

Declaration of Julie Macedo

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

1 REED SATO, Director (SBN 87685)
2 CHRISTIAN CARRIGAN, Senior Staff Counsel (SBN 197045)
3 JULIE E. MACEDO, Senior Staff Counsel (SBN 211375)
4 State Water Resources Control Board
5 1001 I Street, 16th Floor
6 Sacramento, California 95814
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9 E-mail: jmacedo@waterboards.ca.gov

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

19 I, Julie Macedo, declare as follows:

20 1. I am Senior Staff Counsel in the Office of Enforcement, State Water
21 Resources Control Board. I represent the Regional Water Quality Control Board, North
22 Coast Region in this matter.

23 2. The Administrative Record for this matter consists of the materials
24 contained in the public enforcement file, available for review at the North Coast Regional
25 Water Quality Control Board ("Water Board") offices located at 5550 Skylane Boulevard,
26 Suite A, Santa Rosa, CA 95403. The enforcement file becomes part of the administrative
27 record consistent with the Notice of Hearing Procedures, "Evidentiary Documents and
28 File," pg. 7. The enforcement file is generally grouped as follows:

- 4 redwell folders, comprised of correspondence regarding the
Confusion Hill Project and arranged in general chronological order;
- 3 binders, comprised of Caltrans Engineering Diaries;

- 1 Accordion file, comprise of documents submitted by Caltrans to the Regional Board;
- 1 white binder, comprised of Caltrans' response to a Water Board §13267 Order.
- 1 white binder, comprised of the Confusion Hill Stormwater Pollution Prevention Plan ("SWPPP").
- 1 cd of documents copied and shared with Caltrans and MCM during discovery.
- 1 cd of documents provided by Caltrans on November 20, 2006.
- Approximately 11 cds of photographs: 7 from the Caltrans Biological Monitor; 1 from a Regional Board staff inspection, 1 Brown and Caldwell CD provided by Caltrans and 2 others provided by Caltrans.
- Approximately two boxes of documents produced through the discovery process by MCM, consisting of correspondence between MCM and Caltrans or subcontractors, copies of permits/maps, and contract change orders. These materials are also on a single cd.
- Approximately ½ of a box of documents produced through the discovery process by Caltrans. These documents were responsive to certain demands for production of documents, and are grouped according to the numbered demand.
- The materials submitted by the Dischargers through this Hearing Brief will also be added to the enforcement file, and thus the administrative record. See Hearing Procedures, pg. 7.

3. I was responsible for copying the documents described above as produced through the discovery process by MCM, and directed the copying/scanning of the same in December 2010 from the MCM offices in North Highlands, CA.

4. I was the recipient of the documents described above as produced through the discovery process by Caltrans.

1 5. Several of the documents described in Paragraphs 4 and 5 are attached
2 to this declaration. The documents are true and accurate copies that I received or
3 directed to be copied or scanned. Many of these documents had not been produced to
4 the Regional Board prior to discovery, and so the documents were not in the enforcement
5 file redwell folders until received in late 2010.

6 6. The entire document, when available, has been provided, although I
7 have provided brackets or page numbers to make review more efficient.

8 7. Attached as Exhibit A is a true and correct copy of October 7, 2008 MCM
9 correspondence to Mercer-Fraser regarding the removal of Justin Porteous as SWPPP
10 manager on the Confusion Hill Project.

11 8. Attached as Exhibit B is a true and correct copy of October 6, 2008
12 Caltrans correspondence to MCM regarding the removal of Justin Porteous as SWPPP
13 manager on the Confusion Hill Project.

14 9. Attached as Exhibit C is a true and correct copy of August 20, 2008
15 email correspondence from Sebastian Cohen, Caltrans' Resident Engineer on the
16 Confusion Hill Project at the time, to Evan Paine of MCM mentioning Mr. Joe Cartwright.

17 10. Attached as Exhibit D is a true and correct copy of November 4, 2008
18 correspondence from MCM to Mercer-Fraser regarding Caltrans' administrative
19 deduction.

20 11. Attached as Exhibit E is a true and correct copy of October 7, 2008 email
21 correspondence from Sebastian Cohen to Evan Paine (MCM) and Daniel Stiles regarding
22 Caltrans implementing a "retention."

23 12. Attached as Exhibit F is a true and correct copy of September 30, 2008
24 email correspondence from Sebastian Cohen to Evan Paine and Justin Porteous
25 (Mercer-Fraser) regarding Caltrans taking a "% deduct."

26 13. Attached as Exhibit G is a true and correct copy of June 12, 2007
27 correspondence from Caltrans to MCM stating "Effective today, 06/12/07, no additional
28 sandblasting operations will be allowed on the project. The suspension of this activity is

1 effective until an acceptable SWPPP amendment has been submitted (SWPPP
2 Amendment #8).

3 14. Attached as Exhibit H is a true and correct copy of January 8, 2008
4 correspondence from Caltrans to Evan Paine regarding "the immediate termination of
5 grouting operations on this Bridge."

6 15. Attached as Exhibit I is a true and correct copy of a January 4, 2007
7 Session Report between MCM and Caltrans; see p .4.

8 16. Attached as Exhibit J is a true and correct copy of April 19, 2007 draft
9 correspondence from Caltrans to MCM related to the "lack of consistent enforcement of
10 environmental and safety requirements" with handwritten notes, presumably Evan
11 Paine's, indicating the correspondence had been retracted "per 4/27/07 mtg."

12 17. Attached as Exhibit K is a true and correct copy of May 24, 2007
13 Caltrans correspondence to Evan Paine including the statement, "The fact that the
14 operation took place with no measures to minimize deposition of material, and the fact
15 that it took place prior to the presence of Caltrans staff appears to have been a deliberate
16 attempt to violate the permit. MCM had clear direction that the operations, as initially
17 planned, were not to take place."

18 18. Attached as Exhibit L is a true and correct copy of August 29, 2006 email
19 correspondence from Ron Den Heyer, the Caltrans Resident Engineer at the time, to
20 Evan Paine. One of the recipients of the email sent by Walt Dragaloski, embedded in Mr.
21 Den Heyer's email, is Alex Arevalo.

22 19. Attached as Exhibit M is a true and correct copy of June 13, 2007 MCM
23 correspondence to Caltrans regarding BMPs.

24 20. Attached as Exhibit N is a true and correct copy of December 7, 2006
25 correspondence from MCM to Caltrans. Please refer to paragraph 8 on page 2 and the
26 concluding paragraph on page 4.

1 21. Attached as Exhibit O is a true and correct copy of November 10, 2006
2 correspondence from Mercer-Fraser to MCM regarding recent comments by Caltrans on
3 the SWPPP. Please refer to paragraph 11 on page 3.

4 22. Attached as Exhibit P is a true and correct copy of November 15, 2006
5 correspondence from MCM to Caltrans regarding BMPs for welding slag.

6 23. Attached as Exhibit Q is a true and correct copy of the State Water
7 Resources Control Board Water Quality Enforcement Policy with an effective date of May
8 20, 2010. Please refer to pages 17-18 related to the calculation of the number of
9 violations, and page 20 regarding staff costs.

10 24. Attached as Exhibit R is a true and correct copy of July 3, 2007
11 correspondence from Caltrans to MCM.

12 25. Attached as Exhibit S is a true and correct copy of May 8, 2008
13 correspondence from Mercer-Fraser to MCM regarding BMPs.

14 26. Attached as Exhibit T is a true and correct copy of a June 13, 2007
15 "Initial Notice of Potential Claim" from MCM to Caltrans regarding compensation for
16 SWPPP work.

17 27. Attached as Exhibit U is a true and correct copy of April 2, 2009
18 correspondence from Caltrans to MCM regarding BMPs for whip blasting operations.

19 28. Attached as Exhibit V is a true and correct copy of November 9, 2006
20 correspondence from Ladd and Associates to Mercer-Fraser regarding SWPPP issues,
21 wherein Ladd states, "Your company removed that item and other related SWPPP items
22 of work from our scope of work at the writing of our subcontract...".

23 29. Attached as Exhibit W is a true and correct copy of August 29, 2006
24 correspondence from Mercer-Fraser to MCM regarding SWPPP considerations.

25 30. Attached as Exhibit X is a true and correct copy of January 8, 2008
26 correspondence from Caltrans to MCM regarding grouting operations.

27 31. Attached as Exhibit Y is a true and correct copy of January 11, 2008
28 correspondence from MCM to Schwager Davis, Inc. regarding grouting operations.

1 32. Attached as Exhibit Z is a true and correct copy of a written Notice of
2 Discharge dated June 13, 2008 submitted to the Regional Board by Caltrans, along with
3 contemporaneous emails, including photographs.

4 33. Attached as Exhibit AA is a true and correct copy of a Caltrans
5 Construction SWPPP Inspection Report dated January 9, 2009; please refer to page 2.


6 34. Attached as Exhibit BB is a true and correct copy of a Rainy Season
7 Inspection Report for the Confusion Hill Project dated February 25, 2009.

8 35. Attached as Exhibit CC is a true and correct copy of a Rainy Season
9 Inspection Report for the Confusion Hill Project dated January 12, 2009.

10 36. I estimate I estimate that I spent approximately 500 hours since August
11 2010 in preparing for the March 2011 administrative hearing. This time includes the time
12 spent to prepare staff members for deposition, the time spent to propound discovery and
13 review responsive documents, and preparation of the Prosecution Team's Case in Chief
14 brief, supporting declarations and selection of exhibits.

15
16 I declare under penalty of perjury pursuant to the laws of the State of
17 California that the foregoing is true and correct.

18
19 Executed this 11th day of February, 2011, at Sacramento, California.
20

21
22 
23 Julie Macedo
24
25
26
27
28

EXHIBIT

A

Declaration of Julie Macedo

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



FAXED (707) 443-0277

285 file 18.2

Main Office

P.O. BOX 620 / 6413 32nd Street / North Highlands / CA 95660

(916) 334-1221

Estimating / Engineering FAX (916) 334-0562

Accounting FAX (916) 334-8355

Southern California Regional Office

P.O. BOX 867 / 19010 Slover Ave. / Bloomington / CA 92316

(909) 875-0533

Engineering / Accounting FAX (909) 875-2243

October 7, 2008

Mercer Fraser
PO Box 1006
Eureka, Ca 95502

LTR 285-193

Re: Contract 01-397514
Confusion Hill 101 Realignment
SWPPP Manager

Attn: Mr. Justin Zable/Mr. Justin Porteous

Gentlemen:

Per our discussion yesterday, attached is Caltrans letter dated October 6, 2008 directing the removal of Mr. Justin Porteous as the SWPPP manager on this project. This direction is effective immediately. Please advise immediately who your replacement will be as SWPPP manager. If you would like to discuss this further with Caltrans let me know, and a meeting will be established.

Please call with any questions or comments at (916) 334-1221 or (916) 869-4423.

Sincerely,

MCM CONSTRUCTION, INC.,


EVAN PAINE
Project Manager

Cc: JC, HDM, RM, J. Ham
285 File 9.1

Justin replaced with

Charly Anderson

10/8/08

EXHIBIT

B

Declaration of Julie Macedo

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

DEPARTMENT OF TRANSPORTATION
NORTH REGION CONSTRUCTION
PO BOX 699
ARBERVILLE CA 95542
PHONE (707) 925-6218
FAX (707) 925-6391



*Flux you power
Be always efficient*

Date: 10/6/08

Contract: 01-397514
MEN-101-KP 159.6/162.0
REALIGN ROADWAY - CONFUSION HILL

Mr. Evan Paine
MCM Construction, Inc.
PO Box 620
North Highlands, CA 95660

RE: SWPPP Manager--Letter#133

Faxed: (916) 334-0562 & mailed

Evan:

In accordance with Section 5-1.12, "Character of Workers," of the Standard Specifications and Section 10-1.02, "Water Pollution Control," of the Special Provisions, due to continual inadequate implementation of SWPPP measures and insufficient preparation of BMPs on the site, the removal and replacement of Justin Porteous as the project SWPPP Manager is required. This change has become necessary due to longstanding and reoccurring problems regarding timely and appropriate implementation of necessary SWPPP measures. The Department has had to force the Contractor to implement and maintain several of the necessary BMPs and to attempt to comply with the project permit requirements. The amount of resources that have been allocated towards managing the SWPPP requirements has long been under-allocated.

The main premise behind having a SWPPP Manager, and the listed project duties and requirements listed in the Special Provisions, is to ensure that all of the Contractor's operations (sub's and prime's) are being performed within compliance of the numerous permit requirements. It is necessary for this person to perform their many duties in a proactive manner: continuously analyzing the site conditions and the proposed work; understand the permit requirements and the reporting duties; and to make sure that all necessary and appropriate BMPs are in place and that the SWPPP is maintained and complied with. To date, this has not been sufficiently performed.

Effective immediately, a new SWPP Manager is required. Mr. Porteous is not being required to be removed from the project as Mercer-Frasier's Project Manager, or person of contact for other responsibilities. It solely necessary that someone new be appointed to fulfill the numerous duties of SWPPP Manager, per Section 10-1.02, "Water Pollution Control," of the Special Provisions.

If additional meetings are desired to discuss any of the stated points or issues of this letter, or any related matter, please call. I am available for a meeting with management from both Mercer Frasier and MCM.

Sincerely,

Sebastian Cohen

SEBASTIAN COHEN
Resident Engineer

EXHIBIT

C

Declaration of Julie Macedo

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

285 R6 18.2

Evan Paine (epaine@mcmconstructioninc.com) - Fri, 08/22/08 10:07:00 -0700

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From: Sebastian Cohen <sebastian_cohen@dot.ca.gov>
To: epaine@mcmconstructioninc.com
Subject: Confusion SWPPP issues
Date: Wed 08/20/08 02:18 PM

Attn:
James/Joe
From: EVAN

Evan-

We have had way too many of the same reoccurring SWPPP issues and my staff and I are completely fed up with asking and trying to enforce compliance just as you are tired of hearing about it.

Along with participating in funding a portion of Joe Cartwright's position to ensure and enforce SWPPP compliance, for which there already is a funded SWPPP manager on this contract (Portius), we have been very reasonable when it comes to allowing you to get the work done and make sure any and all impacts are cleaned up afterwards. In response to this, we receive WOAs for NOPC 13 for picking up slag and placing plastic under generators.

When I visit the site in the evenings and find piles of sandblasting sand, oil stains, slag piles, excessive piles of garbage etc,.. that were all asked to be cleaned up several weeks ago and in some cases months ago, I become quite frustrated.

Drill Tech was recently shut down due to re-occurring leaking equipment; several other mini-memos for various items of work were required to be submitted threatening work-shutdown to bring about permit compliance; Portius has been significantly absent; the SWPPP document itself is not up-to-date with amendments; we have had several concrete containment issues (which have all been discussed repetitively); and the general attitude towards SWPPP compliance has generally deteriorated in the last few months.

As usual, a majority of the issue are easily achievable with only a little effort and forethought on the part of the Contractor(s), yet the same issues continue to occur. In short- Ham's attitude and guidance to all staff on the project is in need of alteration and a renewed willingness to comply.

In accordance with Section 10-1.02, "Water Pollution Control- Retention of Funds," I am providing 30 days notice of my intent to begin to retain a maximum of 25% of the monthly progress pay until the SWPPP is complied with, maintained and all water pollution control has been adequately controlled, as determined by the Engineer.

We basically have a month or so to go before rain is possible and we

must

ave the site prepared for sediment control. At the next project mtg, along with discussing the required submittals for SWPPP implementation (9/10 and 9/20 are two important due dates for plan and implementation-see pg 145) I would like to discuss and plan for drainage system installation(s), planned disposal slope coverage, and our plan of attack for handling winter storm events and the areas of work that will be active throughout the winter.

Give me a call regarding any clarification or questions,

SEBASTIAN COHEN, PE
Resident Engineer - Confusion Hill Realignment
District 1-Leggett
707-925-6217-office
707-496-4096-cell

Evan Paine (epaine@mcmconstructioninc.com) - Fri, 08/22/08 10:07:00 -0700

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EXHIBIT

D

Declaration of Julie Macedo

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



Main Office

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(909) 875-0533 Engineering / Accounting FAX (909) 875-2243

FAXED (707) 443-0277

November 4, 2008

Mercer Fraser
PO Box 1006
Eureka, Ca 95502

LTR 285-200

Re: Contract 01-397514
Confusion Hill 101 Realignment
Administrative Deduction

Attn: Mr. Justin Zable/Mr. Justin Porteous

Gentlemen:

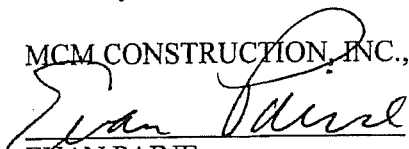
Reference the MCM letter 285-193 dated October 7, 2008 with the Caltrans October 6, 2008 letter attached. Also reference the Caltrans emails that were forwarded to you on October 7, 2008.

In the above referenced correspondence Caltrans has indicated that the SWPP measures were supposed to be in place by September 20, 2008. As of October 7, 2008 most of the items were still not addressed. It was not until after Caltrans directed the removal of the SWPP manager did the required SWPP measures get placed. Caltrans has taken a 15% administrative deduction for the SWPP that was not in place. This deduction occurred in the October 20, 2008 pay estimate No. 33. For this period the Mercer Fraser balance due of \$50,158.80 does not cover the administrative deduction of \$323,231.41. Mercer Fraser shall issue MCM a check in the amount of \$273,072.61 until the administrative deduction is returned by Caltrans. If Mercer Fraser does not issue MCM the above payment interest will be charged at 10% per annum until the deduction is released.

Please call with any questions or comments at (916) 334-1221 or (916) 869-4423.

Sincerely,

MCM CONSTRUCTION, INC.,


EVAN PAINE,
Project Manager

Cc: JC, HDM, RM, J. Ham, Ed Puchi

285 File 91

EXHIBIT

E

Declaration of Julie Macedo

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

Evan Paine (epaine@mcmconstructioninc.com) - Tue, 10/07/08 14:35:47 -0700

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From: Sebastian Cohen <sebastian_cohen@dot.ca.gov>
To: epaine@mcmconstructioninc.com
Cc: daniel.stiles@parsons.com
Subject: WaterBoard Inspection on Thursday AM
Date: Tue 10/07/08 01:03 PM

Evan-

In short, the philosophical subject of this e-mail is "same-shit, different day." I'm figuring out that all I can do is change how I respond to the shit, and hope that others change their behavior so the shit quits coming around.

There will be several individuals from the WaterBoard on site Thursday AM - early. So, we need to have all necessary work (BMPs) in place and well maintained by tomorrow evening. I spent several hours yesterday with Arvin

and Dan Wing reviewing a majority of the project site. We have several areas that have not been addressed at all, and others that have been partially winterized. Unfortunately, almost all of the things we looked at

yesterday are things that we provided in our list several weeks ago (which is clearly listed in the SWPPP Manager's duties), indicating what needed to be done by the 20th of Sept. The Specials are quite clear that all of that was to be 100% complete by 9/20. As of yesterday we still have several things remaining, and this is after we had several inches of rain on Oct 2-4.

Arvin and Dan are hot on forcing everyone from MCM / LADD / and Mercer Fraser to get the remaining work completed by Thursday, via any and all methods at our disposal.

I am very close to simply writing a letter shutting down all operations on the project until everything is complete. I obviously am too much of a softy, and have yet to get so pissed off that I have to do this, but I'm pretty close. I know that you and I both don't need or want this extra work of dealing with this stuff, but it's a reality.

As I mentioned last week, I will be taking a retention on the next estimate for lack of implementation of all required SWPPP measures. as long as we get a new SWPPP manager and get all appropriate SWPPP measures in-place and comply with the permits (have the BMPs that we, the Department, have stated are required), the retention will be returned on the following estimate.

If we are able to get everything completed by Thursday and we have a good review from the WaterBoard, we will be much better-off for the remaining winter months, and we will likely be left alone. the only reason they are reviewing us right now is because they must respond due the Private Complaint. On the other hand, if we get a bad review, we are likely to be paying for it for the remainder of the winter (i.e., we are likely to have several more reviews, with many of them unannounced).

Along with getting all of the remaining work on our list completed, you also should remain aware of what operations you are doing on Thursday.

I would make sure everyone on the project is aware of all their waste. I imagine that the hot topics will be:

- welding slag containment

- sand blasting containment, which your guys have been good at

lately

on the SB (the rail blasting operations) They have a barrier up and

are sweeping it up immediately afterwards.

concrete and concrete wash water containment, especially at the plant

and at wall 1902. Note that wall 1902 needs better containment for

the tie-back operation. Concrete and concrete waste must be separately and imperviously contained - separate from rain water.

The plant area is always high on their list. especially, how they are keeping the rain water separate from rain waters. We have

stated

many, many, many times what needs to occur here.

appropriate coverage of all disturbed soil / slopes. This is very close to being complete. Some areas are very well protected,

others

are bare, and some are incompletely covered. Not having this done when they visit will be impossible to explain away. This is something that needed to be 100% complete by the 9/20. Its not

very

hard to do, we simply need to plan the work and then go do the

work.

sediment basins. Showing that we have sufficiently sized, appropriately located, and well maintained basins will necessary

and

will also be viewed as inexcusable. again, this is something that

we

have repetitively repeated, and is still partially complete. On Friday, when it was raining, we were out there digging some of

these

basins.

Proper containment of all petrol products of any kind, including: oils;

concrete sealers; oil stains; etc.. They will be looking for drip pans

under all equipment (cranes, generators, etc.....) This is nothing new.

there are several pieces of equipment without containment.

If you'd like to discuss this, give me a call.

SEBASTIAN COHEN, PE
Resident Engineer - Confusion Hill Realignment
District 1-Leggett
707-925-6217-office
707-496-4096-cell

Evan Paine (epaine@mcmconstructioninc.com) - Tue, 10/07/08 14:35:47 -0700

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