 that you agree that surface waters can be defined with
17 relation to the term "bankful channel"? Did I say that
18 right? Surface discharge, bankful channel?

19 A. I would normally equate surface waters with
20 surface waters of the state, which can be broader than
21 what could be considered bankful channels by some
22 observers.

23 Q. What is your definition of "surface waters of
24 the state"?

25 A. Well, waters of the state are defined in

1 Porter-Cologne as any surface or groundwaters within
2 the boundary of the state. So I would consider surface
3 waters to be any waters of the state that are not
4 groundwaters.

5 Q. How would you define "groundwater"?

6 A. Water that is found, under almost all
7 occasions, underground except in some limited
8 situations where groundwater can surface for a brief
9 period of time in the year. Then I would call it
10 surface and groundwater.

11 Q. With the exception of groundwater that is
12 also surface water, would groundwater be visible to the
13 naked eye?

14 A. Generally not without some type of drilling
15 excavation, some earth altering activities. Although,
16 recent court decisions have found that --

17 MS. MACEDO: You're getting legal. Stop.

18 THE WITNESS: I'll stop.

19 BY MS. ZAZZERON:

20 Q. When I refer to "Isolated Pool B," do you
21 know what I'm referring to?

22 A. Yes.

23 Q. Where was that located in relation to the
24 project as a whole?

25 A. I'm not sure where it was located. I know it

1 was located within the gravel bar.

2 Q. Are you aware that one of the Board's charges
3 involves Isolated Pool B and its location as being less
4 than 100 feet from the live stream channel; is that
5 familiar to you?

6 A. Yes.

7 Q. That location from a live stream channel,
8 where would that measurement be taken? So you're
9 talking about 100 feet from which point to which point?

10 A. Um-hmm. I was not involved in the
11 development of this as a presumed Best Management
12 Practice to avoid turbidity discharges in the river.

13 Since I wasn't involved in any of the
14 meetings or discussions of this issue, I would imagine
15 that it would be measured from the edge of the live
16 channel to the -- you know, 100 feet back to that bank
17 and then the other -- the other edge of the live
18 channel 100 feet back on that bank.

19 Q. So the edge of the live channel is that
20 where, let's say, the river water is touching earth at
21 that point where those two are meeting; is that
22 correct?

23 A. Yeah. The live channel is where -- is where
24 the current flow of the river is at that period of
25 time.

1 Q. Okay. So that point may not be the same in
2 the middle of July as it is in, let's say, November; is
3 that correct?

4 A. Correct.

5 Q. Is the gravel bar considered waters of the
6 state?

7 A. Yes.

8 Q. Where was the isolated Pool B located, if you
9 know, in relation to the live stream channel?

10 A. I'm not sure. From the things that I have
11 read, it was about 70 feet.

12 Q. The point 30 feet away from where it really
13 was located, do you have knowledge, one way or another,
14 is that location also in the gravel bar, the 100 foot
15 distance?

16 A. I'm not sure.

17 Q. Do you have knowledge or an opinion one way
18 or another whether isolated Pool B was a BMP? Too many
19 letters here.

20 A. I think that it may have worked as a Best
21 Management Practice if it had -- I'm sorry, isolated
22 Pool B. I was actually thinking about -- no, not for
23 isolated Pool B. For a dewatering basin that was set
24 back a good amount and was accepting the right type of
25 discharged water, potentially, it could be a Best

1 Management Practice.

2 Q. To your knowledge was there such a dewatering
3 basin at the Confusion Hill project?

4 A. I don't believe that any of the dewatering
5 basins that were used would be termed Best Management
6 Practices.

7 Q. My question was, were there dewatering basins
8 used at all at the Confusion Hill site?

9 A. I believe so.

10 Q. What do you base your statement that none of
11 the dewatering basins were BMPs? What do you base that
12 on?

13 A. Well, a Best Management Practice would work,
14 and we wouldn't be seeing the turbidity movement from
15 using the dewatering basins if they had been a Best
16 Management Practice.

17 Q. Is the goal of Best Management Practices to
18 completely eliminate discharges?

19 A. The goal is to eliminate discharges of
20 pollutants.

21 Q. Is the goal, generally, also to reduce?

22 A. Yes, to the maximum extent practicable.

23 Q. To your knowledge has the Water Board ever
24 allowed sedimentation basins to be within 100 feet of a
25 live stream channel?

1 A. I don't know.

2 Q. Is that 100 foot distance, if you know, a
3 measurement derived from water Board guidelines?

4 A. No. It was a proposal made by Caltrans that
5 they thought that would be protective of water quality
6 if it was 100 feet back.

7 we agreed, although, even if it had been 100
8 feet back and we were seeing these turbidity
9 discharges, we -- if we were informed of them, as we
10 should be, we would have made Caltrans improve the BMPs
11 because it wasn't operating as a Best Management
12 Practice.

13 Even if it was operating the same way 100
14 feet back, that wouldn't be adequate, and then we would
15 then say, "This was the proposal that we agreed to, but
16 if it was found not to be working, would make further
17 requirements."

18 Q. The turbidity discharges that you're
19 referring to, those were to the live stream channel, I
20 believe?

21 A. I believe so, yes, from the photos that I've
22 seen.

23 Q. Is it your understanding that those
24 discharges would not have occurred if isolated Pool B
25 was located further away than 70 feet?

1 A. I'm not sure if they would have occurred
2 either way. They were not allowable, so if they had
3 occurred, if the pool had been placed, as it should
4 have been, 100 feet back, we still would have said that
5 is not adequate. You have to either slow the flow, use
6 filter fabric.

7 we would have -- we would have required
8 additional requirements to make sure that what was
9 occurring, the turbidity discharges, would no longer be
10 occurring.

11 Q. You earlier testified that you were not sure
12 where isolated Pool B was located in relation to the
13 project as a whole. However, do you have knowledge as
14 to whether locating isolated Pool B 100 feet from the
15 live channel was physically feasible?

16 A. I don't know. However, it was proposed. If
17 it wasn't feasible, then that was providing us with
18 false information in the application which is not
19 legal.

20 Q. You testified earlier that, during the course
21 of the project, nonstormwater may have been, or was,
22 conveyed by a roadway into a storm conveyance system;
23 is that correct?

24 A. Yes.

25 Q. Was that roadway paved or not paved?

1 A. I don't know. I know that there was an
2 unpaved road on the site and there were paved portions
3 of the road on the site as well.

4 Q. Isn't it true that roads can be stormwater
5 conveyance systems if they are paved?

6 A. Yes.

7 Q. Can they ever be such conveyance systems if
8 they are not paved?

9 A. This is a difficult answer because it comes
10 down to what is regulated and what isn't as a point
11 source or a nonpoint source. So sometimes it can be --
12 a stormwater conveyance physically that people can
13 observe, but it might not be regulated as a stormwater
14 conveyance system.

15 Sorry if that's confusing.

16 Q. So which is it with respect to the road that
17 you referred to earlier at Confusion Hill?

18 A. The Caltrans stormwater permit requires -- I
19 mean, identifies regulated stormwater from their
20 facilities, from their roadways, from their
21 rights-of-way. So I believe, in that case, it would be
22 a part of the stormwater conveyance system for
23 Caltrans.

24 Q. Has the Board ever allowed water that has
25 been in contact -- the phrase "contact water," do you

1 understand what I mean by that?

2 A. Yes. Are you talking about concrete or
3 cement concrete?

4 Q. Yes. Has the Board ever, not just in the
5 context of Confusion Hill but the North Coast Board
6 that you're familiar with, ever allowed the use of
7 contact water for dust control?

8 A. Yes.

9 Q. Why is that?

10 MS. MACEDO: Objection. Calls for
11 speculation. You can answer.

12 MS. ZAZZERON: You can still answer if you
13 could.

14 THE WITNESS: Yes. Why did we allow it, or
15 why did -- why is it protective of water quality?

16 BY MS. ZAZZERON:

17 Q. Has it been allowed in, let's say, areas that
18 you would consider waters of the state?

19 A. No. I believe that it may have, after
20 filtration and treatment, been used for dust control
21 outside of waters of the state under some
22 circumstances, yes.

23 Q. But not within waters of the state?

24 A. No, not to my knowledge.

25 Q. And why is that, if you know?

1 A. It would be a discharge of waste to waters of
2 the state, and we try to -- even if we permit a limited
3 discharge of waste to waters of the state in a permit,
4 we try to limit the waste discharged. And I think that
5 that, generally, would be an unnecessary waste to
6 discharge.

7 Q. Are you familiar with the festival Reggae
8 Rising?

9 A. Yes.

10 Q. Have you ever attended?

11 A. No.

12 Q. Does the Board issue permits for that event?

13 A. We do.

14 Q. What type of permit or permits?

15 A. Waste discharge requirements. And I haven't
16 worked on it, so I'm not sure what wastes are
17 permitted.

18 Q. Who from the Board has worked with respect to
19 that festival on waste discharge requirements?

20 A. Brianna Drescher, who, until recently, was an
21 intern in our office; Lisa Bernard, who is in my unit,
22 works on NPDES permits and other types of waste
23 discharge requirements; and John Short, who is a senior
24 engineer.

25 Q. Any other water board permits that you're

1 aware of with respect to the festival?

2 A. Not that I'm aware of.

3 Q. And to your knowledge is the waste discharge
4 requirement issued every year, or is it sort of a
5 standing thing that covers all the festivals?

6 A. I'm not sure. There's -- recently we heard
7 that there are several festivals, and we are not sure
8 how to permit them because we don't know how many there
9 are going to be and where they are going to be.

10 To my understanding, we issued waste
11 discharge requirements several years in a row, and I'm
12 not sure if -- how many festivals were covered in each
13 permit issuance.

14 Q. Who is the permittee for the Reggae Rising?

15 A. I don't know.

16 Q. Have there ever been any enforcement
17 proceedings as a result of the Reggae Rising festival?

18 A. I believe so, but I'm not sure.

19 Q. Is it your understanding that --

20 A. Can I add something to my answer? I just
21 remembered something.

22 Q. Sure.

23 A. I believe one year we actually didn't give
24 them a permit at all because of some concerns that we
25 had. So I don't know -- I don't know if that would be

1 enforcement of a permit. That would be more like
2 withholding a permit because of water quality issues
3 not being resolved.

4 Q. What year was that that the permit was
5 withheld, if you know?

6 A. Within the last five years.

7 Q. Were you the drafter of the November 27th,
8 2006 NOV?

9 A. Yes, I was.

10 Q. Did you include all violations that you were
11 contemplating putting in there?

12 A. From the information we received it wasn't
13 clear how many violations were occurring, so I did the
14 best job I could to include what I thought were
15 violations.

16 To remedy the fact that we had such limited
17 information I also did a 13267 order which required a
18 submittal of a lot of documents because we were
19 concerned that we did not have enough information.

20 Q. All right. Okay. Well, I'm going to go over
21 my notes, but I'm going punt to Mr. Hungerford for now.

22 MR. HUNGERFORD: And I don't have that many
23 questions, but I'll ask you a few.

24 EXAMINATION

25 MR. HUNGERFORD: My name is Sean Hungerford,

1 and I represent MCM. I just have a couple of
2 follow-ups to the testimony that you have already
3 given.

4 BY MR. HUNGERFORD:

5 Q. Earlier on you said that you had a meeting
6 with the Department of Fish and Game, and they provided
7 you, or showed you, a number of photographs; is that
8 right?

9 A. Yes.

10 Q. Did they, actually, give you photographs or
11 just show them to you?

12 A. They gave them.

13 Q. This was Corrine at this point?

14 A. Yes.

15 Q. Do you know if those photographs are in the
16 large group of photographs that have been produced in
17 connection with this ACL Complaint?

18 A. Yes. In fact, they are attached to the
19 Notice of Violation that I wrote.

20 Q. And so all of the photographs that you were
21 provided by Fish and Game are attached to that?

22 A. I believe so. It has been awhile, but I
23 think so.

24 Q. Okay. You described an inspection, an
25 unannounced inspection in January of 1998, correct?

1 A. 2008?

2 Q. Sorry, 2008. Was that the only inspection
3 that you made of the Confusion Hill project?

4 A. Yes.

5 Q. You, also, explained that you attended
6 meetings with Caltrans and MCM discussing the ACL. You
7 were talking about the prior ACL, correct?

8 A. Actually, I meant the ACL that we are
9 discussing today.

10 Q. Well, let me ask that in a little more
11 detail.

12 When did these meetings take place with
13 Caltrans and MCM where you discussed this ACL?

14 A. I can't remember if there was one or two with
15 Caltrans and MCM. I think there may have been two.
16 Cris Carrigan may have been our attorney for one, and
17 then I think, for the second one, I think Cris and
18 Julie were there.

19 I can't remember the dates. And I believe
20 you were there, too, Sean, and Ardine.

21 Q. So you're talking about the meetings that we
22 had that I was present at?

23 A. Yes.

24 MR. HUNGERFORD: Okay. Thank you. I have no
25 further questions.

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MS. ZAZZERON: Okay. I'm just going to
review Exhibit A for a moment.

All right. I think that's it. Thank you.
off the record.

(Whereupon, the deposition was
concluded at 12:05 p.m.)

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CERTIFICATE OF WITNESS

I, MONA DOUGHERTY, hereby declare under oath
that I have read the foregoing testimony recorded on
pages 5 to 53, inclusive, and that the same is a true
and correct transcript of my said testimony, except as
I have corrected any answer in ink, initialed such
correction, and stated on the margin my reason for
making same.

MONA DOUGHERTY

DATE: _____

CORRECTIONS TO THE DEPOSITION OF _____
TAKEN / /

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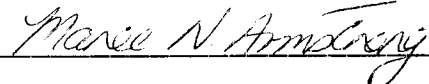
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REPORTER'S CERTIFICATE

I, MAREE N. ARMSTRONG, a duly qualified
certified shorthand reporter for the state of
California, do hereby certify that the witness in the
foregoing deposition named, to wit: MONA DOUGHERTY,
was by me duly sworn to testify to the truth, the whole
truth and nothing but the truth in the within-entitled
cause; that said deposition was taken at the time and
place therein stated in my presence; that the testimony
of said witness was recorded by me stenographically,
and was at my direction thereafter transcribed into
typewriting.

I further certify that I am not a relative or
employee or attorney or counsel of any of the parties,
nor am I a relative or employee of such attorney or
counsel, nor am I financially interested in the within
action.

In witness whereof, I have hereunto set my
hand this 5th day of January, 2011.


MAREE N. ARMSTRONG, CSR #11284

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

2 NORTH COAST REGION

3
4 IN THE MATTER OF:

5 ADMINISTRATIVE CIVIL LIABILITY
6 COMPLAINT NO. R1-2009-0095

SUBPOENA DUCES TECUM TO
MONA DOUGHERTY

7 TO: MONA DOUGHERTY

8 YOU ARE COMMANDED to appear at the place, date and time specified below to testify
9 at the taking of a deposition in the above-referenced matter.

10 YOU ARE ALSO COMMANDED to produce and permit inspection and copying of the
11 documents identified in Attachment A to this Subpoena at the place, date, and time specified below.

12 You have been subpoenaed by MCM Construction, Inc. ("MCM"), a designated party in the
13 aforementioned proceedings. MCM is represented by Diepenbrock Harrison, 400 Capitol Mall,
14 Suite 1800, Sacramento, California, 95814. Inquiries concerning the mechanics of the scheduled
15 deposition should be directed to Sean K. Hungerford, Esq., of Diepenbrock Harrison at (916) 492-
16 5000.

17 PLACE: NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD
18 5550 SKYLANE BLVD., STE. A
19 SANTA ROSA, CA 95403-1072

20 DATE: Thursday, October 21, 2010

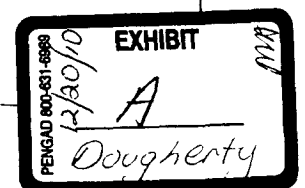
21 TIME: 1:00 p.m.

22
23 DATED: October 5, 2010

DIEPENBROCK HARRISON
A Professional Corporation

24
25 By: 

26 SEAN K. HUNGERFORD
27 Attorney for MCM CONSTRUCTION, INC.
28



ATTACHMENT A TO THE SUBPOENA DUCES TECUM TO
MONA DOUGHERTY

I. INSTRUCTIONS

1. Please produce DOCUMENTS as they are kept in the usual course of business and organize and label them to correspond with the categories in these requests.

2. In the event any requested DOCUMENT has been destroyed, lost, discarded or, otherwise disposed of, please identify such DOCUMENT as completely as possible, including without limitation the following information: (a) date of disposal; (b) manner of disposal; and (c) person approving of the disposal.

II. DEFINITIONS

The following definitions shall apply to each category of documents set forth below:

1. "ACL COMPLAINT" shall mean and refer to Administrative Liability Complaint No. R1-2009-0095, publically released on August 13, 2009.

2. "COMMUNICATIONS" shall mean and refer to the written or verbal exchange of information by any means, including, without limitation, telephone, telecopy, facsimile, or other electronic medium (including e-mail), letter, memorandum, notes or other writing method, meeting, discussion, conversation or other form of verbal expression.

3. "DOCUMENT(S)" shall mean and refer to any and all written, printed, typewritten, photographic, graphic, or recorded materials (by tape, video or otherwise), however produced or reproduced, data stored in a computer, data stored on removable magnetic and optical media (e.g., magnetic tape, floppy disks, and recordable optical disks), e-mail, and voice mail, which relate or pertain in any way to the subject matter to which the Interrogatory refers. "DOCUMENT(S)" shall further include, without limitation, all preliminary, intermediate and final drafts or versions of any DOCUMENT, as well as any notes, comments, and marginalia appearing on any DOCUMENT, and shall not be limited in any way with respect to the process by which any DOCUMENT was created, generated, or reproduced, or with respect to the medium in which the document is embodied. DOCUMENT(S) shall include all "writing" and tangible forms of expression falling within the scope of California Evidence Code section 250, within YOUR custody, possession or control.

1 4. "PERSON(S)" shall mean and refer to any natural person, proprietorship, public or
2 private corporation, limited or general partnership, trust, joint venture, firm, association,
3 organization, board, authority, governmental entity, or any other entity, including a representative of
4 such PERSON(S).

5 5. "RELATING TO" shall mean and refer to relating to, pertaining to, referring to,
6 evidencing, in connection with, reflecting, respecting, concerning, based upon, stating, showing,
7 establishing, supporting, bolstering, contradicting, refuting, diminishing, constituting, describing,
8 recording, noting, embodying, memorializing, containing, mentioning, studying, analyzing,
9 discussing, specifying, identifying, or in any other way bearing on the matter addressed in the
10 request, in whole or in part.

11 6. "SITE" shall mean and refer to the Confusion Hill Bypass Project Site, as described
12 in the ACL COMPLAINT.

13 7. "YOU" or "YOUR" shall mean the Deponent, including without limitation YOUR
14 employer or prior employer and its agents, employees, representatives, attorneys, accountants,
15 investigators, and insurance companies, and their employees, and anyone else acting on your
16 behalf). With respect to YOUR DOCUMENTS, it includes any DOCUMENTS in YOUR
17 possession, custody or control.

18 8. "PERSON" shall mean any entity or natural person.

19 **III. DOCUMENT REQUESTS**

20 1. All evidence and DOCUMENTS which the Regional Water Quality Control Board
21 intends to offer to support the claims and allegations in the ACL COMPLAINT, including but not
22 limited to:

- 23 a. Impacts to water quality;
- 24 b. Impacts to wildlife and wildlife habitat, including protected species;
- 25 c. Application of the adjustment factors listed Water Code section 13385,
26 subdivision (e); and
- 27 d. Letters, reports or other DOCUMENTS prepared by other governmental
28 agencies.

- 1 2. All DOCUMENTS RELATING TO the claims and allegations in the ACL
2 COMPLAINT, including but not limited to:
- 3 a. Impacts to water quality;
 - 4 b. Impacts to wildlife and wildlife habitat, including protected species;
 - 5 c. Application of the adjustment factors listed Water Code section 13385,
6 subdivision (e);
 - 7 d. Letters, reports or other DOCUMENTS prepared by other governmental
8 agencies; and
 - 9 e. Other memoranda, reports, notes, summaries, working files, electronic mail,
10 and test samples or results.

11 *****

1 Re: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2009-0095
2 Confusion Hill Bypass Project, Mendocino County
3 California Regional Water Quality Control Board, North Coast Region

4
5 **MAILING LIST**

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CALIFORNIA REGIONAL WATER CONTROL BOARD

NORTH COAST REGION

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In the Matter of:

ADMINISTRATIVE CIVIL LIABILITY
Complaint No. R1-2009-0095.

COPY

_____/

Deposition of:

DEAN PRAT

Monday, December 20, 2010

Reported by:
MAREE N. ARMSTRONG
CSR #11284

COASTAL REPORTING SERVICES
Certified Shorthand Reporters
131-A Stony Circle, Suite 500
Santa Rosa, CA 95401
(707) 573-9766

1 Deposition of DEAN PRAT, taken pursuant to
2 agreement at the North Coast Regional Water Quality
3 Control Board, 5550 Skylane Boulevard, Suite A, in the
4 City of Santa Rosa, County of Sonoma, State of
5 California, on Monday, the 20th day of December, 2010,
6 commencing at the hour of 1:14 p.m., thereof, before
7 MAREE N. ARMSTRONG, CSR No. 11284, a California
8 Certified Shorthand Reporter.

9
10 A P P E A R A N C E S

11
12 FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
13 BOARD, NORTH COAST REGION:

14 STATE WATER RESOURCES CONTROL BOARD
15 1001 I Street, 16th Floor
 Sacramento, California 95814
 (916) 341-6847

16 BY: Julie E. Macedo
17 Attorney at Law

18 FOR THE STATE OF CALIFORNIA, DEPARTMENT OF
19 TRANSPORTATION:

20 STATE OF CALIFORNIA
 DEPARTMENT OF TRANSPORTATION
 Legal Division
21 595 Market Street, Suite 1700
 San Francisco, California 94105
22 (415) 904-5700

23 By: Ardine Zazzeron
24 Deputy Attorney
 and
 Douglas c. Jensen
25 Attorney at Law

1 APPEARANCES (cont'd)

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4 DIEPENBROCK HARRISON
5 Attorneys at Law
6 A Professional Corporation
7 400 Capitol Mall, Suite 1800
8 Sacramento, California 95814
9 (916) 492-5050

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11 BY: Sean K. Hungerford
12 Attorney at Law
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I N D E X

<u>WITNESS:</u>	<u>DEAN PRAT</u>	<u>Page No.</u>
	Examination by Ms. Zazzeron	5, 71
	Examination by Mr. Hungerford	49

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<u>NOS.</u>		<u>Page No.</u>
A	"Subpoena Duces Tecum to Dean Prat."	19
B	Issuance of Clean Water Act Section 401 Certification, dated February 16, 2006.	20

1 DEAN PRAT,
2 having been duly sworn or affirmed by the certified
3 shorthand reporter in all respects as required by law,
4 proceedings were had as hereinafter set forth:

5 EXAMINATION

6 BY MS. ZAZZERON:

7 Q. Good afternoon. Please state your name for
8 the record and spell your last name.

9 A. Dean Prat, P-r-a-t.

10 Q. Have you ever had your deposition taken
11 before?

12 A. Yes.

13 Q. On how many occasions?

14 A. At least twice.

15 Q. Were those depositions taken in your
16 professional capacity?

17 A. Yes.

18 Q. As an employee of the Board?

19 A. Yes.

20 Q. What were the circumstances surrounding the
21 cases, or whatever they were, regarding your
22 deposition?

23 A. I don't recall exactly. Cleanups. I worked
24 in our site mitigation unit, so it had to do with a
25 cleanup case. But I worked on many, I couldn't tell

1 you which ones. It has been more than ten years.

2 Q. What is your current title or classification

3 with the Board?

4 A. Engineering Geologist.

5 Q. How long have you been employed by the Water

6 Board?

7 A. About 18 years.

8 Q. Have you always been in the North Coast

9 Region?

10 A. No. I worked for about three years at

11 Region 7, which is the Colorado River Basin Region.

12 Q. What years were those?

13 A. Approximately, '93 to '96.

14 Q. And were you an engineering geologist with

15 Region 7, as well?

16 A. Yes.

17 Q. I'm going to go over a couple of the

18 guidelines for depositions, even though you have been

19 deposed. Just a refresher.

20 I would ask that you wait until I'm

21 completely done with asking your question before you

22 begin your answer. Likewise, I will wait for your

23 answer before asking my next question. That is not

24 only to make a clear record, but to stop Maree from

25 beating us up.

1 And, as you know, you have just been sworn to
2 tell the truth; so you understand that?

3 A. Yes.

4 Q. I ask that you not guess or speculate as to
5 the questions I'm asking when you give your answers.
6 We are entitled, though, to your best estimate.

7 An example I gave earlier to the previous
8 witness, the difference between a guess and a best
9 estimate would be, if I were to ask you how much money
10 is in my wallet, that would be a guess for you. If I
11 asked you how much money was in yours, you probably,
12 would be able to give me your best estimate.

13 So it doesn't have to be precise, but we
14 don't want you to speculate.

15 After the deposition is done in a few weeks
16 time you will get a copy of it in a booklet form, and
17 you will have a chance to read through it. And you are
18 entitled to make any corrections. If you make a
19 substantive change like changing a "yes" to a "no," we
20 may be able to comment on that at the hearing. Do you
21 understand that?

22 A. Yes.

23 Q. I ask that you respond audibly with a "yes"
24 or "no." Shakes of the head do not come across on the
25 written record.

1 A. Okay.

2 Q. And last, is there any medical or physical
3 reason that you cannot give true and accurate testimony
4 today?

5 A. No.

6 Q. All right. Did you receive any educational
7 degrees?

8 A. Yes.

9 Q. What are they?

10 A. Bachelor's Degree in Geology.

11 Q. From which institution?

12 A. California State University, Sacramento.

13 Q. What year did you graduate?

14 A. '92.

15 Q. Did you work in any other geology-related
16 jobs before going to Region 7?

17 A. Internship for the Department of Toxic
18 Substance Control.

19 Q. In Sacramento?

20 A. Correct.

21 Q. What did you do for DTSC?

22 A. I assisted with groundwater modeling. That
23 was pretty much the main role, in a nonpaid, weekly
24 internship, so --

25 Q. Do you hold any professional licenses?

1 A. Registered geologist.

2 Q. Has your title or classification ever been
3 any different with the Board?

4 A. For a time they referred to us as an
5 associate engineering geologist after we passed a
6 promotional exam, and then later they did away with the
7 "associate" and developed a range level within the
8 engineering geologist classification.

9 Q. Okay.

10 A. So I was associate engineering geologist for
11 some time.

12 Q. What range level are you at present?

13 A. "D."

14 Q. Is it the highest range?

15 A. Yes.

16 Q. How would you describe your day-to-day job
17 duties and functions?

18 A. Currently?

19 Q. Currently, yes.

20 A. Primarily, review correspondence and
21 applications related to Water Quality Certification and
22 work with applicants towards achieving a complete
23 application, writing public notices for projects, and
24 ultimately, I write Water Quality Certifications when
25 they have been through all the application phases.

1 Q. Are there other individuals in your office
2 here that have similar functions?

3 A. Yes.

4 Q. Is there a geographical manner of dividing up
5 who gets which application?

6 A. Yes. In general, for non-Caltrans projects,
7 I do the northern portion of our region, which is, for
8 the most part, the Eel River Watershed Boundary to the
9 Oregon border. And then I deal with some of the
10 projects outside of the Eel River along the coast south
11 to, approximately, Fort Bragg.

12 Q. Okay. And what about Caltrans projects?

13 A. I no longer do any Caltrans projects with the
14 exception of an emergency project that occurred
15 recently. When our Caltrans 401 staff was out of the
16 office, I handled that.

17 Q. Who is currently handling 401s?

18 A. Jeremiah Puget.

19 Q. Were your job duties any different in the
20 fall of 2006?

21 A. Yes.

22 Q. How so?

23 A. My job duties included 401 Certification
24 projects within Caltrans.

25 Q. And that would have been true for the year

1 before that?

2 A. Yes.

3 Q. Was there a reason why Mr. Puget is now doing
4 the Caltrans 401s, and you're not?

5 A. Yes. There are probably several reasons.

6 Q. Okay. Do any of them have to do with the
7 Confusion Hill Bypass Project?

8 A. To some degree I think so.

9 I guess one of the underlying things was
10 workload for myself and my counterpart, that the
11 workload of 401s, including the Caltrans, was too much
12 for two people. It is probably too much for three
13 people, if I could add that.

14 Q. Do you attend training as part of your
15 professional development at the Board?

16 A. I do.

17 Q. How many training types of events do you
18 attend, let's say, on an annual basis?

19 A. I get training in a lot of different forms,
20 so I couldn't be specific unless I was specific about
21 the types of trainings because we probably attend
22 trainings, probably, monthly for different types of
23 things.

24 we do trainings at regular meetings with our
25 State Board Program Manager. So in that context,

1 probably, four a year.

2 Q. Okay. Have you ever taught a class of any
3 kind?

4 A. No.

5 Q. At what point in time did you become aware of
6 the state's Confusion Hill Bypass Project?

7 A. I would be guessing what year that I became
8 aware of it.

9 Q. Well, let me ask you this. In your role as a
10 Caltrans 401 application reviewer, do you recall when
11 you received or you became aware that the state was
12 going ahead with the Bypass Project?

13 A. Well, sometime before we worked on the
14 application I had meetings with Caltrans about the
15 project coming, the environmental process, the
16 decommissioning of the old -- or the currently old
17 section prior to ever receiving an application. I
18 couldn't tell you if that was in '03, '04, or '05. I'm
19 not recalling when exactly we started talking about
20 planning in our pre-project planning.

21 Q. What was the purpose of those pre-project
22 meetings? Did it vary or --

23 A. Yeah, they varied. Whatever Caltrans purpose
24 was at the time for getting to the next stage, whether
25 that was choosing an alignment, or specifics of the

1 bridge designs, or how the road was going to be
2 decommissioned. There were different projects over
3 different periods. I don't know exactly when they all
4 happened.

5 Q. What was your role at these meetings?

6 A. To represent the Regional Water Board and to
7 provide information or answer questions about the
8 process if they were to come up.

9 Q. When the Department of Transportation
10 submitted its application you were assigned to it
11 immediately?

12 A. Yes. That's to the best that I know.

13 Q. At the time you received this application,
14 did you already know which alignment had been chosen?

15 A. I believe so.

16 Q. Were you already familiar with the proposed
17 design of the bridge -- bridges?

18 A. Somewhat, in general. Probably, I wasn't
19 specifically aware until I actually looked through the
20 application to see the design, you know. But I know I
21 had been involved in some discussions and
22 presentations.

23 Q. Had you ever worked on a construction project
24 where MCM had been involved?

25 A. Yes.

1 Q. Which project was that?

2 A. Van Duzen River Bridge, Southbound 101.

3 Q. So the application came in. Please walk me
4 through the steps that you, as a reviewer, went through
5 to review the application?

6 A. I could only tell you what a typical
7 application review is.

8 Q. That's fine.

9 A. I have probably worked on a hundred projects
10 since this project. Each one is a little different.
11 But in a typical sense we would make sure it is
12 complete from a standpoint of the Code of Regulations,
13 List of Contents of a Complete Application.

14 we would look at the proposed areas of impact
15 and the fee that was -- the corresponding fee that
16 would be for what the area of impact was being proposed
17 on the project. It was also part of a complete
18 application.

19 I would have informed Caltrans of any
20 proposed activities that couldn't be -- that wouldn't
21 be permissible and asked to either have those revised
22 or to inform Caltrans that they would be receiving them
23 from now, a condition that would prohibit something
24 that they were, you know, asking to do.

25 whereas, we attempt to -- to approve the

1 proposal with, you know, in general, lacking -- you
2 know, minimizing the number of specific prohibitions
3 that we have to spell out versus being able to say the
4 activity is approved as you proposed.

5 so we kind of went through some of those
6 things. Once everything was complete and orderly, we
7 would write a public notice and, following the public
8 notice, issued the Cert.

9 Q. Do you ever physically look at the proposed
10 project site?

11 A. Yes.

12 Q. Did you do that in this case?

13 A. Yes.

14 Q. How many times did you go out there in the
15 course of your application review?

16 A. Well, I don't know if I did in the course of
17 my application review because I've been to the site and
18 it is visible from the highway, so --

19 Q. Was anyone accompanying you?

20 A. I don't recall.

21 Q. Did you go out there more than once?

22 A. Before?

23 Q. During the application review.

24 A. I don't recall. I don't recall.

25 Q. When you were reviewing applications do you

1 typically have reference materials that you refer to?

2 A. Yeah.

3 Q. Such as?

4 A. Such as the content of -- the List of
5 Contents of the Complete Application, Basin Plan,
6 Porter-Cologne.

7 Q. Do you ever refer to any BMP manuals, or is
8 that a little bit too early in the process for that?

9 A. I hadn't for this. I don't believe I had for
10 this, yeah.

11 Q. When you do refer to BMPs manuals, which ones
12 do you look at?

13 A. Generally, they are provided as part of an
14 application if they're a reference.

15 In our application we ask for description of
16 BMPs, so sometimes there's reference material that is
17 just included.

18 Maybe you could ask me the question again, if
19 that's not sufficient.

20 Q. It's okay. The department has its own
21 stormwater management plan, correct -- you're aware of
22 that?

23 A. Stormwater Pollution Prevention Plan?

24 Q. Well, there's that one, too, yes. That's the
25 one that you mentioned that is known as SWPPP --

1 S-W-P-P-P, correct?

2 A. Um-hmm.

3 Q. Yes?

4 A. Yes.

5 Q. Did you review the SWPPP for this job?

6 A. Not in its entirety. I think we requested it
7 along the way or -- I think there's a condition of the
8 cert. that required it to be submitted before the
9 project started.

10 Q. Okay.

11 A. Yeah. And I looked at it at that point, I'm
12 sure, because it came into my possession. But how far
13 I looked at it, I don't recall.

14 Q. Does the Board have any reference materials
15 that it looks to to help evaluate SWPPPs including
16 BMPs -- the BMP components?

17 A. Yes.

18 Q. What are the titles of those?

19 A. I don't -- I couldn't give you those.

20 Q. Okay. Do you know, are they published by the
21 Board?

22 A. I'm sure there are some reference materials
23 for stormwater published by our Board. Our Board does
24 trainings and things like that on stormwater, but it is
25 quite a large program.

1 Q. You initially reviewed the Department's
2 application. What was your response?

3 A. I think our initial response to the
4 application was incomplete.

5 Q. In what aspect, or aspects, was it
6 incomplete?

7 A. I don't recall, specifically.

8 Q. Did you advise the Department of its
9 incompleteness?

10 A. I believe there is a letter to that effect,
11 yeah.

12 Q. Was the application, thereafter,
13 re-submitted?

14 A. Yes.

15 Q. And then what occurred?

16 A. Probably, a public notice followed by a
17 Certification.

18 Q. Was there an amendment to the Certification
19 at some point?

20 A. Yeah. I believe there's at least one
21 amendment.

22 Q. How did the amendment change the originally
23 issued application?

24 A. Language regarding operation of equipment was
25 changed from a strict operation of equipment in

1 waters, I believe -- was modified to remove the strict
2 prohibition of operation.

3 And, I think, submittal of the Stormwater
4 Pollution Prevention Plan was delayed -- allowed to be
5 delayed so that staging could occur.

6 Q. How was the timing of the SWPPP affected by
7 staging?

8 A. I believe that Caltrans made a fair argument
9 that -- that we should allow certain activities to
10 occur, such as staging of equipment and materials,
11 prior to them being able to produce the Stormwater
12 Pollution Prevention Plan for our review, which we
13 asked for prior to disturbing the ground.

14 MS. ZAZZERON: All right. A little
15 housekeeping here. We will have Exhibit A to
16 Mr. Prat's deposition marked. That's the subpoena to
17 Dean Prat.

18 (Whereupon, Exhibit A was marked
19 for identification.)

20 BY MS. ZAZZERON:

21 Q. Mr. Prat have you seen Exhibit A?

22 A. Before now?

23 Q. Yes.

24 A. I don't recall seeing that.

25 Q. Did you bring any documents responsive to the

1 Subpoena?

2 A. No.

3 Q. Did you bring some documents here with you
4 today at all?

5 A. No.

6 MS. ZAZZERON: We will have this marked as
7 Exhibit B. This is the Issuance of Clean Water Act
8 Section 401 Certification, dated February 16, 2006.

9 (Whereupon, Exhibit B was marked
10 for identification.)

11 MS. ZAZZERON: Off the record.

12 (Discussion off the record.)

13 BY MS. ZAZZERON:

14 Q. Mr. Prat, could you take a look at Exhibit B
15 and tell me if it appears to be a complete copy of the
16 401 Certification?

17 And my question also -- or my request also
18 includes the last two pages which appear to be the
19 amended portions.

20 A. Yes. Although, it appears to be missing one
21 amendment that I thought happened.

22 Q. Which amendment are you referring to that you
23 believe happened?

24 A. I believe there was an amendment to allow
25 water drafting.

1 Q. Okay. Mr. Prat, did you author this
2 February 16, 2006 Certification?

3 A. Yes.

4 Q. Did you also author the April 18, 2006
5 amendment? And that amendment is two additional
6 conditions, No. 4 and 13.

7 A. Yes.

8 Q. Did anyone assist you in writing these
9 portions of the permit?

10 A. Not substantially.

11 MS. ZAZZERON: All right. Turning to the top
12 of page 3 of the Permit and Certification, can you read
13 that first sentence there, please. Just to yourself,
14 you don't have to read it out loud.

15 (Witness examines document.)

16 MS. ZAZZERON: And then the second sentence,
17 too. It starts with, "The area of anticipated."

18 (Witness examines document.)

19 BY MS. ZAZZERON:

20 Q. The "temporary impacts" referenced in that
21 first sentence, what were they?

22 A. My recollection is they were primarily for
23 temporary access to the peninsula area between the two
24 bridges from either end of the highway.

25 Q. What did that contemplate constructing? Some

1 sort of temporary road or --

2 A. Roads. And in the case of the north bridge,
3 a temporary work platform and possibly access road on
4 the south end crossing -- crossing the stream.

5 Q. On the ground was the contractor going to
6 construct roads -- temporary roads; is that your
7 understanding?

8 A. Yeah. Well, I don't know if roads is the
9 right -- temporary roads, I guess, yeah. "Temporary"
10 is the emphasis, yeah, or bridges or trestles.

11 Q. When you said platform over the water were
12 you referring to a trestle?

13 A. I'm not seeing that in the two sentences
14 here.

15 Q. I thought that was my recollection of your
16 testimony. I may have misstated it, but I believe you
17 referenced a platform. Do you recall stating something
18 about a platform over water?

19 A. Just now?

20 Q. A couple of answers ago.

21 A. As part of the area of temporary impacts that
22 would have been included.

23 Q. Okay. So a trestle was included?

24 A. Yeah. Trestle could be one of the -- one of
25 the issues, one of the aspects of the temporary impact.

1 Q. The second sentence there, "the anticipated
2 temporary impacts" reference, are those the same
3 temporary impacts mentioned in the previous sentence?

4 A. Yeah, they are referencing the same. Yeah.
5 Here it says access road and temporary bridge placement
6 and removal.

7 Q. Was a temporary bridge ever placed during the
8 project?

9 A. Yes.

10 Q. Where was that?

11 A. The north end.

12 Q. What were the actual impacts that were
13 allowed of a temporary nature -- the things you already
14 mentioned, the temporary bridge, the access points, the
15 trestle. Anything else?

16 A. Not that I can think of.

17 Q. Those are considered impacts?

18 A. Yes.

19 Q. And why is that?

20 A. Because they disturb the stream or bed or
21 bank.

22 Q. What were the permanent impacts that were
23 referenced in this paragraph in the first sentence?

24 A. I believe the only permanent impacts from the
25 project was to be a single pier from the south bridge

1 located in the water or below ordinary high water.

2 Q. what was your understanding as to how the,
3 let's say, the trestle was going to be placed? Let me
4 strike that.

5 what was your understanding of what work was
6 entailed in placing the trestle?

7 A. I don't recall what my understanding was at
8 the time when they built the trestle. Obviously, I was
9 aware that they would be putting some type of
10 foundation for it and building a framework to put a
11 deck on top, but the details of that I don't generally
12 concern myself with in my review.

13 Q. okay. would your answer be the same with
14 respect to the access points on the temporary bridge?

15 A. I was -- I was, I think, referring to the
16 trestle as a temporary bridge.

17 Q. okay. All right. So "temporary bridge" and
18 "platform" and "trestle" are synonymous?

19 A. Yes.

20 Q. okay. would it be fair to say that, insofar
21 as the Certification anticipates the temporary impacts
22 that we talked about, that it also allows the work to
23 be done to place those temporary impacts?

24 A. Sorry, you lost me.

25 Q. okay. The Certification allows the temporary

1 impacts, correct?

2 A. Yes.

3 Q. The ones that we talked about?

4 A. Yes.

5 Q. Does it also allow the work to be done to

6 place them?

7 A. Yes.

8 Q. Within the limits circumscribed in the rest

9 of the Certification; is that correct?

10 A. Yes. And I would add the information

11 contained within the Application for Certification,

12 which contains a lot of the detail.

13 Q. At the time the Application was submitted was

14 it anticipated that there would be several river

15 crossings in conjunction with building the bridges?

16 A. I do recall that there was discussions about

17 river crossings, and I believe that there was -- the

18 limits on that was mostly prescribed by either Fish and

19 Game or NOAA Fisheries as to the number of crossings

20 that they would allow, and so forth.

21 Q. The river crossings were included within

22 Application; is that correct?

23 A. Potentially, yeah. I don't recall

24 specifically. It is pretty typical that they would

25 describe those.

1 But if you're referring to a piece of
2 equipment being driven across a gravel bar and through
3 the water as a crossing, it doesn't involve a dredge
4 and fill activity, so it is less of an issue for my
5 scrutiny and my purview.

6 Q. Did you ever visit the site when construction
7 was underway?

8 A. Yes.

9 Q. On how many occasions?

10 A. I don't have a count memory.

11 Q. Would it have been more than five?

12 A. I believe I was there more than five times.

13 Q. More than ten?

14 A. I'm not sure.

15 Q. So something more than five, but you're not
16 sure if it was more than 10; is that accurate to say?

17 A. Like I said, it is visible from the highway.
18 I made many trips past there. It didn't always
19 register as a site inspection for purposes of, maybe,
20 your count. It is too many times to -- for me to
21 remember --

22 Q. Okay.

23 A. -- on that level of an inspection.

24 Q. With respect to what you would consider to be
25 an inspection, just so I'm clear, you're saying it was

1 more than five, but you're not sure if it was less than
2 ten?

3 A. I would have to count my memos, and I assume
4 that is reflected in the file, the exact number, by how
5 many memos are in there.

6 Q. Did you author a Notice of Violation for the
7 project?

8 A. Yes.

9 Q. Was that in October of 2006?

10 A. Yes.

11 Q. Was that NOV the result of an inspection that
12 you made at the site?

13 A. Yes.

14 Q. Would that have been your first inspection,
15 if you can recall?

16 A. I think it was the first inspection after
17 activities had begun rolling.

18 Q. What prompted, if anything, that first
19 inspection?

20 A. I don't know if anything prompted it other
21 than the work -- my job.

22 Q. Did you personally, or the Board, that you
23 know of, ever receive any complaints about this project
24 from an outside entity or person?

25 A. Outside of our office?

1 Q. Correct.

2 A. Yes.

3 Q. And how many different complaints?

4 A. Again, I can't recall a number. I would be

5 guessing.

6 Q. Were any of them from other public entities?

7 A. Yes.

8 Q. Which public entity?

9 A. I recall getting complaints from Caltrans

10 staff.

11 Q. Okay. Any others?

12 A. Fish and Game. I don't recall -- you're

13 waiting.

14 Q. I didn't want to break your train of thought

15 there.

16 How many different Caltrans staff relayed

17 complaints about the project to you?

18 A. I'm bad with numbers. I'm recounting these

19 things as they go. Sorry, I don't know how many.

20 Q. These complaints, in what mode were they

21 delivered -- telephone, in person?

22 A. Probably in person, by telephone, and by

23 e-mail.

24 Q. Okay. Was it more than one person that

25 complained?

1 A. Yes.

2 Q. More than five?

3 A. I don't think more than five.

4 Q. Was there one or more of these individuals
5 that complained more than one time about the project?

6 A. Yes.

7 Q. What names of the people do you recall being
8 from Caltrans that complained?

9 A. Walt Dragaloski, Sebastian Cohen. I don't
10 recall, specifically, any others.

11 Q. Mr. Dragaloski sent e-mails to the Board; is
12 that correct?

13 A. Yes.

14 Q. Were there any complaints from Mr. Dragaloski
15 that were not reflected in e-mails or memos that he
16 sent? In other words, were there verbal complaints
17 that, as far as you know, were not put in writing?

18 A. Not that I'm aware of.

19 Q. Mr. Cohen, did he send you e-mails?

20 A. Yes.

21 Q. Were there complaints that he had that you
22 are aware of that were not confirmed in writing?

23 A. It is possible that we had on-site
24 discussions about many different details of the site
25 that could be construed as complaints that we didn't --

1 I don't know. And it is possible that they weren't
2 ever put down the writing.

3 So there's none that I'm aware of, but I
4 think that is possible that that could have happened
5 on-site.

6 Q. Okay. Were some of what you have referred to
7 as complaints from Mr. Dragaloski and Mr. Cohen the
8 equivalent of reporting the violation?

9 A. Yes.

10 Q. Did you have direct contact from anyone from
11 Fish and Game?

12 A. Yes.

13 Q. Who from Fish and Game?

14 A. I know Karen Maurer, for sure, and possibly
15 someone before then, but I can't recall the names.

16 Q. What were the nature of Warden Maurer's
17 communications to you?

18 A. She requested copies of my photos and, to
19 some degree, I think, chastised me for not being
20 aggressive enough in respect to stormwater problems.

21 Q. What was your response to her in the latter
22 regard?

23 A. We are trying, and it is not my particular
24 area of purview on the project, but she could speak to
25 others -- other managers.

1 I didn't work in the stormwater unit or
2 division, so I thought it was appropriate to have her
3 speak to somebody else.

4 Q. Who from the Board had, I would say, primary
5 responsibility for inspecting the Confusion Hill
6 project site?

7 A. Me.

8 Q. And is that true for the life of the project?

9 A. No.

10 Q. So that changed at some point?

11 A. In my mind.

12 Q. Did someone else become primarily
13 responsible?

14 A. I believe Jeremiah Puget was hired towards
15 the end and took over responsibility for all of the
16 Caltrans projects. So that primary might be -- there
17 might not have been a primary.

18 Q. Okay.

19 A. Maybe there was a transition period to
20 someone who would be the primary. I really don't
21 recall those specifics.

22 Q. Would you say you were the main person
23 responsible for inspecting the Confusion Hill site from
24 its beginning in mid 2006 until, let's say, mid 2007?
25 Would that be accurate to say?

1 A. Yes.

2 Q. Did Fish and Game ever institute any
3 enforcement proceedings with respect to the Confusion
4 Hill project?

5 A. I'm not aware of --

6 Q. Do you know why they did not?

7 A. No.

8 Q. Other than Warden Maurer, did you ever
9 communicate with anyone at Fish and Game about the
10 project?

11 A. Yeah. I recall in the -- it is likely that I
12 worked with Fish and Game -- you know, non-warden staff
13 at Fish and Game during the Application permitting
14 time, I just don't recall names.

15 Q. When you performed your inspection that led
16 to the 2006 violation, I believe you indicated you took
17 photos; is that correct?

18 A. Yes.

19 Q. Did you take photos on any of your other
20 inspections?

21 A. Yes.

22 Q. Did you take photos upon every inspection?

23 A. It is likely. I don't know, for sure.

24 Q. Okay. Did you ever have any contact with any
25 Biological Monitors that were assigned to the project?

1 A. No.

2 Q. Are you acquainted in any manner with either
3 Carl Page or Bradford Norman?

4 A. I know the name, Carl Page. I understand he
5 was the Biological Monitor. I had an occasion to meet
6 Carl well before the project started. That was my
7 contact, that was it.

8 Q. But you did not speak to Mr. Page either
9 before, during or after with respect to this project;
10 is that correct?

11 A. No.

12 Q. That is correct, though? The statement is
13 correct, yes? Sorry. That wasn't probably the best
14 wording. You did not --

15 A. I did not speak to Carl Page during the
16 project.

17 Q. Or at any time during the project?

18 A. Correct.

19 Q. And the same for Bradford Norman?

20 A. I hadn't heard of Bradford Norman until you
21 said his name today.

22 Q. Did you have any role in the drafting of the
23 ACL in this case?

24 A. No.

25 Q. All right.

1 A. I would say, no, absolutely, but I guess --
2 if you want to dissect the word, I always have a role,
3 I guess, but -- for example, the NOV is part of it, I
4 understand. I mean, I could not absolutely not have a
5 role, but I didn't put any words to the paper if that's
6 specifically what you're asking.

7 Q. Did you have any review responsibilities for
8 the ACL itself?

9 A. No.

10 Q. Have you talked to either Mr. Leland or
11 Mr. Grady or Ms. Dougherty about their deposition
12 testimony?

13 A. No.

14 Q. Have you --

15 A. I take that back. Yes.

16 Q. Which one, or all three?

17 A. Mr. Grady.

18 Q. What did you discuss with respect to
19 Mr. Grady's testimony?

20 A. Nothing specific about the testimony, just
21 how it is, and how long it is, and how it feels, and --

22 Q. Did you see any of the transcripts?

23 A. No.

24 Q. Okay. That would be either Mr. Grady's or
25 Mr. Leland's?

1 A. No.

2 MS. ZAZZERON: Okay. Turning to the permit,
3 page 6. That would be Condition 9. If you could
4 review that to yourself, that would be great.

5 (Witness examines document.)

6 BY MS. ZAZZERON:

7 Q. What definition of waters of the state apply
8 to this section?

9 A. I'm aware of one definition. Did you ask me
10 which definition?

11 Q. Yes.

12 A. Any surface waters or groundwaters.

13 Q. Okay. And the phrase, "where it may be
14 washed by rainfall," does that refer to, for lack of a
15 better term, an absolute, or is it really dependent on
16 the likelihood of rain? In other words, when you
17 drafted this, the term, "where it may be washed by
18 rainfall," does that mean whether or not rain is
19 predicted or even likely?

20 A. Yes.

21 Q. In other words, if something was left other
22 than the area considered waters of the state -- not in
23 the water but, say, in the gravel bar -- would you
24 consider waters of the state?

25 A. Yes.

1 Q. If it was left there and rain was not
2 predicted for two weeks, so it would be a violation
3 under section 9 if it were debris, soil, silt,
4 et cetera?

5 A. Yes.

6 Q. How about if it were left, again
7 hypothetically, in a gravel bar and then picked up
8 within five minutes, is that a still a violation?

9 A. I could argue that it is a violation.

10 Q. Is it a violation under section 9?

11 A. Yes.

12 Q. And then the phrase, more towards the
13 middle -- "other than that authorized by this permit."
14 What is encompassed with respect to being authorized by
15 this permit?

16 A. I believe that statement caveats that we are
17 authorizing the things we discussed earlier, such as
18 temporary concrete piers for trestle, and so forth.
19 But it is not suggesting that some of the things in the
20 list are authorized by the permit, if that's the
21 question.

22 Maybe you could ask me the question again.

23 Q. All right. Well, then, with respect to
24 section 9, what is it saying as being authorized by
25 this permit specific to Condition 9 there?

1 A. Section 9 is not saying that anything is
2 authorized by this permit.

3 Q. All right. So what is it referring to beyond
4 Section 9? What is authorized by the permit that is
5 being referenced here?

6 A. I think -- I don't think it is referencing
7 anything there that's authorized by the permit.

8 Q. Are you saying it has no meaning?

9 A. No, I'm not saying it has no meaning.

10 Q. What is it meaning?

11 A. Number 9 means that you cannot deposit these
12 things where it could get into the water.

13 Q. What is the word "other," what is that
14 referring to?

15 A. That the things that I just mentioned, like
16 the concrete footings, are allowed to be placed where
17 we authorized them that is described in the project
18 description.

19 Q. Those temporary impacts that we discussed
20 earlier, are they composed of any of the items listed
21 here in 9 -- debris, soil, silt, et cetera?

22 A. Soil, earthen material, that I can come up
23 with, yeah.

24 Q. All right.

25 A. So for, like, a temporary road, typically --

1 allowed to maybe, you know, push some of the gravel bar
2 to a surface that would allow you to cross, or
3 something like that, but -- is that what you're asking?

4 Q. Are you familiar with the term "isolated
5 Pool B"?

6 A. Yes.

7 Q. Where on the project was it located?

8 A. The northern end.

9 Q. Did you, personally, observe isolated Pool B?

10 A. Yes.

11 Q. Did your 2006 NOV contain any reference to
12 what is known as "iso Pool B"?

13 A. Yes. I don't believe that name -- it was
14 given that name at that time.

15 Q. If I were to use that terminology, do you
16 understand what I mean, or would you prefer that I
17 refer to it in some other way?

18 A. No. I just -- clarifying that, I don't think
19 my memo says isolated Pool B.

20 Q. Got you.

21 A. Or NOV, sorry.

22 Q. How did you refer to it there?

23 A. I don't recall.

24 Q. Sedimentation basin or --

25 A. That sounds right.

1 Q. What was or were the violations associated
2 with that basin in your NOV?

3 A. It was used for waste water disposal. I
4 think, specifically, there is a prohibition on any
5 concrete contact water from going into an underlying
6 basin. There is a turbidity discharge.

7 It is likely there was a failure to monitor
8 the turbidity discharge. I don't know if that was
9 included in there.

10 Q. Was there any issue with the location of the
11 basin, or was that with respect to another basin?

12 A. The basin was closer than the minimum
13 distance that Caltrans proposed to use a basin for that
14 use in a Permit Application; so, yeah, it was closer
15 than 100 feet.

16 Q. Okay. Is there some regulation or some data
17 that drove that 100 foot number?

18 A. Not that I was using, unless the applicant
19 had data to show that that was -- they would be able to
20 comply using that distance. I don't have any -- I
21 wasn't using any data.

22 Q. Does the Board or did the Board have some
23 sort of mandate that sedimentation basins must be
24 located 100 feet from -- was it the active channel?

25 A. No.

1 Q. As an engineering geologist can you think of
2 any reason why, everything else being in compliance,
3 that 100 feet is preferable to, let's say, 80 feet?

4 A. Many variables. The applicant proposed the
5 100 feet. I would be guessing as to the reasons they
6 proposed the 100 feet. But that could include the
7 ability to comply, a reduction in risks that they might
8 be taking, a reduction in monitoring that might be
9 required if there is a discharge. The farther away the
10 lower the potential for that to result in a discharge
11 back to the river.

12 And so the 100 feet was just taken from the
13 Application and approved.

14 Q. Do you have actual knowledge that the
15 department considered all of those things that you just
16 mentioned when it proposed 100 feet?

17 A. No.

18 Q. During the Application process was the 100
19 feet ever discussed by you and the department?

20 A. Yes. Was it included in the public notice --
21 is that a discussion?

22 Q. Was it included in the public notice?

23 A. I assume it was. It has been a long time.

24 Q. Has the Board, to your knowledge, ever
25 approved the use of a sedimentation basin that is less

1 than a 100 feet from a live stream channel?

2 A. It is likely.

3 Q. How would that 100 feet be measured? From
4 what point to what point?

5 A. From the shortest distance between the edge
6 of the water and the edge of the basin.

7 Q. In a general sense are sedimentation basins
8 considered BMPs?

9 A. Did you say "in a general sense"?

10 Q. Yes.

11 A. Yes.

12 Q. Was the sedimentation basin that we have been
13 discussing at Confusion Hill a BMP?

14 A. I would say -- my understanding is that it
15 was a natural depression in the gravel bar, and it was
16 used as a BMP.

17 Q. Okay. would it have been physically feasible
18 to place that sedimentation basin 100 feet from the
19 edge of the river?

20 A. Yes.

21 Q. would that spot 100 feet from the edge of the
22 river have been on the gravel bar?

23 A. I don't believe so.

24 Q. would it have been within the waters of the
25 state if you measure 100 feet from the edge of the

1 river to where the sedimentation basin could have gone
2 100 feet away? Is that still waters of the state?

3 A. The sediment basin there's a steep wall on
4 the landward side of the basin, so I don't believe
5 there was a location that -- that -- legitimate,
6 feasible location on the same gravel bar that could
7 have put it 100 feet away.

8 Q. Maybe I misunderstood. Was it your
9 testimony, or is it your testimony that a sedimentation
10 could have been placed 100 feet away from the edge of
11 the river?

12 A. Yes.

13 Q. And the area that you're thinking of would
14 have been outside the waters of the state?

15 A. The sediment basin could have been located
16 outside waters of the state.

17 Q. That's your testimony?

18 A. Yes. To make it 100 feet?

19 Q. Yes. So your answer is "yes"?

20 A. I'm not sure what I'm answering now. Maybe
21 if I say it this way.

22 The isolated Pool B was on a gravel bar, and
23 there may not have been a location on that same gravel
24 bar that -- where the basin could have been relocated
25 to that would have put it 100 feet away -- or more

1 away, yeah.

2 Q. Okay. Aside from -- go ahead.

3 A. Let me finish. Based on that, the use of
4 that gravel bar for a sediment basin, it wouldn't have
5 been feasible. It was not a -- you couldn't comply
6 with the condition using that gravel bar for
7 dewatering.

8 Q. Because it was less than 100 feet away, is
9 that what you mean, or because it was on the gravel
10 bar?

11 A. Because there was no place within the gravel
12 bar to locate a basin at least 100 feet away.

13 Q. Could the basin have been located outside of
14 the gravel bar --

15 A. Yes.

16 Q. -- and still have served its purpose?

17 A. Yes.

18 Q. And, again, I'm sorry to belabor the point,
19 but just so I'm clear. It is your testimony that it
20 would have been physically feasible to locate the
21 sedimentation basin 100 feet or more away, but it would
22 not have been in the gravel bar; is that correct?

23 A. Not that specific gravel bar.

24 Q. We talked about the Department's Application,
25 and there was an indication that the sedimentation

1 basin would be placed more than 100 feet from the
2 active channel, correct?

3 A. Yes.

4 Q. As proposed, was the sedimentation basin to
5 be located within waters of the state?

6 A. I don't believe there was a specific location
7 mapped for the sedimentation basin.

8 Q. Based on your knowledge of the site, would it
9 have been feasible to locate the sedimentation basin
10 more than 100 feet away from the live channel? Yes,
11 that's my question.

12 A. That's the same question that I just
13 answered. Yes, you could put a sedimentation basin at
14 least 100 feet away from an active channel.

15 Q. And where you placed it, would it be within
16 or without the waters of the state -- the 100 feet?

17 A. Either.

18 MS. ZAZZERON: Okay. Let's take a few
19 minutes -- a ten-minute break.

20 (Recess.)

21 BY MS. ZAZZERON:

22 Q. After the 2006 NOV issued what happened with
23 the sedimentation basin?

24 A. I have no idea.

25 Q. You don't know if it was moved?

1 A. No.

2 Q. Did it continue to be used at the 70 foot
3 mark?

4 A. I do not recall.

5 Q. Do you have any actual knowledge that fish
6 died as a result of the project activities?

7 A. No.

8 Q. Do you have actual knowledge that any habitat
9 was permanently damaged as a result of the project
10 activities?

11 A. No.

12 Q. Do you have any actual knowledge that
13 beneficial uses of the river were permanently harmed as
14 a result of the project?

15 A. No.

16 Q. Are you familiar with the festival, Reggae
17 Rising?

18 A. Yes.

19 Q. Have you ever attended?

20 A. No.

21 Q. Have you ever been involved in any permitting
22 for that activity or, excuse me, that event?

23 A. Yes.

24 Q. In what capacity?

25 A. 401 Certification.

1 Q. Okay. Has the Board ever issued any other
2 permits or allowances for that festival other than for
3 a 401 Certification?

4 A. Our office worked with them with respect to
5 waste water disposal. I don't know what the outcome of
6 that was, if we have waste discharge requirements. I
7 don't know.

8 Q. How many 401 certifications have you been
9 involved with for the festival?

10 A. I think just one for Reggae Rising.

11 Q. Is that because they have only applied for
12 one, or they may have applied for more than one, but
13 you have only worked on one yourself?

14 A. The event had a different name some years
15 ago.

16 Q. Is that "Reggae on the River"?

17 A. Yes.

18 Q. Did Reggae on the River acquire permits from
19 the water Board?

20 A. Yes.

21 Q. What type?

22 A. Water Quality Certification is the only one
23 that I'm aware of.

24 Q. Was there one Certification for Reggae Rising
25 and one for Reggae on the River, or did they obtain

1 Certifications each year?

2 A. My recollection is that Reggae on the River
3 obtained Certification prior to me working in that
4 capacity here. I think I worked on one Certification
5 for Reggae on the River and the transfer, or the shift
6 in name, occurred and Reggae Rising had to come in and
7 obtain permits for their temporary crossings.

8 Q. Were there temporary impacts then allowed in
9 these 401 Certifications for the festival?

10 A. Yes.

11 Q. Are they spelled out in the 401?

12 A. Yes.

13 Q. Do they allow swimming in the river?

14 A. It doesn't address swimming.

15 Q. Would swimming in the river constitute a
16 violation?

17 A. No.

18 Q. Why not?

19 A. It is not prohibited by the Certification --
20 a beneficial use of the river.

21 Q. Are there turbidity prohibitions in that 401
22 Certification?

23 A. To the extent that the prohibition from the
24 Basin Plan is -- not a prohibition, it is a water
25 quality objective -- in our Basin Plan is reiterated as

1 the Cert requires compliance with the Basin Plan.

2 Q. How about turbidity monitoring requirements?

3 A. I don't believe there's a turbidity
4 monitoring requirement in that Cert.

5 Q. Is the pitching of tents within the waters of
6 the state allowed?

7 A. Yes.

8 Q. Who was the applicant or permittee under
9 Reggae Rising?

10 A. Other than Reggae Rising, I'm not going to
11 recall the name.

12 Q. If the Board were to, say, receive a public
13 request for a permit regarding Reggae Rising/Reggae on
14 the River, that would be description enough to know
15 what the person was talking about?

16 A. Yeah. I think so, yeah.

17 Q. All right. To your knowledge, have there
18 ever been any enforcement proceedings resulting from
19 either Reggae on the River or Reggae Rising?

20 A. I'm not aware of any.

21 Q. And just one more on that. Would swimming in
22 the river with sunscreen on one's body be a violation?

23 A. No.

24 Q. Why is that?

25 A. It is not likely that the Water Board is

1 going to have evidence of a discharge of some sunscreen
2 off some person's body.

3 So I guess I could say that it could be a
4 violation that we are not likely to detect.

5 Q. would dozens of people being in the water
6 with sunscreen be a concern?

7 A. I think it is a concern to some people.

8 Q. Okay. Approximately, how many people attend
9 these festivals?

10 A. I don't know approximately.

11 Q. Is it specified in the Application, if you
12 recall, one way or the other?

13 A. (Witness shakes head.)

14 Q. You don't recall?

15 A. I don't recall.

16 MS. ZAZZERON: All right. Mr. Hungerford, do
17 you have any questions?

18 MR. HUNGERFORD: Are you done, Ms. Zazzeron?

19 MS. ZAZZERON: Well, I might be, but I will
20 review my notes. If you have questions in the
21 meantime --

22 MR. HUNGERFORD: Sure. I have a couple of
23 questions. I have a couple of quick follow-ups.

24 EXAMINATION

25 MR. HUNGERFORD: Mr. Prat, I have a couple of

1 follow-ups on Reggae on the River and Reggae Rising.

2 BY MR. HUNGERFORD:

3 Q. Are those two different events, or are they
4 the same event but with a couple of different
5 incarnations?

6 A. I don't think I can give you a complete
7 answer to that because it is something that changes all
8 the time and it is not something that I care to follow.
9 But, historically, it started out with Reggae on the
10 River, and where it was located on the river, Reggae
11 Rising relocated to that site.

12 But I have heard rumors that Reggae on the
13 River has happened at other locations, or they are
14 pursuing other locations. I don't know when, or where,
15 or how many times.

16 Q. But you have written a 401 Certification for
17 one of those events at least on one occasion, right?

18 A. The activity that required a 401
19 certification, a 404 permit, is installation of
20 temporary bridges. And those certifications are good
21 for typically a period of five years.

22 Q. Do you remember how many bridges?

23 A. Most recently two crossings. I think it
24 consisted of three bridges.

25 Q. To be clear, this is the Eel River upstream

1 of the Confusion Hill area?

2 A. It would be South Fork Eel River.

3 Q. So would this be upstream of where the
4 project site is, or is this a different stream system
5 entirely?

6 A. Same. Yeah, upstream. I'm trying to think.
7 I'm trying to figure out the geography in my mind.
8 I'll think to myself.

9 Q. That's okay. You don't need to, we can
10 figure that out.

11 You indicated that you don't know how many
12 people attend this event, at least the year that you
13 wrote the 401 Certification; is that right?

14 A. I do not know how many people attended that
15 year.

16 Q. What is your understanding of the event,
17 generally? Are there lots of people in the river,
18 itself, listening to reggae, is that the nature of
19 event?

20 A. I think the nature of the event is to listen
21 to reggae music, and I believe a lot of people are
22 using the river during the event.

23 Q. There's a TMDL for turbidity; is that right?

24 A. Sediment.

25 Q. Sediment. Would that apply in the area of

1 the Reggae on the River event?

2 A. Yes.

3 Q. It would be expected, to me at least, that
4 this event, this activity would create a fair amount of
5 sedimentation turbidity from people standing and
6 walking in the river. Do you think that's a fair
7 statement based on your knowledge of the Eel River?

8 A. I would expect turbidity, but I don't believe
9 they are introducing sediment into the river within the
10 scope of the TMDL.

11 Q. So the TMDL would apply to sediment
12 introduced into the river from outside of the river
13 itself as opposed to sediment within the river
14 disturbed?

15 A. Anthropogenic sources of sediment, like
16 logging and roads.

17 Q. Sediments that came from the source caused by
18 human activity outside of the Eel River itself; is that
19 right?

20 A. To a large degree, yeah.

21 Q. So people who were walking around the river
22 stirring up sediments within the river bottom, that
23 wouldn't violate the TMDL for sediment, although, it
24 might for turbidity?

25 A. That's fair.

1 Q. The Basin Plan has a standard for turbidity,
2 if I recall right, of 20 percent; is that right?

3 A. Twenty percent above naturally occurring
4 background?

5 Q. That's right.

6 A. Yeah.

7 Q. Is it permissible to permit an activity like
8 the Reggae on the River consistent with the Basin Plan
9 when 20 percent above background is virtually certain
10 to take place?

11 A. I don't think that there's a relationship to
12 the fishing and swimming and the Basin Plan and the
13 event. We don't regulate people fishing and swimming
14 at the Water Board, so whether or not they are doing it
15 as part of this event or -- I don't have any experience
16 of ever writing any requirements to anybody fishing or
17 swimming.

18 Q. So people who are fishing or swimming, or
19 other recreational activities in the river, creating
20 turbidity as a natural consequence, that wouldn't be
21 covered by the Basin Plan?

22 A. I don't think that that is necessarily the
23 case. We are just not regulating it.

24 Q. A few minutes ago we talked about isolated
25 Pool B. I have a couple of questions about that.

1 If I understood your testimony right, you
2 said that there's nothing special about the 100-foot
3 distance that was included in the Application here.
4 That was what Caltrans included in the Application and
5 the Board approved it; is that right?

6 A. Yes.

7 Q. And you, also, mention that the Regional
8 Board, in all likelihood, have approved shorter
9 distances than 100 feet in other situations?

10 A. Yes.

11 Q. Knowing that there's nothing special about
12 the 100 foot distance here, and also knowing that the
13 Board has probably accepted less than 100 feet in other
14 situations, if, back at the time of the Application,
15 Caltrans would have said: "The furthest we could put
16 away a basin within the gravel bar in the work area is
17 70 feet," would there be any reason, from your
18 standpoint, to disapprove that request?

19 A. No.

20 Q. You mentioned that you visited the project
21 site a couple of times before actually writing the
22 permit; is that right?

23 A. I think I stated that you could see the
24 project site from the highway, and I drive the highway
25 a lot.

1 Q. So you're generally familiar with the project
2 site?

3 A. Yes.

4 Q. Did you ever actually get out on the ground
5 prior to writing the permit and walk around and look at
6 the area?

7 A. No.

8 Q. When Caltrans' Application mentioned the
9 100-foot sedimentation basin setback, would it,
10 typically, have been your practice to visit the project
11 site and determine whether or not 100 foot standard is
12 feasible or possible?

13 A. The requirements -- the distance in the
14 requirements aren't the only variables, so the
15 requirements, themselves, capture protection of water
16 quality whether or not it is at 70 or 100 or 10. And
17 the variables would include things like the rate of
18 disposal.

19 So using a basin 10 feet away for a small
20 volume of water could achieve the same result.

21 Q. As a matter of practice in writing 401
22 Certifications, do you perform any investigation of the
23 project site to determine whether or not certain
24 features, certain BMPs, are possible prior to writing
25 that Certification?

1 A. would you say that again?

2 Q. Sure. As part of your own practice in
3 writing 401 Certifications do you ever visit, you know,
4 project sites to determine whether or not proposed
5 BMPs are possible within the area covered by the
6 project?

7 A. Yes.

8 Q. Is this something that you did on this
9 occasion for this project, Confusion Hill?

10 A. Not with respect to the basin.

11 Q. With respect to anything else?

12 A. I think in the context of concrete washout we
13 had discussions that -- I don't know. At least to get
14 into your question a little bit --

15 Q. well, I'll stop you there because I'm aware
16 of the concrete washouts, that that was a discussion
17 between you and Caltrans prior to you writing the
18 permit.

19 A. And during. what I was actually more
20 specifically getting to is iterations of BMPs while we
21 were on the project. So I was consulted, I guess, you
22 could say.

23 Q. Okay. The question that I had was, you're
24 facing an Application for a 401 Certification and it
25 identifies a number of BMPs that, to some extent, may

1 rely upon the actual facts on the ground, whether or
2 not topography or the terrain allows for a specific
3 BMP.

4 Do you have a practice of visiting the
5 project site before writing a permit to determine
6 whether or not certain proposals are feasible or even
7 possible?

8 A. Not in general. Not in general.

9 Q. And for this particular project did you visit
10 it, the project site, prior to writing the
11 Certification, other than just a drive-by, to determine
12 whether or not proposals made for BMPs were possible?

13 A. No.

14 Q. You described your review of the Draft
15 Administrative Civil Liability Complaint as being
16 fairly limited; is that right?

17 A. Yes.

18 Q. Did you ever review any draft versions of the
19 ACL Complaint?

20 A. I think I did. I don't know for sure.

21 Q. Would it have been typical and customary for
22 you to have to review a Complaint like that and give
23 your sign-off?

24 A. No.

25 Q. Your statement that you might have done that,

1 is that just conjecture on your part, or do you
2 actually have a recollection of reviewing this
3 particular Complaint before it went out?

4 A. What I recall is staff asking me for things
5 to support the Complaint, you know, pictures and memos,
6 and maybe asked me questions about that. But as far as
7 the actual document in a draft form, if somebody gave
8 that to me, it is not my practice to -- I'm not in a
9 role here that provides any kind of approval of that
10 document. So it would be not part of my time well
11 spent on my job.

12 Q. Who would have been primarily responsible for
13 reviewing that document?

14 A. The supervisor for the enforcement unit.

15 Q. At that time that person would have been --
16 David Leland, perhaps?

17 A. No, I don't believe he is the supervisor of
18 our enforcement unit. Diana Henrouille is the current
19 supervisor.

20 A lot of things have changed in our
21 organization and whose responsibilities are, over the
22 time. I don't -- I can't compare the timelines to see
23 when those changes happened.

24 Q. Sure. You're not the only one at that point
25 in time who was writing 401 Certifications; is that

1 right? There was another person back, you know, in the
2 2006 time frame?

3 A. Yes.

4 Q. Who would that person or persons have been?

5 A. Either Andrew Jensen or Steven Bargsten.

6 Q. To your knowledge, would either of them have
7 been asked to review the Confusion Hill ACL Complaint
8 before it went out?

9 A. No.

10 Q. You also mentioned you took a number of
11 photographs of the site during your visits during the
12 construction process?

13 A. Yes.

14 Q. You might know that the Regional Board has
15 provided us, collectively, with a large number of
16 photographs, most or all of which have been, you know,
17 identified as taken by Biological Monitors.

18 Do you know if any of the photographs that
19 you took made their way into the Complaint? I'm sorry,
20 made their way into the batches of photographs given to
21 different parties?

22 A. Yes.

23 Q. All of them?

24 A. Yes.

25 Q. How do we identify which ones were taken by

1 you versus others?

2 A. I was told that the photos I provided were
3 put on a disk that has my name on it.

4 Q. I also want to ask you a couple of questions
5 about your site visits during the construction process,
6 and I was a little bit unclear about that.

7 I know that there were times when you did a
8 drive-by and checked out the site from the road, but
9 then there were also occasions when you actually got
10 out in the project area and walked around and
11 inspected, right?

12 A. (Witness nods head.)

13 Q. were you able to estimate how many times you,
14 actually, got out and inspected and walked around the
15 site during the construction process?

16 A. Are you asking me to estimate how many times
17 I was at the site?

18 Q. Exactly.

19 A. Five.

20 Q. Let me back up. would you have prepared any
21 inspection reports or memoranda or other documents
22 recording the observations you made during those
23 visits?

24 A. Yes.

25 Q. what type of document would that have been?

1 A. Inspection memo.

2 Q. Is that a form memorandum the Regional Board
3 maintains, or is it a form that you fill out? It is
4 called an inspection memo?

5 A. It is just text from my observations that
6 might reference things such as pictures. It is not a
7 form, per se. It may or may not be on our letterhead,
8 but the subject is typically "Inspection Memo," and the
9 name of the facility, or the site or the project.

10 Q. Are these memoranda something that you're
11 required to prepare by the Regional Board, or is this
12 your own practice?

13 A. It is highly encouraged that we document our
14 inspections in memos.

15 Q. So it is a little bit of both, it sounds
16 like, is the answer?

17 A. There's a request that we do that. To be
18 honest, it is not always feasible.

19 Q. Sure.

20 A. For example, a drive-by that I don't see
21 anything is not likely to get written up as a memo that
22 I drove by and didn't seen anything; whereas, getting
23 out on the ground, taking photos, it is likely I'm
24 going to write up the nature of the photos, the nature
25 of anything I saw -- good, bad or indifferent.

1 Q. Let me ask this. Did you prepare inspection
2 memos for each of those five or so visits that you made
3 at the Confusion Hill site?

4 A. Yes.

5 Q. Do you know if they have been produced to the
6 parties in this matter?

7 A. I know to the extent the memos that I wrote
8 were put into the file. So if you have a copy of the
9 file they would be provided.

10 Q. Do you have a copy of the 401 Certification
11 in front of you?

12 A. I do.

13 MR. HUNGERFORD: I want to ask you a couple
14 of questions about that. If you go to Condition 7 and
15 take a look at that real quick.

16 (Witness examines document.)

17 BY MR. HUNGERFORD:

18 Q. Okay. The last phrase of that condition
19 references surface waters. As intended by this
20 condition, what does "surface waters" mean?

21 A. The flowing portion of the river.

22 Q. So where water, actually, is present?

23 A. I guess I would clarify that, for turbidity
24 control, you're speaking of flowing water, and for
25 sediment it is the stream channel.

1 Q. For turbidity it would mean the flowing
2 water?

3 A. I guess for both it would be the flowing
4 water for sediment because the turbidity, obviously,
5 wouldn't be something that you would see on dry land.

6 Q. So just to be clear, you know, for the
7 purposes of this condition, "surface waters" means
8 flowing water for sediment and turbidity control?

9 A. Yes.

10 Q. Now, going down to Condition 9, the very last
11 phrase of that condition is "waters of the state."
12 Just to make sure that we have all of the terminology
13 correct, you have mentioned that that refers to both
14 surface waters and groundwaters, correct?

15 A. Yes.

16 Q. And then further down, just to use
17 Condition 13 as an example, you have referenced "waters
18 of the United States." What is your understanding of
19 that phrase?

20 A. Waters of the United States is a smaller area
21 or subset of waters of the state that would only
22 include the area below ordinary high water.

23 Q. And the ordinary highwater mark, that's not
24 always the same thing as the 100-year floodplain, is
25 it?

1 A. They are usually not the same.

2 MR. HUNGERFORD: All right. If you look at
3 Condition 10 on the Certification. Just take a quick
4 moment to look at that, and I'll ask you a question.
5 I'm sorry, I meant Condition 11.

6 (Witness examines document.)

7 BY MR. HUNGERFORD:

8 Q. Okay. The first sentence references a work
9 area, right? Does that include the gravel bar where
10 people were putting up trestles and doing various
11 activities?

12 A. Yeah -- yes.

13 Q. Now, the first sentence, also, refers to
14 "excess material or debris," and in the second sentence
15 it refers to "rubbish." What is your understanding of
16 the difference between "excess material or debris" and
17 "rubbish"?

18 A. I would have to say they are synonymous here.

19 Q. Okay. Now, obviously, you're aware that,
20 having visited the site during the construction
21 process, that various, you know, items were placed in
22 and around the river or gravel bar -- pieces of wood,
23 plates of metal, that sort of thing; is that right?

24 A. I didn't get a question out of that.

25 Q. Yes, that was bad wording.

1 Is it fair to state that during your
2 observations of the project site during the
3 construction process you witnessed pieces of wood,
4 pieces of metal, other various items in and around the
5 gravel bar?

6 A. Yes.

7 Q. I'm assuming it would be your understanding
8 that all of those things, at some point, would be
9 picked up, and that certainly would be the expectation
10 of the 401 Certification; is that your understanding?

11 A. That is my expectation.

12 Q. So the fact that a piece of wood may be
13 placed on the gravel bar temporarily prior to being
14 cleaned up, would that be a violation of Certification?

15 A. Yes.

16 Q. What part of the Certification would that
17 violate?

18 A. It could be 9.

19 Q. I'm interested then in your understanding of
20 how you harmonize Condition 9 which would basically
21 prohibit something as minor as a notepad from being put
22 on the river bank, you know, with Condition 11, which
23 contemplates that there will be various items placed on
24 the gravel bar and provided they are eventually cleaned
25 up as part of normal cleanup practices.

1 A. Okay. Item 11 or Condition 11 is, when
2 operations are completed, you move everything that's
3 not permanent at least 150 feet away from the highwater
4 mark; whereas, No. 9 says you can't place anything
5 where it can be washed by rainfall into waters of the
6 state.

7 Is that what you're --

8 Q. Let's use this notepad as an example. If
9 you're in the construction process, and this is placed
10 on the gravel bar, is that a violation of Condition 9?

11 A. I think it is a violation of Condition 9. If
12 you're asking me if I'm going to write it up in a memo
13 as a violation of Condition 9, probably not.

14 Q. Fair enough. What would Condition 11
15 require? That this notepad be removed at some point in
16 time at the end of construction?

17 A. Yes.

18 Q. If you turn to Condition 19, please. That is
19 discussing turbidity measurements, correct?

20 A. Turbidity monitoring.

21 Q. Turbidity monitoring. So in the second
22 paragraph of Condition 19 there is the requirement that
23 measurements be collected upstream within 50 feet of
24 project activities and downstream within 100 feet of
25 the source of turbidity; is that right?

1 A. Yes.

2 Q. What is the source of the 50/100 foot
3 measurements? Where do those measurements come from?

4 A. From me.

5 Q. Is that just based on your own experience
6 for -- I don't want to put words in your mouth, but you
7 came up with the numbers. What was the basis for
8 them?

9 A. Fifty feet would likely provide a
10 background -- natural background conditions as it -- it
11 is not likely that water in the South Fork would move
12 50 feet upstream to effect that.

13 And within 100 feet -- at the time of writing
14 this, 100 feet was most likely the farthest downstream
15 distance that would be approved for this type of
16 monitoring. So I attempted to make this distance as
17 long as possible recognizing that there was going to be
18 some turbidity and --

19 Take the swimmer, for example. You might
20 find turbidity within a couple of feet downstream and
21 be able to say that's 20 percent above background;
22 whereas, in a construction project, if you put the
23 monitoring point 2 feet downstream of the backhoe you
24 would always be violating; whereas -- this says if
25 you're violating 100 feet then you need to change your

1 practices to make it less than 100 feet, which is more
2 practical, I think, than an absolute point of -- point
3 of downstream exceedance requirement.

4 Q. So, again, recalling the Basin Plan, just
5 uses a simple 20 percent above background, it doesn't
6 actually put any guardrails around it such as a certain
7 distance upstream and downstream?

8 A. It just says except for allowables on
9 dilution within a permit.

10 Q. If I'm understanding right then, this is your
11 take on, you know, what's a practical way of measuring
12 whether or not you have achieved compliance with the
13 Basin Plan; is that fair to state?

14 A. I think it would be more fair to state it
15 that that is the practical distance that we would take
16 an action for turbidity violation --

17 Q. Okay.

18 A. -- or turbidity exceedance, I should say.

19 whereas, if turbidity is exceeded within 100
20 feet it is a violation of the Basin Plan that this is
21 contemplating we are not going to or we are probably
22 not going to make a big deal of it other than improving
23 BMPs.

24 Q. So absent this provision, you know, if you
25 were less than 100 feet downstream from the source and

1 that 20 percent level was breached, then it would
2 probably be an actionable violation. But in this case,
3 you know, the permit kind of makes that allowance that
4 there wouldn't be enforcement within 100 feet?

5 A. I'm not saying that it gives that allowance.
6 That's -- as a staff person, when I can inspect and
7 make recommendations on enforcement cases, that would
8 be the way that I would handle that type of situation.

9 Q. Okay.

10 A. I would -- I would just add that it is --
11 incorporated into our decision making on that, is the
12 use of the BMPs to begin with.

13 In other words, if very ample, robust BMPs
14 are in place, and there's a discharge that causes
15 turbidity 50 feet downstream or 100 feet downstream,
16 we -- we may not view that the same as if the turbidity
17 is 100 feet downstream and there's no BMPs in place.

18 Q. And, finally, you mentioned at the early part
19 of your deposition that there was a changeover in
20 responsibilities from yourself for the Caltrans
21 permitting, and then there was another person that came
22 on. I forget that person's name. But there was a
23 changeover, correct?

24 A. Yes.

25 Q. And that took place, I believe, after spring

1 of 2007?

2 A. Yes.

3 Q. And what was the reason for the change?

4 A. We hired a new staff person to deal solely

5 with Caltrans projects as they relate to Water Quality

6 Certification.

7 Q. And you mentioned that -- you really

8 suggested that that was too much of a workload for one

9 person to handle?

10 A. Yes.

11 Q. Who was it that made that hiring decision?

12 A. I think Caltrans had a big role in the hiring

13 decision since they are paying for the person to be

14 hired. Do you not understand that?

15 Q. Pardon?

16 A. Did you not understand that persons being

17 hired as a Caltrans liaison through a contract from

18 Caltrans --

19 Q. I don't work for Caltrans, so I don't have a

20 complete understanding --

21 A. Okay. I'm sorry.

22 Q. That's okay.

23 A. Yeah. I don't know how much --

24 Q. So as I take it, Caltrans supports, in whole

25 or in part, this person's position; is that right?

1 A. Yes.

2 Q. And who is that person now?

3 A. Jeremiah Puget.

4 Q. Is Jeremiah Puget someone hired by Caltrans,
5 specifically, or hired by the Regional Board?

6 A. Hired by the Association of Bay Area
7 Governments under contract for Caltrans to work for the
8 Water Board.

9 Q. And that position didn't exist prior to
10 Jeremiah Puget --

11 A. That's correct.

12 MR. HUNGERFORD: I don't have any other
13 questions. Thank you.

14 FURTHER EXAMINATION

15 MS. ZAZZERON: Let's revisit Condition 11.

16 BY MS. ZAZZERON:

17 Q. The phrase "when operations are completed,"
18 does that refer to operations on a daily basis or some
19 other temporal reference?

20 A. It could be argued that it means on a daily
21 basis.

22 Q. When you wrote it, what was your intent?

23 A. I didn't write that condition. I just picked
24 it out of standard conditions and included it because
25 I'm required to include a lot of standard conditions in

1 the Certifications. I didn't author this original --
2 language originally.

3 Q. What was your understanding of that phrase
4 when you included it?

5 A. That we are not allowing construction
6 projects to throw waste into the stream, or near the
7 stream, or where it can fall into the stream, or can be
8 left behind when they leave.

9 Q. Again, leave for the day, leave --

10 A. It could be if it was egregious and we felt
11 like the operation was complete. I mean, you know,
12 projects go on intermittently for many years sometimes.
13 In certain cases "operations are complete" could mean
14 for the winter, for the week, for the project.

15 Q. So you would agree that this phrase could be
16 read in different ways?

17 A. It could.

18 Q. Okay. Compared to the size and scope of
19 other projects that you reviewed for 401
20 Certifications, and in this time period of 2005-2006,
21 is the Confusion Hill project, would you say, on the
22 large side?

23 A. Yes, on the large side.

24 Q. Okay. Were there any, within the, let's say,
25 three years before, three years after certification,

1 were there any projects that you would consider bigger
2 in terms of size and scope?

3 A. I was involved in the Willits Bypass Project
4 for many years. That's a larger project.

5 Q. Okay.

6 A. I didn't -- I didn't stay with the project
7 through Certification, so just to clarify that part,
8 but --

9 Q. Okay. With respect to water that has been in
10 contact with cement or concrete, has the Water Board
11 ever okayed contact waters use for dust control?

12 A. It is possible, but I don't know specifics --
13 a specific case.

14 MS. ZAZZERON: All right. I think that's all
15 I have.

16 MR. HUNGERFORD: No more.

17 MS. MACEDO: Off the record.

18 (Whereupon, the deposition was
19 concluded at 3:33 p.m.)
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CERTIFICATE OF WITNESS

I, DEAN PRAT, hereby declare under oath that I have read the foregoing testimony recorded on pages 5 to 73, inclusive, and that the same is a true and correct transcript of my said testimony, except as I have corrected any answer in ink, initialed such correction, and stated on the margin my reason for making same.

DEAN PRAT

DATE: _____

CORRECTIONS TO THE DEPOSITION OF _____
TAKEN / /

PAGE #	LINE #	CORRECTION
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REPORTER'S CERTIFICATE

I, MAREE N. ARMSTRONG, a duly qualified
certified shorthand reporter for the state of
California, do hereby certify that the witness in the
foregoing deposition named, to wit: DEAN PRAT, was by
me duly sworn to testify to the truth, the whole truth
and nothing but the truth in the within-entitled cause;
that said deposition was taken at the time and place
therein stated in my presence; that the testimony of
said witness was recorded by me stenographically, and
was at my direction thereafter transcribed into
typewriting.

I further certify that I am not a relative or
employee or attorney or counsel of any of the parties,
nor am I a relative or employee of such attorney or
counsel, nor am I financially interested in the within
action.

In witness whereof, I have hereunto set my
hand this 5th day of January, 2011.


MAREE N. ARMSTRONG, CSR #11284

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

IN THE MATTER OF:

**ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R1-2009-0095**

**SUBPOENA DUCES TECUM TO
DEAN PRAT**

TO: DEAN PRAT

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above-referenced matter.

YOU ARE ALSO COMMANDED to produce and permit inspection and copying of the documents identified in Attachment A to this Subpoena at the place, date, and time specified below.

You have been subpoenaed by MCM Construction, Inc. ("MCM"), a designated party in the aforementioned proceedings. MCM is represented by Diepenbrock Harrison, 400 Capitol Mall, Suite 1800, Sacramento, California, 95814. Inquiries concerning the mechanics of the scheduled deposition should be directed to Sean K. Hungerford, Esq., of Diepenbrock Harrison at (916) 492-5000.

PLACE: NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD
5550 SKYLANE BLVD., STE. A
SANTA ROSA, CA 95403-1072

DATE: Thursday, October 21, 2010

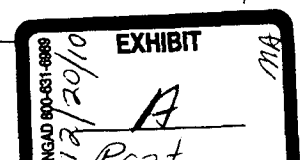
TIME: 10:00 a.m.

DATED: October 5, 2010

DIEPENBROCK HARRISON
A Professional Corporation

By:


SEAN K. HUNGERFORD
Attorney for MCM CONSTRUCTION, INC.



1 **ATTACHMENT A TO THE SUBPOENA DUCES TECUM TO**

2 **DEAN PRAT**

3 **I. INSTRUCTIONS**

4 1. Please produce DOCUMENTS as they are kept in the usual course of business and
5 organize and label them to correspond with the categories in these requests.

6 2. In the event any requested DOCUMENT has been destroyed, lost, discarded or,
7 otherwise disposed of, please identify such DOCUMENT as completely as possible, including
8 without limitation the following information: (a) date of disposal; (b) manner of disposal; and (c)
9 person approving of the disposal.

10 **II. DEFINITIONS**

11 The following definitions shall apply to each category of documents set forth below:

12 1. "ACL COMPLAINT" shall mean and refer to Administrative Liability Complaint
13 No. R1-2009-0095, publically released on August 13, 2009.

14 2. "COMMUNICATIONS" shall mean and refer to the written or verbal exchange of
15 information by any means, including, without limitation, telephone, telecopy, facsimile, or other
16 electronic medium (including e-mail), letter, memorandum, notes or other writing method, meeting,
17 discussion, conversation or other form of verbal expression.

18 3. "DOCUMENT(S)" shall mean and refer to any and all written, printed, typewritten,
19 photographic, graphic, or recorded materials (by tape, video or otherwise), however produced or
20 reproduced, data stored in a computer, data stored on removable magnetic and optical media (e.g.,
21 magnetic tape, floppy disks, and recordable optical disks), e-mail, and voice mail, which relate or
22 pertain in any way to the subject matter to which the Interrogatory refers. "DOCUMENT(S)" shall
23 further include, without limitation, all preliminary, intermediate and final drafts or versions of any
24 DOCUMENT, as well as any notes, comments, and marginalia appearing on any DOCUMENT, and
25 shall not be limited in any way with respect to the process by which any DOCUMENT was created,
26 generated, or reproduced, or with respect to the medium in which the document is embodied.
27 DOCUMENT(S) shall include all "writing" and tangible forms of expression falling within the
28 scope of California Evidence Code section 250, within YOUR custody, possession or control.

1 4. "PERSON(S)" shall mean and refer to any natural person, proprietorship, public or
2 private corporation, limited or general partnership, trust, joint venture, firm, association,
3 organization, board, authority, governmental entity, or any other entity, including a representative of
4 such PERSON(S).

5 5. "RELATING TO" shall mean and refer to relating to, pertaining to, referring to,
6 evidencing, in connection with, reflecting, respecting, concerning, based upon, stating, showing,
7 establishing, supporting, bolstering, contradicting, refuting, diminishing, constituting, describing,
8 recording, noting, embodying, memorializing, containing, mentioning, studying, analyzing,
9 discussing, specifying, identifying, or in any other way bearing on the matter addressed in the
10 request, in whole or in part.

11 6. "SITE" shall mean and refer to the Confusion Hill Bypass Project Site, as described
12 in the ACL COMPLAINT.

13 7. "YOU" or "YOUR" shall mean the Deponent, including without limitation YOUR
14 employer or prior employer and its agents, employees, representatives, attorneys, accountants,
15 investigators, and insurance companies, and their employees, and anyone else acting on your
16 behalf). With respect to YOUR DOCUMENTS, it includes any DOCUMENTS in YOUR
17 possession, custody or control.

18 8. "PERSON" shall mean any entity or natural person.

19 **III. DOCUMENT REQUESTS**

20 1. All evidence and DOCUMENTS which the Regional Water Quality Control Board
21 intends to offer to support the claims and allegations in the ACL COMPLAINT, including but not
22 limited to:

- 23 a. Impacts to water quality;
- 24 b. Impacts to wildlife and wildlife habitat, including protected species;
- 25 c. Application of the adjustment factors listed Water Code section 13385,
26 subdivision (e); and
- 27 d. Letters, reports or other DOCUMENTS prepared by other governmental
28 agencies.

- 1 2. All DOCUMENTS RELATING TO the claims and allegations in the ACL
2 COMPLAINT, including but not limited to:
- 3 a. Impacts to water quality;
 - 4 b. Impacts to wildlife and wildlife habitat, including protected species;
 - 5 c. Application of the adjustment factors listed Water Code section 13385,
6 subdivision (e);
 - 7 d. Letters, reports or other DOCUMENTS prepared by other governmental
8 agencies; and
 - 9 e. Other memoranda, reports, notes, summaries, working files, electronic mail,
10 and test samples or results.

11 *****

1 Re: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2009-0095
2 Confusion Hill Bypass Project, Mendocino County
3 California Regional Water Quality Control Board, North Coast Region

4 **PROOF OF SERVICE**

5 I, Gilberto J. Castro, declare:

6 I am a citizen of the United States, employed in the City and County of Sacramento,
7 California. My business address is 400 Capitol Mall, Suite 1800, Sacramento, California 95814. I
8 am over the age of 18 years and not a party to the within action.

9 I am familiar with the practice of Diepenbrock Harrison for collection and processing of
10 correspondence, said practice being that in the ordinary course of business, correspondence is
11 sealed, given the appropriate postage and placed in a designated mail collection area. Each day's
12 mail is collected and deposited in the United States Postal Service.

13 On October 5, 2010, I served the attached,

14 **SUBPOENA DUCES TECUM TO DEAN PRAT**

15 [X] (BY U.S. MAIL) I placed such sealed envelope, with postage thereon fully prepaid for first-
16 class mail, for collection and mailing at Diepenbrock Harrison, Sacramento, California,
17 following ordinary business practices as addressed as follows, and/or

18 [] (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the
19 addressees at the addresses listed below; and/or

20 [X] (VIA FEDERAL EXPRESS) I caused each such envelope to be delivered via Federal
21 Express overnight service to the addressees at the addresses listed below; and/or

22 [] (VIA FACSIMILE) I caused each such document to be sent by facsimile machine number
23 (916) 446-4535 to the following persons or their representative at the addresses and the
24 facsimile numbers listed below; and/or

25 [X] (VIA EMAIL) I caused each such document to be sent by electronic mail to the addressees
26 at the email addresses listed below.

27 SEE ATTACHED MAILING LIST.

28 Executed on October 5, 2010, at Sacramento, California.


Gilberto J. Castro

1 Re: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2009-0095
2 Confusion Hill Bypass Project, Mendocino County
3 California Regional Water Quality Control Board, North Coast Region

4
5 **MAILING LIST**

6 Cristian Carrigan
7 Senior Staff Counsel
8 Office of Enforcement
9 State Water Resources Control Board
10 1001 I Street
11 Sacramento, CA 95814
12 ccarrigan@waterboards.ca.gov

13 Samantha Olsen
14 Senior Staff Counsel
15 Office of Chief Counsel
16 State Water Resources Control Board
17 1001 I Street
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20 Luis Rivera
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22 North Coast Water Board
23 5550 Skylane Boulevard, Suite A
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25 lriviera@waterboards.ca.gov

26 Doug Jensen
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Alan C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board North Coast Region

John W. Corbett, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

February 16, 2006

Ms. Susan Leroy
CDOT Eureka
1656 Union Street
Eureka, CA 95501

Dear Ms. Leroy:

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Confusion Hill Bypass Project

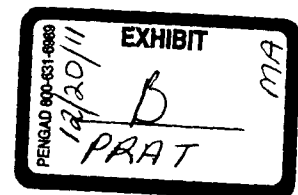
File: CDOT - Hwy 101, Confusion Hill Bypass
WDID No. 1B05153WNME

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341), in response to your request, on behalf of the California Department of Transportation (applicant), for Water Quality Certification for activities related to the Confusion Hill Bypass Project in Mendocino County. On November 29, 2005, the Regional Water Board received your application and a \$500.00 processing fee. On December 29, 2005, we sent you a letter stating the application was incomplete. You submitted additional information during the first week of January 2006, including a Notice of Determination and maps that show the area of potential impact from the project is larger than the area that was used to calculate the initial fee. On January 11, 2006, we deemed the application complete and posted information describing the project on the Regional Water Board's website for a 21-day public review and comment period. We did not receive any comments on this project. On January 12, 2006, we received an additional \$6510.00 that covers the remaining balance of the application fee.

Project Description: The project is located approximately 18.5 miles south of Garberville and 8 miles north of Leggett. Highway 101 currently bisects an ancient and active rockslide in the area known as Confusion Hill. The purpose of the project is to provide a safe and reliable transportation route around the landslide area by relocating the highway from the east side of the South Fork Eel River to the west side. Relocating the highway requires construction of two new bridges and a new section of highway between the new bridges. The existing section of highway will be de-commissioned following completion of the bypass.

California Environmental Protection Agency

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The south bridge will be a segmental, cast-in-place, pre-stressed box girder structure. The south bridge will be 43 feet wide, 1355 feet long, and 255 feet above the center of the river channel. The foundation for the south bridge will be constructed on cast-in-drilled-hole piles. The north bridge will be a cast-in-place pre-stressed box girder structure with pier shaft foundations. The north bridge will be 43 feet wide, 580 feet long, and 150 feet above the center of the river. Both bridges are designed such that all piers and associated foundations will be located above the 100-year flood elevation of the river and the new section of highway will be at least 150-feet above the river.

Temporary access roads and temporary bridges will be constructed at each end of the project to allow access for personnel and various construction equipment including cranes, drill rigs, and excavation equipment. The applicant has identified two 1.5-acre areas near each end of the project as places where activities related to construction of access roads and temporary bridges could impact waters of the United States. The temporary bridges will be constructed 3 feet above the elevation of the 100-year storm event or they will be designed to withstand the 100-year storm event and would be overtopped at the elevation of a 50-year storm event. Activities related to construction of the temporary bridges include rotating, vibrating, drilling or a combination of these methods to install sheet piles or casings and drilling holes into the bedrock to build support piers for the temporary bridges.

A seasonal temporary bridge may also be installed near the south bridge. A railroad flatcar or similar bridge deck will be placed on river rock abutments; or wooden, steel or concrete piles will be placed in the channel to support a wood deck. The river rock abutments may extend several feet into the channel. All the bridges are designed to allow for fish passage and passage for recreational boating.

A portable concrete batch plant will be located near the southern end of Route 271 at an elevation above the 100-year storm event. A concrete pipeline or "slick line" may be used to transport concrete from the batch plant. A typical slick line is made of 6-inch diameter steel pipe; a secondary containment pipe or trough would be used to contain any concrete spills. All concrete wastes and water that contacts fresh concrete must be fully contained and disposed of properly in order to prevent any discharge to surface water or ground water.

All permanent and temporary impacts to waters of the United States from this project will occur within two designated 1.5-acre areas; however, the actual area of impact to waters of the United States is anticipated to be much smaller. The area of anticipated temporary impacts to waters of the United States from access road and temporary bridge placement and removal activities will be approximately 0.16-acre at each end of the project. All support piers installed for the temporary bridges will be removed to the level of bedrock. The only area of permanent impact to waters of the United States is anticipated to be from the sections of temporary bridge piers that will remain below the top of bedrock following removal of the temporary bridges. The area of permanent impact to waters of the United States from these pier remnants will be less than 0.01 acre. The new bridges and new highway section will not permanently impact waters of the United States.

The new section of highway will be placed in a large through-cut. Approximately 385,000 cubic yards of excess earthen material will be generated by excavation of the through-cut. The applicant has identified five areas along Highway 101 near the north end of the project that are above the elevation of the 100-year storm event where permanent disposal of the excess excavation material will occur. Best Management Practices (BMPs) for sediment and turbidity control will be implemented at the disposal areas during construction activities and all the disposal areas will be planted with native shrubs upon completion of the project.

The proposed project will not affect any wetlands. Existing vegetation will be preserved to the maximum extent possible and all disturbed areas will be seeded and replanted. To compensate for potential impacts this project may have on salmonids, a culvert modification project will be implemented on Red Mountain Creek to restore fish passage and provide access to historic spawning and rearing habitat.

Receiving Waters:	South Fork Eel River in the Benbow Hydrologic Subarea No. 111.32.
Filled or Excavated Area:	Area Temporarily Impacted: 0.32 acres of stream bank and stream channel Area Permanently Impacted: 0.01 acre of stream channel
Total Linear Impacts:	Length temporarily impacted: 150 feet Length permanently impacted: none

- Federal Permit:** U.S. Army Corps of Engineers Nationwide Permit No. 33
- Compensatory Mitigation:** To compensate for potential impacts to salmonids as a result of the Confusion Hill Bypass project construction activities, the applicant will fund a project to improve fish passage through the culvert at Red Mountain Creek. Highway 101 crosses Red Mountain Creek at the north end of the project where the new alignment will conform to the existing alignment. During a wide range of typical stream flows, the existing culvert at Red Mountain Creek prevents salmonids from accessing historic spawning and rearing habitat located upstream of the culvert. The fish passage improvement project will incorporate National Marine Fisheries Service and California Department of Fish and Game (CDF&G) fish passage criteria. The mitigation project is subject to approval by those agencies.
- Modifications to improve fish passage through the existing culvert will likely include installation of concrete/rock weirs (baffles) in the bottom of the culvert to reduce flow velocities through the culvert. The baffles are likely to be composed of large rocks and concrete. The existing road leading to the culvert outlet will be used to gain access to through the culvert and inlet area.
- Noncompensatory Mitigation:** Noncompensatory mitigation for this project includes the use of BMPs for waste handling, sediment and turbidity control, and heavy equipment use and concrete use near a waterway. The applicant has applied for a Lake or Streambed Alteration Agreement (1600 Permit) from the CDF&G.
- CEQA Compliance:** The California Department of Transportation, as the lead agency for CEQA, certified an Environmental Impact Report (SCH# 200405201) for this project on December 15, 2005.
- Standard Conditions:** Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this project:
- 1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCR 3867.
 - 2) This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy

Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- 3) The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR 3833, unless otherwise stated in writing by the certifying agency.

Additional Conditions: Pursuant to 23 CCR 3859(a), the applicant shall comply with the following additional conditions:

- 1) The applicant shall notify the Regional Water Board in writing at least five working days (working days are Monday – Friday) prior to the commencement of the project, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project.
- 2) All conditions listed in this Water Quality Certification must be included in the Plans and Specifications prepared by the applicant for the Contractor. All conditions shall be implemented according to the submitted application and this Water Quality Certification.
- 3) A copy of this permit must be provided to the contractor and all subcontractors conducting the work, and a copy must be in their possession at the work site. It is the applicant's responsibility to ensure that the contractor and all subcontractors are provided a copy of this permit.
- 4) A copy of the Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the attention of Regional Water Board staff Dean Prat at least 30 days prior to the start of the project.
- 5) The Red Mountain Creek mitigation project shall be completed by October 31, 2010. The applicant shall notify the Regional Water Board in writing at least five working days (working days are Monday – Friday) prior to the commencement of the Red Mountain Creek mitigation project, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project.

- 6) The Red Mountain Creek mitigation project shall comply with all conditions in this Water Quality Certification.
- 7) Adequate BMPs for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
- 8) If, at any time, an unauthorized discharge to surface waters occurs, or any water quality problem arises, the project shall cease immediately and Regional Water Board staff shall be notified promptly.
- 9) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.
- 10) All materials used for cleaning concrete from tools and equipment, and any wastes generated by this activity, shall be adequately contained to prevent contact with soil and surface water and shall be disposed of properly.
- 11) When operations are completed, any excess material or debris shall be removed from the work area and disposed of properly. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
- 12) If construction dewatering is found to be necessary, the applicant will use a method of water disposal other than disposal to surface waters (such as land disposal) or the applicant shall apply for coverage under the General Construction Dewatering Permit and receive notification of coverage to discharge to surface waters.
- 13) Fueling, lubrication, maintenance, operation, storage and staging of vehicles and equipment shall be outside of waters of the United States and shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment, which leaks any substance that may impact water quality.

- 14) Project activities shall comply with provisions in the North Coast Region Water Quality Control Plan (Basin Plan).
- 15) The project site may be visited and assessed by Regional Water Board staff to document compliance with this certification.
- 16) All work within waters of the United States shall not commence until May 15th and shall be completed prior to October 31st.
- 17) All activities, BMPs, and associated mitigation will be conducted as described in this Permit and the application submitted by the applicant for this project.
- 18) The applicant shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after the first rainfall event that generates visible runoff from these areas in order to demonstrate that erosion control measures have been successful. A report containing these photos shall be submitted within 60 days of the first rainfall event that generates runoff from the disturbed areas.
- 19) Visual observations of the South Fork Eel River shall be conducted whenever a project activity has the potential to mobilize sediment and increase the turbidity of the South Fork Eel River. Field turbidity measurements shall be collected whenever a project activity causes turbidity of the South Fork Eel River to be increased above background concentrations in order to demonstrate compliance with receiving water limitations.

Whenever turbidity in the South Fork Eel River is increased above background as a result of project activities, turbidity measurements shall be collected upstream (within 50 feet) of project activities (background) and downstream (within 100 feet) of the source of turbidity. The frequency of turbidity monitoring shall be a minimum of every hour during periods of increased turbidity and shall continue until turbidity measurements demonstrate compliance with receiving water limitations and turbidity levels are no longer increasing as a result of project activities. If turbidity levels are greater than 20 percent above background 100 feet downstream of the source of turbidity, all necessary steps shall be taken to install, repair, and/or modify BMPs to control the source(s) of sediment and the overall distance from the source of

turbidity to the downstream extent of the increased turbidity (20 percent above background) shall be measured.

Turbidity monitoring results shall be reported to appropriate Regional Water Board staff by telephone within 1 hour of taking any turbidity measurement that shows turbidity levels are 20 percent above background 100 feet or more downstream of the source of turbidity. All recorded visual observation and all field turbidity measurements collected for the purpose of this condition shall be submitted in a report to the Regional Water Board by November 15th each year and within 45 days of project completion.

- 20) This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the applicant, the applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, address, and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order.

Water Quality Certification: I hereby issue an order [23 CCR Subsection 3831(e)] certifying that any authorized discharge from the Confusion Hill Bypass Project, (Facility No. 1B05153WNME) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act [33 USC Subsection 1341 (a)(1)], and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

Expiration: The authorization of this certification for any dredge and fill activities expires on February 16, 2011. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please notify Dean Prat of our staff at (707) 576-2801 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,



Catherine Kuhlman
Executive Officer

021406_DLP_hwy101confusionhill401cert.doc

Enclosure:

State Water Resources Control Board Order No. 2003-0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification"

cc: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 333 Market Street,
San Francisco, CA 94599
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA 95502

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED
STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)**

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

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 November 19, 2003.

AYE: Arthur G. Baggett, Jr.
 Peter S. Silva
 Richard Katz
 Gary M. Carlton
 Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board



Dan Skopce
Acting Secretary

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

William R. Massey, Chairman

www.waterboards.ca.gov/northcoast

5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

April 18, 2006

Mr. Gary Berrigan
CDOT Eureka
P.O. Box 3700
Eureka, CA 95501

Dear Mr. Berrigan:

Subject: Amendment to the Clean Water Act Section 401 Certification (Water Quality Certification) for the Confusion Hill Bypass Project

File: CDOT - Hwy 101, Confusion Hill Bypass
WDID No. 1B05153WNME

On March 6, 2006, we received your letter requesting amendments to Additional Conditions Nos. 4 and 13 of the Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) that was issued for the Confusion Hill Bypass Project on February 16, 2006. The purpose of the project is to provide a safe and reliable transportation route around the Confusion Hill landslide area by relocating the highway from the east side of the South Fork Eel river to the west side. Your letter details potential problems with some of the language contained in Additional Conditions Nos. 4 and 13 and requests that these conditions be amended slightly to better clarify their intent.

Additional Condition No. 4 requires submittal of a Storm Water Pollution Prevention Plan (SWPPP) at least 30 days prior to the start of the project. Your letter recognizes the Regional Water Board's authority to require submittal of the SWPPP at least 30 days prior to the commencement of significant soil disturbance activities and the need for Regional Water Board staff to have adequate time to review the SWPPP and require changes. However, the requirement to submit the SWPPP prior to the start of the project is problematic because the time constraints associated with the authorized work window requires that CDOT begin staging and preparation activities well in advance of any significant soil disturbing activities. Regional Water Board staff recognize that Additional Condition No. 4 does not clearly define the start of the project and this condition shall be amended.

Your letter also suggests that the term "operation" in Additional Condition No. 13 is ambiguous. Additional Condition No. 13 states that fueling, lubrication, maintenance, operation, storage and staging of vehicles and equipment shall be outside waters of the United States and shall not result in a discharge or a threatened discharge to waters of the United States. Regional Water Board staff recognize this project involves certain authorized operations within waters of the United

California Environmental Protection Agency

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Mr. Gary Berrigan

-2-

April 18, 2006

States. Regional Water Board staff agree that including the term "operation" in this condition is not appropriate for this project.

This letter serves as an amendment to the Water Quality Certification issued for the Confusion Hill Bypass project on February 16, 2006, revising and replacing Additional Condition Nos. 4 and 13 as outlined below:

Additional Condition No. 4: A copy of the Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the attention of Regional Water Board staff Dean Prat at least 30 days prior to the start of soil disturbance activities or other activities that could affect water quality.

Additional Condition No. 13: Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside waters of the United States and operation of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment that leaks any substance that may impact water quality.

I hereby issue an amendment to Additional Condition Nos. 4 and 13 of the Water Quality Certification Order (WDID No. 1B05153WNME) for the Highway 101, Confusion Hill Bypass Project and certify that the remainder of the Water Quality Certification sections of the Order are still valid. If you have any questions or comments, please contact Dean Prat at (707) 576-2801.

Sincerely,



Catherine B. Kuhlman
Executive Officer

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cc: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 333 Market Street,
San Francisco, CA 94599
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA 95502
Ms. Susan Leroy, CDOT Eureka, P.O. Box 3700, Eureka, CA 95501

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