

Declaration on Kason Grady

**Prosecution Team Case-in-Chief
Confusion Hill Bypass Project**

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10 Attorney for Regional Water Quality Control Board,
11 North Coast Region

12 BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
13 NORTH COAST REGION
14

15 In the Matter of:)
16 California Department of Transportation,) ACLC Order No. R1-2007-0095
17 Confusion Hill Bypass Project,)
18 WDID No. 1B05153WNME) DECLARATION OF KASON GRADY
19)

20 I, Kason Grady, declare as follows:

- 21 1. I am employed at the North Coast Regional Water Quality Control Board (Regional
22 Water Board) as a Water Resources Control Engineer, and have been employed here for
23 over four years. I graduated from the University of California, Los Angeles in 2005 with a
24 Bachelor of Science in Chemical Engineering. I work primarily in wastewater discharge
25 permitting, although I was in the Enforcement Unit at the time I drafted the Confusion Hill
26 ACLC.
27 2. I have maintained the physical enforcement file for the Confusion Hill Project,
28 which I made available at the three days I offered deposition testimony.
3. I started working on the Confusion Hill enforcement matter with the Office of
Enforcement attorneys shortly after I was hired, in spring of 2007.
4. True and correct copies of the 401 amendments for the Confusion Hill Project as

1 attached hereto as Exhibit A.

2 5. A true and correct copy of the ACLC issued on the Confusion Hill matter on August
3 13, 2009 is attached hereto as Exhibit B.

4 6. A true and correct copy of the 401 Certification for the Confusion Hill Bypass
5 Project, dated February 16, 2006 is attached hereto as Exhibit C.

6 7. Other permits and advisory documents for the Project are too voluminous to attach
7 in their entirety. These documents are available online, on either the Caltrans or the
8 Water Board websites. I have relied on these permits and other documents in preparing
9 the ACLC, and consider them part of the Administrative Record. The documents could be
10 printed or burned to cd to be kept with the enforcement file Regional Board. The cover
11 pages of the various permits are collectively attached as Exhibit D for reference, and the
12 documents are:
13

- 14 • Caltrans' Storm Water Permit (and Fact Sheet) (adopted by the State
15 Board)
- 16 • Storm Water Construction General Permit (adopted by the State Board)
- 17 • Caltrans' Storm Water Management Plan
- 18 • Caltrans' Special Provisions for the Confusion Hill Project
- 19 • Caltrans' Construction Site BMP Manual
- 20

21 8. Attached as Exhibit E is a true and correct copy of notes taken at a November 29,
22 2005 meeting between Dean Prat and Caltrans employees prior to the Project
23 certification. These notes were provided to Mr. Prat by Alex Arevalo.
24

25 9. Attached as Exhibit F is a true and correct copy of correspondence from Caltrans
26 to Dean Prat rescheduling a meeting that eventually occurred on June 8, 2006. I am
27 informed and believe that Dean Prat attended that meeting, along with Caltrans and
28 MCM.

1 10. Attached as Exhibit G is a true and correct copy of an excerpt from the first day of
2 my deposition, from October 21, 2010.

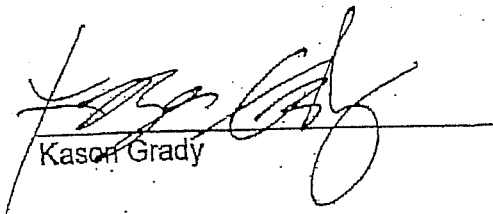
3 11. Attached as Exhibit H is a true and correct copy of the National Marine Fisheries
4 Service' permit for the Confusion Hill Project. Please refer to paragraph 2.d. on page 4
5 regarding the Biological Monitor requirement.

6 12. After the conclusion of my deposition, I reviewed my deposition transcript, went
7 back over the evidence to confirm or deny hypothetical assertions posed by the
8 Dischargers regarding potentially duplicative violations, in-stream sediment discharges
9 and other violations where the strength of the evidence was in question. I also reviewed
10 documents provided by MCM during the discovery process.

11 13. I was the primary Region 1 staff member with responsibility for drafting the ACLC.
12 From mid-2007 to August 2009, I would estimate that I spent 390 hours on drafting,
13 reviewing documents in search of violations, speaking with counsel, and other tasks
14 related to evaluating evidence in support of the violations.

15 14. I estimate that I spent approximately 300 hours since August 2010 in preparing for
16 the March 2011 administrative hearing. This time includes my deposition time, time spent
17 preparing for my deposition with counsel, reviewing documents after my deposition, and
18 assisting with drafting the Prosecution Team's Case in Chief.

19
20
21 Executed this 10th day of February, 2011, at Santa Rosa, California.
22
23
24
25
26
27
28


Kason Grady

EXHIBIT

A

Declaration of Kason Grady

**Prosecution Team Case-in-Chief
Confusion Hill Bypass Project**

DEPARTMENT OF TRANSPORTATION

NORTH REGION ENVIRONMENTAL SERVICES

P. O. BOX 3700

EUREKA, CA 95502-3700

PHONE (707) 441-5730

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RWQCB
REGION 1

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March 2, 2006

Dean Prat
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

EA 01-397511
Men 101 PM 98.9/R100
Confusion Hill

Subject: Request for Amendments to 401 Water Quality Certification for Confusion Hill
Bypass Project

Dear Mr. Prat:

The Department of Transportation (Caltrans) received the 401 Water Quality Certification for the Confusion Hill Bypass Project on February 16, 2006. Pursuant to your conversation with Alex Arevalo on February 21, 2006 regarding the project, I am requesting the following clarifications in the language for Additional Condition #4 on page 5 and Additional Condition #13 on page 6.

Additional Condition #4 states: "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."

Caltrans recognizes the need for and authority of the North Coast Regional Water Board to have adequate time to review the SWPPP for the proposed project. This is reflected in Caltrans National Pollutant Discharge Elimination System (NPDES) Permit, Order No. 99-06-DWQ (Caltrans Statewide NPDES Permit). Section H.8.b. states in part "RWQCB staff has the authority to require the submittal of an 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".

Given the time constraints of work windows set by the resource agencies, Caltrans has scheduled certain necessary construction activities to occur within the first and subsequent construction seasons. We agreed that the intent of condition #4 is to allow adequate time to review the SWPPP.

Caltrans requests that Additional Condition #4 be reworded to: "A copy of the Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the attention of Regional Water

Dean Prat
March 2, 2006
Page 2

Board staff Dean Prat at least 30 days prior to the start of soil disturbance or other activities that could affect water quality."

This proposed change would allow project activities that do not have the potential to impact water quality to begin during the review period, while still ensuring that Regional Water Board staff has adequate time to review the SWPPP.

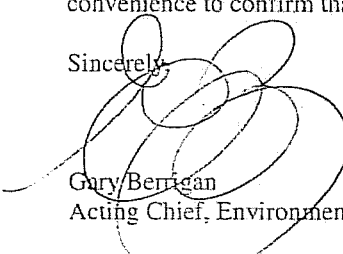
Additional condition #13 states: "Fueling, lubrication, maintenance, operation, storage and staging of vehicles and equipment shall be outside waters of the United States and shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment, which leaks any substance that may impact water quality."

The word "operation" could be ambiguous in its interpretation as applied to construction activities. As stated in the project description, there will be construction activities occurring within 'waters of the United States' (defined as below ordinary high water). Please note that Caltrans has included in the specifications for the project the following requirement: "Every day before starting work, motorized construction equipment used below top of banks of South Fork Eel River shall be checked for fluid leaks. Any leaks found shall be immediately corrected, contamination shall be contained and affected soils shall be immediately removed."

Caltrans requests that Additional Condition #13 be reworded to: "Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside waters of the United States and operation of such 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 which leaks any substance that may impact water quality."

Thank you for your time and consideration of this matter. Please contact me at your earliest convenience to confirm that the requested changes are acceptable.

Sincerely,



Gary Berrigan
Acting Chief, Environmental Branch E2

c: SLeroy
JBulinski
DMelendrez



Dan Skopec
Acting Secretary

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

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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

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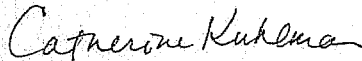
States. Regional Water Board staff agree that including the term "operation" in this condition is not appropriate for this project.

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 E. 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

California Environmental Protection Agency

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Linda S. Adams
Secretary for
Environmental Protection

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North Coast Region
John W. Corbett, Chairman

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Arnold
Schwarzenegger
Governor

December 12, 2007

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 November 26, 2007, we received an email from Jerome Washington of your agency requesting clarification or amendment of Additional Condition No. 16 of the Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) for the Confusion Hill Bypass Project. The clarification or amendment was requested because Caltrans has obtained a permit from the Division of Water Rights allowing water drafting for this project from the South Fork Eel River outside of the work window specified in Additional Condition No. 16 of the Water Quality Certification. Additional Condition No. 16 states that all work within waters of the United States shall not commence until May 15th and shall be completed prior to October 31st.

Based on the information contained in the Division of Water Rights' Temporary Permit for Diversion and Use of Water, permitted water drafting activities are not likely to result in discharges or threatened discharges that could affect water quality. 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 No. 16 as outlined below:

Additional Condition No. 16: All work within waters of the United States shall not commence until May 15th and shall be completed prior to October 31st. Water drafting activities conducted in accordance with a Temporary Permit for Diversion and Use of Water issued by the Division of Water Rights are exempt from this condition.

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Mr. Gery Berrigan

-2-

December 12, 2007

Please note that if it is determined that any water drafting activities are causing adverse impacts to the South Fork Eel River, water drafting activities shall cease immediately until measures to correct the problem(s) are implemented such that activities will no longer result in any adverse impacts to water quality.

I hereby issue an amendment to Additional Condition No. 16 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,



Robert R. Klamt
Interim 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
Mr. Jerome Washington, CDOT Eureka, P.O. Box 3700, Eureka, CA 95501

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