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November 28, 2007

Our File Number: 0NAN-133500

***VIA ELECTRONIC MAIL AND
U.S. MAIL***

John H. Robertus
Executive Officer
California Regional Water Quality Control
Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Attn: Benjamin Neill

Re: Administrative Civil Liability Complaint No. R9-2007-0093

Dear Mr. Robertus:

FCI Constructors, Inc., as a member of the joint venture known as West Coast Rail Constructors, JV ("West Coast"), respectfully submits this letter and the attached Declaration of Robert Long in response to Administrative Civil Liability Complaint No. R9-2007-0093 (the "ACL") issued by the California Regional Water Quality Control Board, San Diego Region ("Regional Board") on August 31, 2007. The ACL alleges that West Coast's client, the North County Transit District ("NCTD"), violated the Statewide General Permit for Storm Water Discharges Associated with Construction Activities ("Permit"), by failing to put into place adequate storm water pollution prevention measures on the Sprinter Rail construction project (the "Sprinter Project"). The Regional Board seeks to assess the maximum penalty of \$160,000 against NCTD. West Coast, as the general contractor for the NCTD on the Sprinter Project, possesses knowledge pertinent to this matter, and consequently West Coast submits this information to assist the Regional Board in reaching its determination.

This letter adopts by reference the letter to John R. Robertus from Marguerite S. Strand of Best, Best and Krieger, dated October 4, 2007. In that letter, the NCTD addressed each violation alleged in the ACL. West Coast concurs with the arguments made by the NCTD in the October 4 letter, and West Coast incorporates that letter herein. The purpose of this correspondence is to provide supplemental factual information that the Regional Board may find useful in reaching its decision.

John H. Robertus
November 28, 2007
Page 2

The Regional Board's allegations in the ACL include specific allegations relating to the discharge of sediment to a municipal separate storm sewer system (MS4) and navigable waters of the United States in the San Diego region. The ACL contends that the alleged discharges to the MS4 constitute violations of State Board Order No. 99-08-DWQ Discharge Prohibition A.2. The ACL alleges ten separate discharges and seeks the maximum penalty of \$10,000 for each of those discharges.

Under Section 5.1 of the ACL, the Regional Board alleges a discharge into the "MS4 inlet east of Escondido Avenue in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista lagoon." This alleged discharge on February 20, 2007 never occurred. On that date, the MS4 inlet described in the ACL had not yet been connected with the MS4. That inlet east of Escondido Avenue in the City of Vista was connected to the MS4 on April 4 and 5, 2007. On those dates, West Coast excavated underneath Escondido Avenue, shored the excavation, and installed the pre-cast concrete juncture and the casings that connect the inlet and storm drain to the existing storm water sewer. It was not until this work was completed on April 5, 2007 that the inlet was hooked into the MS4. See Declaration of Robert Long, paragraphs 8-10. Consequently, there was no discharge on February 20, 2007.

With respect to the second alleged discharge violation, described in paragraph 5.2 of the ACL, the paragraph states that there was a discharge of sediment from the site at the following location: "MS4 inlet at the Mar Vista storage yard in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista Lagoon." This allegation mistakenly designates the storage yard as the sole source of sediment that collected at this inlet. In reality, the principal source of the sediment was a natural drainage channel that collects water from a large water shed on the south side of the Sprinter Mainline, passes through a pipe underneath the railroad, and continues on to an inlet that is also located outside of the railroad right-of-way and West Coast's work area. This natural drainage channel existed before the construction of the Sprinter Mainline began. West Coast employees inspected the storage yard that is alleged to be the source of the sediment, and the storage yard was properly surrounded with silt fence. That silt fence was still standing and had not been breached or overwhelmed. See Declaration of Robert Long, paragraphs 11-13.

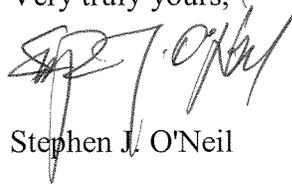
In addition to these specific responses to the alleged discharge violations, West Coast wants to respond to the Regional Board's allegations that inadequate resources had been devoted to sediment and erosion control on this project. The Regional Board, at paragraph 3.1.8 of the Technical Analysis, estimated that adequate soil and erosion control BMPs cost roughly \$2,000 per acre per year, or \$560,000 per year for the entire 280 acres of the Sprinter Mainline and San Marcos Loop projects. The Regional Board's estimate of what would have been "adequate" resources devoted to sediment and erosion control BMPs is roughly one-half of the actual cost the NCTD has incurred for the BMPs. As of September 20, 2007, West Coast has charged NCTD more than \$2.7 million for sediment and erosion control BMPs on the main line, and another \$400,000 in costs for erosion and sediment control BMPs from the San Marcos Loop

John H. Robertus
November 28, 2007
Page 3

project. Thus, the actual cost to NCTD for sediment and erosion control BMPs for the Sprinter Mainline Project has been roughly \$1 million per year, nearly double the \$560,000 per year amount that the Regional Board considers adequate. To the extent the Regional Board believes that inadequate resources have been devoted to sediment and erosion control in the Sprinter Project, that belief is erroneous.

Thank you for providing West Coast with the opportunity to provide factual information pertinent to the ACL. By submitting this information, West Coast is attempting to assist the Regional Board in reaching its determination with respect to the ACL against the permittee, the NCTD. West Coast is not the permittee on this project, and West Coast does not assume any permittee liability through the submission of this evidence.

Very truly yours,



Stephen J. O'Neil

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:LOB\400564441.1
Enclosure

cc: Marguerite S. Strand, Esq.

DECLARATION OF ROBERT LONG

I, Robert Long, declare as follows:

1. I am an employee of FCI Constructors, Inc., which is one of the members of the joint venture known as West Coast Rail Constructors, JV ("West Coast"). West Coast is the general contractor for the Sprinter Mainline and San Marcos Loop Projects, both of which are rail projects owned by the North County Transit District ("NCTD"). In September 2005, I became the Assistant Project Manager for the construction of the Sprinter Mainline Project. I served as the Assistant Project Manager for roughly one year and then became the Project Manager. From November 2006 to the present, I have continuously served as the Project Manager for the Sprinter Mainline. As the Project Manager, I have overall responsibility for the performance of West Coast's work on the Sprinter Mainline Project, as well as overall financial responsibility for the work. As Assistant Project Manager and Project Manager, my office has always been located in construction trailers at 1142 Armorlite Drive in San Marcos, adjacent to a portion of the Sprinter Mainline. I have personal knowledge of the matters stated in this declaration except as noted below, and if called upon to do so, could and would competently testify to the following matters.

2. I received and reviewed the Regional Water Quality Control Board's ("RWQCB") Facility Inspection Reports prepared in connection with its February 20 and March 21, 2007 inspections of portions of the Sprinter Mainline and San Marcos Loop Projects. Based on my work as the Assistant Project Manager and Project Manager, I was familiar with the locations along the Sprinter Mainline discussed in the Facility Inspection Reports. I also have reviewed

the RWQCB's Complaint No. R9-2007-0093 for Administrative Civil Liability ("Complaint"), as well as the August 31, 2007 Technical Analysis ("Technical Analysis") attached to it.

**NCTD'S COSTS FOR INSTALLING AND MAINTAINING SEDIMENT
AND EROSION CONTROL BMP'S**

3. At paragraph 3.1.8 of the Technical Analysis, the RWQCB estimates that adequate sediment and erosion control BMP's cost roughly \$2,000 per acre per year, or \$560,000 per year for the entire 280 acre Sprinter Mainline and San Marcos Loop Projects. This estimate of the NCTD's costs for sediment and erosion control BMP's is roughly one-half of the actual costs the NCTD has incurred for the BMP's.

4. West Coast's monthly payment applications to NCTD contain specific entries for the quantity and cost to NCTD for installing nine different types of BMP's. For example, as of the September 20, 2007 payment application, West Coast had installed 149,903 linear feet of silt fence. NCTD paid West Coast \$599,612 for this quantity of silt fence. As of September 20, 2007, West Coast had installed 195,572 linear feet of fiber rolls, and NCTD paid \$782,288 for this quantity of fiber rolls.

5. In addition to the BMP's that were separately itemized on payment applications, the charges for installing or maintaining certain other sediment and erosion control measures were accumulated and billed to NCTD through earthwork charges for each of the four segments of the Sprinter Mainline. For example, street sweeping charges and pre-storm maintenance charges were accumulated in the earthwork account for each segment.

6. As of the September 20, 2007 payment application, West Coast had charged NCTD more than \$2.7 million for sediment and erosion control BMP's on the Sprinter Mainline, either through the separately itemized charges or through the charges included within the earthwork accounts. Because the Sprinter Mainline is not yet complete, West Coast continues to perform work in connection with sediment and erosion control BMP's and the costs to NCTD for this work continue to grow. The actual costs to NCTD for sediment and erosion control BMP's for the Sprinter Mainline Project have been roughly \$1,000,000 per year, nearly double the \$560,000 per year amount that the RWQCB would consider adequate.

7. The \$2.7 million in costs that NCTD incurred for erosion and sediment control BMP's through September 20, 2007 on the Sprinter Mainline Project does not include the amount NCTD has paid for such measures in connection with the San Marcos Loop Project. The Sprinter Mainline and San Marcos Loop Projects are covered by separate contracts between West Coast and NCTD and are billed separately. Through my discussions with my counterpart, Tom Cameron, who is the Project Manager for the San Marcos Loop Project, I am informed and believe that NCTD has incurred more than \$400,000 in costs for erosion and sediment control BMP's for the San Marcos Loop Project.

ALLEGED DISCHARGE INTO MUNICIPAL SEPARATE STORM SEWER SYSTEM

EAST OF ESCONDIDO AVENUE IN VISTA

8. One of the allegations in the RWQCB's Complaint is that on February 20, 2007, the NCTD discharged sediment from the Sprinter Mainline site into the Municipal Separate Storm Sewer System ("MS4") through an inlet east of Escondido Avenue in the City of Vista,

which then was discharged into Buena Vista Creek and downstream into Buena Vista lagoon. Complaint, Allegation 5.1 at page 2. This allegation is untrue.

9. On February 20, 2007, the inlet east of Escondido Avenue in Vista to which the RWQCB refers was not yet hooked into the MS4. Any sediment that might have entered the inlet could not have passed into the municipal system because the inlet was not tied into the municipal system until roughly six weeks later.

10. On April 4 and 5, 2007, West Coast diverted traffic on Escondido Avenue, excavated underneath Escondido Avenue, shored the excavation, installed the pre-cast concrete junction structure, installed the casings that connect the new inlet and storm drain to the existing storm water sewer, backfilled the excavation, patched over the street, and restored traffic. This work on April 4 and 5, 2007 connected the inlet east of Escondido Avenue to the MS4. It was not until this work was completed on April 5, 2007 that the inlet was hooked into the MS4.

ALLEGED DISCHARGE FROM THE MAR VISTA STORAGE YARD
INTO BUENA VISTA CREEK

11. Another allegation in the Complaint is that NCTD discharged sediment from the Mar Vista storage yard in Vista into an MS4 inlet that discharges into Buena Vista Creek and downstream into Buena Vista lagoon. Complaint, Allegation 5.2 at page 2.

12. This allegation mistakenly designates the storage yard as the sole source of the sediment that collected at the inlet. The principal actual source of the sediment was a natural drainage channel that collects water from a large watershed on the south side of the Sprinter Mainline (outside of the railroad right-of-way and West Coast's work area), passes through a

pipe underneath the railroad, and continues on to an inlet that also is located outside of the railroad right-of-way and West Coast's work area. This natural drainage channel existed before the construction of the Sprinter Mainline began.

13. After the RWQCB notified the NCTD of the February 2007 violation in connection with the MS4 inlet at the Mar Vista storage yard, I asked one of West Coast's employees to inspect the inlet and storage yard. The storage yard was properly surrounded with silt fence, which was still standing and had not been breached or overwhelmed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 28, 2007 at San Marcos, California.


Robert Long