State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:	)	
	)	
California Department of Transportation	)	[AMENDED] Complaint No. R8-2010-0050
I-215 Widening Project	)	for
	)	Administrative Civil Liability

California Department of Transportation, District 8
464 West 4th Street
San Bernardino, CA 92401

MCM Construction, Inc.
PO Box 620
6413 32nd Street
North Highlands, CA 95660

Skanska-Rados, a Joint Venture
Skanska USA Civil West
1995 Agua Mansa Road
Riverside, California 92509

And

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1915

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The California Department of Transportation (hereinafter "Caltrans") contracted with MCM Construction, Inc. ("MCM") and Skanska-Rados, a Joint Venture (also known as Skanska USA Civil West ("Skanska") to complete construction activities related to the widening of Interstate 215 (I-215 Widening Project or Project), and described in greater detail *infra* at Paragraph 14. Caltrans also entered into a Construction Cooperative Agreement with San Bernardino Associated Governments ("SANBAG") to oversee portions of the Project. The I-215 Widening Project was constructed in several "segments". Segments 3, 5 and 11 were constructed by MCM and Segments 1 and 2 were constructed by Skanska, with oversight by SANBAG. Caltrans, MCM, Skanska and SANBAG (hereinafter collectively referred to as "Dischargers") are alleged to have violated provisions of law for which the California Regional Water Quality Control Board,

Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability, pursuant to California Water Code (hereinafter "CWC") §13385.

2. A hearing concerning this Complaint will be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, Dischargers waive their right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on January 21, 2011 at the City Council Chambers of City of Loma Linda, California. Dischargers, or their representative(s), will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.

3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

4. Caltrans is responsible for the design, construction, management, and maintenance of the State's highway system, including freeways, bridges, tunnels, maintenance facilities, and related properties, and facilities.

5. Caltrans contracted with MCM and Skanska to complete various segments of the I-215 Widening Project and with SANBAG for oversight responsibilities as described in a Construction Cooperative Agreement. While Caltrans is jointly and severally liable for all the violations described in this Complaint, MCM is jointly and severally liable for violations arising from the project "Segments" that it worked on: 3, 5 and 11, and SANBAG and Skanska are jointly and severally liable for violations arising from Segments 1 and 2.

6. Section 402(p) of the Clean Water Act requires that pollutants in storm water runoff from municipal separate storm sewer systems (MS4s), including highway and freeway systems, be regulated under the National Pollutant Discharge Elimination System (NPDES) permit. The Clean Water Act also requires that industrial activities, including construction activities on one or more acres, be regulated under the NPDES permit.

7. Storm water runoff from Caltrans highways, properties, activities and facilities, including construction activities, are regulated under the State Water Resources Control Board's Caltrans Storm Water Permit, Order No. 99-06-DWQ, NPDES No. CAS000003, (hereinafter "Caltrans Permit"). Provision A.1 of the Caltrans

Permit in part requires that the discharge of runoff from construction sites containing pollutants which have not been reduced using Best Available Technology economically achievable (BAT) for toxic pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutant to waters of the United States be prohibited.

8. Provision H.2 of the Caltrans Permit also requires that Caltrans construction activities shall be in compliance with the requirements of the State's General Permit for Construction Activities (hereinafter "Construction General Permit"). [Order No. 99-08-DWQ, renewed by Order No. 2009-0009-DWQ, NPDES No. CAS000002]. The violations cited below occurred prior to the effective date of Order No. 2009-0009-DWQ. As such any reference to the Construction General Permit is to Order No. 99-08-DWQ. The Caltrans and the Construction General Permits are hereinafter referred to as the "NPDES Permits."

9. The NPDES Permits require implementation of Best Management Practices (BMPs) to control and abate the discharge of pollutants in storm water discharges. Provision C.2 of the Construction General Permit requires the dischargers of storm water from construction sites to develop and implement a Storm Water Pollution Prevention Plan (hereinafter "SWPPP"), emphasizing BMPs, designed to reduce/eliminate migration of sediment and other pollutants to storm drains and/or receiving waters.

10. Provision E.1 of the Caltrans Permit requires the maintenance and implementation of a Storm Water Management Plan (hereinafter "SWMP"). The SWMP describes BMP categories used by Caltrans, the process to identify BMPs, and the BMP implementation process. The SWMP describes the minimum procedures and practices Caltrans shall use to reduce the discharge of pollutants in storm water discharges from facilities and activities owned or operated by Caltrans.

11. The BMPs identified in the SWMP are further described in detail in Appendix D of the SWMP, in the Statewide Storm Water Practice Guidelines (hereinafter "Guidelines"). The Guidelines describe in detail the minimum BMPs that should be implemented by Caltrans to reduce pollutants in storm water runoff. These BMPs should be designed to meet BAT/BCT standards for construction sites to control or reduce the discharge of pollutants to waters of the United States.

12. The SWPPP, SWMP, and Guidelines are enforceable components of the Caltrans Permit.

13. MCM and Skanska are responsible for complying with the terms of the NPDES Permits. SANBAG is responsible for the portions of the Project it oversaw pursuant to the Construction Cooperative Agreement. As used in this Complaint, SANBAG is considered a "contractor" on the Project.

14. The I-215 Widening Project includes the widening of I-215 from south of Orange Show Road overcrossing to University Parkway undercrossing, in the city of San Bernardino, San Bernardino County. The Project is being constructed in several phases. The project includes the addition of HOV lanes, construction of new bridges, widening of existing bridges, replacing existing bridges, construction of retaining walls and concrete barriers, improvements to local streets, improvements to drainage systems and construction of new drainage systems. A summary of the construction notifications received at the Regional Board office include:

    A) A Notice of Construction from Caltrans, dated January 14, 2008, for Segment 3 of the I-215 Widening Project: Segment 3 involves the widening of I-215 from 0.3 km south of Orange Show Road overcrossing to 0.3 km south of Rialto Avenue undercrossing. The Notice of Construction listed the tentative project start date as January 2, 2008 and the tentative end date as May 5, 2011. The total construction area was listed as 88.8 acres and the total disturbed area was listed as 29.1 acres. This segment included the widening of the bridge over Lytle Creek and the widening of an existing bridge over Warm Creek and construction of two new bridges over Warm Creek.

    B) A Notice of Construction from Caltrans, dated October 14, 2009, for Segments 1 and 2 of the I-215 Widening Project: Segments 1 and 2 involve the widening of I-215 from 0.2 km south of Redlands Loop overhead to 0.7 km north of 16th Street overcrossing and on Route 259 from 0.9 km North of Baseline Street overcrossing to Highland Avenue overcrossing. The Notice of Construction listed the tentative project start date as October 19, 2009 and the tentative end date as October 25, 2013. The total construction area was listed as 124.94 acres.

    C) A Notice of Construction from Caltrans, dated February 23, 2009, for Segments 5 and 11 of the I-215 Widening Project: Segments 5 and 11 involve the widening of I-215 from north of 16th Street to University Parkway undercrossing and on Interstate 210 from east of 27th Street undercrossing to the 210/215 interchange. The project will also include improvements to the I-215 and I-210 interchange. The Notice of Construction listed the tentative project start date as September 1, 2009 and the tentative end date as November 15, 2013. The total construction area was listed as 215 acres and the total disturbed area was listed as 128 acres. This segment included the construction of two infiltration basins and two detention basins along I-215 at southbound PM 9.84, northbound PM 9.87, southbound PM 9.74 and northbound PM 9.89, respectively.

15. The Caltrans Permit states, in part, the following:

A) General Discharge Prohibitions A.6:

"The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters, is prohibited."

B) Receiving Water Limitations for Construction Activities C-2.2:

"The SWPPP developed for the construction activity covered by this NPDES Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or applicable RWQCB's Basin Plan."

C) Receiving Water Limitations for Construction Activities C-2.3:

"Should it be determined by Caltrans, SWRCB or RWQCB staff that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, Caltrans shall: (a) Implement corrective measures immediately following discovery that water quality standards were exceeded...."

D) Construction Program Management H.4:

"Caltrans shall plan, site, and develop roads and highways in a manner that protects water quality, beneficial uses of water and minimizes erosion and sedimentation."

E) Highway Maintenance Activities I.a(3):

"Identify road segments with slopes that are prone to erosion and discharge of sediment and stabilize these slopes to the extent possible."

F) Construction Site BMPs 4.5:

"The temporary control practices deployed on construction sites will be regularly inspected in accordance with Section 4.2 of the Guidelines, and improperly installed or damaged practices shall be corrected immediately, or by a later date and time, if requested by the Contractor and approved by the RE [Resident Engineer] in writing, but not later than the onset of subsequent rain events."

16. The Construction General Permit states, in part, the following:

A) Discharge Prohibition A.3:

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

B) Special Provision For Construction Activity C.2:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard."

C) Section A – Storm Water Pollution Prevention Plan A.6:

"At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season."

D) Section A – Storm Water Pollution Prevention Plan A.8:

"Sediment control BMPs are required at appropriate locations along the site perimeter and at all operational internal inlets to the storm drain system at all times during the rainy season."

E) Section A – Storm Water Pollution Prevention Plan A.11:

"...Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions...All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending upon worker safety."

17. The Guidelines state, in part, the following:

A) Table 4-4 specifies that slopes in active disturbed soil areas with slope inclinations greater than 1:20 (V:H) and slope lengths greater than 3 meters are required to have temporary sediment controls and barriers in place prior to predicted rain during the rainy season.

18. The SWPPP developed for Segment 3 states, in part, the following:

A) Section 500.3.5 Sediment Controls, Implementation of Temporary Sediment Controls:

"During the rainy season, temporary sediment controls will be implemented at the draining perimeter of disturbed soil areas, at the toe of slopes steeper than 1:20, at storm drain inlets and at outfall areas at all times."

19. On December 29, 2008, Caltrans notified (via a Notice of Discharge or NOD) the Regional Board of the discharge of sediment laden storm water runoff from the construction site into Lytle Creek during a storm event that occurred on December 15, 2008. The report indicated that sediment overflowed a gravel bag berm located along the perimeter of the disturbed soil area along the northern channel wall of Lytle Creek. This is a violation of the General Discharge Prohibitions A.6 and Receiving Water Limitations for Construction Activities C-2.2 of the Caltrans Permit, Discharge Prohibitions Section A.3, Special Provisions for Construction Activity C.2, and SWPPP requirements A.6 of the General Permit. Caltrans failed to implement an effective combination of erosion and sediment controls to minimize erosion and effectively control the discharge of sediment from the disturbed soil area. The discharge of sediment from the construction site impacted or threatened to impact the beneficial uses of waters of the United States. Caltrans proposed to clean-up and maintain the previously placed BMP and indicated that the area will be monitored on a weekly basis and additional BMPs will be installed as necessary.

20. On July 1, 2009, the Caltrans Resident Engineer managing Segment 3 of the Project was informed of the results of a SWPPP review conducted on July 1, 2009 by the Caltrans San Bernardino County Storm Water Coordinator. The SWPPP review identified the need to remove built up sediment accumulated behind the gravel bag berm located along the perimeter of the disturbed soil area along the northern channel wall of Lytle Creek. This is a violation of Construction Site BMPs 4.5 of the Caltrans Permit and Section A.11 of the SWPPP requirements of the General Permit. The storm events that preceded the July 1, 2009 SWPPP review were on April 11, 2009 (rainfall total of 0.08 inches); March 23, 2009 (rainfall total of 0.16 inches); and a multiple day rain event that occurred on February 16 through February 17, 2009 (rainfall total of 1.18 inches). Caltrans failed to implement corrective maintenance of the BMPs in accordance with the requirements of the NPDES Permits. The NPDES Permits require that corrective maintenance of the BMPs be performed as soon as possible after the conclusion of each storm.

21. On December 14, 2009, the Caltrans Resident Engineer managing Segment 3 of the Project was informed of the results of a SWPPP review conducted on December 14, 2009 by the Caltrans San Bernardino County Storm Water Coordinator. The SWPPP review was conducted following a multiple day rain event that began on December 11, 2009 and ended on December 13, 2009, producing a total of 1.65 inches of rain. Findings of the SWPPP review include:

A) The SWPPP review identified several storm drain system inlets that failed to have any sediment control BMPs in place prior to the rain event. The discharge of storm water runoff from the construction site into unprotected storm drain system inlets are violations of Sections A.8 and A.11 of the SWPPP requirements of the Construction General Permit and Section 500.3.5 of the SWPPP for Segment 3 of the I-215 Widening Project. The Contractor and/or Caltrans staff failed to perform effective inspections of the construction sites prior to the storm event. In addition, Caltrans failed to comply with the requirements that sediment control BMPs shall be installed at all storm drain system inlets during the rainy season. The following storm drain inlets failed to have sediment control BMPs in place during the rainy season:
   1) An unprotected storm drain inlet was identified along the north bound I-215 at the Orange Show Road on-ramp.
   2) An unprotected storm drain inlet was identified along the north bound I-215 just past Lytle Creek Channel.
   3) An unprotected storm drain inlet was identified along the south bound I-215, adjacent to the new Inland Center Drive on-ramp.

B) The SWPPP review also identified the need to remove built up sediment accumulated behind sediment control BMPs installed at several storm drain system inlets. The following storm drain system inlets required maintenance to remove accumulated sediment:
   1) North bound I-215, at the Mill Street on ramp;
   2) North bound I-215, just past Mill Street, prior to Lytle Creek Channel;
   3) South bound I-215, prior to Lytle Creek Channel; and
   4) South bound I-215, just past Lytle Creek Channel;

C) In addition, the SWPPP review emphasized the requirement to implement temporary or permanent soil stabilization BMPs on all non-active disturbed soil areas.

22. On January 8, 2010, Caltrans notified the Regional Board of the discharge of sediment laden storm water from the construction area into a storm drain system inlet and into Lytle Creek during storm events that occurred on December 11, 2009 through December 13, 2009 and on Decernber 22, 2009. The Notice of Discharge reported:

A) Sediment discharged into an unprotected storm drain system inlet located near the Mill Street on ramp to the north bound I-215. Caltrans reported that the drainage inlet had been uncapped prior to the rain event that occurred on December 22, 2009. The drain inlet was being prepared for installation of the permanent drainage structure when the rain event occurred. The failure to install adequate sediment control BMPs around the storm drain system inlet prior to the forecast storm resulted in the discharge of sediment into the storm drain system

and to waters of the United States. This is a violation of Sections A.8 and A.11 of the SWPPP requirements of the Construction General Permit.

B) Caltrans reported that during the storm events on December 11, 2009 through December 13, 2009 and December 22, 2009, sediment discharged into Lytle Creek from drainage areas located parallel to the north bound and south bound lanes of I-215. Caltrans failed to implement an effective combination of erosion and sediment controls to minimize erosion and effectively control the discharge of sediment from the disturbed soil area. The discharge of sediment from the construction site impacted or threatened to impact the beneficial uses of waters of the United States. The following discharges are violations of the General Discharge Prohibitions A.6 of the Caltrans Permit and Discharge Prohibitions Section A.3 and Section A.6 of the SWPPP requirements of the Construction General Permit.

1) Caltrans reported that sediment laden storm water overflowed a single row of gravel bags placed along the perimeter of the disturbed soil and discharged into Lytle Creek from a drainage area located parallel to the north bound I-215. Caltrans reported that following the storm events, built-up sediment was removed and additional gravel bags were placed along the gravel bag berm.
2) Caltrans reported that sediment laden storm water discharged directly into Lytle Creek from the disturbed soil area located along the south bound I-215 south of Lytle Creek. Caltrans reported that no sediment control BMPs were in place along the perimeter of the disturbed soil area prior to the rain events. Caltrans reported that following the rain events, sediment control BMPs were placed along the perimeter of the disturbed soil area along the channel wall of Lytle Creek. Caltrans reported that the area was graded and ready for permanent erosion control BMPs prior to the discharge events.
3) Caltrans reported that the disturbed soil areas would be sprayed with temporary soil stabilization by January 22, 2010 and permanent A/C dikes would be constructed along the roadway by January 22, 2010. Caltrans indicated that the A/C dikes will direct flows from paved surfaces to drainage structures and away from the disturbed soil areas susceptible to erosion.

23. On January 20, 2010, Regional Board staff conducted an unannounced inspection of the I-215 construction sites. Regional Board staff performed the inspection during a forecasted rain event. As reported by San Bernardino County Flood Control District, the rain event began on January 17, 2010 and ended on January 22, 2010. Regional Board staff inspected several locations along the I-215 Widening Project and identified several violations of the Caltrans and Construction General Permits. Regional Board staff noted that Caltrans failed to design and/or implement an effective combination of erosion and

sediment control BMPs at several locations. Inadequate construction entrance and exit tracking control BMPs, inadequate perimeter sediment control BMPs, inadequate storm drain system inlet protection BMPs, and inadequate stockpile management BMPs were observed. Specific examples of some of the observations noted during the inspection include:

A) Caltrans and/or its contractors failed to take appropriate steps to minimize erosion of disturbed slopes that receive concentrated flows from paved surfaces. Significant erosion was observed on the disturbed slopes located along the north bound and south bound I-215, north and south of Lytle Creek. Regional Board staff noted that the slopes were not protected with linear sediment control barrier BMPs. This is a violation of Caltrans Permit and Guidelines. Table 4-4 of the Guidelines specifies that all active disturbed soil areas with slope inclinations greater than 1:20 (V:H) are required to have temporary sediment control BMPs in place during the rainy season. Caltrans reported in the January 8, 2010 NOD that by January 22, 2010, permanent A/C dikes or temporary sediment controls BMPs would be placed along the edge of the roadway to direct concentrated flows from the paved surface towards storm drain inlets located away from the disturbed slopes. Neither the A/C dike nor temporary sediment control BMPs were installed along the edge of the roadway prior to the forecast rain event. Regional Board staff observed sediment laden storm water runoff discharging into the storm drain inlet in the drainage area located east of the Mill Street on ramp to the north bound I-215.

B) Regional Board staff also observed erosion of the disturbed slope located east of the north bound I-215, between Rialto Avenue and 2nd Street, parallel to the 2nd Street off ramp. Regional Board staff noted temporary sediment control BMPs (fiber rolls) were installed at the toe of the slope but the sediment controls were overwhelmed with eroded sediment. Regional Board staff noted that eroded sediment exceeded the BMP holding capacity, as sediment was overtopping the fiber rolls. Regional Board staff also noted that the storm drain system inlet protection BMP installed at an inlet located down gradient from the toe of the slope required corrective measures. The temporary sediment control BMP installed at the inlet allowed storm water runoff to flow past the BMP without reducing the flow velocity before the runoff entered the storm drain system inlet.

24. On January 21, 2010, Regional Board staff conducted another unannounced inspection of the project site to inspect additional project locations and to assess whether any corrective measures had been implemented at the locations evaluated during the previous inspection. Regional Board staff identified several locations that were in violation of the Caltrans and Construction General Permits. Examples of some of the observations noted during the inspection include:

A) Temporary sediment control BMPs still had not been installed along the disturbed slopes located along the north bound and south bound I-215, north and south of Lytle Creek. The failure to install sediment control BMPs along these slopes are a violation of the Caltrans Permit and Guidelines. Regional Board staff observed sediment laden storm water runoff discharge into Lytle Creek from the drainage area. The discharge of sediment laden storm water runoff from the drainage area discolored the waters in Lytle Creek. This is a violation of the General Discharge Prohibitions A.6 of the Caltrans Permit.

B) Regional Board staff inspected the construction area along the north bound I-215, between Rialto Avenue and 2nd Street, to assess if the sediment control BMPs in place had been maintained. Regional Board staff noted that the linear sediment control BMPs placed along the toe of the slope had accumulated more sediment than previously observed. Sediment laden storm water runoff was observed discharging from the construction area and draining into storm drain system inlets located down gradient from the disturbed slope. Regional Board staff noted that the storm drain system inlet protection BMPs installed at inlets located down gradient from the slope still required corrective measures. Storm water runoff was observed flowing around the storm drain inlet protection BMPs. The failure to maintain an effective combination of erosion and sediment control BMPs resulted in the discharge of sediment laden storm water runoff into the storm drain system.

25. On February 2, 2010, Regional Board staff conducted a follow-up inspection of the project site to assess whether any corrective measures had been implemented since the previous two inspections. Examples of some of the observations noted during the inspection include:

A) Temporary sediment control BMPs still had not been installed along the disturbed slopes located along the north bound and south bound I-215, north and south of Lytle Creek. The permanent A/C dikes or temporary sediment control BMPs proposed to be constructed by Caltrans by January 22, 2010, also had not been placed along the edge of the roadway.

B) Regional Board staff noted that some areas of the sediment control BMPs installed along the north bound I-215 between Rialto Avenue and 2nd Street had been maintained. Accumulated sediment was removed from behind the linear sediment control BMPs installed along the base of the slope, parallel to Rialto Avenue. However, the linear sediment control BMPs installed along the toe of the slope between Rialto Avenue and 2nd Street, parallel to the north bound I-215 had not been maintained. Eroded sediment from the disturbed slope still overtopped the linear sediment control BMPs. The failure to maintain the sediment control BMPs is a violation of Section A.11 of the SWPPP requirements of the General Permit and Section 4.5 of the Construction Site BMPs requirements of the Caltrans Permit.

C) Regional Board staff noted that some of the storm drain inlet protection BMPs previously identified as inadequately installed or maintained had been reconfigured and/or maintained.

26. On February 3, 2010, the Caltrans Resident Engineer managing Segment 3 of the Project was informed of the results of a SWPPP review conducted on February 3, 2010 by the Caltrans San Bernardino County Storm Water Coordinator. The SWPPP review noted that additional work is required to bring the construction activities into minimum compliance with the Caltrans requirements, including spraying non active slopes with soil stabilization BMPs, implementing additional sediment control BMPs, and placing permanent and or temporary dikes at the top of the disturbed slopes. Specific examples of some of the findings of the SWPPP review include:

A) Recommended the placement of sand bag barriers or permanent dike where storm water is running from paved surface areas to slopes along north bound and south bound I-215 near the Mill Street on and off ramps to the I-215.

B) Recommended the application of temporary soil stabilization BMPs to the slope east of the Mill Street on ramp to the north bound I-215, near Lytle Creek.

C) Recommended the application of temporary soil stabilization BMPs to the slope west of the Mill Street off ramp along the south bound I-215, from approximately Lytle Creek to Mill Street.

D) Recommended the placement of temporary down slope drains along the slope located south of Lytle Creek along the south bound I-215, as "...water is running down the slope and causing erosion."

E) Specified that eroded areas needed to be filled in and temporary soil stabilization BMPs needed to be reapplied.

F) Recommended the application of temporary sediment controls on slopes with inclinations greater than 1:20 and longer than 10 feet in length.

27. On February 16, 2010, Caltrans notified the Regional Board that sediment laden storm water runoff from the construction area discharged into Lytle Creek and into storm drain system inlets that discharge into Lytle Creek during the storm event that occurred on January 18 through January 22, 2010. Caltrans reported that an unknown amount of water sheet flowed into the drainage inlets and over the gravel bag sediment control BMP. This is a violation of Section A.6 of the SWPPP requirements of the Construction General Permit. Caltrans and/or its contractors failed to implement an effective combination of erosion and sediment controls to minimize erosion and effectively control the discharge of sediment

from the disturbed areas. Caltrans noted that all in-place BMPs were functioning as intended and any necessary adjustments to the BMPs would be made prior to forecasted rain events.

28. On February 22, 2010, Regional Board staff held a meeting with Caltrans staff to discuss concerns regarding the implementation of construction site storm water BMPs along the I-215 Widening Project. Regional Board staff requested a copy of the SWPPPs prepared for the I-215 Widening Project and copies of the inspection reports prepared by the contractor(s) and Caltrans staff from December 2009 through the date of submittal.

29. On February 25, 2010, Regional Board staff received a copy of the SWPPPs for Segments 1, 2, 3, 5 and 11 of the I-215 Widening Project. Regional Board staff also received copies of the Notices of Discharge and inspection reports performed by the contractors and Caltrans during the period from December 2009 through February 25, 2010.

30. After review of the SWPPPs and inspection reports, the Regional Board issued Caltrans a Notice of Violation (NOV) dated May 13, 2010, for violations noted by Regional Board staff during the inspections conducted during the period of January 20 through February 2, 2010. The NOV requested Caltrans to conduct a review of construction management practices as they relate to compliance with the Caltrans Permit and provide a written report to the Regional Board by May 28, 2010.

31. On May 28, 2010, the Regional Board received an electronic copy of Caltrans' written response to the May 13, 2010 NOV. Caltrans reported in its letter dated May 27, 2010, that the erosion of the damaged slopes located from Mill Street to north of Lytle Creek were addressed by implementing additional temporary water pollution control measures during the week of February 15, 2010. Caltrans reported that gravel bag berms were placed along the top of the damaged slopes and the damaged slopes were covered with plastic sheeting.

32. Storm water pollution control measures must be implemented on a proactive manner during all seasons while construction is ongoing. Caltrans and/or its contractors failed to implement an effective combination of erosion and sediment controls and other appropriate BMPs at several locations during the I-215 Widening Project. Evidence that Caltrans and/or its contractors failed to implement an effective combination of erosion and sediment control BMPs was demonstrated by the reoccurring presence of sediment behind control devices, erosion in disturbed soil areas, and the repeated discharge of sediment from disturbed soil areas to storm drain system inlets, and into Lytle Creek and Warm Creek, tributaries to the Santa Ana River, a water of the United States.

33. Caltrans and/or its contractors also failed to implement an effective inspection and a regular maintenance program. In compliance with the requirements of SWPPPs and the NPDES Permits, site inspections were to be conducted by the contractors and/or Caltrans staff prior to forecast storm events, at 24-hour intervals during extended rain events, and after rain events that cause runoff from the construction site, as well as weekly inspections during the rainy season. Results of these inspections shall document inadequate BMPs, locations that require maintenance, list corrective actions required, including any changes to the SWPPP and implementation dates. Regional Board staff note that the contractor(s) and/or Caltrans staff regularly inspected the construction sites but the inspection reports often appeared to be inadequate, particularly for Segment 3 of the I-215 Widening Project. For example, for Segment 3 of the I-215 Widening Project the contractor(s) and/or Caltrans staff failed to identify and install appropriate pollution control BMPs at several storm drain system inlets prior to storm events that occurred during the rainy season that resulted in the discharge of sediment from the construction site into the storm drain system and to waters of the United States. In addition, the inspection reports prepared by the contractor(s) and Caltrans staff on behalf of the Resident Engineer for Segment 3 of the I-215 Widening Project failed to document the need to repair slopes damaged by erosion and failed to recommend the installation of permanent or temporary soil stabilization or erosion/sediment controls and barriers to prevent further erosion of the damaged slopes.

34. As described above, beginning in the 2008-2009 rainy season and continuing into the 2009-2010 rainy season, Caltrans reported several instances where sediment discharged from disturbed soil areas into the storm drain system and/or directly into Lytle Creek. Caltrans and/or its contractors failed to implement the minimum water pollution control measures specified in the Guidelines during this period. Disturbed slopes located from Mill Street to north of Lytle Creek were not protected with appropriate sediment control barriers and/or an effective combination of erosion and sediment control BMPs to prevent erosion of the disturbed soil areas. The repeated discharge of sediment, lack of proactive repairs to fill and stabilize slopes damaged with rill and gully erosion, failure to identify the need to install water pollution control measures to direct concentrated flows away from the damaged slopes towards storm drain system inlets, and effectively stabilize the disturbed slopes in a timely manner, resulted in threatened and/or direct discharge of pollutants to waters of the United States during storm events that occurred during the 2008-2009 and 2009-2010 rain seasons.

35. Based on information available to Regional Board staff, beginning as early as February 2008, Caltrans and/or its contractors failed to implement temporary sediment control BMPs at the storm drain inlet located along the north bound I-215 near the Orange Show on-ramp (as noted in Finding No. 19). The construction schedule included in the SWPPP for Segment 3 of the I-215

Widening Project identified clearing and grubbing activities in Stage 1a of the segment during the month of January 2008. SWPPP measures were to be installed immediately following the clearing and grubbing activities. After a review of WPCD-2a, dated December 4, 2007, Regional Board staff noted that the storm drain inlet is shown in WPCD but sediment control BMPs were not required for the storm drain inlet. Although, as depicted in WPCD-2a, other storm drain inlets located in the same general area as the inlet noted above were required to be protected with temporary sediment control BMPs. As noted in Finding No. 19, the December 14, 2009 Caltrans SWPPP review identified the failure to install sediment control BMPs at the inlet. Following the SWPPP review, SWPPP Amendment No. 5, dated December 15, 2009, required the installation of sediment control BMPs at the storm drain inlet. The failure to install sediment control BMPs at the storm drain inlet during the rainy season is a violation of Section A.8 of the SWPPP requirements of the Construction General Permit and Section 500.3.5 of the SWPPP developed for Segment 3 of the I-215 Widening Project. Caltrans and its contractors failed to comply with the requirements of the Construction General Permit and SWPPP during the period of February 2008 to December 14, 2009.

36. Based on information available to Regional Board staff, beginning as early as March 2008, Caltrans and/or its contractors failed to implement temporary sediment control BMPs at the storm drain inlet located along the south bound I-215 near the Inland Center Drive on-ramp (as noted in Finding No. 19). The construction schedule included in the SWPPP for Segment 3 of the I-215 Widening Project identified clearing and grubbing activities for Stage 2 of the segment during the month of February 2008. The SWPPP measures were to be installed immediately following the clearing and grubbing activities. The WPCD-25, dated December 4, 2007, identified storm drain inlet protection BMPs for several storm drain inlets located along the south bound I-215 adjacent to the Inland Center Drive on-ramp. As noted above, the December 14, 2009 Caltrans SWPPP review identified the failure to install sediment control BMPs at the inlets. The failure to install sediment control BMPs at the storm drain inlets during the rainy season is a violation of Section A.8 of the SWPPP requirements of the Construction General Permit and Section 500.3.5 of the SWPPP developed for Segment 3 of the I-215 Widening Project. Caltrans and its contractors failed to comply with the requirements of the Construction General Permit and SWPPP during the period of March 2008 to December 14, 2009.

37. Based on information available to Regional Board staff, beginning as early as April 2008, Caltrans and/or its contractors failed to implement temporary sediment control BMPs at the storm drain inlet located along the north bound I-215 north of Lytle Creek (as noted in Finding No. 19). The construction schedule included in the SWPPP for Segment 3 of the I-215 Widening Project identified clearing and grubbing activities for Stage 1b of the segment during the months of January through March 2008. The SWPPP measures were to be installed

immediately following the clearing and grubbing activities. The WPCD-A2-10 dated September 30, 2008 identified the installation of sediment control BMPs along the north bound I-215 and along the perimeter of the disturbed soil area adjacent to the northern channel wall of Lytle Creek. The December 14, 2009 Caltrans SWPPP review noted that the storm drain inlet was not protected with sediment control BMPs. The failure to install sediment control BMPs at the storm drain inlet during the rainy season is a violation of Section A.8 of the SWPPP requirements of the Construction General Permit and Section 500.3.5 of the SWPPP developed for Segment 3 of the I-215 Widening Project. Caltrans and its contractors failed to comply with the requirements of the Construction General Permit and SWPPP during the period of April 2008 to December 14, 2009.

38. Caltrans and/or its contractors failed to ensure the sediment control BMPs installed along the east slope of the I-215 between Rialto Avenue and 2nd Street were maintained in accordance with the requirements of the Caltrans and Construction General Permits. As noted above, during an inspection of the construction site on January 20, 2010 Regional Board staff observed the temporary linear sediment control BMPs installed along the toe of the slope at the perimeter of the construction area were buried with sediment. During a follow-up inspection on February 2, 2010, Regional Board staff noted that the linear sediment control BMPs were still buried with sediment. The Storm Water Quality Construction Site Inspections performed by SANBAG staff on February 4th, February 5th, February 10th, and February 12th, 2010, also noted that the sediment control BMPs along the toe of the slope were buried with sediment and the BMPs required maintenance. The February 5, 2010 SANBAG inspection noted that additional silt fence or perimeter controls were needed at the toe of the slope and at the nearby storm drain system inlet. On February 8th and February 10th, 2010, SANBAG inspection reports indicated that concentrated flow blew through an earthen berm and gravel bag berm along the toe of the slope and discharged sediment into the storm drain system inlet located nearby. As reported in the San Bernardino County Flood Control District's Flood Warning System database, rain events occurred in the city of San Bernardino on January 17th through January 22nd, January 26th, February 5th through February 6th, and on February 9th, 2010. In accordance with the Section A.11 of the SWPPP requirements of Construction General Permit, maintenance of BMPs shall be performed after the conclusion of each storm. Regional Board staff noted that it was not until February 18, 2010, as noted in SWPPP Amendment No. 8, that additional perimeter controls were installed along the toe of the slope. The SWPPP amendment noted that 133-meters of silt fence were installed along the toe of the slope between Rialto Avenue and 2nd Street. By failing to implement timely maintenance of the linear sediment control BMPs and/or effective erosion and sediment control BMPs along the slope, sediment discharged from the construction area to nearby storm drain system inlets. Caltrans and its contractors failed to ensure compliance with the requirements of the Construction

General Permit and SWPPP during the period of January 20, 2010 to February 18, 2010.

39. Based on San Bernardino County storm event records, the above violations resulted in a discharge of sediment-laden storm water on 108 days during 2008-09 to 2009-10 rain seasons. During the same period, there were a total of 1,240 days of non-discharge violations. These are detailed in Attachment A and in Paragraphs 20(A), and 32 to 36, above. Because of the difficulty involved in determining the exact drainage area for each discharge point, staff did not attempt to calculate the discharge volume. As such no penalty has been assessed based on the discharge volume.

40. The discharge of sediment laden storm water from the construction activities impacted or potentially impacted the beneficial uses of the waters in the Santa Ana River. Sediment laden storm water runoff from the construction activities discharged sediment into Lytle Creek, Warm Creek, and into the storm drain systems that conveyed storm water runoff to Lytle Creek and/or Warm Creek. Lytle Creek and Warm Creek are tributary to Reach 4 of the Santa Ana River, a water of the United States.

41. The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) designates beneficial uses for waterbodies within the Region. The designated beneficial uses of Reach 4 of the Santa Ana River include: (1) Groundwater recharge; (2) Water contact recreation[1]; (3) Non-contact water recreation; (4) Warm freshwater habitat; and (5) Wildlife habitat.

42. The Basin Plan specifies that "Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses..." The discharge of sediment from the construction activities to surface waters may cause nuisance, is deleterious to benthic organisms, may cause anaerobic conditions, can clog fish gill and interfere with respiration in aquatic fauna. Suspended and settleable solids also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

43. Caltrans and its contractors violated the Caltrans Permit by failing to implement adequate pollution control measures and discharging pollutants from the construction site and by causing or threatening to cause a condition of pollution or nuisance in waters of the United States. Pursuant to Water Code §13385(a)(2), civil liability may be administratively imposed for the preceding violations.

44. Pursuant to CWC §13385(c), the Regional Board may impose civil liability administratively for noncompliance with the provisions of the Federal Water

[1] Access prohibited in some portions by San Bernardino County Flood Control.

Pollution Control Act on a daily basis at a maximum of ten thousand dollars ($10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1,000 gallons in accordance with CWC §13385(c)(2); or both.

45. Pursuant to CWC §13385(c), the maximum liability for the violations cited above is $13,480,000, based on 108 days of discharge violations at $10,000 per day, and 1,240 non-discharge days of violations at $10,000 per day.

46. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "Policy") adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of methodology addresses the factors in CWC §13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

47. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:

A) The Policy establishes an alternative approach to assess civil liability on a per day basis for violations that last more than thirty (30) days. The daily assessment can be less than the calculated daily assessment if one of the following conditions is applicable: 1) the violation is not causing daily detrimental impacts to the environment or the regulatory program; 2) the violation results in no economic benefit from the illegal conduct that can be measured on a daily basis; or, 3) the violation occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. Regional Board staff determined that non-discharge violations noted in this Complaint did not cause daily detrimental impacts to the environment or the regulatory program. Using the alternative approach to penalty calculations for multiple day violations, the civil liability on a per day basis for non-discharge violations that occurred for more than thirty consecutive days were reduced in accordance with the Policy from 1,240 days to 85 days (see page 18 of the Policy and Attachment A for details).

B) For the discharge violations, the Policy also requires a consideration of the potential for harm from the discharge and the deviation from requirements. Using a potential harm factor of 5 and "moderate" deviation from requirement, a

per day factor of 0.100 is obtained from Table 2 of the Policy (see Page 15 of the Policy). Using this factor, the total assessment for the discharge violations is: 108 daysX$10,000/dayX0.100=$108,000.

C) For the non-discharge violations, using a potential harm of "moderate" and "minor" deviation from requirement, a per day factor of 0.25 is obtained from Table 3 of the Policy (see Page 16 of the Policy). Using this factor, the total assessment for the non-discharge violations for 85 days is: 85 daysX$10,000/dayX0.25=$212,500.

D) The total for the discharge and the non-discharge violations is $108,000+$212,500=$320,500.

E) This amount is then adjusted based on Caltrans' and its contractors' culpability, cleanup effort and cooperation, and history of violations. Caltrans and/or its contractors did not implement several recommendations from its own storm water coordinator; as such a culpability of factor of 1.5 is appropriate in this situation. A factor of 1 each is assigned for cleanup effort and cooperation, and history of violations. Using these factors the total assessed liability is: $320,500X1.5X1X1=$480,750.

F) CWC Section 13385(e) and the Policy also require consideration of economic benefit or savings, if any, resulting from the violations and other matters as justice may require. Regional Board staff has determined that Caltrans and/or its contractors failed to implement erosion and sediment control BMPs along drainage areas located near Lytle Creek that resulted in erosion of the disturbed soil areas and discharge of sediment into the storm drain system and to waters of the United States. In addition, Caltrans and/or its contractors failed to install storm drain system inlet protection BMPs at several locations that resulted in the discharge of sediment into the storm drain system and to waters of the United States. Based on the United States Environmental Protection Agency BEN Model, Caltrans and/its contractors saved approximately $47,600 in deferred costs associated with its failure to implement BMPs specified in its SWPPPs, and by failing to comply with the other provisions of the Caltrans Permit. The Policy requires that the proposed assessment be at least 10% higher than the economic benefit or savings received.

G) The costs of investigation and enforcement incurred by the Regional Board Prosecution staff are considered as one of the "other factors as justice may require," and should be included in the liability assessed. Investigation costs have been estimated to be $46,950 (313 hours at $150 per hour = $46,950). Staff costs are then added to the proposed liability amount for a total of $527,700 ($480,750+ $46,950 = $527,700).

H) Caltrans and MCM are jointly and severally liable for violations arising from Segments 3, 5 and 11. Caltrans, SANBAG and Skanska are jointly and severally liable for violations arising from Segments 1 and 2. The investigation and enforcement costs have been equally divided between the two project portions, Segments 3, 5 and 11 on the one hand, and Segments 1 and 2 on the other hand.

48. After consideration of the factors in accordance with the CWC section 13385(e) and the Policy, the Division Chief proposes that civil liability be imposed on Caltrans in the amount of five hundred twenty-seven thousand seven hundred dollars (**$527,700**) for discharging pollutants to waters of the United States in violation of the Caltrans Permit.

49. Due to the division of labor in constructing the Segments, the liability of the Contractors is as follows:
    A. MCM, Segments 3, 5 and 11: $408,975.
    B. Skanska, Segments 1 and 2: $118,725.
    C. SANBAG, Segments 1 and 2: $118,725.
    D. Caltrans is jointly and severally liable for the $527,700 sought in this Complaint.

WAIVER OF HEARING

Dischargers may waive their right to a hearing. If Dischargers choose to do so, please sign the attached Waiver Form and return it, together with a check for $527,700 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If Dischargers waive their right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Kirk Larkin at (951) 320-2182.

11/09/10
Date

Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Discharger: Caltrans, District 8 I-215 Widening Project		Violations					
		Failure to Protect Disturbed Slopes, Near Lytle Creek	Unprotected Storm Drain Inlet, Near Orange Show Rd.	Unprotected Storm Drain Inlet, Near Inland Center Dr.	Unprotected Storm Drain Inlet, Near Lytle Creek	Unprotected Storm Drain Inlet, Near Mill Street	Delayed BMP Maintenance, Between Rialto Ave & 2nd St
Project Segment No.		3	3	3	3	3	1 & 2
Discharge Violations	Potential Harm Factor	5	5	5	5	5	5
	Days of Violation	32	27	21	21	1	6
	Statutory Maximum per Day	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
	Per Day Adjustment Factor	0.100	0.100	0.100	0.100	0.100	0.100
	Per Day Assessment	$32,000	$27,000	$21,000	$21,000	$1,000	$6,000
	Discharge Volume, Gallons	-	-	-	-	-	-
	Statutory Maximum per Gallon	-	-	-	-	-	-
	Per Gallon Adjustment Factor	-	-	-	-	-	-
	Per Gallon Assessment	-	-	-	-	-	-
Non-Discharge Violations	Days of Violation	244	350	327	296	-	23
	Multiple Day Violations (Number of days reduced per Policy)	14	17	16	15	-	23
	Statutory Maximum per Day	$10,000	$10,000	$10,000	$10,000	-	$10,000
	Per Day Adjustment Factor	0.25	0.25	0.25	0.25	-	0.25
	Per Day Assessment	$35,000	$42,500	$40,000	$37,500	-	$57,500
Initial Amount of Liability		$67,000	$69,500	$61,000	$58,500	$1,000	$63,500
Conduct Adjustment Factors	Culpability	1.5	1.5	1.5	1.5	1.5	1.5
	Cleanup and Cooperation	1.0	1.0	1.0	1.0	1.0	1.0
	History of Violations	1.0	1.0	1.0	1.0	1.0	1.0
Initial Base Liability Amount		$100,500	$104,250	$91,500	$87,750	$1,500	$95,250
Total Base Liability Amount		$480,750					
Staff Costs (Equally divided between the contractors)		$46,950					
Economic Benefit		$47,600					
Final Liability Amount		$527,700					

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2010-0050
RE: I-215 Widening Project
ISSUED TO

California Department of Transportation, District 8
464 West 4th Street
San Bernardino, CA 92401

MCM Construction, Inc.
PO Box 620
6413 32nd Street
North Highlands, California 95660

Skanska-Rados Joint Venture
Skanska USA Civil West
1995 Agua Mansa Road
Riverside, CA 92509
and

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1915

SCHEDULED FOR January 21, 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Division Chief has issued an Administrative Civil Liability Complaint (hereinafter "Complaint") pursuant to California Water Code Section 13323 against the California Department of Transportation (Caltrans), MCM Construction, Inc. (MCM) and Skanska-Rados Joint Venture/ Skanska USA Civil West (Skanska), and San Bernardino Associated Governments (SANBAG) (collectively referred to as "Dischargers") alleging that they have violated the Caltrans Storm Water Permit, Order No. 99-06-DWQ, and General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ by discharging pollutants to navigable waters of the United

States associated with their construction activities. The Complaint proposes that administrative civil liability in the amount of five hundred twenty-seven thousand seven hundred dollars ($527,700) be imposed as authorized by Water Code Section 13385(c) and as described in the Complaint. A hearing is currently scheduled to be held before the Regional Board during its January 21, 2011 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on January 21, 2011 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the City Council Chambers of the City of Loma Linda, located at 25541Barton Road, Loma Linda, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml.

The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY DECEMBER 1, 2010 OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

(1) Regional Board Prosecution Team
(2) Caltrans
(3) MCM
(4) Skanska
(5) SANBAG

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on November 30, 2010 by Advisory Team Attorney David Rice, **Davidrice@waterboards.ca.gov**. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on December 7, 2010. The parties will be notified by 5 p.m. on December 10, 2010 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team:

David Rice (email: Davidrice@waterboards.ca.gov)
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team:	**Julie Macedo (email: jmacedo@waterboards.ca.gov)** **Phone: 916-323-6847** State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100
Caltrans:	Raymond Wolfe, District 8 Director Email: (Ray.W.Wolfe@dot.ca.gov) Phone: 909-383-4631 California Department of Transportation, District 8 464 West 4th Street San Bernardino, CA 92401 Legal Counsel: Donna Clark, Cassandra Hoff
MCM:	Bret Rowan, Project Manager Jim Carter, President PO Box 620 6413 32nd Street North Highlands, California 95660 (916) 334-1221 Legal Counsel: Edmundo Puchi
Skanska:	Mark Hegbloom, Project Manager 1995 Agua Mansa Road Riverside, California 92509 (951) 684-5360 Legal Counsel: John Boyd, Anthony Perez
SANBAG:	Legal Department 1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715 (909) 884-8276

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Julie Macedo, Senior Staff Counsel, Office of Enforcement, State Water Resources Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board, and Kirk Larkin, Enforcement Unit, Santa Ana Regional Water Quality Control Board. Any members of the Advisory Team

who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than December 10, 2010. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.

3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. If any of the Dischargers intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), that Discharger should submit supporting evidence as set forth in the "Complaint Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on December 20, 2010.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on December 20, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on December 29, 2010. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than December 20, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by January 4, 2011

for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on January 10, 2011. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: alucas@waterboards.ca.gov; phone: 951-782-7961). This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at: http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. Although the web page is updated regularly, to assure access to the latest information, you may contact Julie Macedo (jmacedo@waterboards.ca.gov).

Questions

Questions concerning this hearing proceeding may be addressed to the Advisory Team Attorney David Rice (Davidrice@waterboards.ca.gov).

IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Dischargers waive that requirement.)

November 9, 2010:	Prosecution Team issues Amended ACL Complaint to Dischargers and Advisory Team, sends Hearing Procedure to Dischargers and Advisory Team, and publishes Public Notice.
November 30, 2010:	Deadline for requests for designated party status.
December 1, 2010:	Deadline for objections, if any, to proposed Hearing Procedure.
December 7, 2010:	Deadline for oppositions to requests for designated party status.
December 10, 2010	Deadline for requests for additional time at the hearing, if any; Advisory Team issues decision on requests for designated party status, if any.
December 20, 2010:	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements."
December 20, 2010:	Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
December 20, 2010:	Interested Persons' deadline for written non-evidentiary policy statements.
December 29, 2010:	All Designated Parties' deadline for rebuttal information, evidentiary objections.
January 4, 2011:	All parties deadline for presentation materials (PowerPoint or other materials)
January 10, 2011:	All parties deadline for objections to presentation materials submitted by other parties.
January 21, 2011:	Public Hearing.

Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

11/09/10
Date

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
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Arnold Schwarzenegger
Governor

WAIVER FORM (MCM)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent MCM Construction, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0050 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of four hundred eight thousand nine hundred seventy-five dollars **($408,975)** by check that references "ACL Complaint No. R8-2010-0050." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by November 30, 2010 or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss

settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

☐ ***(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.

b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of $192,750. I agree to submit the proposal and the remainder of the proposed civil liability within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy and the Statewide Policy on Supplemental Environmental Projects. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the amount of four hundred eight thousand nine hundred seventy-five dollars **($408,975)** by check that references "ACL Complaint No. R8-2010-0050" made payable to the State Water Pollution Cleanup and Abatement Account within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
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www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

WAIVER FORM (Caltrans)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0050

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent California Department of Transportation (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0050 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of five hundred twenty-seven thousand seven hundred dollars **($527,700)** by check that references "ACL Complaint No. R8-2010-0050." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by November 30, 2010 or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional

Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

☐ ***(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.

b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of $240,375. I agree to submit the proposal and the remainder of the proposed civil liability within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy and the Statewide Policy on Supplemental Environmental Projects. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the amount of five hundred twenty-seven thousand seven hundred dollars **($527,700)** by check that references "ACL Complaint No. R8-2010-0050" made payable to the State Water Pollution Cleanup and Abatement Account within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

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www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

WAIVER FORM (SANBAG)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent San Bernardino County Transportation Authority (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0050 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of one hundred eighteen thousand seven hundred twenty-five dollars **($118,725)** by check that references "ACL Complaint No. R8-2010-0050." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by November 30, 2010 or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional

Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

☐ ***(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.

b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of $47,625. I agree to submit the proposal and the remainder of the proposed civil liability within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy and the Statewide Policy on Supplemental Environmental Projects. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the amount of one hundred eighteen thousand seven hundred twenty-five dollars **($118,725)** by check that references "ACL Complaint No. R8-2010-0050" made payable to the State Water Pollution Cleanup and Abatement Account within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

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www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

WAIVER FORM (SKANSKA)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Skanska-Rados, a Joint Venture, and any of its subsidiaries or affiliates, including Skanska USA Civil West, (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0050 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of one hundred eighteen thousand seven hundred twenty-five dollars **($118,725)** by check that references "ACL Complaint No. R8-2010-0050." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by November 30, 2010 or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve

the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

☐ ***(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.

b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of $47,625. I agree to submit the proposal and the remainder of the proposed civil liability within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy and the Statewide Policy on Supplemental Environmental Projects. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the amount of one hundred eighteen thousand seven hundred twenty-five dollars **($118,725)** by check that references "ACL Complaint No. R8-2010-0050." made payable to the State Water Pollution Cleanup and Abatement Account within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.

c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

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MCM CONSTRUCTION, INC.
P.O. BOX 620
NORTH HIGHLANDS, CA 95660
EDMUNDO A PUCHI
TREASURER/GENERAL COUNSEL

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DR. RAYMOND WOLFE
DISTRICT 8 DIRECTOR
CA DEPT OF TRANSPORTATION
464 W. 4TH ST.
SAN BERNARDINO, CA 92401

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SKANSKA-RADOS JOINT VENTURE
SKANSKA USA CIVIL WEST
1995 AGUA MANSA RD.
RIVERSIDE, CA 92509
ATTN: MARK HEGBLOOM, P.M.

PS Form 3800, August 2006 See Reverse for Instructions