
North Coast Regional Water Quality Control Board

September 27, 2017

Mr. Matthew Brady, District 1 Director
California Department of Transportation
P.O. Box 3700
Eureka, CA 95501-3700
Matthew.Brady@dot.ca.gov

Dear Mr. Brady:

Subject: Notice of Violation of Unpermitted Discharges of Waste and Requirement for Information, Pursuant to Water Code Section 13267 - Caltrans State Route 101 Willits Bypass Project

Violations: General Conditions 7, 20 and 21 of Clean Water Act Section 401 Water Quality Certification, WDID No. 1B10019WNME

File: Highway 101 - Willits Bypass Project
WDID No. 1B10019WNME, ECM PIN CW-750104

We find that the California Department of Transportation's (Caltrans) implementation of the Highway 101 Willits Bypass Project (Project) has resulted in violations of general conditions 7, 20 and 21 of its Clean Water Act Section 401 Water Quality Certification (Certification), issued by the Regional Water Board (or Board) on August 6, 2010. This notice of violation is supported by the May 5, 2017, and June 29, 2017, site inspections conducted by Regional Water Board staff.

Pursuant to Water Code section 13267, you are required to submit technical reports containing the information listed below (see Information Required) no later than 45 days from the date of this letter (13267 Order). Please direct the reports and any related correspondence to the attention of Regional Water Board staff Stephen Bargsten.

A. Background

1. During a site inspection on May 5, 2017, Regional Water Board staff had noticed a modification to a wetland establishment area on what is known as the Watson 037-221-30 parcel in the form of a water retention pond (see Attachment A). The modification included installing a 3-foot tall and 8-foot wide berm around this water retention feature, which is not in the Board approved construction plans. This measurement is an estimation, as precise measurement tools were not available at the time of staff inspection. This upland feature is not shown on the original, approved plan sheet. When the Board staff discovered this water retention feature, we asked if this design modification had been submitted for approval, Caltrans had responded "no". We were also informed by Caltrans staff that this type of modification was constructed at a number of other mitigation sites.

B. Alleged 401 Certification Violations

Condition 7 of the Certification requires:

Caltrans shall mitigate the project impacts by implementing the Caltrans-prepared Final Mitigation and Monitoring Proposal (Final MMP), adopted June 8, 2010. At a minimum, the mitigation shall result the enhancement of approximately 1,011 acres of existing wetlands, the creation of 24 acres, the preservation of 53 acres for a total of approximately 1,088 of wetlands to be secured in perpetuity. In addition, Caltrans must mitigate impacts to riparian areas (waters of the State) by creating 47.57 acres, enhancing 48.51 acres, and securing in perpetuity 104 acres. Additionally the mitigation must enhance 27.58 acres and preserve 24.5 acres of waters of the U.S. and State.

Condition 20 of the Certification requires:

Caltrans shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality requirements and Water Quality Standards as detailed in the Basin Plan.

Condition 21 of the Certification requires:

Any change in the design or implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review, consideration, and concurrence.

Caltrans violated these conditions by modifying the Board-approved final construction plan sheets without obtaining prior approval. These final construction plans were incorporated into the Willits Bypass Mitigation and Monitoring Proposal (MMP), approved by the Board on June 13, 2014. Caltrans is required to implement the MMP as approved. Any changes to the MMP must first be submitted for review and approval by the Regional Water Board Executive Officer. These changes were never submitted for Executive Officer's prior approval. Modifying the final, Board-approved MMP likely resulted in a change to wetland type (e.g., ponded wetlands versus seep wetlands), and wetland quantity.

C. Information Required

No later than 45 days from the date of this 13267 Order, technical reports, containing the information listed below, shall be submitted to Regional Water Board staff:

1. Submit a report detailing proposed remedies for the alleged violations, measures to prevent violation recurrences, and a detailed explanation why the construction plans were not followed and why the berms, or modifications were constructed, for all mitigation areas.
2. Include the following information, for all mitigation areas in a tabulated format:

From Approved MMP

1. Existing wetland area prior to any work (ft²)
2. U.S. Army Corps of Engineers Jurisdictional Determination maps
3. Proposed amount of wetland fill
4. Original agency-approved plan sheets
5. Proposed finished wetland areas (separated by type – ponded, seep, etc.)

From Current as-built

6. Current wetland area (ft²) (separated by type – ponded, seep, etc.)
7. Current amount of wetland fill (area and volume)
8. Current as-built plan sheets
9. Reasons for altering wetland types to what was originally present

Pursuant to Water Code section 13385, any person who violates Water Code section 13376 can be liable for up to \$10,000 for each day in which the violation occurs. Where there is a discharge, an additional liability may be assessed up to \$10 per gallon.

Pursuant to Water Code section 13268, any person failing or refusing to furnish technical reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs.

Submit the report, plan sheets, and tables to Stephen Bargsten, Regional Water Board staff, at Stephen.Bargsten@waterboards.ca.gov. If you have questions regarding this Notice of Violation, you may contact Stephen Bargsten by email or by telephone, at (707) 576-2653.

Sincerely,

Shin-Roei Lee, P.E.
Assistant Executive Officer

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Certified Mail Return Receipt Required

cc: U.S. Army Corps of Engineers
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