

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
SEPTEMBER 24, 2013**

ITEM 10

SUBJECT

CONSIDERATION OF A PROPOSED ORDER FOR STATE WATER BOARD REVIEW ON ITS OWN MOTION OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R1-2012-0034 (ACL ORDER) ISSUED TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) BY THE NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD (NORTH COAST WATER BOARD). (SWRCB/OCC FILES A-2208(a) and A-2208(b).)

DISCUSSION

On March 15, 2012, the North Coast Water Board issued the ACL Order to Caltrans for activities related to the construction of the Confusion Hill Highway Bypass Project (Project) near the South Fork of the Eel River in Mendocino County. Both Caltrans and its construction contractor for the Project, MCM Construction, Inc. (MCM), filed timely petitions seeking review of the ACL Order with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on November 7, 2012.

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete. In this case, the petitioners agreed to extend that 270-day period by 60 days, to October 3, 2013, to accommodate the State Water Board's request for additional time to review the large volume of evidentiary and other issues raised in the petitions. If the State Water Board has not made a formal disposition within this time frame, the regulations deem the petitions denied.

The State Water Board needs additional time to finalize a proposed draft order on the merits. The order proposed for adoption on September 24, 2013 is therefore an interim order through which the State Water Board decides to review the ACL Order on its own motion. It is expected that the State Water Board will release a draft proposed order on the merits by the end of 2013.

POLICY ISSUE

Should the State Water Board adopt the proposed order to review the ACL Order on its own motion?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

If the proposed order is not adopted, the North Coast Water Board would be subject to potential litigation on the ACL Order. Adoption of the proposed order delays the prospect of litigation until the State Water Board adopts the impending order on the merits.

STAFF RECOMMENDATION

Adopt the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**ORDER WQ 2013-**

CALIFORNIA DEPARTMENT OF TRANSPORTATION AND MCM CONSTRUCTION, INC.

For Review of
Administrative Civil Liability Order No. R1-2012-0034
California Department of Transportation, Confusion Hill Bypass Project

Issued by the
California Regional Water Quality Control Board,
North Coast Region

SWRCB/OCC FILE A-2208(a) and (b)

BY THE BOARD:

On March 15, 2012, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted Administrative Liability Order No. R1-2012-0034 (ACL Order) to the California Department of Transportation (Caltrans) for activities related to the construction of the Confusion Hill Highway Bypass Project (Project) near the South Fork of the Eel River in Mendocino County. Both Caltrans and its construction contractor for the Project, MCM Construction, Inc. (MCM), filed timely petitions seeking review of the ACL Order with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on November 7, 2012.¹

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete.² In this case, the petitioners agreed to extend that 270-day period by 60 days, to October 3, 2013, to accommodate the State Water Board's request for additional time to review the large volume of evidentiary and other issues raised in the petitions.³ If the State Water Board has not made a formal disposition within this time frame, the regulations deem the petition denied. The denial of a petition for review would

¹ Cal. Code Regs., tit. 23, § 2054.

² Cal. Code Regs., tit. 23, § 2050.5, subd. (a).

³ See Petitioners' Stipulation to Time Extension, dated July 9, 2013.

ordinarily require a petitioner to file any judicial challenge within 30 days of the denial.⁴ When the State Water Board anticipates addressing a petition on the merits after the review period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation.

The State Water Board anticipates issuing an order addressing all of the issues raised in the petitions, including the numerous evidentiary issues, but not by October 3, 2013. Therefore, the State Water Board has decided to review the ACL Order on its own motion.⁵

ORDER

IT IS HEREBY ORDERED that the State Water Board will review Administrative Liability Order No. R1-2012-0034 on its own motion.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 24, 2013.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board

⁴ Wat. Code, § 13330, subd. (b).

⁵ See Wat. Code, § 13320, subd. (a); Cal. Code Regs., tit. 23, § 2050.5, subd. (c).