

## Response to Comments

Administrative Civil Liability Order No. R1-2008-0008

### California Department of Transportation Confusion Hill Bypass Project

On October 25, 2007, the California Department of Transportation (Caltrans) submitted comments on Administrative Civil Liability Complaint No. R1-2007-0059, which is being considered by the Regional Water Board as Administrative Civil Liability Order No. R1-2008-0008 (ACL Order). Mr. Douglas Jensen, counsel to Caltrans, submitted the comments, including statements written by Mr. Nick King, MCM Construction Inc. employee and Project Engineer for the Confusion Hill Bypass Project (Project) and Mr. Justin Porteous, Mercer-Fraser Company employee and Engineer for the Project.

The comments included two arguments: the turbidity monitoring results included in the discharge report were not relevant to evaluating the impact of the discharge and turbid wastewater was discharged to the gravel bar and isolated pool, rather than to the flowing water of the river.

#### Turbidity Monitoring

The discharge report prepared by Mr. Porteous and submitted by Caltrans included turbidity monitoring results, which were reported in a confusing manner, but nonetheless were included in the Administrative Civil Liability Complaint. Caltrans has clarified in their comments that the turbidity monitoring that occurred at the time of discharge and also an hour after discharge, was done in two separate locations and, therefore, could not actually evaluate any impacts resulting from the pipeline discharge. It is Caltrans' responsibility to perform the necessary turbidity monitoring when a discharge occurs, to evaluate impacts to water quality. The turbidity monitoring is required by the Water Quality Certification and must be conducted in a way that will identify any increases in surface water turbidity due to the discharge. Here, that monitoring was not done properly, and the information cannot, therefore be used as evidence, and the turbidity monitoring results have been removed from the ACL Order.

#### Wastewater Discharged Primarily to Gravel Bar

Staff received conflicting and confusing reports on the pipeline discharge. It is Caltrans' responsibility to provide information clearly and accurately, with events described in detail and impacts to water quality plainly identified. One of the primary conflicts in the reports is the location of the discharge. In the comments submitted on October 25, 2007, Caltrans stated that turbid wastewater was discharged to the gravel bar and an isolated pool, rather than to the flowing water of the South Fork Eel River, as the river was in a low flow period. This is not an important element of the ACL Order.

The gravel bar and isolated pool are below the ordinary high water mark of the South Fork Eel River and are therefore within waters of the United States, which are also waters of the State. The Water Quality Certification and Storm Water Permit prohibit the discharge of unauthorized waste to waters of the United States and waters of the State. Additionally, in comments submitted on October 25, 2007, Caltrans stated that the discharge was not cleaned up, except for in an area above the floodplain, which is presumably outside of waters of the United States. The discharge, therefore, was most likely washed by rainfall into the flowing water of the South Fork Eel River during the next rain event.

Not only will discharges to the large isolated pool eventually make it to the river when the river's increased wintertime flow reaches the isolated pool, but the isolated pool itself has beneficial uses that must be protected from discharges of waste. The California Department of Fish and Game identified the isolated pool as containing fish and amphibians, including a sighting of a California red-legged frog, an amphibian identified as threatened under the federal Endangered Species Act.

Discharges of sediment to the South Fork Eel River impact beneficial uses of the river. The South Fork Eel River has an established sediment total maximum daily load (TMDL) that states that discharges of sediment are deleterious to the river. The South Fork Eel River is also habitat for endangered species that are sensitive to excessive sediment. The pipeline discharge was a sediment discharge that was easily avoidable with the proper use of best management practices such as properly draining, cleaning, and capping the pipeline before pulling it across the river.