

SUMMARY OF WATER QUALITY ORDER

ORDER NO.	WQ 2014-0015
DATE ADOPTED	February 4, 2014
PETITION TITLE	PETITIONS OF (a) CALIFORNIA DEPARTMENT OF TRANSPORTATION (DEPARTMENT); and, (b) MCM CONSTRUCTION, INC. (MCM) (ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R1-2012-0034 IN THE MATTER OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, CONFUSION HILL BYPASS PROJECT), NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD (NORTH COAST WATER BOARD)
POPULAR NAME [if applicable]	Confusion Hill Petitions
REGIONAL BOARD	North Coast Regional Water Quality Control Board
FILE NO[S]	SWRCB/OCC Files A-2208(a) and (b)

PRECEDENTIAL DECISION

In March 2012, the North Coast Water Board issued an Administrative Civil Liability Order (ACL Order) to the Department. The ACL Order assessed overall liability to the Department in the amount of \$475,182 (including \$70,182 in initial staff costs).

The Department and its construction contractor, MCM, each filed timely petitions requesting State Water Board review of the ACL Order. The State Water Board consolidated their petitions for review, and in September 2013, adopted an order to review the ACL Order on its own motion. On January 21, 2014, the State Water Board held a public workshop to address written comments received in advance of the workshop and to receive oral comments on the proposed order. The State Water Board adopted the Order at a public meeting held on February 4, 2014.

The Department's petition (1) asked for review of the North Coast Water Board's inclusion of the initial staff costs in its liability assessment; (2) raised evidentiary objections; and (3) requested relief from imposition of liability for charges that had been withdrawn by the prosecution prior to the hearing but inadvertently included in the ACL Order. The Order denies all but one of the Department's requests, and holds that:

1. The Department's assertion that the North Coast Water Board was not authorized by statute or regulation to include staff costs in its assessment of liability is incorrect.
2. The evidence challenged by the Department for lacking authentication and amounting to hearsay was, in fact, properly authenticated, subject to statutory hearsay exceptions, and therefore admissible.
3. The three previously withdrawn charges should be stricken from the ACL Order, along with the amount of liability assessed for those three violations.

MCM's petition challenged seven of the nine categories of violations for which liability was assessed (construction dewatering, leaky equipment, turbid discharges, insufficient turbidity measurements,

cementitious discharges, individual events, and stormwater permit violations). It also challenged the application of statutory factors the North Coast Water Board considered when determining the amount of liability. The draft order denies MCM's petition in its entirety, holding that:

1. The seven categories of permit violations challenged by MCM are all supported by evidence in the record.
2. The North Coast Water Board appropriately analyzed and applied the ten Water Code section 13385 factors at issue.

The Order also takes the opportunity to correct the ACL Order's requirement that all penalties be paid to the Cleanup and Abatement Account, because the relevant statutes provide that most of these penalty amounts should be deposited into the Waste Discharge Permit Fund.